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<p>SUPREME COURT, STATE OF COLORADO</p> <p>Ralph L. Carr Judicial Center 2 East 14th Ave. Denver, CO 80203</p>	<p>DATE FILED: April 16, 2013 FILED IN THE SUPREME COURT</p> <p>APR 16 2013</p> <p>OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p> <p>σ COURT USE ONLY σ</p>
<p>Certiorari to the Colorado Court of Appeals Case Number 08CA2694</p> <p>THE PEOPLE OF THE STATE OF COLORADO</p> <p>Petitioner</p> <p>v.</p> <p>CAREY ANDRE GRIFFIN</p> <p>Respondent</p>	<p>Case Number: 11SC351</p>
<p>ANSWER BRIEF</p>	

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<p style="text-align: center;">CERTIFICATE OF COMPLIANCE</p>	

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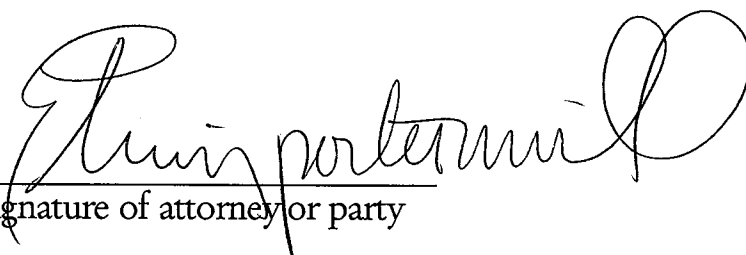
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INTRODUCTION

Petitioner the State of Colorado, will be referred to as the prosecution or the State. Respondent, Carey Griffin, was the defendant in the trial court and will be referred to by name. Numbers in parentheses refer to the volume and page number of the record on appeal.

ISSUES ANNOUNCED BY THE COURT

- I. Whether physical presence or occupancy is required to establish a residence under the Colorado Sex Offender Registration Act.
- II. Whether the court of appeals erred in finding that the evidence was insufficient to sustain the defendant's conviction for the continuing offense of failure to register as a sex offender.
- III. Whether the proper resolution of a certiorari review of a conviction reversed on direct appeal is abatement *ab initio* when the defendant has died during the pendency of such review.
- IV. In any event, whether the issues accepted for review in this case are of sufficient public importance and may evade future review such that resolution by the Court is warranted despite the defendant's death.

STATEMENT OF CASE

In March 2007, the Adams County District Attorney charged Mr. Griffin with failure to register as a sex offender. (v1, p1-2) Initially, the prosecution alleged Mr. Griffin "failed to complete a cancellation of registration form and file the form with the local law enforcement agency" on February 27, 2007 pursuant to section 18-3-412.5(1)(i), C.R.S. 2006 (count one). (*Id.*) Later, the district court granted the

prosecution's motions to dismiss count one and to add a new count. (7/9/08 p3; v1, p6) The new count alleged Mr. Griffin "failed to register with the local law enforcement agency in each jurisdiction in which he resides upon changing an address" on March 9, 2007 pursuant to section 18-3-412.5(1)(g), (2), C.R.S. 2006 (the only count at trial). (v1, p6)

The day trial was initially scheduled to begin, the prosecution moved to amend the offense date to between June 2, 2006 and February 27, 2007. (7/9/08 p2-3; *see also* v1, p25) Over objection, the court granted the amendment but continued the trial within the speedy trial deadline. (7/9/08 p6, 10-11, 13)

After a bench trial on August 27, 2008, the court found Mr. Griffin guilty of the charged offense. (8/27/08 p123-28)

Mr. Griffin appealed his conviction, arguing, *inter alia*, the prosecution presented insufficient evidence to convict him of failing to register because it did not prove he resided in Adams County. (Flat File: Court of Appeals OB) On March 17, 2011, the Court of Appeals agreed with Mr. Griffin and vacated his conviction. *People v. Griffin*, slip op. at 11 (Colo. App. No. 08CA2694, March 17, 2011). The State filed a petition for rehearing, which was denied April 21, 2011. (Flat File: Petition for Rehearing, April 11, 2011; Order Denying Petition for Rehearing, April 21, 2011)

This Court granted the State's petition for writ of certiorari on October 11, 2011. (Flat File: Order of Court, Oct. 11, 2011) Mr. Griffin died on November 22, 2011. (Flat File: Notice of Death Certificate, May 29, 2012) The State filed its Opening Brief on April 30, 2012. Upon learning of Mr. Griffin's death, defense counsel moved to dismiss the appeal, relying on the abatement *ab initio* and mootness doctrines. (Flat File: Notice of Death and Motion to Dismiss Appeal, May 17, 2012) This Court granted the motion and dismissed the appeal. (Flat File: Order of Court, May 30, 2012)

The State asked this Court to reconsider its order dismissing the appeal and to expand the scope of review. (Flat File: Response to Motion to Dismiss Appeal and Request to Expand the Scope of Review Before this Court, June 4, 2012) This Court granted the State's motion and reinstated the appeal. (Flat File: Order of Court, June 21, 2012) This Court also announced two new certiorari issues involving the abatement *ab initio* and mootness doctrines. The State has not yet briefed the two new certiorari issues.

STATEMENT OF FACTS

The facts are largely undisputed. Based upon the evidence presented at trial, the facts of the case are as follows.

In November 1997, a jury convicted Mr. Griffin of attempted first-degree sex assault¹ and attempted inducement of child prostitution.² (*See* People's Ex. 10) After completing his Department of Corrections (DOC) sentence, Mr. Griffin was required to register as a sex offender.

In June 2006, Mr. Griffin canceled his registration in Denver, where he had been living. (8/27/08 p19; People's Ex. 1) At the time he canceled his Denver registration, he intended to move to Adams County. (8/27/08 p19, 92; People's Ex. 1)

Before Mr. Griffin moved to Adams County, however, his plans changed. He left Colorado and eventually moved to Washington. (8/27/08 p92-94) Accordingly, Mr. Griffin never registered in Adams County.

In 2007, Mr. Griffin was arrested in Washington, where he lived, for the failure to register charge. (8/27/08 p94) He returned to Colorado to resolve this case. (*Id.*) Thereafter, Mr. Griffin was prosecuted as set forth in the Statement of the Case.

Consequently, as the Court of Appeals correctly concluded, Mr. Griffin's failure-to-register-as-a-sex-offender conviction turned on whether the duty to register for changing an address is triggered upon merely forming an *intent* to reside at a new

¹ § 18-3-402(1)(a), C.R.S. 1996, a class-four felony.

² § 18-2-101, C.R.S. 1996, a class-four felony. The mittimus lists the offense date for both convictions as 11/22/1996.

address or whether the duty is triggered by actually residing, through physical presence or occupancy, at a new address.

ARGUMENT SUMMARY

Because the third and fourth issues may be dispositive, they will be addressed first in the Answer Brief.

III. It is well-settled in Colorado that a defendant's death pending direct appellate review of criminal convictions abates not only the appeal but all proceedings had in the prosecution from its inception; this legal principle is referred to as the abatement *ab initio* doctrine. Based upon the principal rationale for the abatement doctrine – that criminal defendants who die before the conclusion of their appellate review have not obtained a final adjudication of guilt or innocence, the doctrine should apply whenever a criminal defendant dies before either the United States Supreme Court or the Colorado Supreme Court has had an opportunity to review the judgment of conviction. Consistent with this Court's actions in *People v. Versteeg*, Mr. Griffin's case should be abated and remanded to the trial court with directions to vacate the judgment of conviction and dismiss the charge.

IV. Even if this Court does not abate the proceedings *ab initio*, the appeal in Mr. Griffin's case should be dismissed as moot and the judgment of conviction should be vacated. When Mr. Griffin died, this appeal became moot; any judgment

rendered by this Court would have no practical legal effect upon him. This case presents neither an issue of sufficient public importance nor an issue capable of repetition yet evading review, and, thus, the exceptions to the mootness doctrine are inapplicable. Furthermore, many reasons justify dismissal of Mr. Griffin's case as moot, including this Court lacking subject-matter jurisdiction, the nonexistence of a case or controversy thereby requiring an advisory opinion, the rules of professional conduct requiring client consultation, and the legislature not authorizing public defenders to represent dead people.

I. The failure-to-register-as-a-sex-offender offense statute requires registration based upon where sex offenders *reside* upon changing an address. The plain and ordinary meaning of *reside* requires physical presence or occupancy. Both the disputed provisions of the regulatory act and the regulatory act, as a whole, support the *Griffin* Court's conclusion that physical presence or occupancy is required. Colorado case law also supports the *Griffin* Court's conclusion.

Contrary to the State's position, a sex offender's intent to reside in a jurisdiction, without physical presence or occupancy, does not trigger the duty to register. The State's interpretation ignores the offense statute's plain language, would render part of the offense statute superfluous, does not harmonize the remaining regulatory act statutes or the offense statute, and does not consider case law.

Furthermore, the State's interpretation creates a mandatory presumption in a criminal case, which violates due process. Unfortunately, the regulatory act does not create a seamless registration system, and the State's interpretation would lead to an unworkable and an absurd result, creating many new problems with the already problematic registration system. Finally, if the offense statute is ambiguous, then the statute must be strictly construed in Mr. Griffin's favor.

II. The law that failure to register as a sex offender is a continuing offense does not change the sufficiency analysis. The prosecution presented insufficient evidence to establish Mr. Griffin was guilty of failing to register as a sex offender because it did not prove he resided in Adams County at any time during the time period charged. Even if this Court concludes a sex offender's intent to reside in a jurisdiction, without more, triggers the duty to register, the prosecution still presented insufficient evidence to establish Mr. Griffin was guilty of failing to register as a sex offender in Adams County during the time period charged.

ARGUMENT

III. This Court should apply the abatement *ab initio* doctrine, abate the proceedings *ab initio*, and remand with directions to the trial court to vacate Mr. Griffin's conviction and dismiss the charge.

A. STANDARD OF REVIEW

Counsel preserved this issue for appeal by moving to dismiss Mr. Griffin's case based upon the abatement *ab initio* doctrine. (Flat File: Notice of Death and Motion to Dismiss Appeal, May 17, 2012)

Whether the abatement *ab initio* doctrine applies is a question of law reviewed *de novo*. See *Crowley v. People*, 223 P.2d 387 (Colo. 1950) (seemingly reviewing *de novo*).

B. LAW AND ANALYSIS

1. It is well-settled that Colorado applies the abatement *ab initio* doctrine when criminal defendants die while their cases are pending direct appellate review.

For more than 100 years, Colorado has applied the abatement *ab initio* doctrine when criminal defendants die pending direct appellate review of their convictions. See, e.g., *Overland Cotton Mill Co. v. People*, 75 P. 924, 925 (Colo. 1904) (because criminal defendant died while case pending before the Colorado Supreme Court, "the proceedings are abated by operation of law"). Application of the abatement *ab initio* doctrine results in the criminal proceedings being abated and remand to the trial court with directions to vacate the defendant's convictions and dismiss the charges. See, e.g.,

Durham v. United States, 401 U.S. 481, 483 (1971) (adopting unanimous rule applied by lower federal courts that “death pending direct review of a criminal conviction abates not only the appeal but also all proceedings had in the prosecution from its inception”); *Crowley*, 223 P.2d at 388 (because criminal defendant died after an appeal bond was granted, the Court reversed the judgment of conviction); *People v. Lipira*, 621 P.2d 1389, 1389-90 (Colo. App. 1980) (because criminal defendant died while direct appeal pending, case remanded with directions to set aside the judgment of conviction and dismiss the indictment).

This Court adopted the doctrine in 1904, explaining that “[t]he purpose of enforcing a penal statute is to punish the person found guilty of violating its provisions,” a purpose which can be served only as long as the person is alive. *Overland*, 75 P. at 925; see *People v. Daly*, 2011 WL 2308587, *2 (Colo. App. No. 10CA580, June 9, 2011). Thus, when the convicted person dies, the judgment cannot be enforced and the proceedings are abated:

The purpose of enforcing a penal statute is to punish the person found guilty of violating its provisions. The representatives of deceased are not responsible for the alleged violation of the statute by him during his lifetime. They cannot be required to satisfy the judgment against him. It is only the person adjudged guilty who can be punished, and a judgment cannot be enforced when the only subject-matter upon which it can operate has ceased to exist. As to the deceased, the proceedings are abated by operation of law.

Overland, 75 P. at 925 (citations omitted); accord *Crowley*, 223 P.2d at 388 (reversing the defendant’s judgment of conviction to “put an end to an infliction or enforcement of the punishment imposed”).

Overland and *Crowley* are the only two cases in which this Court issued an opinion involving the abatement *ab initio* doctrine. However, this Court applied the abatement *ab initio* doctrine to circumstances similar to those presented in Mr. Griffin’s case – where the defendant dies after certiorari review has been granted. In *People v. Versteeg*, this Court initially granted certiorari review but later, when the defendant died, dismissed the case and ordered “defendant’s convictions *ab initio* are vacated.” 2008 WL 2468537, *1 (Colo. No. 07SC80, May 6, 2008). The result in *Versteeg* was correct, as the doctrine clearly applies to cases that are pending direct appeal when the defendant dies.

2. This Court should apply the abatement *ab initio* doctrine whenever defendants die before either the United States Supreme Court or the Colorado Supreme Court has had an opportunity to review the convictions.

A handful of Colorado Court of Appeals cases have considered the abatement *ab initio* doctrine and either applied it consistent with *Overland* and *Crowley* or refused to do so by carving out exceptions to its scope, none of which apply to the circumstances presented here. See *Lipira*, 621 P.2d at 1390 (following *Overland* and

Crowley, abating defendant's convictions *ab initio* where defendant died pending appeal of his conviction); *People v. Valdez*, 911 P.2d 703, 704 (Colo. App. 1996) (refusing to apply abatement doctrine where defendant died during an appeal of the denial of postconviction motion); *People v. Rickstrew*, 961 P.2d 1139, 1141 (Colo. App. 1998) (refusing to apply abatement doctrine to sentence appeal where defendant pled guilty); *Daly*, 2011 WL 2308587 at *6 (following *Overland* and *Crowley*, abating defendant's conviction *ab initio* where defendant died before his direct appeal was resolved). Nonetheless, the rationales in those cases are instructive.

The primary rationale for the abatement doctrine is that an appeal is “an integral part of our system of adjudicating guilt or innocence and defendants who die before the conclusion of their appellate review have not obtained a final adjudication of guilt or innocence. . . . [T]he interests of justice require that defendants not stand convicted without resolution of an appeal.” *Valdez*, 911 P.2d at 704 (citing *Griffin v. Illinois*, 351 U.S. 12, 18 (1956)); *see also Lipira*, 621 P.2d at 1389 (explaining “the Supreme Court has not been definitive in its direction to the trial court as to the final disposition of the case”); *Rickstrew*, 961 P.2d at 1141, 1140 (explaining “[a] defendant who dies prior to the conclusion of a direct appeal of a conviction has not obtained a final adjudication of guilt or innocence,” and “death deprived the accused of his or her right to appellate review, and the defendant should not stand convicted”).

This principal rationale for the abatement doctrine supports application of the doctrine when a criminal defendant dies before “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A) (explaining when the one-year statute of limitations for a criminal defendant’s habeas corpus petition must be filed). Until the United States Supreme Court has reviewed a criminal conviction, declined to review a criminal conviction, or the time for seeking such review has expired, our system of adjudicating guilt or innocence has not run its course. *See Durham*, 401 U.S. at 482-83 (abating where defendant died while petition for writ of certiorari pending but suggesting state courts are free to apply the doctrine however they see fit); *but see Dove v. United States*, 423 U.S. 325, 325 (1976) (summarily dismissing petition for writ of certiorari instead of applying the abatement doctrine and cryptically noting, “[t]o the extent that *Durham v. United States* may be inconsistent with this ruling, *Durham* is overruled”).

Alternatively, in Colorado, a direct appeal is not resolved and a conviction is not final until the appeal “has been exhausted.” *People v. Hampton*, 876 P.2d 1236, 1240 (Colo. 1994). This occurs when the judgment of conviction has been rendered, a valid sentence has been imposed, the judgment has been affirmed on appeal, and the petition for writ of certiorari has been denied or the time for filing one has elapsed.

Id. at 1239; *Leyva v. People*, 184 P.3d 48, 50 (Colo. 2008). The judgment of conviction is not final until the mandate issues. *See People v. Alexander*, 129 P.3d 1051, 1056 (Colo. App. 2005).

Until the direct appeal is exhausted and the conviction is final, the question of guilt or innocence is not fully and finally resolved, and the conviction is subject to reversal. *See, e.g., Arko v. People*, 183 P.3d 555 (Colo. 2008) (on certiorari review, conviction reversed and case remanded for a new trial); *Golob v. People*, 180 P.3d 1006 (Colo. 2008) (on certiorari review, conviction reversed); *Winter v. People*, 126 P.3d 193 (Colo. 2006) (on certiorari review, judgment reversed and conviction vacated). If a defendant's death were to result only in the dismissal of his or her pending petition for writ of certiorari and not in abatement of the criminal prosecution, the defendant would be deprived of full appellate review.³ The defendant's petition would effectively be deemed meritless and the conviction would be deemed final even though, had he or she lived, the petition might have been granted and the conviction might have been reversed or even vacated. *See id.* If the primary purpose of the

³ In dictum, the *Valdez* and *Daly* Divisions either suggested or asserted the abatement *ab initio* doctrine should not apply if a defendant dies while awaiting a decision on a petition for writ of certiorari. *Valdez*, 911 P.2d at 704 (“post-conviction proceedings should be resolved upon the death of the defendant in the same manner as upon a defendant's death pending certiorari review”); *Daly*, 2011 WL 2308587 at *3 (“if a defendant dies . . . while awaiting a decision on a petition for writ of certiorari . . . – the conviction should not be abated”).

abatement *ab initio* doctrine is to ensure that a defendant does not stand convicted without the full benefit of appellate review and a final adjudication of guilt or innocence, the doctrine should apply until the appeal “has been exhausted.” *Hampton*, 876 P.2d at 1240.

Another rationale for the abatement doctrine is that “[t]he purpose of enforcing a penal statute is to punish the person found guilty of violating its provisions” and to protect society from perpetrators of crime. *Overland*, 75 P. at 925. When a defendant dies, however, “the state’s interest in protecting society has been satisfied and there is no further interest in punishing the wrongdoer.” *Valdez*, 911 P.2d at 704. This is true regardless of where in the appellate process the defendant’s case is postured upon death. As this Court aptly said more than 100 years ago, “a judgment cannot be enforced when the only subject-matter upon which it can operate has ceased to exist.” *Overland*, 75 P. at 925.

Consequently, this Court should clarify that the abatement *ab initio* doctrine applies whenever defendants die before either the United States Supreme Court or the Colorado Supreme Court has had an opportunity to review the convictions.

3. The abatement *ab initio* doctrine applies to Mr. Griffin's case because he died before this Court decided whether his judgment of conviction was properly vacated and, thus, his case was still pending direct appellate review.

Here, Mr. Griffin died after this Court granted certiorari review of his case. Compare Flat File: Notice of Death Certificate (November 22, 2011) with *People v. Griffin*, 2011 WL 4793513 (Colo. No. 11SC351, Oct. 11, 2011). Mr. Griffin's death occurred before a final adjudication regarding his guilt or innocence.⁴

Whether this Court adopts a rule that the abatement *ab initio* doctrine applies until the United States Supreme Court has had an opportunity to review a criminal defendant's convictions or the Colorado Supreme Court has had an opportunity for review, the abatement *ab initio* doctrine applies to Mr. Griffin's case because this Court granted certiorari review before he died. See *Versteeg*, 2008 WL 2468537 at *1. This Court should abate the proceedings *ab initio* and remand the case to the trial court with directions to vacate Mr. Griffin's convictions and dismiss the charge.⁵

Even if this Court refuses to apply the abatement *ab initio* doctrine to Mr. Griffin's case, jurisdictions which have rejected the abatement doctrine hold that, when a criminal defendant dies pending appellate review, the appellate proceedings

⁴ Presumably, the State agrees with this proposition, as it does not want the Court of Appeals' decision to be the final adjudication of Mr. Griffin's guilt or innocence.

⁵ The issue for certiorari review, as drafted by the State, questions whether the abatement doctrine applies to certiorari review of a conviction *reversed* on direct appeal. However, Mr. Griffin's conviction was vacated by the Court of Appeals.

should be dismissed. *See, e.g., Neville v. State*, 181 N.E.2d 638 (Ind. 1962) (dismissing appeal where defendant died pending appeal); *Dove*, 423 U.S. at 325 (dismissing petition for writ of certiorari). Because the Court of Appeals already vacated Mr. Griffin's conviction, if this certiorari review is dismissed, the case still must be remanded to the trial court with directions to vacate his conviction.⁶

IV. This Court should apply the mootness doctrine, dismiss the appeal, and vacate the judgment of conviction.

A. STANDARD OF REVIEW

Counsel preserved this issue for appeal by moving to dismiss Mr. Griffin's case based upon the mootness doctrine. (Flat File: Notice of Death and Motion to Dismiss Appeal, May 17, 2012)

Whether the mootness doctrine applies is a question of law reviewed *de novo*. *See People v. Espinoza*, 819 P.2d 1120, 1121 (Colo. App. 1991) (seemingly reviewing *de novo*).

B. LAW AND ANALYSIS

“Generally, appellate courts will not render opinions on the merits of an appeal when the issues presented have become moot because of subsequent events.” *Colo. Citizens for Ethics in Gov't v. Comm. for the American Dream*, 187 P.3d 1207, 1213 (Colo.

⁶ Because the State has not yet briefed this issue, defense counsel cannot respond to its arguments in the Answer Brief.

App. 2008); *Van Schaack Holdings, Ltd. v. Fulenwider*, 798 P.2d 424, 426-27 (Colo. 1990). “A case is moot when a judgment, if rendered, would have no practical legal effect upon the existing controversy.” *Van Schaack*, 798 P.2d at 426 (“The general rule is that when issues presented in litigation become moot because of subsequent events, an appellate court will decline to render an opinion on the merits of an appeal.”); *Barnes v. Dist. Ct.*, 607 P.2d 1008, 1009 (Colo. 1980) (“The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not . . . to declare principles or rules of law which cannot affect the matter in issue before it.” (quoting *People v. Dist. Ct.*, 242 P. 997 (Colo. 1925))); *Espinoza*, 819 P.2d at 1121 (appeal dismissed because issue presented was moot).

1. When Mr. Griffin died, this appeal became moot.

After this Court agreed to review this case, Mr. Griffin died. Any judgment rendered by this Court would have no practical legal effect upon Mr. Griffin. *See Van Schaack*, 798 P.2d at 426. Even if this Court reversed the Court of Appeals’ decision vacating Mr. Griffin’s judgment of conviction, he cannot be re-prosecuted. Accordingly, the original certiorari issues have become moot, and this Court should not render an opinion on the merits of the appeal. *See Colo. Citizens for Ethics in Gov’t*, 187 P.3d at 1213.

2. The circumstances of this case do not fall within the scope of the exceptions to the mootness doctrine.

A moot appeal must be dismissed unless “it presents a controversy capable of repetition yet evading review, or if the controversy in question involves an issue of great public importance or an allegedly recurring constitutional violation.” *Espinoza*, 819 P.2d at 1121.

First, Mr. Griffin’s case does not present an issue of sufficient public importance that resolution is warranted despite his death. Mr. Griffin was convicted of a class-six felony, the most minor felony conviction in Colorado. The crime of which he was convicted involved wholly passive conduct; he did not actively violate the law. Failing to register as a sex offender is a victimless crime, and, thus, this case does not implicate victims’ rights or restitution.

Second, Mr. Griffin’s case does not present an issue capable of repetition yet evading review. Numerous cases, before and after Mr. Griffin’s case, have interpreted a sex offender’s duty to register as clear; sex offenders must register in the jurisdiction in which they reside. *See People v. Allman*, 2012 COA 212, ¶ 21 (Colo. App. No. 09CA1347, December 6, 2012) (rejecting vagueness challenge to the regulatory act). (*See also* AB § I.D.4., *infra*) Mr. Griffin’s death will not prevent cases with similar issues from being reviewed by the Colorado Court of Appeals or this Court.

The circumstances of this case do not fall within the scope of the exceptions to the mootness doctrine.

3. Many reasons justify dismissal of Mr. Griffin’s case as moot.

Aside from strictly applying the mootness doctrine, many reasons justify dismissal of the appeal in Mr. Griffin’s case as moot.

a. When Mr. Griffin died, this Court lost subject-matter jurisdiction over his case.

“The purpose of enforcing a penal statute is to punish the person found guilty of violating its provisions. . . . [A] judgment cannot be enforced when the only subject-matter upon which it can operate has ceased to exist.” *Overland*, 75 P. at 925. When Mr. Griffin ceased to exist, so too did the subject-matter upon which any judgment could be enforced. Consequently, Mr. Griffin’s case must be dismissed for lack of subject-matter jurisdiction.

b. No case or controversy exists regarding Mr. Griffin’s conviction, and this Court is not empowered to issue advisory opinions.

The mootness doctrine is grounded in the Colorado Constitution’s implicit case or controversy requirement. Cathy S. Krendl & James R. Krendl, *Colorado Practice: Methods of Practice*, § 25:7 (5th ed. 2012); Colo. Const. art. VI, § 2; *see also Van Schaack*, 798 P.2d at 427. Because the case and controversy regarding Mr. Griffin’s conviction ended when he ceased to exist, the State is essentially asking this Court to issue an

advisory opinion. But this Court is not empowered to render advisory opinions. *See Kemp v. Empire Sav., Bldg. and Loan Ass'n*, 660 P.2d 899, 901 (Colo. 1983) (“This court is not empowered to give advisory opinions based upon hypothetical situations”); *Bd. of County Com’rs v. County Road Users Ass’n*, 11 P.3d 432, 438 (Colo. 2000) (“[a] court has no jurisdiction to render an advisory opinion on a controversy that is not yet ripe, or to decide a case on speculative, hypothetical, or contingent set of facts”). This Court should not “declare principles or rules of law which cannot affect the matter in issue before it.” *Barnes*, 607 P.2d at 1009. Therefore, the appeal should be dismissed.

- c. **Attorneys represent their clients’ interests and must consult with their clients about the objectives of representation, but if a client dies, attorneys have no way of knowing what their deceased client’s interests are.**

Colorado’s Rules of Professional Conduct require lawyers to “abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.” Colo. RPC 1.2. The Rules also require lawyers, *inter alia*, to “consult with the client about the means by which the client’s objectives are to be accomplished.” Colo. RPC 1.4.

Now that Mr. Griffin is dead, he can no longer assist in making decisions concerning his case. In this vacuum, counsel has no way of knowing what Mr. Griffin's interests are and whether she is representing those interests.

d. The legislature has not authorized counsel, a public defender, to represent dead people.

Colorado public defenders' representation is statutorily limited only to indigent people who are facing criminal proceedings in Colorado. § 21-1-103, C.R.S. 2012. The statute does not authorize public defenders to represent dead people. *See* § 21-1-103. While Mr. Griffin was indigent before his death and, thus, qualified for the assistance of a public defender, now that he is dead, the Colorado State Public Defender's Office is not authorized to represent him or his case.

In conclusion, Mr. Griffin's case is moot, none of the exceptions to the mootness doctrine apply, and many additional reasons justify dismissal of the case as moot. "When a case becomes moot on appeal, the usual practice is to dismiss the appeal and vacate the lower court's judgment." *Van Schaack*, 798 P.2d at 427; *see also United States v. Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950). Consequently, this Court should dismiss the appeal and remand with directions to the trial court to vacate Mr. Griffin's judgment of conviction.⁷

⁷ Because the State has not yet briefed this issue, defense counsel cannot respond to its arguments in the Answer Brief.

- I. **The Court of Appeals correctly concluded that prosecutors must prove sex offenders reside in a jurisdiction – through physical presence or occupancy – to convict sex offenders of failing to register upon changing an address.**

- A. STANDARD OF REVIEW

Mr. Griffin's trial counsel preserved this issue for appeal by moving pretrial to clarify the prosecution's burden of proof. (v1, p30) This issue was also preserved at the end of the bench trial when defense counsel sought to clarify the court's ruling regarding the prosecution's burden of proof, the elements of the offense, and the existence of a presumption. (8/27/08 p128) Defense counsel further preserved this issue for appeal by filing a Renewed Motion for Judgment of Acquittal and a Motion for a New Trial, both of which included arguments about the proper burden of proof and whether a presumption existed. (v1, p71-72, 74)

Statutory interpretation is a question of law reviewed *de novo*. *Goodyear Tire & Rubber Co. v. Holmes*, 193 P.3d 821, 825 (Colo. 2008).

- B. RELEVANT STATUTES

This case involves a number of statutory provisions. The two most important provisions are the failure-to-register-as-a-sex-offender offense statute, *see* § 18-3-412.5, C.R.S. 2006 (hereinafter offense statute), and the Sex Offender Registration Act, *see* §§ 16-22-101 to -115, C.R.S. 2006 (hereinafter regulatory act). Because some of the

statutes have been modified since Mr. Griffin was charged, the applicable provisions from the 2006 revised statutes are attached as an appendix.

C. APPLICABLE FACTS

Because this issue involves statutory interpretation, the evidentiary facts of the case have very little relevance. However, the State's arguments mirror the trial court's rulings, and the State asserts the trial court's reasoning was correct. (OB p37, 39, 40) Accordingly, the arguments before the trial court and its rulings are set forth herein.

On multiple occasions, and at Mr. Griffin's counsels urging, the district court discussed the prosecution's burden of proof and the elements for proving a sex offender is guilty of failing to register.

Pretrial, the court concluded a provision of the venue statute, § 18-1-202(11), C.R.S. 2006, enumerates that, for certain crimes, venue is an essential element; failing to register as a sex offender is one of those crimes. (8/22/08 p6) Specifically, the court determined that "venue, to the extent that you have to prove the jurisdiction in which the individual is required to register, is an essential element of the offense and must be proven by proof beyond a reasonable doubt." (*Id.*) The prosecution stated it understood its burden. (8/22/08 p7)

Denying the judgment of acquittal motion, the court concluded the prosecution was not required to prove that Mr. Griffin actually lived in Adams County because

only proof of his intent to move was necessary to convict him of failing to register.
(See 8/27/08 p81)

After all the evidence was presented, the court ruled from the bench. Concluding the dispositive inquiry was whether Mr. Griffin intended to establish a residence in Adams County, the court explained, “there is the presumption that if there is the intent to establish a residence, that the individual is required to register in that location. It doesn’t say that you actually live there. It just says: If you establish a residence.” (8/27/08 p124)⁸

D. LAW AND ANALYSIS

When interpreting a statute, appellate courts must determine and give effect to the intent of the legislature. *People v. Madden*, 111 P.3d 452, 457 (Colo. 2005); *M.S. v. People*, 812 P.2d 632, 635 (Colo. 1991). To discern the legislature’s intent, appellate courts first look to the plain and ordinary meaning of the statutory language. *Madden*, 111 P.3d at 457; *see also People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987) (looking first to the statutory term’s commonly accepted and understood meaning). When the statutory language is clear and unambiguous, the statute must be interpreted as written

⁸ For a more detailed discussion of defense counsel’s arguments and the trial court’s rulings regarding the prosecution’s burden of proof and the offense’s elements, please see Mr. Griffin’s Court of Appeals Opening Brief, Arg. II.

without resort to interpretive rules and statutory construction. *People v. Zapotocky*, 869 P.2d 1234, 1238 (Colo. 1994); *Jones v. Cox*, 828 P.2d 218, 221 (Colo. 1992).

Appellate courts must give effect to every word and are not to adopt a construction that renders any term superfluous. *Madden*, 111 P.3d at 457; *Slack v. Farmers Ins. Exch.*, 5 P.3d 280, 284 (Colo. 2000). And, “statutes must be construed, whenever possible, so as to obviate or reduce any constitutional infirmities.” *People v. Smith*, 862 P.2d 939, 943 (Colo. 1993); *see also People v. M.B.*, 90 P.3d 880, 881 (Colo. 2004).

If a statute’s plain language is ambiguous, appellate courts turn to other rules of statutory construction to clarify the legislative intent. § 2-4-203, C.R.S. 2006; *Zapotocky*, 869 P.2d at 1238. Appellate courts may consider the consequences of a particular construction. *Id.* They may consider the statutory words in context and analyze the whole statute to ensure a consistent, harmonious, and logical effect. *People v. Poage*, 272 P.3d 1113, 1116 (Colo. App. 2011).

Finally, if any ambiguity exists, “Colorado criminal statutes are to be strictly construed in favor of the accused.” *People v. Roybal*, 618 P.2d 1121, 1125 (Colo. 1980).

1. The plain language of the offense statute requires proof that a sex offender actually resides – through physical presence or occupancy – in a jurisdiction before he or she is guilty of failing to register upon changing an address.

The trial court found Mr. Griffin guilty of the *only* offense the prosecution pursued at trial, failing to register as a sex offender pursuant to section 18-3-412.5(1)(g). (v1, p6) The offense statute provides, as relevant:

(1) Any person who is required to register pursuant to article 22 of title 16, C.R.S., and who fails to comply with any of the requirements placed on registrants by said article, including but not limited to committing any of the acts specified in this subsection (1), commits the offense of failure to register as a sex offender:

(g) Failure to register with the local law enforcement agency in each jurisdiction in which the person resides upon changing an address, establishing an additional residence, or legally changing names.

§ 18-3-412.5(1)(g) (emphasis added).

The prosecution only alleged Mr. Griffin failed to register upon changing an address. (v1, p6) Thus, the “establish[] an additional address, or legally chang[e] names” provisions of subsection (g) are inapplicable.

As relevant, the plain language of the offense statute therefore requires that (1) a person who is required to register as a sex offender (2) registers with the local law enforcement agency (3) in each jurisdiction in which the person resides (4) upon

changing an address. *See People v. Banks*, 9 P.3d 1125, 1127 (Colo. 2000) (courts should first consider the plain and ordinary meaning of the statutory language).

The legislature used the word “resides” in the offense statute, which is the present tense of the infinitive “to reside,” a verb. The act of residing embodies the common understanding that a person lives in or inhabits a place. The dictionary definition of “reside” is “to settle oneself or a thing in a place,” or “to dwell permanently or continuously, have a settled abode for a time, have one’s residence or domicile.” Webster’s Third New International Dictionary at 1931 (2002). Thus, the plain and ordinary meaning and common understanding of “reside” requires physical presence or occupancy; a sex offender must actually live, inhabit, or reside in a jurisdiction before he or she has a duty to register upon changing an address.

The Court of Appeals’ decision supports this conclusion. Framing Mr. Griffin’s legal premise as, “Can a sex offender ‘establish a residence,’ within the meaning of the registration act, without residing in the dwelling?,” the Court of Appeals focused on the meaning of “establish a residence.” *Griffin*, slip op. at 3. The court explained, “the phrase ‘establish a residence’ is understood to involve a physical presence – an act of residing – in the dwelling.” *Id.* (citing, *inter alia*, *Carlson v. Dist. Ct.*, 180 P.2d 525, 529-30 (Colo. 1947) (“residence” requires bodily presence as an inhabitant)).

Similarly, Black's Law Dictionary defines "residence" as "[t]he act or fact of living in a given place for some time" or "[t]he place where one actually lives, as distinguished from a domicile." Black's Law Dictionary at 1335 (8th ed. 2004).

Based on the plain language of the offense statute, a sex offender cannot be found guilty of failing to register upon changing an address unless the prosecution proves beyond a reasonable doubt that the sex offender actually resides – through physical presence or occupancy – in the jurisdiction. This Court should apply the plain and ordinary meaning, and it need not consider any other rules of statutory construction.

2. The disputed provisions of the regulatory act, although inartfully written, support the *Griffin* Court's conclusion.

The purpose of the regulatory act is "to balance the expectations of persons convicted of offenses involving unlawful sexual behavior and the public's need to adequately protect themselves and their children from these persons." § 16-22-110(6)(a). Case law indicates the regulatory act's purpose is to help the public know where sex offenders live to protect themselves and to help the police locate sex offenders. *See Jamison v. People*, 988 P.2d 177, 180 (Colo. App. 1999) ("registration is required to aid law enforcement officials in investigating future sex crimes and to protect the public safety"); *People v. Stead*, 66 P.3d 117, 120 (Colo. App. 2002) (same)

(citing *Jamison*). To further those purposes, sex offenders should register where they actually can be located, where they live, where they reside.

The regulatory act includes two statutes, sections 16-22-102(5.7) and 16-22-105(3), C.R.S. 2006, that are designed to distinguish situations which require registration from situations that do not and to eliminate possible loopholes. *See Griffin*, slip op. at 6 (“it distinguishes the kind of occupancy that requires registration from the kind that does not”); *see also Allman*, 2012 COA 212, ¶ 21 (“Taking these provisions together, the General Assembly did not intend for the Registration Act to limit a ‘residence’ to a traditional house or apartment”).

First, section 16-22-102(5.7) (hereinafter the definition statute) provides:

“Residence” means a place or dwelling that is used, intended to be used, or usually used for habitation by a person who is required to register pursuant to section 16-22-103. “Residence” may include, but is not limited to, a temporary shelter or institution, if the owner of the shelter or institution consents to the person utilizing the shelter or institution as his or her registered address as required by section 16-22-106(4) or 16-22-107(4)(a) and if the residence of the person at the shelter or institution is capable of certification as required by section 16-22-109(3.5). A person may establish multiple residences by residing in more than one place or dwelling.

Thus, the regulatory act defines “residence” as any place a sex offender lives – whether a home, a homeless shelter, an institution, or an unconventional housing

situation intended to be used, by the sex offender, for habitation. § 16-22-102(5.7).

The legislature recognized sex offenders do not always have a house to call home.

The definition statute also contemplates that a sex offender may establish multiple residences by inhabiting more than one place, which would ensure transient sex offenders register. The jurisdiction in which the “residence” is located is the jurisdiction in which the sex offender must register.

Second, section 16-22-105(3) (hereinafter the establish-a-residence statute) provides:

For purposes of this article, any person who is required to register pursuant to section 16-22-103 shall register in all jurisdictions in which he or she establishes a residence. A person establishes a residence through an intent to make any place or dwelling his or her residence. The prosecution may prove intent to establish residence by reference to hotel or motel receipts or a lease of real property, ownership of real property, proof the person accepted responsibility for utility bills, proof the person established a mailing address, or any other action demonstrating such intent. Notwithstanding the existence of any other evidence of intent, occupying or inhabiting any dwelling for more than fourteen days in any thirty-day period shall constitute the establishment of residence.

The establish-a-residence statute compliments the definition statute. While the definition statute explains sex offenders may establish multiple residences by inhabiting more than one place, the establish-a-residence statute’s first provision

clarifies that, if a sex offender has multiple residences, he or she must register in each jurisdiction in which the residences are located.

The establish-a-residence statute's remaining provisions elaborate on the alternative ways a location qualifies as a residence for registration purposes. For example, if sex offenders live in unconventional housing situations, they must register if either (a) they intend for a place to be their residence or (b) they occupy or inhabit a place for more than fourteen days in any thirty-day period.

Consistent with the purpose of the regulatory act, the two disputed statutes, together, ensure that all sex offenders (required to register in Colorado) register in the places where they can be located – the place where police will be able to find them.

To illustrate how the definition and establish-a-residence statutes work together, Mr. Griffin provided the Court of Appeals with a hypothetical situation: a dry spot under a bridge would not normally be considered a residence. However, if an indigent sex offender intends to live under the bridge, that place becomes his residence under the statute, thereby triggering the sex offender's duty to register in the jurisdiction in which the bridge is located. Alternatively, if the same indigent sex offender refuses to recognize the bridge as his residence but stays under the bridge more than fourteen days in a thirty-day period, it becomes his residence under the statute, thereby triggering his duty to register in the jurisdiction in which the bridge is

located. Accordingly, the statutes, read together, prevent sex offenders who live in unconventional housing situations from evading their registration obligations by arguing they do not live in a traditional residence (*i.e.*, home or apartment).

The Court of Appeals adopted its own hypothetical, which illustrates how the statutes are designed to distinguish situations which require registration from situations that do not. *Griffin*, slip op. at 6 n.2. The Court queried: must a sex offender traveling in Colorado register in every jurisdiction in which he or she stays? The establish-a-residence statute answers this question. As the Court of Appeals explained, “[u]nder the statute, the offender need not register unless he intends to make that place his residence. But if he occupies a place for more than fourteen days in any thirty-day period, he must register regardless of his intent.” *Id.*

Hypotheticals are no longer needed however. The Court of Appeals was recently presented with a situation in which an indigent sex offender was living in his car, regularly moving to different locations within the same jurisdiction. *See Allman*, 2012 COA 212. To defeat a vagueness challenge, the Court determined the regulatory act requires sex offenders to register even if they live in unconventional housing situations. *Allman*, 2012 COA 212, ¶ 21. The Court also concluded, “[u]nder the plain meaning of the definition [of residence], . . . a motor vehicle, if ‘used, intended to be used, or usually used for habitation,’ may be a residence even if not parked in a

fixed location.” 2012 COA 212, ¶ 29. The Court interpreted the definition and establish-a-residence statutes consistent with the *Griffin* Court and, thus, ensured that transient sex offenders fall within the registration requirements.

Together, the definition statute and the establish-a-residence statute ensure that all sex offenders, who are required to register in Colorado, register in the jurisdiction where they can be located by clarifying the situations which require registration from those that do not and eliminating possible loopholes.

3. The regulatory act, as a whole, supports the *Griffin* Court’s conclusion.

The regulatory act’s numerous statutes clearly establish that sex offenders are required to register based upon where they actually *reside*, not where they intend to reside (the State’s position – *see* AB § I.D.5., *infra*). *See* § 16-22-105 (discussing duty to register “with the local law enforcement agency of each jurisdiction in which the person resides”) (emphasis added); *see also* § 16-22-106(1)(a) (same); § 16-22-106(2)(a) (same); § 16-22-106(3.5) (discussing duty to register with “the Colorado jurisdiction in which the person resides” and with “the local law enforcement agency of each Colorado jurisdiction in which the person resides”) (emphasis added); § 16-22-106(4) (discussing duty to register “with the local law enforcement agency of each jurisdiction in which the person resides”) (emphasis added); § 16-22-107(2) (same).

The statute dedicated to registration procedures provides, “[e]ach person who is required to register . . . shall register with the local law enforcement agency in each jurisdiction in which the person resides.” § 16-22-108(1)(a) (emphasis added). It explains that sex offenders must register annually on their birthday with “each jurisdiction in which the person resides on his or her birthday.” § 16-22-108(1)(b) (emphasis added); *see also People v. Lopez*, 140 P.3d 106 (Colo. App. 2005) (interpreting a previous version of the annual birthday registration requirement). The birthday registration requirement links “resides” to the temporal phrase “on his or her birthday,” supporting the Court of Appeals’ conclusion that physical presence or occupancy is required to trigger the duty to register.

In contrast, when referencing *future* registration requirements for sex offenders presently incarcerated (either in jail or in the DOC), the statutes use the language “intends to reside.” *See, e.g.*, § 16-22-106(3)(c) (before a sex offender is release from jail, the sheriff shall notify the “local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person’s discharge”) (emphasis added); § 16-22-107(3) (before a sex offender is released from prison, the DOC shall notify the “local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person’s release or discharge”) (emphasis added). This demonstrates the legislature knew how to draft the offense statute to criminalize

failing to register in a jurisdiction in which a sex offender *intends* to reside, had it wanted to do so. *See, e.g., Shelter Mut. Ins. Co. v. Mid-Century Ins. Co.*, 246 P.3d 651, 662 (Colo. 2011); *People ex rel. S.G.L.*, 214 P.3d 580, 586 (Colo. App. 2009); *see cf. Thompson v. Drug Enforcement Admin.*, 492 F.3d 428, 432 (D.C. Cir. 2007) (“Had Congress intended such an unusual result, we expect it would have clearly said so.”).

Further, many of the regulatory act’s statutes explain the notice sex offenders must receive to comport with due process for statutes that criminalize passive conduct as recognized in *Lambert v. California*, 355 U.S. 225 (1957). The notice provisions explain that the governmental entity “shall provide notice . . . to the person of the duty to register . . . with the local law enforcement agency of each jurisdiction in which the person resides.” § 16-22-106(1)(a) (emphasis added) (probation department’s notice obligations when sex offender sentenced to probation); § 16-22-106(2)(a) (community correction’s notice obligations when sex offender sentenced to community corrections); § 16-22-106(3)(b) (sheriff’s notice obligations when sex offender released from jail); § 16-22-107(2) (DOC’s notice obligations when sex offenders are released from prison); *see also* § 16-22-105(1) (“Such notice shall inform the person of the duty to register . . . with the local law enforcement agency of each jurisdiction in which the person resides.”) (emphasis added). If the legislature intended for sex offenders to register based merely on an intent to reside, not where

they actually reside, then the notice provided to sex offenders is inadequate for due process purposes. See *Lambert*, 355 U.S. at 229; see also *Smith v. Doe*, 638 U.S. 84, 96 (2003) (“When a State sets up a regulatory scheme, it is logical to provide those persons subject to it with clear and unambiguous notice of the requirements and the penalties for noncompliance.”); *Lopez*, 140 P.3d at 115 (recognizing sex offenders must receive notice of the duty to register to ensure no due process violation pursuant to *Lambert*).

4. Colorado case law supports the *Griffin* Court’s conclusion.

Colorado’s appellate courts have repeatedly interpreted the regulatory act to require registration based on where a sex offender *resides*, not merely where he or she intends to reside as the State argues. See, e.g., *Stead*, 66 P.3d at 119 (explaining “any person sentenced as a sexually violent predator has a lifetime duty to register with local law enforcement agencies in the jurisdiction in which he or she resides”) (emphasis added); *Poage*, 272 P.3d at 1115 (“it is incumbent upon the People to establish that the Defendant resided within the jurisdiction and failed to register with that jurisdiction”).

5. **Contrary to the State’s position, a sex offender’s intent to reside in a jurisdiction, without physical presence or occupancy, does not trigger the duty to register.**

Relying on the regulatory act (specifically, the definition and establish-a-residence statutes), the State argues “the registration statutes demonstrate[] that the duty to register arises upon the defendant’s establishment of a residence in a jurisdiction even where he has not yet occupied or been physically present in that residence.” (OB p40; *see also* OB p42, 45) In other words, the State advances the position that a sex offender is guilty of failing to register upon changing an address if the prosecution proves beyond a reasonable doubt that the sex offender merely *intended* to reside in a jurisdiction, even if the sex offender never actually resided in the jurisdiction.

- a. **The State’s interpretation ignores the offense statute’s plain language.**

Foremost, Mr. Griffin was *not* charged with failing to register pursuant to the regulatory act. *Compare* § 18-3-412.5(1)(a) (failing to register pursuant to the regulatory act) *with* § 18-3-412.5(1)(g) (failing to register in each jurisdiction in which the person resides upon changing an address). Thus, the subject of statutory interpretation, here, is the language of the offense statute, not the regulatory act.

The plain language of the offense statute does *not* include the word “intent” and does not suggest that a sex offender’s intent to move to a jurisdiction (or intent to

reside in a particular jurisdiction), without more, is sufficient to trigger the duty to register in that jurisdiction.⁹ See *Turbyne v. People*, 151 P.3d 563, 567 (Colo. 2007) (when construing a statute, a court does not add or subtract words from it). The offense statute plainly states a sex offender must register in the jurisdiction in which he or she *resides*. § 18-3-412.5(1)(g) (“in each jurisdiction in which the person resides upon changing an address”). As explained, reside requires physical presence or occupancy; therefore, prosecutors must prove beyond a reasonable doubt, *inter alia*, that a sex offender defendant lived at a place without registering in the jurisdiction to obtain a guilty verdict.

b. The State’s interpretation would render part of the offense statute superfluous.

Assuming, *arguendo*, the State is correct that the legislature intended for the establish-a-residence statute to trigger the duty to register based merely on an intent to reside, then Mr. Griffin should have been charged with failure to register pursuant to the regulatory act. Section 18-3-412.5(1)(a) criminalizes violations of the regulatory act: “[f]ailure to register pursuant to article 22 of title 16, C.R.S.”

⁹ Despite contesting that sex offenders must actually reside in a jurisdiction to trigger registration duties, the State repeatedly recognizes that the offense statute uses the word “resides.” (OB p37 (“Subsection (1)(g) . . . concerns failure to register in each jurisdiction in which the registrant resides upon changing an address”) (emphasis added), 40 (“The defendant was charged with failing to register with the local law enforcement agency in each jurisdiction in which he resided upon changing his address”) (emphasis added))

“Resides” in subsection (g), the offense of which Mr. Griffin was convicted, cannot be interpreted to require registration based merely on an intent because such an interpretation would render subsection (g) superfluous. *See Madden*, 111 P.3d at 457 (courts must not adopt a construction that renders terms superfluous); *see also Slack*, 5 P.3d at 284. Because the State’s intent to reside argument is derived from the regulatory act’s establish-a-residence statute, subsections (a) and (g) would both criminalize the same conduct – failing to register based on merely an intent to reside in a jurisdiction. As statutes must be construed so as to prevent portions being rendered superfluous, subsection (g) must mean something different. *See id.*

Failing to register as a sex offender pursuant to subsection (g) must be interpreted based on its plain language; a sex offender is only guilty of failing to register upon changing an address if the prosecution proves he or she actually resided – through physical presence or occupancy – in the jurisdiction.

- c. **The State’s interpretation considers the definition and establish-a-residence statutes in a vacuum, without harmonizing the remaining regulatory act statutes or the offense statute and without considering case law.**

The regulatory act contains numerous statutes which repeatedly explain sex offenders must register with the local law enforcement agency of each jurisdiction in which the person *resides*. (*See AB § I.D.3., supra*) The regulatory act’s requirements regarding notice provide that the governmental entity must advise sex offenders they

are required to register where they *reside*. (*See id.*) And it appears the only provisions of the regulatory act that use the language “intent to reside” are the provisions related to future registration requirements. (*See id.*)

The State’s interpretation of the establish-a-residence statute – requiring registration based merely on an intent to reside – cannot be harmonized with the regulatory act and the offense statute, and it does not ensure a consistent result. *See Poage*, 272 P.3d at 1116 (statutory words must be read in context, and the whole statute must be analyzed in order to provide consistent, harmonious, and logical effect).

Similarly, the State’s interpretation cannot be reconciled with the numerous appellate court decisions requiring registration based on where sex offenders reside. (*See AB § I.D.4., supra*)

d. The State’s interpretation creates a mandatory presumption in a criminal case, violating due process.

To support its position that registration is required based upon intent alone, the State argues the establish-a-residence statute “provides for a presumption of intent to establish a residence based on proof of several facts, including establishing a mailing address at the home.” (OB p38 (emphasis added))

“[T]he use of presumptions in criminal cases raises serious due process concerns precisely because these evidentiary devices can have the effect of relieving

the prosecution of its constitutionally mandated burden of proof.” *Jolly v. People*, 742 P.2d 891, 896 (Colo. 1987); *see also Barnes v. People*, 735 P.2d 869, 872 (Colo. 1987) (*Barnes II*).

“A permissive inference or presumption allows, but does not require, the trier of fact to infer the elemental fact of a crime from proof by the prosecution of the predicate fact on which the inference is based.” *Jolly*, 742 P.2d at 896. “Because a permissive inference or presumption does not relieve the state of the burden of persuasion on an essential element of a crime, it will pass constitutional muster as long as the inference is one that is justified by reason and common sense in light of the proven facts before the jury.” *Id.*

“A mandatory presumption, however, is a ‘far more troublesome evidentiary device.’” *Barnes II*, 735 P.2d at 872. Two types of mandatory presumptions exist – a conclusive or un rebuttable presumption and a mandatory rebuttable presumption. *Jolly*, 742 P.2d at 896.

A conclusive presumption “relieves the prosecution of its burden of persuasion by removing the presumed element from the case entirely when the prosecution proves the predicate fact on which the presumption is based.” *Id.* A conclusive presumption violates “due process because it can reasonably be interpreted by the factfinder as a mandate to find the presumed element of the crime upon proof of the

predicate fact, and thus clashes directly with the presumption of innocence and the constitutional requirement of prosecutorial proof beyond a reasonable doubt.” *Id.* at 897.

In contrast, a mandatory rebuttable presumption

does not remove the presumed element from the case upon proof of the predicate fact, but nonetheless ‘relieves the State of the affirmative burden of persuasion on the presumed element by instructing the jury that it must find the presumed element unless the defendant persuades the jury not to make such a finding.’

Id. “Although less onerous from the defendant’s perspective than a conclusive presumption, a mandatory rebuttable presumption will nonetheless violate due process of law if it shifts the burden of persuasion to the defendant on an essential element of the crime.” *Id.*

The State’s presumption argument relies on the trial court’s reasoning, with which it expressly agreed. (OB p40) The trial court interpreted the establish-a-residence statute as creating a presumption of intent to reside, thereby triggering the duty to register, based upon mail being sent to an address, which the defense failed to overcome. (*See* 8/27/08 p124, 127 (“there is a presumption that if there is the intent to establish a residence, the individual is required to register in that location” and the presumption “has not been overcome”))

Regardless of whether the offense statute includes as an element “resides” or “intends to reside,” the presumption the trial court imposed, and the State argues in favor of, is a mandatory presumption. The presumption imposed by the trial court *required* a factfinder *to infer* an element of the crime – “resides” or “intent to reside” – from proof by the prosecution of the predicate fact on which the inference is based – that mail was sent to the sex offender. *See Jolly*, 742 P.2d at 896. The imposed presumption shifted the burden of persuasion from the prosecution to the defense on an essential element of the offense. *See id.* at 897.

By imposing a mandatory presumption, the trial court violated Mr. Griffin’s state and federal constitutional rights to due process. *See* U.S. Const. amends. V, XIV; *see also* Colo. Const. art. II, § 25; *Jolly*, 742 P.2d at 897; *Barnes II*, 735 P.2d at 872.

Courts, however, must construe statutes to avoid constitutional infirmities. *See, e.g., Smith*, 862 P.2d at 943; *M.B.*, 90 P.3d at 881. Assuming, *arguendo*, the legislature intended to create a presumption, the statute should be interpreted as creating a permissive inference (or permissive presumption), which is constitutional. *See Jolly*, 742 P.2d at 897 (“courts generally construe criminal statutes as raising permissive inferences [or presumptions] only”).

e. The regulatory act does not create a seamless registration system.

The State repeatedly argues “[t]he Colorado Sex Offender Registration Act is designed to provide a seamless registration system, insuring that a registrant maintains uninterrupted registration within Colorado.” (OB p31; *see also* OB p25, 46) The State does not, however, cite any authority indicating Colorado’s registration is seamless.

Colorado, unfortunately, does not have a seamless registration system. The version of the regulatory act in place at the time Mr. Griffin was charged with failing to register did not specifically delineate the time period in which he was required to register a new address upon changing his residence. *Compare* § 16-22-108 (sex offenders must register within five business days of establishing an additional residence, arriving in Colorado for temporary residence, ceasing to reside at an address). It could be inferred, from the other provisions involving events which trigger re-registration, that sex offenders have five business days after changing their address to re-register with the local law enforcement agency in the jurisdiction in which they reside. Nevertheless, this creates a gap, a time frame within which sex offenders may not be registered with any law enforcement agency in Colorado.

“[T]o balance the expectations” of sex offenders “and the public’s need to adequately protect themselves and their children from” sex offenders and to help law enforcement locate sex offenders where they actually can be found, Colorado should

implement a seamless registration system. § 16-22-110(6)(a); *Jamison*, 988 P.2d at 180; *Stead*, 66 P.3d at 120. Currently, sex offenders must register with the local law enforcement agency in the jurisdiction in which they reside, and, each time they re-register, they must pay for the law enforcement agency to photograph and fingerprint them, and they must pay an additional fee to the law enforcement agency. *See, e.g.*, § 16-22-108(1) (sex offenders must register with local law enforcement agency); *see also* § 16-22-108(6) (each time sex offenders register, they must pay for a photograph and fingerprinting); § 16-22-108(7) (authorizing local law enforcement agency to enforce registration fee). If sex offenders move, they must not only cancel their registration with the jurisdiction they are leaving but also register with the jurisdiction in which they reside after moving. *See* § 16-22-108(4)(a) (must file registration cancelation within five business days of ceasing to reside at an address); § 16-22-108(3)(a) (must re-register upon changing an address).

To protect society and to encourage sex offenders to comply with registration requirements, Colorado should require sex offenders to register with the Colorado Bureau of Investigation (CBI), the agency the legislature charged with establishing a statewide central sex offender registry. § 16-22-110(1). Then, sex offenders always know which state agency they must contact to register, re-register, or change a registration upon moving, rather than trying to figure out which local law

enforcement agency has jurisdiction over them and rather than going to multiple law enforcement agencies upon changing an address. A centralized, statewide system run by CBI would also eliminate gaps in registration – the time periods between canceling a registration and re-registering in a new jurisdiction. These proposals will make sex offender registration requirements simpler, consistent, and cheaper, thereby encouraging compliance, which is in everyone's best interest.

f. The State's interpretation leads to an unworkable and absurd result.

The duty to register cannot be triggered based upon merely an intent, as the State argues. Otherwise, many new problems with the already problematic registration system would arise.

For example, a sex offender may intend to retire someday to Aspen. The State's position would require the sex offender to begin registering in Aspen as soon as the intent is formed, even if the intended residency in Aspen would not happen for many years.

The General Assembly presumably did not intend for the offender to register in Aspen upon forming that intent. Requiring a current registration based upon an intent defeats one of the purposes of a registration system; the police will no longer be able to rely upon the registration system to discern where a sex offender can be located. *See* § 16-22-110(6)(a); *Jamison*, 988 P.2d at 180; *Stead*, 66 P.3d at 120.

Consequently, the duty to register is only triggered once sex offenders actually reside, through physical presence or occupancy, in a particular jurisdiction.

As the Court of Appeals noted, if the State's position is adopted, "[h]ow long does the offender have after forming the intent to reside in a particular place?" And, "what if the offender abandons his intent to reside in the place? Must he cancel his registration? . . . (The duty to cancel cannot be premised on the fact that the offender has ceased to reside, if the offender never resided there.)" *Griffin*, slip op. at 6 n.2.

In contrast, the Court of Appeals' interpretation of the definition and establish-a-residence statutes – requiring registration based upon where sex offenders actually reside, through physical presence or occupancy – ensures that sex offenders cannot avoid the registration requirements by living in an unconventional residence, being transient, or claiming they are just traveling through Colorado. (*See* AB § I.D.2, *supra*)

The State's interpretation would also allow sex offenders to thwart police efforts to locate them by intending to establish numerous residences throughout Colorado; the police would never know at which residence the sex offender is located.

Requiring sex offenders to register based upon merely where they intend to reside is the beginning of a slippery slope toward criminalizing thoughts. The offense of failing to register as a sex offender is already a passive conduct crime. Presumably,

our legislature did not intend to criminalize passive conduct triggered simply on an intent.

To interpret the offense statute as requiring only an intent to reside – and not requiring proof a sex offender actually resided, through physical presence or occupancy – at a particular location (thereby triggering the duty to register) yields an unworkable and absurd result. *See Woford v. Pinnacol Assurance*, 107 P.3d 947, 951 (Colo. 2005) (rejecting an interpretation that yields unworkable results); *People v. Kyle*, 111 P.3d 491, 497 (Colo. App. 2004) (when interpreting statutes, courts presume the General Assembly intended a just and reasonable result).

6. If the offense statute is ambiguous, the rule of lenity applies.

To the extent the offense statute is ambiguous, any ambiguity must be strictly construed in Mr. Griffin's favor. *See Roybal*, 618 P.2d at 1125 (discussing rule of lenity).

II. The Court of Appeals correctly concluded the prosecution failed to prove beyond a reasonable doubt that Mr. Griffin was guilty of failing to register as a sex offender.

A. STANDARD OF REVIEW

Mr. Griffin's trial counsel preserved this issue for appeal by moving for a judgment of acquittal. (8/27/08 p76-78) She further preserved the issue by filing a Renewed Motion for Judgment of Acquittal. (v1, p71)

Whether evidence is sufficient to sustain a conviction involves a question of law. *People v. Hollenbeck*, 944 P.2d 537, 539 (Colo. App. 1996). Appellate courts review the record *de novo* to determine whether the evidence was sufficient. *Dempsey v. People*, 117 P.3d 800, 807 (Colo. 2005).

B. APPLICABLE FACTS

As noted, Mr. Griffin was charged with failing to register upon changing an address *between June 2, 2006 and February 27, 2007*. (7/9/08 p2-3; *see also* v1, p25) The following evidence was presented at trial:

1. De-registration Form

Detective Schneider testified he helped Mr. Griffin fill out his de-registration form at the Denver Police Department headquarters on June 2, 2006. (8/27/08 p17; *see also* People's Ex. 1-2) The de-registration form provided space for the registrant's name, date of birth, current registered address, new address for registration, and date of move. (People's Ex. 1) The detective explained Mr. Griffin's old address listed on the de-registration form – the Denver County address – was Mr. Griffin's address of record with the police department, Mr. Griffin provided the new address information, and he typed all the information into the computer. (8/27/08 p22) Mr. Griffin told Detective Schneider that he was going to move to the Adams County address. (8/27/08 p23) Unlike the re-registration visit discussed below, Mr. Griffin was not

asked to provide documentation to prove he actually lived at the Adams County address. (See 8/27/08 p13-37) Furthermore, the detective admitted he never went to the Adams County address to verify Mr. Griffin was actually living there and had no idea whether Mr. Griffin actually moved to Adams County. (8/27/08 p31, 36)

2. The Adams County Address

Judy Kinyon, a sex offender registration coordinator for CBI, testified Mr. Griffin did not have an active registration in Colorado between June 2, 2006 and February 27, 2007. (8/27/08 p72) She subsequently admitted she did not look at the nationwide registration database to see whether Mr. Griffin was registered during the same time period in a different state. (8/27/08 p73-74) Ms. Kinyon also acknowledged Mr. Griffin may not have been required to register as a sex offender in a couple states.¹⁰ (8/27/08 p74)

When CBI discovered Mr. Griffin had de-registered in Denver County but had not registered in Adams County, the agency contacted the Commerce City Police Department to investigate. (8/27/08 p39) On February 27, 2007, Detective Mike

¹⁰ Because CBI Agent Kinyon acknowledged some states did not require registration at that time, Detective Saunder's testimony that he checked the NCI system and Mr. Griffin had not re-registered anywhere does not establish he failed to register in other jurisdictions. Further, the State asserts that CBI Agent Kinyon testified "there was no active registration for the defendant between June 2, 2006 and February 27, 2007," but, to be clear, Kinyon's testimony referred to active registrations *in Colorado*. (AB p11)

Saunders went to the Adams County address. (8/27/08 p40-41) Upon arriving, he met Kathy Dunston, the current homeowner's mother, who had been living at the address between January 2007 and February 2008. (8/27/08 p41, 48) Ms. Dunston informed the detective she had never heard of Mr. Griffin. (8/27/08 p41) To be clear, Detective Saunders further testified he did not find Mr. Griffin at the Adams County address and he did not look elsewhere for Mr. Griffin. (8/27/08 p41, 43)

Ms. Dunston testified her daughter purchased the Adams County property from a California bank at the end of January 2007. (8/27/08 p48) She confirmed her daughter did not purchase the house from Mr. Griffin, and, indeed, she did not know Mr. Griffin. (8/27/08 p48) Ms. Dunston stated the house had not been rented to anyone, and she lived by herself. (8/27/08 p49) She also said Mr. Griffin never lived at the Adams County address and the house was vacant when it was purchased by her daughter. (8/27/08 p53, 55)

Ms. Dunston testified she received mail addressed to Mr. Griffin at the Adams County address, and she first started receiving Mr. Griffin's mail in April or May 2008. (8/27/08 p50) She explained that, even once she moved out of the house, she continued to pick up the mail for her daughter. (8/27/08 p51) After the prosecutor repeatedly asked Ms. Dunston whether she was sure it was as late as April or May 2008 – after the time period that Mr. Griffin was charged with failing to register, Ms.

Dunston said she *may* have received mail addressed to Mr. Griffin prior to April or May 2008. (8/27/08 p51-52,56) She further testified she received mail addressed to two or three additional unknown people at the Adams County address. (8/27/08 p57)

Detective Saunders admitted he did not obtain a lease for the Adams County address with Mr. Griffin's name on it, did not find a mortgage in Mr. Griffin's name, did not have any tax records for the property, did not find any utility bills in Mr. Griffin's name, and did not inquire with neighbors whether they knew Mr. Griffin. (8/27/08 p43-44) The detective also admitted he did not know whether Mr. Griffin ever actually lived in Adams County or, for that matter, lived in Colorado during the relevant time period. (8/27/08 p45)

3. Re-registration Form

Detective Schneider suggested he also helped Mr. Griffin fill out his re-registration form when Mr. Griffin moved back to Denver County in November 2007. (8/27/08 p24; *see also* People's Ex. 3) At that time, Mr. Griffin told the police he was living at the Salvation Army Crossroads Shelter, located at 1901 29th Street in Denver. (*Id.*) Detective Schneider testified that Mr. Griffin provided documentation, which established he was a resident of the shelter. (*Id.*)

The re-registration form listed Mr. Griffin's previous address as the Adams County address, and Mr. Griffin signed the form. (*See* People's Ex. 3) However, Detective Schneider admitted that, when someone from his department fills out a sex offender registration form, he or she can find the registrant's "new address" from the previous registration form and input it as the former or old address in the new registration form. (8/27/08 p34) In other words, the registrar, without confirming with the registrant, can automatically insert the former or old address on the new registration form from the "new address" on the previous registration form.

However, with respect to Mr. Griffin's re-registration form, when Detective Schneider was asked whether the Adams County address information was from the computer, he backtracked and denied knowing whether the computer generated the information or Mr. Griffin provided it because he was not the person who actually re-registered Mr. Griffin. (8/27/08 p35) Defense counsel inquired, "But that's information [the Adams County address] that you had gotten from your computer system?" and the detective responded:

It would have been in there. That certainly would have still been in our address, if that - I mean, in our database, if that was the last address he had when he moved.

Again, Lorin Reyes could have asked him where he came from. I don't know. I didn't . . . I didn't do this initial - I mean this . . . portion of it.

(8/27/08 p35) Defense counsel pressed the detective, and he admitted the registrar could have obtained the old address – the Adams County address – from the computer; Mr. Griffin did not “necessarily come in and say: I am moving from 6920 Kearney.” (*Id.*)

4. Mr. Griffin’s testimony

Mr. Griffin testified at trial that he and his wife intended to purchase the house at the Adams County address, and they were prequalified to do so. (8/27/08 p92) Believing the sale would soon be finalized, Mr. Griffin went to the Denver police station and filled out the de-registration form. (*Id.*) However, the following day, the sale fell through, and Mr. Griffin discovered he could not purchase the house at the Adams County address. (8/27/08 p92-93) Approximately two days later, the trucking company for which Mr. Griffin worked informed him that he was being transferred to Montana. (8/27/08 p93) Ultimately, Mr. Griffin moved to Washington, spending two or three days in each of the following states: Wyoming, Montana, Utah, and Oregon. (8/27/08 p94)

C. LAW AND ANALYSIS

Due process requires the prosecution to prove each and every element of the crime charged beyond a reasonable doubt. *See* U.S. Const. amends. V, XIV; Colo. Const. art. II, § 25; *In re Winship*, 397 U.S. 358, 363-64 (1970); *Kogan v. People*, 756 P.2d

945, 950 (Colo. 1988). “The prosecution has the burden of establishing a *prima facie* case of guilt, which requires introduction of ‘sufficient evidence to establish guilt—no more, no less.’” *Dempsey*, 117 P.3d at 807 (quoting *People v. Bennett*, 515 P.2d 466, 469 (Colo. 1973)).

“Where the sufficiency of the evidence is challenged on appeal,” appellate courts must “determine whether the evidence, viewed as a whole, and in the light most favorable to the prosecution, is sufficient to support a conclusion by a reasonable person that the defendant is guilty of the crimes charged beyond a reasonable doubt.” *Kogan*, 756 P.2d at 950 (emphasis added); *see also Bennett*, 515 P.2d at 469.

Nevertheless, the evidence must be both substantial and sufficient to prove guilt beyond a reasonable doubt. *Kogan*, 756 P.2d at 950. “[A] modicum of relevant evidence will not rationally support a conviction beyond a reasonable doubt,” and “verdicts in criminal cases may not be based on guessing, speculation, or conjecture.” *People v. Sprouse*, 983 P.2d 771, 778 (Colo. 1999); *People v. Stark*, 691 P.2d 334, 339 (Colo. 1984).

“The presumption of innocence, coupled with proof of each element of the charge beyond a reasonable doubt, provides the foundation for our system of criminal justice.” *People v. Kanan*, 186 Colo. 255, 258, 526 P.2d 1339, 1340 (1974); *see also In re*

Winslip, 397 U.S. at 363-64, 90 S.Ct. at 1072. “The burden is never on the defendant to show that he did not commit the crime.” *Leonard v. People*, 369 P.2d 54, 61 (Colo. 1962) (emphasis added) (quoting 1 Anderson, Wharton’s Criminal Evidence, § 10 (12th ed. 1955)).

1. The law that failure to register as a sex offender is a continuing offense does not change the sufficiency analysis because the prosecution did not prove Mr. Griffin was guilty of the charged offense during the time period charged.

As an initial matter, defense counsel does not dispute that the offense of failing to register as a sex offender is a continuing offense. *See Lopez*, 140 P.3d at 109.

The State argues that, notwithstanding the Court of Appeals’ decision, Mr. Griffin is guilty of failing to register as a sex offender because it is a continuing offense. (*See* OB p47, 48-49) As support for this argument, the State asserts Mr. Griffin was guilty because he (1) made a false statement in his de-registration form, (2) “failed to return to the Denver Police Department to correct his de-registration form,” (3) “never re-registered anywhere in Colorado,” and (3) “remained a resident of Denver¹¹ and either had a duty to re-register there or to correct his de-registration

¹¹ The State’s argument that Mr. Griffin remained a resident of Denver “[o]nce he knew he was not moving to Adams County” conflicts with its statutory construction argument. The evidence established Mr. Griffin no longer intended to reside in Denver, and, based on the State’s argument, without the intent to reside, Mr. Griffin was not required to register in Denver.

form to indicate that he was not moving to Adams County or was moving out of State.” (OB p51, 52)

Assuming, *arguendo*, the State’s scenarios constitute failure-to-register offenses and the evidence presented at Mr. Griffin’s trial was sufficient to establish he committed those offenses, the *only* charge the prosecution pursued at trial against Mr. Griffin was failing to register upon changing an address pursuant to subsection (1)(g). (See Statement of Case, *supra*) Prosecutors must prove the *charged* offense, and a conviction cannot rest on proof that meets the statutory definition of another offense differing from the charged offense. See *People ex rel. H.W., III*, 226 P.3d 1134, 1140 (Colo. App. 2009); see also *Skidmore v. People*, 390 P.2d 944, 946 (Colo. 1964) (“[a]n accused person is entitled to be tried on the specific charge contained in the information”); *Madden*, 111 P.3d at 455 (“a defendant cannot be required to answer a charge not contained in the information”). “When the prosecution fails to present proof of the offense charged, double jeopardy prevents the prosecution from availing itself of a second opportunity to try the accused on that charge.” *H.W., III*, 226 P.3d at 1138.

The law that the offense of failing to register as a sex offender is a continuing offense does not change the sufficiency analysis. Because the prosecution presented insufficient evidence to establish Mr. Griffin was guilty of the charged offense during

the time period charged, double jeopardy prohibits the State from now arguing he is guilty of an offense differing from the charged offense.

The Court of Appeals rejected an argument similar to the State's in *Poage*, 272 P.3d 1113. There, the defendant was initially charged with multiple counts of failing to register as a sex offender, but the prosecutor elected to proceed based upon subsections (1)(g) (the same subsection of which Mr. Griffin was convicted) and (1)(i) (failure to cancel a registration). *Id.* at 1115. The trial court acquitted the defendant of the charge related to subsection (1)(g) but found the defendant guilty of failing to cancel his registration.¹² *Id.*

On appeal, the defendant asserted the prosecution presented insufficient evidence that he was guilty of failing to cancel his registration because it did not establish he no longer resided in the jurisdiction. *Id.* at 1116. The State countered, *inter alia*, that the defendant was guilty of failing to register pursuant to the regulatory act and subsections (1)(a) through (1)(k) of the offense statute do not create or define crimes. *Id.* The Court of Appeals disagreed with the State, noting, "by attempting to incorporate every alternative method of violating the registration statute, the People

¹² Ruling on the defense's motion for judgment of acquittal, the trial court concluded, consistent with the *Griffin* Court's interpretation, "it is incumbent upon the People to establish that the Defendant resided within the jurisdiction and failed to register with that jurisdiction." *Id.* at 1115 (emphasis added).

disregard the fact that they elected to proceed under only two subsections: (g) and (i).”
Id. at 1117.

Here, the State attempts to do something very similar as the State did in *Poage* – asserting, for the first time, that, even if Mr. Griffin is not guilty of failing to register upon changing an address pursuant to (1)(g), he is still guilty of failing to register. The Court of Appeals correctly rejected the similar argument in *Poage*, and, here, the Court of Appeals correctly considered only whether the prosecution presented sufficient evidence to prove beyond a reasonable doubt Mr. Griffin was guilty of the charged offense during the time period charged.

In a related argument, the State suggests the Court of Appeals should have found Mr. Griffin guilty of failing to register in a jurisdiction other than Adams County because “the charge reached beyond the failure to register in Adams County and extended to the defendant’s failure to register in each jurisdiction.” (OB p51-52) However, “criminal actions shall be tried in the county where the offense was committed.” § 18-1-202(1), C.R.S. 2006. The prosecution alleged Mr. Griffin committed the offense in Adams County. Accordingly, the law required that Mr.

Griffin be tried in Adams County.¹³

2. The prosecution presented insufficient evidence to establish Mr. Griffin was guilty of failing to register as a sex offender because it did not prove he resided in Adams County at any time during the time period charged.

Here, the evidence presented was insufficient to prove Mr. Griffin was guilty of the continuing offense of failing to register as a sex offender. In fact, the evidence established Mr. Griffin was innocent of the charged offense under the plain language of the statute.

The record unequivocally establishes that Mr. Griffin did not live at the Adams County address from January 2007 through the end of February 2007. Ms. Dunston, the prosecution's witness, testified her daughter bought the house in January 2007, and she lived alone in the house from January 2007 until February 2008. (8/27/08 p48) Moreover, Detective Saunders went to the Adams County address on February 27, 2007 and only found Ms. Dunston living therein. (8/27/08 p40-41)

¹³ The defense litigated this precise issue pretrial, and the trial court ruled, pursuant to section 18-1-202(11), that "venue, to the extent that you have to prove the jurisdiction in which the individual is required to register, is an essential element of the offense and must be proven . . . beyond a reasonable doubt." (8/22/08 p6) *See also* § 18-1-202(12) (for the offense of failing to register as a sex offender, "the offender may be tried in the county in which the offender was released from incarceration for commission of the offense requiring registration or in the county in which the offender resides or in the county in which the offender is apprehended") (emphasis added).

Additionally, the record strongly indicates Mr. Griffin did not live at the Adams County address before January 2007. Ms. Dunston's daughter purchased the house in January 2007 from a California bank, not from Mr. Griffin, and the house had been vacant before the purchase. (8/27/08 p48, 55) Furthermore, Ms. Dunston testified she did not know Mr. Griffin, she had never heard of him, and he had never lived at the Adams County address. (8/27/08 p48, 41, 53)

Detective Saunders, the officer charged with investigating whether Mr. Griffin failed to register as a sex offender in Adams County, was unable to find a lease, a mortgage, tax records, or utility bills for the Adams County address naming Mr. Griffin. (8/27/08 p43-44) He also did not find any neighbors who could attest to whether Mr. Griffin ever lived at the address. (*Id.*) The detective even admitted Mr. Griffin may have been living in another state during the relevant time period. (8/27/08 p45)

Although Mr. Griffin's re-registration form listed the Adams County address as his previous address, the form's accuracy was unreliable because Mr. Griffin undisputedly did not live at the Adams County address when he re-registered in November 2007. Ms. Dunston, the prosecution's own witness, was living alone at the Adams County address at that time. (8/27/08 p48) Furthermore, Detective Schneider admitted the previous address listed on the re-registration form may have

been automatically inserted from the former registration form by the registrar.
(8/27/08 p34)

While Ms. Dunston received mail addressed to Mr. Griffin at the Adams County address, the receipt of the mail did not definitively occur until April or May 2008, more than a year after the time period for which Mr. Griffin was charged with failing to register. (8/27/08 p51-52) Notably, Ms. Dunston also received mail at the Adams County address addressed to two or three additional unknown people.
(8/27/08 p57)

Absolutely no evidence was presented to suggest Mr. Griffin lived elsewhere in Adams County. Indeed, Detective Saunders only looked for Mr. Griffin at the Adams County address, did not find him there, and did not find him residing somewhere else in Adams County. (8/27/08 p41, 43)

The de-registration form also does not prove Mr. Griffin lived at the Adams County address. Rather, it only establishes that he, at one time, intended to move to Adams County. While Mr. Griffin intended to move to the Adams County address when he filled out the de-registration form in Denver on June 2, 2006, the prosecution failed to present any evidence to explain the gap in Mr. Griffin's registration. Indeed, the prosecution relied entirely on the absence of evidence indicating where Mr. Griffin resided to prove he lived in Adams County.

Ms. Kinyon, the prosecution's witness from CBI, admitted she did not look at the nationwide registration database to see whether Mr. Griffin was registered during the relevant time period in a different state. (8/27/08 p73-74) Moreover, Ms. Kinyon acknowledged some states may not have required Mr. Griffin to register as a sex offender if he lived there. (8/27/08 p74) Even if Mr. Griffin's reasonable explanation for the gap in his Colorado registration is not considered, the prosecution did not prove Mr. Griffin actually resided in Adams County during the relevant time period.

Although the law draws no distinction between direct and circumstantial evidence, *see People v. Taylor*, 159 P.3d 730, 734 (Colo. App. 2006), the circumstantial evidence here, if any, requires improper guessing, speculation, and conjecture to conclude Mr. Griffin resided at the Adams County address and thus failed to register in that jurisdiction. *See Sprouse*, 983 P.2d at 778; *see also Stark*, 691 P.2d at 339. And, it certainly did not amount to more than a modicum of relevant evidence, which is required to rationally support a conviction beyond a reasonable doubt. *See Sprouse*, 983 P.2d at 778. In short, the prosecution failed to prove beyond a reasonable doubt Mr. Griffin resided in Adams County, and, therefore, his conviction is supported by insufficient evidence.

When the evidence presented at trial is insufficient, due process requires the conviction be vacated. *Kogan*, 756 P.2d at 950; *see also* U.S. Const. amends. V, XIV; Colo. Const. art. II, § 25. The Court of Appeals correctly vacated Mr. Griffin's conviction because the prosecution failed to prove beyond a reasonable doubt that he resided in Adams County.

3. **Even if this Court concludes that a sex offender's intent to reside in a jurisdiction, without more, triggers the duty to register, the prosecution still presented insufficient evidence to establish Mr. Griffin was guilty of failing to register as a sex offender in Adams County during the time period charged.**

The State argues that, based on its interpretation of the regulatory act, "the evidence was sufficient to support the trial court's finding that the defendant had established a residence in Adams County." (OB p49) To support its argument, the State relies on evidence that (1) Mr. Griffin informed the Denver Police Department that he was moving to the Adams County address, (2) Mr. Griffin established the Adams County address as his mailing address and received official governmental mail and other mail at the Adams County home, (3) and, when the defendant re-registered in Denver, he signed a form stating that his prior residence was the Adams County residence. (OB p49-50)

The State's first argument illustrates one of the problems with its position that sex offenders must register where they *intend* to reside. Intentions change. And changing circumstances change intentions. (See AB § I.D.5.f., *supra*)

Mr. Griffin never contested he intended to move to and intended to reside in Adams County. But he abandoned his intent to reside in Adams County before he actually moved there.¹⁴

Even though the burden is never on the defendant to prove he did not commit a crime, Mr. Griffin exercised his constitutional right to testify. See *Leonard*, 369 P.2d at 61. Mr. Griffin's testimony established his intent changed before he actually lived in Adams County.

Here, the prosecution relied on the absence of evidence to try to prove Mr. Griffin was guilty of failing to register.¹⁵ But, prosecutors may not rely on the absence of evidence to establish guilt, especially when the offense is failing to register as a sex offender. See *People v. Duncan*, 109 P.3d 1044, 1047 (Colo. App. 2004) (prosecution presented insufficient evidence of defendant's guilt because "there is no evidence that defendant did not register on . . . the first business day following his birthday").

¹⁴ These are the circumstances the legislature may have contemplated by enacting the affirmative defense discussed by the State. (OB p32 n.7)

¹⁵ The testimony of Ms. Dunston (the woman who lived at the Adams County address) and Detective Saunders (investigating officer) supported Mr. Griffin's testimony that he never resided in Adams County. (See AB § II.C.2., *supra*)

The State's second argument relies on the establish-a-residence statute and its interpretation that the statute creates a mandatory presumption. (*See* OB p50) Because mandatory presumptions are unconstitutional, the establish-a-residence statute must be interpreted to create, if any presumption is created, a permissive presumption or inference. (*See* AB § I.D.5.d., *supra*) Put differently, proof of mail being sent to an address cannot require the factfinder to infer the addressee, if a sex offender, intended to reside at the address, thereby triggering the duty to register. Instead, proof of mail may be used to infer the addressee intends to reside at the address.

The evidence established, however, that the mail addressed to Mr. Griffin was sent *after* the time period for which he was charged with failing to register. Ms. Dunston's testimony established the mail addressed to Mr. Griffin was not definitively received until April or May 2008, more than a year after the last date of the charged date range (between June 2, 2006 and February 27, 2007).¹⁶ Because the mail was sent after the charged time period and because the evidence undisputedly established Mr.

¹⁶ The fact that Ms. Dunston also received mail at the Adams County address addressed to other unknown people demonstrates that mail is unreliable in determining whether a person resides at the address. Mail may also be received at an address after a sex offender ceases to reside at a residence, but, even if the sex offender properly cancels the registration in the old jurisdiction, under the State's interpretation, the mail would still require the sex offender to register in the old jurisdiction.

Griffin did not live in Adams County in April 2008 or later, it is not reasonable to infer that Mr. Griffin intended to reside at the Adams County address based on the mail. *See Anson v. Trujillo*, 56 P.3d 114, 120 (Colo. App. 2002) (“Jurors are entitled to draw reasonable inferences from the evidence, but they may not speculate concerning elements of a claim.”).

The State’s final argument also rests on the absence of evidence presented at trial and on an unreasonable inference. The de-registration form – listing the Adams County address as Mr. Griffin’s old address – may prove Mr. Griffin intended to reside in Adams County, but it does nothing to refute his testimony that he abandoned that intent.

The State complains “the Court of Appeals essentially treated the defendant’s assertion that he did not ever live at the Adams County address as if it were an affirmative defense that must be disproven by the people.” (OB p50) It is true that passive conduct crimes are difficult to prove because prosecutors must essentially prove a negative. But our legislature chose to create this type of offense here, and prosecutors are not relieved of their constitutional burden of proving all the elements of the charged offense beyond a reasonable doubt. The prosecutor relied on the absence of evidence to try to establish Mr. Griffin’s guilt, and that, under the law, is

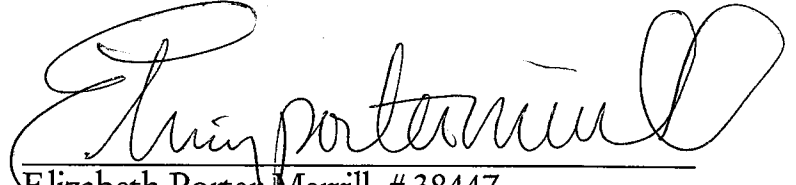
simply not enough to hold Mr. Griffin criminally liable for failing to register as a sex offender. *See Duncan*, 109 P.3d at 1047.

Regardless of how this Court interprets the elements of failing to register as a sex offender upon changing an address, the prosecution presented insufficient evidence to convict Mr. Griffin. The Court of Appeals correctly vacated his conviction.

CONCLUSION

For the reasons and authorities presented in Arguments III and IV, defense counsel respectfully requests that this Court abate the proceedings *ab initio* and remand the case to the trial court with directions to vacate his conviction. For the reasons and authorities presented in Arguments I and II, counsel respectfully requests that this Court affirm the Court of Appeals' decision and remand the case to the trial court with directions to vacate Mr. Griffin's conviction.

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Colorado State Public Defender

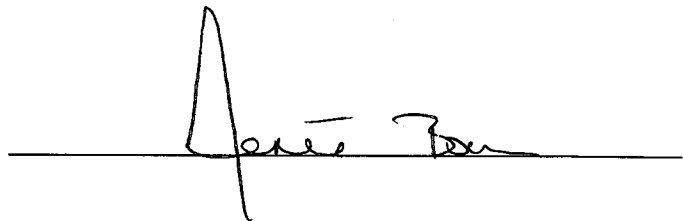


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CERTIFICATE OF SERVICE

I certify that, on April 16, 2013, a copy of this Answer Brief was hand-delivered to the Colorado Court of Appeals for deposit in the Attorney General's mailbox to the attention of:

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APPENDIX

C.R.S.A. § 18-3-412.5

West's Colorado Revised Statutes Annotated Currentness

Title 18. Criminal Code (Refs & Annos)

Article 3. Offenses Against The Person (Refs & Annos)

Part 4. Unlawful Sexual Behavior (Refs & Annos)

§ 18-3-412.5. Failure to register as a sex offender

(1) Any person who is required to register pursuant to article 22 of title 16, C.R.S., and who fails to comply with any of the requirements placed on registrants by said article, including but not limited to committing any of the acts specified in this subsection (1), commits the offense of failure to register as a sex offender:

(a) Failure to register pursuant to article 22 of title 16, C.R.S.;

(b) Submission of a registration form containing false information or submission of an incomplete registration form;

(c) Failure to provide information or knowingly providing false information to a probation department employee, to a community corrections administrator or his or her designee, or to a judge or magistrate when receiving notice pursuant to section 16-22-106(1), (2), or (3), C.R.S., of the duty to register;

(d) If the person has been sentenced to a county jail, otherwise incarcerated, or committed, due to conviction of or disposition or adjudication for an offense specified in section 16-22-103, C.R.S., failure to provide notice of the address where the person intends to reside upon release as required in sections 16-22-106 and 16-22-107, C.R.S.;

(e) Knowingly providing false information to a sheriff or his or her designee, department of corrections personnel, or department of human services personnel concerning the address where the person intends to reside upon release from the county jail, the department of corrections, or the department of human services. Providing false information shall include, but is not limited to, providing false information as described in section 16-22-107(4)(b), C.R.S.;

(f) Failure when registering to provide the person's current name and any former names;

(g) Failure to register with the local law enforcement agency in each jurisdiction in which the person resides upon changing an address, establishing an additional residence, or legally changing names;

(h) Failure to provide the person's correct date of birth, to sit for or otherwise provide a current photograph or image, to provide a current set of fingerprints, or to provide the person's correct address;

(i) Failure to complete a cancellation of registration form and file the form with the local law enforcement agency of the jurisdiction in which the person will no longer reside.

(2)(a) Failure to register as a sex offender is a class 6 felony if the person was convicted of felony unlawful sexual behavior, or of another offense, the underlying factual basis of which includes felony unlawful sexual behavior, or if the person received a disposition or was adjudicated for an offense that would constitute felony unlawful sexual behavior if committed by an adult, or for another offense, the underlying factual basis of which involves felony unlawful sexual behavior; except that any second or subsequent offense of failure to register as a sex offender by such person is a class 5 felony.

(b) Any person convicted of felony failure to register as a sex offender shall be sentenced pursuant to the provisions of section 18-1.3-401. If such person is sentenced to probation, the court shall require, as a condition of probation, that the person participate until further order of the court in an intensive supervision probation program established pursuant to section 18-1.3-1007. If such person is sentenced to incarceration and subsequently released on parole, the parole board shall require,

as a condition of parole, that the person participate in an intensive supervision parole program established pursuant to section 18-1.3-1005.

(c) A person who is convicted of a felony sex offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, and who commits failure to register as a sex offender in this state commits felony failure to register as a sex offender as specified in paragraph (a) of this subsection (2) and shall be sentenced as provided in paragraph (b) of this subsection (2).

(3)(a) Failure to register as a sex offender is a class 1 misdemeanor if the person was convicted of misdemeanor unlawful sexual behavior, or of another offense, the underlying factual basis of which involves misdemeanor unlawful sexual behavior, or if the person received a disposition or was adjudicated for an offense that would constitute misdemeanor unlawful sexual behavior if committed by an adult, or for another offense, the underlying factual basis of which involves misdemeanor unlawful sexual behavior. A class 1 misdemeanor conviction pursuant to this subsection (3) is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501(3).

(b) A person who is convicted of a misdemeanor sex offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, and who commits failure to register as a sex offender in this state commits misdemeanor failure to register as a sex offender as specified in paragraph (a) of this subsection (3).

(4)(a) Any juvenile who receives a disposition or is adjudicated for a delinquent act of failure to register as a sex offender that would constitute a felony if committed by an adult shall be sentenced to a forty-five-day mandatory minimum detention sentence; except that any juvenile who receives a disposition or is adjudicated for a second or subsequent delinquent act of failure to register as a sex offender that would constitute a felony if committed by an adult shall be placed or committed out of the home for not less than one year.

(b) Any juvenile who receives a disposition or is adjudicated for a delinquent act of failure to register as a sex offender that would constitute a misdemeanor if committed by an adult shall be sentenced to a thirty-day mandatory minimum detention sentence; except that any juvenile who receives a disposition or is adjudicated for a second or subsequent delinquent act of failure to register as a sex offender that would constitute a misdemeanor if committed by an adult shall be sentenced to a forty-five-day mandatory minimum detention sentence.

(5) For purposes of this section, unless the context otherwise requires, "unlawful sexual behavior" has the same meaning as set forth in section 16-22-102(9), C.R.S.

(6)(a) When a peace officer determines that there is probable cause to believe that a crime of failure to register as a sex offender has been committed by a person required to register as a sexually violent predator in this state pursuant to article 22 of title 16, C.R.S, or in any other state, the officer shall arrest the person suspected of the crime. It shall be a condition of any bond posted by such person that the person shall register pursuant to the provisions of section 16-22-108, C.R.S., within five business days after release from incarceration.

(b) When a peace officer makes a warrantless arrest pursuant to this subsection (6), the peace officer shall immediately notify the Colorado bureau of investigation of the arrest. Upon receiving the notification, the Colorado bureau of investigation shall notify the jurisdiction where the sexually violent predator last registered. The jurisdiction where the sexually violent predator last registered, if it is not the jurisdiction where the probable cause arrest is made, shall coordinate with the arresting jurisdiction immediately to determine the appropriate jurisdiction that will file the charge. If the sexually violent predator is being held in custody after the arrest, the appropriate jurisdiction shall have no less than five business days after the date of the arrest to charge the sexually violent predator.

C.R.S.A. § 16-22-101

West's Colorado Revised Statutes Annotated Currentness

Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-101. Short title

This article shall be known and may be cited as the “Colorado Sex Offender Registration Act”.

CREDIT(S)

Added by Laws 2002, Ch. 297, § 1, eff. July 1, 2002.

Current through the end of the 2006 First Extraordinary Session of the Sixty-Fifth General Assembly (2006)

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C.R.S.A. § 16-22-102

West's Colorado Revised Statutes Annotated Currentness
Title 16. Criminal Proceedings
Offenders—Registration
Article 22. Colorado Sex Offender Registration Act (Refs & Annos)
§ 16-22-102. Definitions

As used in this article, unless the context otherwise requires:

- (1) "Birthday" means a person's birthday as reflected on the notice provided to the person pursuant to section 16-22-106 or 16-22-107 or the person's actual date of birth if the notice does not reflect the person's birthday.
- (2) "CBI" means the Colorado bureau of investigation established pursuant to part 4 of article 33.5 of title 24, C.R.S.
- (3) "Convicted" or "conviction" means having received a verdict of guilty by a judge or jury, having pleaded guilty or nolo contendere, having received a disposition as a juvenile, having been adjudicated a juvenile delinquent, or having received a deferred judgment and sentence or a deferred adjudication.
- (3.5) "Employed at an institution of postsecondary education" means a person:
 - (a) Is employed by or is an independent contractor with an institution of postsecondary education or is employed by or is an independent contractor with an entity that contracts with an institution of postsecondary education; and
 - (b) Spends any period of time in furtherance of the employment or independent contractor relationship on the campus of the postsecondary institution or at a site that is owned or leased by the postsecondary institution.
- (4) "Immediate family" means a person's spouse, parent, grandparent, sibling, or child.
- (4.5) "Local law enforcement agency" means the law enforcement agency, including but not limited to a campus police agency, that has jurisdiction over a certain geographic area.
- (5) "Register" and "registration" include initial registration pursuant to section 16-22-104, and registration, confirmation of registration, and reregistration, as required in section 16-22-108.
- (5.5) "Registrant" means a person who is required to register in accordance with this article.
- (5.7) "Residence" means a place or dwelling that is used, intended to be used, or usually used for habitation by a person who is required to register pursuant to section 16-22-103. "Residence" may include, but is not limited to, a temporary shelter or institution, if the owner of the shelter or institution consents to the person utilizing the shelter or institution as his or her registered address as required by section 16-22-106(4) or 16-22-107(4)(a) and if the residence of the person at the shelter or institution is capable of verification as required by 16-22-109(3.5). A person may establish multiple residences by residing in more than one place or dwelling.
- (6) "Sex offender registry" means the Colorado sex offender registry created and maintained by the CBI pursuant to section 16-22-110.
- (7) "Sexually violent predator" means a person who is found to be a sexually violent predator pursuant to section 18-3-414.5, C.R.S.

- (8) "Temporary resident" means a person who is a resident of another state but in Colorado temporarily because the person is:
- (a) Employed in this state on a full-time or part-time basis, with or without compensation, for more than fourteen consecutive business days or for an aggregate period of more than thirty days in any calendar year; or
 - (b) Enrolled in any type of educational institution in this state on a full-time or part-time basis; or
 - (c) Present in Colorado for more than fourteen consecutive business days or for an aggregate period of more than thirty days in a calendar year for any purpose, including but not limited to vacation, travel, or retirement.
- (9) "Unlawful sexual behavior" means any of the following offenses or criminal attempt, conspiracy, or solicitation to commit any of the following offenses:
- (a)(I) Sexual assault, in violation of section 18-3-402, C.R.S.; or
 - (II) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;
 - (b) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;
 - (c)(I) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or
 - (II) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;
 - (d) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;
 - (e) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;
 - (f) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;
 - (g) Enticement of a child, in violation of section 18-3-305, C.R.S.;
 - (h) Incest, in violation of section 18-6-301, C.R.S.;
 - (i) Aggravated incest, in violation of section 18-6-302, C.R.S.;
 - (j) Trafficking in children, in violation of section 18-6-402, C.R.S.;
 - (k) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;
 - (l) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;
 - (m) Indecent exposure, in violation of section 18-7-302, C.R.S.;
 - (n) Soliciting for child prostitution, in violation of section 18-7-402, C.R.S.;
 - (o) Pandering of a child, in violation of section 18-7-403, C.R.S.;
 - (p) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;
 - (q) Keeping a place of child prostitution, in violation of section 18-7-404, C.R.S.;
 - (r) Pimping of a child, in violation of section 18-7-405, C.R.S.;
 - (s) Inducement of child prostitution, in violation of section 18-7-405.5, C.R.S.;

- (t) Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.;
- (u) Engaging in sexual conduct in a penal institution, in violation of section 18-7-701, C.R.S.
- (v) Wholesale promotion of obscenity to a minor, in violation of section 18-7-102(1.5), C.R.S.;
- (w) Promotion of obscenity to a minor, in violation of section 18-7-102(2.5), C.R.S.
- (x) Class 4 felony internet luring of a child, in violation of section 18-3-306(3), C.R.S.; or
- (y) Internet sexual exploitation of a child in violation of section 18-3-405.4, C.R.S.

C.R.S.A. § 16-22-103

West's Colorado Revised Statutes Annotated Currentness

Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-103. Sex offender registration—required—applicability—exception

(1) Effective July 1, 1998, the following persons shall be required to register pursuant to the provisions of section 16-22-108 and shall be subject to the requirements and other provisions specified in this article:

(a) Any person who was convicted on or after July 1, 1991, in the state of Colorado, of an unlawful sexual offense, as defined in section 18-3-411(1), C.R.S., or enticement of a child, as described in section 18-3-305, C.R.S.;

(b) Any person who was convicted on or after July 1, 1991, in another state or jurisdiction, including but not limited to a military or federal jurisdiction, of an offense that, if committed in Colorado, would constitute an unlawful sexual offense, as defined in section 18-3-411(1), C.R.S., or enticement of a child, as described in section 18-3-305, C.R.S.; and

(c) Any person who was released on or after July 1, 1991, from the custody of the department of corrections of this state or any other state, having served a sentence for an unlawful sexual offense, as defined in section 18-3-411(1), C.R.S., or enticement of a child, as described in section 18-3-305, C.R.S.

(2)(a) On and after July 1, 1994, any person who is convicted in the state of Colorado of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior, or any person who is released from the custody of the department of corrections having completed serving a sentence for unlawful sexual behavior or for another offense, the underlying factual basis of which involved unlawful sexual behavior, shall be required to register in the manner prescribed in section 16-22-104, section 16-22-106 or 16-22-107, whichever is applicable, and section 16-22-108.

(b) A person shall be deemed to have been convicted of unlawful sexual behavior if he or she is convicted of one or more of the offenses specified in section 16-22-102(9), or of attempt, solicitation, or conspiracy to commit one or more of the offenses specified in said section.

(c)(I) For convictions entered on or after July 1, 2002, a person shall be deemed to be convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior, if:

(A) The person is convicted of an offense that requires proof of unlawful sexual behavior as an element of the offense; or

(B) The person is convicted of an offense and is eligible for and receives an enhanced sentence based on a circumstance that requires proof of unlawful sexual behavior; or

(C) The person was originally charged with unlawful sexual behavior or with an offense that meets the description in sub-subparagraph (A) or (B) of this subparagraph (I), the person pleads guilty to an offense that does not constitute unlawful sexual behavior, and, as part of the plea agreement, the person admits, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense to which he or she is pleading guilty involves unlawful sexual behavior; or

(D) The person was charged with and convicted of an offense that does not constitute unlawful sexual behavior and the person admits on the record, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense involved unlawful sexual behavior.

(II) If a person is originally charged with unlawful sexual behavior or with an offense that meets the description in subparagraph (A) or (B) of subparagraph (I) of this paragraph (c), the court may accept a plea agreement to an offense that does not constitute unlawful sexual behavior only if:

(A) The district attorney stipulates that the underlying factual basis of the offense to which the person is pleading guilty does not involve unlawful sexual behavior; or

(B) The person admits, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense to which he or she is pleading guilty involves unlawful sexual behavior.

(III) The advisement provided for purposes of this paragraph (c), in addition to meeting the requirements of the Colorado rules of criminal procedure, shall advise the person that admitting that the underlying factual basis of the offense to which the person is pleading or of which the person is convicted involves unlawful sexual behavior will have the collateral result of making the person subject to the requirements of this article. Notwithstanding any provision of this paragraph (c) to the contrary, failure to advise a person pursuant to the provisions of this subparagraph (III) shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the defendant had actual notice of the duty to register.

(IV) In any case in which a person is deemed to have been convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior, as provided in this paragraph (c), the judgment of conviction shall specify that the person is convicted of such an offense and specify the particular crime of unlawful sexual behavior involved.

(V) The provisions of this paragraph (c) shall apply to juveniles for purposes of determining whether a juvenile is convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior.

(d) Notwithstanding any other provision of this section, any stipulation by a district attorney and any finding of the court with regard to whether the offense of which a person is convicted includes an underlying factual basis involving unlawful sexual behavior shall not limit or otherwise affect the ability of the department of corrections to make such determination in accordance with department procedures for purposes of classification and treatment of any person sentenced to the department of corrections.

(3) In addition to the persons specified in subsections (1) and (2) of this section, any person convicted of an offense in any other state or jurisdiction, including but not limited to a military or federal jurisdiction, for which the person, as a result of the conviction, is required to register in the state or jurisdiction of conviction, or for which such person would be required to register if convicted in Colorado, shall be required to register in the manner specified in section 16-22-108, so long as such person is a temporary or permanent resident of Colorado. Such person may petition the court for an order that discontinues the requirement for registration in this state at the times specified in section 16-22-113 for offense classifications that are comparable to the classification of the offense for which the person was convicted in the other state or jurisdiction.

(4) The provisions of this article shall apply to any person who receives a disposition or is adjudicated a juvenile delinquent based on the commission of any act that may constitute unlawful sexual behavior or who receives a deferred adjudication based on commission of any act that may constitute unlawful sexual behavior; except that, with respect to section 16-22-113(1)(a) to (1)(e), a person may petition the court for an order to discontinue the duty to register as provided in those paragraphs, but only if the person has not subsequently received a disposition for, been adjudicated a juvenile delinquent for, or been otherwise convicted of any offense involving unlawful sexual behavior. In addition, the duty to provide notice to a person of the duty to register, as set forth in sections 16-22-105 to 16-22-107, shall apply to juvenile parole and probation officers and appropriate personnel of the division of youth corrections in the department of human services.

(5)(a) Notwithstanding any provision of this article to the contrary, if, pursuant to a motion filed by a person described in this subsection (5) or on its own motion, a court determines that the registration requirement specified in this section would be unfairly punitive and that exempting the person from the registration requirement would not pose a significant risk to the

community, the court, upon consideration of the totality of the circumstances, may exempt the person from the registration requirements imposed pursuant to this section if:

(I) The person was younger than eighteen years of age at the time of the commission of the offense; and

(II) The person has not been previously charged with unlawful sexual behavior; and

(III) The offense, as charged in the first petition filed with the court, is a first offense of either misdemeanor unlawful sexual contact, as described in section 18-3-404, C.R.S., or indecent exposure, as described in section 18-7-302, C.R.S.; and

(IV) The person has received a sex offender evaluation that conforms with the standards developed pursuant to section 16-11.7-103(4)(f), from an evaluator who meets the standards established by the sex offender management board, and the evaluator recommends exempting the person from the registration requirements based upon the best interests of that person and the community; and

(V) The court makes written findings of fact specifying the grounds for granting such exemption.

(b) Any defendant who files a motion pursuant to this subsection (5) or the court, if considering its own motion, shall provide notice of the motion to the prosecuting district attorney. In addition, the court shall provide notice of the motion to the victim of the offense. Prior to deciding the motion, the court shall conduct a hearing on the motion at which both the district attorney and the victim shall have opportunity to be heard.

(6) Any person who is required to register pursuant to this section and fails to do so or otherwise fails to comply with the provisions of this article may be subject to prosecution for the offense of failure to register as a sex offender, as described in section 18-3-412.5, C.R.S. Failure of any governmental entity or any employee of any governmental entity to comply with any requirement of this article shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the defendant had actual notice of the duty to register.

C.R.S.A. § 16-22-104

West's Colorado Revised Statutes Annotated Currentness

Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-104. Initial registration—effective date—repeal

(1)(a)(I) Beginning January 1, 2005, for any person required to register pursuant to section 16-22-103, the court, within the later of twenty-four hours or the next business day after sentencing the person, shall electronically file with the CBI the initial registration of the person, providing the information required by the CBI.

(II) Beginning May 27, 2004, the court shall specify on the judgment of conviction the person's duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration if the person is sentenced on or after January 1, 2005, and the person's duty to reregister.

(b) Any person who is sentenced prior to January 1, 2005, and who is required to register pursuant to section 16-22-103 shall initially register in the manner provided and within the times specified in section 16-22-108(1)(a) for registration.

(c) The state court administrator is hereby authorized to receive and expend any public or private gifts, grants, or donations that may be available to offset the costs incurred in implementing the provisions of this subsection (1).

(2) Repealed by Laws 2004, Ch. 297, § 3, eff. July 1, 2005.

C.R.S.A. § 16-22-105

West's Colorado Revised Statutes Annotated Currentness

Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-105. Notice—requirements—residence—presumption

(1) Any person who is required to register pursuant to section 16-22-103 shall receive notice of the duty to register as provided in section 16-22-106 or 16-22-107, whichever is applicable. Such notice shall inform the person of the duty to register, in the manner provided in section 16-22-108, with the local law enforcement agency of each jurisdiction in which the person resides. The notice shall inform the person that he or she has a duty to register with local law enforcement agencies in any state or other jurisdiction to which the person may move and that the CBI shall notify the agency responsible for registration in the new state as provided in section 16-22-108(4). The notice shall also inform the person that, at the time the person registers, he or she must provide his or her date of birth, a current photograph, and a complete set of fingerprints.

(2) Failure of any person to sign the notice of duty to register, as required in sections 16-22-106 and 16-22-107, shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the person had actual notice of the duty to register.

(3) For purposes of this article, any person who is required to register pursuant to section 16-22-103 shall register in all jurisdictions in which he or she establishes a residence. A person establishes a residence through an intent to make any place or dwelling his or her residence. The prosecution may prove intent to establish residence by reference to hotel or motel receipts or a lease of real property, ownership of real property, proof the person accepted responsibility for utility bills, proof the person established a mailing address, or any other action demonstrating such intent. Notwithstanding the existence of any other evidence of intent, occupying or inhabiting any dwelling for more than fourteen days in any thirty-day period shall constitute the establishment of residence.

C.R.S.A. § 16-22-106

West's Colorado Revised Statutes Annotated Currentness

Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-106. Duties—probation department—community corrections administrator—court personnel—jail personnel—notice

(1)(a) If a person who is required to register pursuant to section 16-22-103 is sentenced to probation, the probation department, as soon as possible following sentencing, shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides. Beginning on May 27, 2004, the court shall specify on the judgment of conviction the duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration if sentenced on or after January 1, 2005, and to reregister.

(b) The probation department shall electronically notify the CBI of the date on which the person's probation is terminated, and the probation department shall notify the CBI if the person absconds or dies prior to the probation termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this paragraph (b).

(2)(a) If a person who is required to register pursuant to section 16-22-103 receives a direct sentence to community corrections, the administrator for the community corrections program, or his or her designee, as soon as possible following sentencing, shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides. The court shall specify on the judgment of conviction the duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration, if sentenced on or after January 1, 2005, and to reregister.

(b) The administrator of the community corrections program, or his or her designee, shall electronically notify the CBI of the date on which the sentence to community corrections is terminated, and the administrator of the community corrections program shall notify the CBI if the person escapes or dies prior to the sentence termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this paragraph (b).

(3)(a)(I) If a person who is required to register pursuant to section 16-22-103 is sentenced to a county jail, the sheriff of the county in which the county jail is located, or his or her designee, as soon as possible following sentencing, shall transmit to the CBI confirmation of the person's registration on a standardized form provided by the CBI, using the address or addresses at which the person will reside while in custody of the county jail, and including the person's date of birth, a current photograph of the person, and the person's fingerprints.

(II) The provisions of this paragraph (a) shall apply to persons sentenced on or after January 1, 2005.

(b) At least five days prior to the discharge of the person from custody, the sheriff, or his or her designee, shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the

notice as confirmation of receipt and to provide the person's date of birth and the address at which the person intends to reside upon discharge.

(c) Within five days, but not fewer than two days, prior to the discharge of the person from custody, the sheriff, or his or her designee, shall notify the CBI and the local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person's discharge. Such notice, at a minimum, shall include the address at which the person plans to reside upon discharge, provided by the person pursuant to paragraph (b) of this subsection (2), and the person's date of birth, fingerprints, and current photograph.

(3.5) With regard to a person who is required to register within a state, military, or federal jurisdiction other than Colorado, the chief local law enforcement officer, or his or her designee, of the Colorado jurisdiction in which the person resides shall provide notice, as described in section 16-22-105, to the person as soon as possible after discovering the person's presence in the jurisdiction, of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each Colorado jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides.

(4) For any person who is required to register pursuant to section 16-22-103, who is not committed to the department of human services, and who is not sentenced to probation, community corrections, county jail, or the department of corrections, the judge or magistrate who has jurisdiction over the person shall, at sentencing, provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides.

C.R.S.A. § 16-22-107

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Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-107. Duties—department of corrections—department of human services—confirmation of registration—notice—address verification

(1)(a) If a person who is required to register pursuant to section 16-22-103 is sentenced to the department of corrections, the department of corrections shall transmit to the CBI confirmation of the person's registration on a standardized form provided by the CBI, including the person's date of birth and the person's fingerprints. The department of corrections shall also transmit a photograph of the person if requested by the CBI.

(b) The provisions of this subsection (1) shall apply to persons sentenced on or after January 1, 2005.

(2) At least ten business days prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, the department of corrections shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address at which the person intends to reside upon release or discharge.

(3) Within five days, but not fewer than two days, prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, the department shall notify the CBI and the local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person's release or discharge. Such notice shall include the address at which the person intends to reside upon release or discharge, provided by the person pursuant to subsection (2) of this section, and the person's date of birth and the person's current photograph if requested by the CBI. In addition, such notice may include additional information concerning the person, including but not limited to any information obtained in conducting the assessment to determine whether the person may be subject to community notification pursuant to section 16-13-903.

(4)(a) Prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, department of corrections personnel, if the person is being released on parole, or the local law enforcement agency of the jurisdiction in which the person intends to reside, if the person is being discharged, shall verify that:

(I) The address provided by the person pursuant to subsection (2) of this section is a residence;

(II) The occupants or owners of the residence know of the person's history of unlawful sexual behavior;

(III) The occupants or owners of the residence have agreed to allow the person to reside at the address; and

(IV) If the person is being released on parole, the address complies with any conditions imposed by the parole board.

(b) If, in attempting to verify the address provided by the person, department of corrections personnel or local law enforcement officers determine that any of the information specified in paragraph (a) of this subsection (4) is not true, the person shall be deemed to have provided false information to department personnel concerning the address at which the person intends to reside upon release.

(4.5) With regard to a person who has been sentenced to the department of corrections, is released on parole, and is required to register pursuant to section 16-22-103, the department shall electronically notify the CBI of the date on which the person's parole is terminated, and the department shall notify the CBI if the person absconds or dies prior to the parole termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this subsection (4.5).

(5) In the case of a juvenile who is required to register pursuant to section 16-22-103 and is committed to the department of human services, said department shall have and carry out the duties specified in this section for the department of corrections with regard to said juvenile.

C.R.S.A. § 16-22-108

West's Colorado Revised Statutes Annotated Currentness

Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-108. Registration—procedure—frequency—place—change of address—fee

(1)(a) Each person who is required to register pursuant to section 16-22-103 shall register with the local law enforcement agency in each jurisdiction in which the person resides. Each such person shall initially register or, if sentenced on or after January 1, 2005, confirm his or her initial registration within five business days after release from incarceration for commission of the offense requiring registration or within five business days after receiving notice of the duty to register, if the person was not incarcerated. Such person shall register with the local law enforcement agency during business hours by completing a standardized registration form provided to such person by the local law enforcement agency and paying the registration fee imposed by the local law enforcement agency as provided in subsection (7) of this section. The CBI shall provide standardized registration forms to the local law enforcement agencies pursuant to section 16-22-109.

(b) Except as otherwise provided in paragraph (d) of this subsection (1), each person who is required to register pursuant to section 16-22-103 shall reregister on the person's first birthday following initial registration and annually on the person's birthday thereafter. If a person's birthday falls on a Saturday, Sunday, or holiday, the person shall reregister on the first business day following his or her birthday. Such person shall reregister pursuant to this paragraph (b) with the local law enforcement agency of each jurisdiction in which the person resides on his or her birthday, in the manner provided in paragraph (a) of this subsection (1).

(c) Each person who is required to register pursuant to section 16-22-103 and who establishes an additional residence shall, within five business days after establishing an additional residence in any city, town, county, or city and county within Colorado, register with the local law enforcement agency of the jurisdiction in which he or she establishes the additional residence. Such person shall register in said jurisdiction in the manner provided in paragraph (a) of this subsection (1) and shall reregister as provided in paragraph (b) of this subsection (1) or paragraph (d) of this subsection (1), whichever is applicable, in said jurisdiction so long as the person resides in said jurisdiction.

(d)(I) Any person who is a sexually violent predator and any person who is convicted as an adult of any of the offenses specified in subparagraph (II) of this paragraph (d) has a duty to register for the remainder of his or her natural life; except that, if the person receives a deferred judgment and sentence for one of the offenses specified in subparagraph (II) of this paragraph (d), the person may petition the court for discontinuation of the duty to register as provided in section 16-22-113(1)(d). In addition to registering as required in paragraph (a) of this subsection (1), such person shall reregister ninety days after the date he or she was released from incarceration for commission of the offense requiring registration, or ninety days after the date he or she received notice of the duty to register, if the person was not incarcerated, and every ninety days thereafter until such person's birthday. Such person shall reregister on his or her birthday and shall reregister every ninety days thereafter. If a person's birthday or other reregistration day falls on a Saturday, Sunday, or holiday, the person shall reregister on the first business day following his or her birthday or other reregistration day. Such person shall reregister pursuant to this paragraph (d) with the local law enforcement agency of each jurisdiction in which the person resides on the reregistration date, in the manner provided in paragraph (a) of this subsection (1).

(I.5)(A) A person convicted of an offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, who, as a result of the conviction, is required to register quarterly as a sex offender in the state or jurisdiction of

conviction is required to register as provided in subparagraph (I) of this paragraph (d) so long as the person is a temporary or permanent resident of Colorado.

(B) A person convicted of an offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, which conviction would require the person to register as provided in subparagraph (I) of this paragraph (d) if the conviction occurred in Colorado, is required to register as provided in said subparagraph (I) so long as the person is a temporary or permanent resident of Colorado.

(II) The provisions of this paragraph (d) shall apply to persons convicted of one or more of the following offenses:

(A) Felony sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000, or felony sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000; or

(B) Sexual assault on a child in violation of section 18-3-405, C.R.S.; or

(C) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or

(D) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.; or

(E) Incest, in violation of section 18-6-301, C.R.S.; or

(F) Aggravated incest, in violation of section 18-6-302, C.R.S.

(e) Notwithstanding the time period for registration specified in paragraph (a) of this subsection (1), any person who is discharged from the department of corrections of this state or another state without supervision shall register in the manner provided in paragraph (a) of this subsection (1) no later than the next business day following discharge.

(2) Persons who reside within the corporate limits of any city, town, or city and county shall register at the office of the chief law enforcement officer of such city, town, or city and county; except that, if there is no chief law enforcement officer of the city, town, or city and county in which a person resides, the person shall register at the office of the county sheriff of the county in which the person resides. Persons who reside outside of the corporate limits of any city, town, or city and county shall register at the office of the county sheriff of the county where such person resides.

(3) Any person who is required to register pursuant to section 16-22-103 shall be required to register each time such person:

(a) Changes such person's address, regardless of whether such person has moved to a new address within the jurisdiction of the law enforcement agency with which such person previously registered;

(b) Legally changes such person's name;

(c) Establishes an additional residence in another jurisdiction or an additional residence in the same jurisdiction;

(d) Becomes employed or changes employment or employment location, if employed at an institution of postsecondary education;

(e) Becomes enrolled or changes enrollment in an institution of postsecondary education, or changes the location of enrollment; or

(f) Becomes a volunteer or changes the volunteer work location, if volunteering at an institution of postsecondary education.

(4)(a) Any time a person who is required to register pursuant to section 16-22-103 ceases to reside at an address, the person shall notify the local law enforcement agency of the jurisdiction in which said address is located by completing a written registration cancellation form, available from the local law enforcement agency. At a minimum, the registration cancellation form shall

indicate the address at which the person will no longer reside and all addresses at which the person will reside. The person shall file the registration cancellation form within five business days after ceasing to reside at an address. A local law enforcement agency that receives a registration cancellation form shall electronically notify the CBI of the registration cancellation. If the person moves to another state, the CBI shall promptly notify the agency responsible for registration in the new state.

(b) If a person fails to submit the registration cancellation form as required in paragraph (a) of this subsection (4) and the address at which the person is no longer residing is a group facility, officials at such facility may provide information concerning the person's cessation of residency to the local law enforcement agency of the jurisdiction in which the address is located. If the person is a juvenile or developmentally disabled and fails to submit the registration cancellation form as required in paragraph (a) of this subsection (4) and the address at which the person is no longer residing is the residence of his or her parent or legal guardian, the person's parent or legal guardian may provide information concerning the person's cessation of residency to the local law enforcement agency of the jurisdiction in which the address is located. Any law enforcement agency that receives such information shall reflect in its records that the person no longer resides at said group facility or the parent's or legal guardian's residence and shall transmit such information to the CBI. Provision of information by a group facility or a person's parent or legal guardian pursuant to this paragraph (b) shall not constitute a defense to a charge of failure to register as a sex offender.

(5) During the initial registration process for a temporary resident, the local law enforcement agency with which the temporary resident is registering shall provide the temporary resident with the registration information specified in section 16-22-105. A temporary resident who is required to register pursuant to the provisions of section 16-22-103 shall, within five business days after arrival in Colorado, register with the local law enforcement agency of each jurisdiction in which the temporary resident resides.

(6) Any person required to register pursuant to section 16-22-103, at the time the person registers with any local law enforcement agency in this state, and thereafter when annually reregistering on the person's birthday or the first business day following the birthday as required in paragraph (b) of subsection (1) of this section, shall sit for a current photograph or image of himself or herself and shall supply a set of fingerprints to verify the person's identity. The person shall bear the cost of the photograph or image and fingerprints.

(7) A local law enforcement agency may establish a registration fee to be paid by persons registering and reregistering with the local law enforcement agency pursuant to the provisions of this section. The amount of the fee shall reflect the actual direct costs incurred by the local law enforcement agency in implementing the provisions of this article.

C.R.S.A. § 16-22-109

West's Colorado Revised Statutes Annotated Currentness

Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-109. Registration forms—local law enforcement agencies—duties

(1) The director of the CBI shall prescribe standardized forms to be used to comply with this article, and the CBI shall provide copies of such standardized forms to the courts, probation departments, community corrections programs, the department of corrections, the department of human services, and local law enforcement agencies. Such standardized forms may be provided in electronic form. Such standardized forms shall be used to register persons pursuant to this article and to enable persons to cancel registration, as necessary. The standardized forms shall provide that the persons required to register pursuant to section 16-22-103 disclose such information as is required on the standardized forms. The information required on the standardized forms shall include, but need not be limited to:

(a) The name, date of birth, address, and place of employment of the person required to register, and, if the place of employment is at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the person may be physically located;

(a.3) If the person's place of residence is a motor vehicle, trailer, or motor home, the vehicle identification number, license tag number, registration number, and description, including color scheme, of the motor vehicle and trailer.

(a.5) If the person is volunteering at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the person may be physically located;

(a.7) If the person enrolls or is enrolled in an institution of a postsecondary education, all addresses and locations of the institution of postsecondary education at which the person attends classes or otherwise participates in required activities;

(b) All names used at any time by the person required to register, including both aliases and legal names;

(c) For any person who is a temporary resident of the state, the person's address in his or her state of permanent residence and the person's place of employment in this state or the educational institution in which he or she is enrolled in this state and, if the temporary resident of the state is enrolled in, employed by, or volunteers at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the temporary resident attends classes or otherwise participates in required activities or works or performs volunteer activities;

(d) The name, address, and location of any institution of postsecondary education where the person required to register is enrolled;

(e) The name, address, and location of any institution of postsecondary education where the person required to register volunteers.

(2) The standardized forms prepared by the CBI pursuant to this section, including electronic versions of said forms, shall be admissible in court without exclusion on hearsay or other evidentiary grounds and shall be self-authenticating as a public record pursuant to the Colorado rules of evidence.

(3) Upon receipt of any completed registration form pursuant to this article, the local law enforcement agency shall retain a copy of such form and shall report the registration to the CBI in the manner and on the standardized form prescribed by the director of the CBI. The local law enforcement agency shall, within three business days after the date on which a person is

required to register, report to the CBI such registration and, if it is the registrant's first registration with the local law enforcement agency, transmit the registrant's fingerprints to the CBI. The local law enforcement agency shall transfer additional sets of fingerprints only when requesting CBI to conduct a comparison. The local law enforcement agency shall transmit a photograph of a registrant only upon request of the CBI.

(3.5) The local law enforcement agency with which a person registers pursuant to this article shall, as soon as possible following the registrant's first registration with the local law enforcement agency and at least annually thereafter, verify the residential address reported by the registrant on the standardized form; except that, if the registrant is a sexually violent predator, the local law enforcement agency shall verify the registrant's residential address quarterly.

(4) The forms completed by persons required to register pursuant to this article shall be confidential and shall not be open to inspection by the public or any person other than law enforcement personnel, except as provided in sections 16-22-110(6), 16-22-111, and 16-22-112 and section 25-1-124.5, C.R.S.

(5) Notwithstanding any provision of this article to the contrary, a requirement for electronic notification or electronic transmission of information specified in this article shall be effective on and after January 1, 2005. Prior to said date, or if an agency does not have access to electronic means of transmitting information, the notification and information requirements shall be met by providing the required notification or information by a standard means of transmittal.

C.R.S.A. § 16-22-110

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Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-110. Colorado sex offender registry—creation—maintenance—release of information

(1) The director of the Colorado bureau of investigation shall establish a statewide central registry of persons required to register pursuant to section 16-8-115 or 16-8-118 or as a condition of parole or pursuant to this article, to be known as the Colorado sex offender registry. The CBI shall create and maintain the sex offender registry as provided in this section. In addition, the CBI shall be the official custodian of all registration forms completed pursuant to this article and other documents associated with sex offender registration created pursuant to this article.

(2) The sex offender registry shall provide, at a minimum, the following information to all criminal justice agencies with regard to registered persons:

(a) Identification of a person's registration status;

(b) A person's date of birth;

(c) Descriptions of the offenses of unlawful sexual behavior of which a person has been convicted;

(d) Identification of persons who are identified as sexually violent predators;

(e) Notification to local law enforcement agencies when a person who is required to register pursuant to section 16-22-103 fails to register, when a person is required to reregister as provided in section 16-22-108, or when a person reregisters with another jurisdiction in accordance with the provisions of section 16-22-108;

(f) Specification of modus operandi information concerning any person who is required to register pursuant to section 16-22-103.

(3)(a) In addition to the sex offender registry, the CBI shall maintain one or more interactive data base systems to provide, at a minimum, cross validation of a registrant's known names and known addresses with information maintained by the department of revenue concerning driver's licenses and identification cards issued under article 2 of title 42, C.R.S. Discrepancies between the known names or known addresses listed in the sex offender registry and information maintained by the department of revenue shall be reported through the Colorado crime information center to each local law enforcement agency that has jurisdiction over the location of the person's last-known residences.

(b) The Colorado integrated criminal justice information system established pursuant to article 20.5 of this title shall be used to facilitate the exchange of information among agencies as required in this subsection (3) whenever practicable.

(3.5) The Colorado bureau of investigation shall develop an interactive database within the sex offender registry to provide, at a minimum, the following information to all criminal justice agencies in whose jurisdictions an institution of postsecondary education is located:

(a) Identification of all persons required to register pursuant to section 16-22-103 who volunteer or are employed or enrolled at an institution of postsecondary education and the institution at which each such person volunteers, is employed, or is enrolled;

(b) Identification of all persons who are sexually violent predators who volunteer or are employed or enrolled at an institution of postsecondary education and the institution at which each such person volunteers, is employed, or is enrolled.

(4) Upon development of the interactive databases pursuant to subsection (3) of this section, personnel in the judicial department, the department of corrections, and the department of human services shall be responsible for entering and maintaining in the databases the information specified in subsection (2) of this section for persons in those departments' legal or physical custody. Each local law enforcement agency shall be responsible for entering and maintaining in the databases the information for persons registered with the agency who are not in the physical or legal custody of the judicial department, the department of corrections, or the department of human services.

(5) The CBI, upon receipt of fingerprints and conviction data concerning a person convicted of unlawful sexual behavior, shall transmit promptly such fingerprints and conviction data to the federal bureau of investigation.

(6)(a) The general assembly hereby recognizes the need to balance the expectations of persons convicted of offenses involving unlawful sexual behavior and the public's need to adequately protect themselves and their children from these persons, as expressed in section 16-22-112(1). The general assembly declares, however, that, in making information concerning persons convicted of offenses involving unlawful sexual behavior available to the public, it is not the general assembly's intent that the information be used to inflict retribution or additional punishment on any person convicted of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior.

(b) Pursuant to a request for a criminal history check under the provisions of part 3 of article 72 of title 24, C.R.S., the CBI may inform the requesting party as to whether the person who is the subject of the criminal history check is on the sex offender registry.

(c) A person may request from the CBI a list of persons on the sex offender registry.

(d) Deleted by Laws 2005, Ch. 174, § 1, eff. May 27, 2005.

(e) Any person requesting information pursuant to paragraph (c) of this subsection (6) shall show proper identification.

(f) Information released pursuant to this subsection (6), at a minimum, shall include the name, address or addresses, and aliases of the registrant; the registrant's date of birth; a photograph of the registrant, if requested and readily available; and the conviction resulting in the registrant being required to register pursuant to this article. Information concerning victims shall not be released pursuant to this section.

(7) The CBI may assess reasonable fees for the search, retrieval, and copying of information requested pursuant to subsection (6) of this section. The amount of such fees shall reflect the actual costs, including but not limited to personnel and equipment, incurred in operating and maintaining the sex offender registry. Any such fees received shall be credited to the sex offender registry fund, which fund is hereby created in the state treasury. The moneys in the sex offender registry fund shall be subject to annual appropriation by the general assembly for the costs, including but not limited to personnel and equipment, incurred in operating and maintaining the sex offender registry. The sex offender registry fund shall consist of the moneys credited thereto pursuant to this subsection (7) and subsection (9) of this section and any additional moneys that may be appropriated thereto by the general assembly. All interest derived from the deposit and investment of moneys in the sex offender registry fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the sex offender registry fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(8) Any information released pursuant to this section shall include in writing the following statement:

The Colorado sex offender registry includes only those persons who have been required by law to register and who are in compliance with the sex offender registration laws. Persons should not rely solely on the sex offender registry as a safeguard against perpetrators of sexual assault in their communities. The crime for which a person is convicted may not accurately reflect the level of risk.

(9) The CBI shall seek and is hereby authorized to receive and expend any public or private gifts, grants, or donations that may be available to implement the provisions of this article pertaining to establishment and maintenance of the sex offender registry,

including but not limited to provisions pertaining to the initial registration of persons pursuant to section 16-22-104 and the transmittal of information between and among local law enforcement agencies, community corrections programs, the judicial department, the department of corrections, the department of human services, and the CBI. Any moneys received pursuant to this subsection (9), except federal moneys that are custodial funds, shall be transmitted to the state treasurer for deposit in the sex offender registry fund created in subsection (7) of this section.

C.R.S.A. § 16-22-111

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Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-111. Internet posting of sex offenders—procedure

(1) The CBI shall post a link on the state of Colorado homepage on the internet to a list containing the names, addresses, and physical descriptions of certain persons and descriptions of the offenses committed by said persons. A person's physical description shall include, but need not be limited to, the person's sex, height, and weight, any identifying characteristics of the person, and a digitized photograph or image of the person. The list shall specifically exclude any reference to any victims of the offenses. The list shall include the following persons:

(a) Any person who is a sexually violent predator;

(b) Any person sentenced as or found to be a sexually violent predator under the laws of another state or jurisdiction;

(c) Any person who is required to register pursuant to section 16-22-103 and who has been convicted as an adult of two or more of the following offenses:

(I) A felony offense involving unlawful sexual behavior; or

(II) A crime of violence as defined in section 18-1.3-406, C.R.S.; and

(d) Any person who is required to register pursuant to section 16-22-103 because the person was convicted of a felony as an adult and who fails to register as required by section 16-22-108.

(1.5) In addition to the posting required by subsection (1) of this section, the CBI may post a link on the state of Colorado homepage on the internet to a list, including but not limited to the names, addresses, and physical descriptions of any person required to register pursuant to section 16-22-103, as a result of a conviction for a felony. A person's physical description shall include, but need not be limited to, the person's sex, height, weight, and any other identifying characteristics of the person. The list shall specifically exclude any reference to any victims of the offenses.

(2)(a) For purposes of paragraph (d) of subsection (1) of this section, a person's failure to register shall be determined by the CBI. Whenever the CBI's records show that a person has failed to register as required by this article, the CBI shall forward to each law enforcement agency with which the person is required to register notice of the person's failure to register by the required date. Each law enforcement agency, within three business days after receiving the notice, shall submit to the CBI written confirmation of the person's failure to register. Upon receipt of the written confirmation from the law enforcement agency, the CBI shall post the information concerning the person on the internet as required in this section.

(b) If a local law enforcement agency files criminal charges against a person for failure to register as a sex offender, as described in section 18-3-412.5, C.R.S., the local law enforcement agency shall notify the CBI. On receipt of the notification, the CBI shall post the information concerning the person on the internet, as specified in subsection (1) of this section.

(3) The internet posting required by this section shall be in addition to any other release of information authorized pursuant to this article or pursuant to part 9 of article 13 of this title, or any other provision of law.

CREDIT(S)

C.R.S.A. § 16-22-112

West's Colorado Revised Statutes Annotated Currentness

Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-112. Release of information—law enforcement agencies

(1) The general assembly finds that persons convicted of offenses involving unlawful sexual behavior have a reduced expectation of privacy because of the public's interest in public safety. The general assembly further finds that the public must have access to information concerning persons convicted of offenses involving unlawful sexual behavior that is collected pursuant to this article to allow them to adequately protect themselves and their children from these persons. The general assembly declares, however, that, in making this information available to the public, as provided in this section and section 16-22-110(6), it is not the general assembly's intent that the information be used to inflict retribution or additional punishment on any person convicted of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior.

(2)(a) A local law enforcement agency shall release information regarding any person registered with the local law enforcement agency pursuant to this article to any person residing within the local law enforcement agency's jurisdiction. In addition, the local law enforcement agency may post the information specified in paragraph (b) of this subsection (2) on the law enforcement agency's website.

(b) A local law enforcement agency may post on its website sex offender registration information of a person from its registration list only if the person is:

(I) An adult convicted of a felony requiring the adult to register pursuant to section 16-22-103;

(II) An adult convicted of a second or subsequent offense of any of the following misdemeanors:

(A) Sexual assault as described in section 18-3-402(1)(e), C.R.S.;

(B) Unlawful sexual contact as described in section 18-3-404, C.R.S.;

(C) Sexual assault on a client as described in section 18-3-405.5(2), C.R.S.;

(D) Sexual exploitation of a child by possession of sexually exploitive material as described in section 18-6-403, C.R.S.;

(E) Indecent exposure as described in section 18-7-302, C.R.S.; or

(F) Sexual conduct in a penal institution as described in section 18-7-701, C.R.S.;

(III) A juvenile with a second or subsequent adjudication involving unlawful sexual behavior or for a crime of violence as defined in section 18-1.3-406, C.R.S.; or

(IV) A juvenile who is required to register pursuant to section 16-22-103 because he or she was adjudicated for an offense that would have been a felony if committed by an adult and has failed to register as required by section 16-22-103.

(3)(a) Deleted by Laws 2005, Ch. 174, § 2, eff. May 27, 2005.

(b) At its discretion, a local law enforcement agency may release information regarding any person registered with the local law enforcement agency pursuant to this article to any person who does not reside within the local law enforcement agency's jurisdiction or may post the information specified in paragraph (e) of this subsection (3) on the law enforcement agency's

website. If a local law enforcement agency does not elect to release information regarding any person registered with the local law enforcement agency to a person not residing within the local law enforcement agency's jurisdiction, the local law enforcement agency may submit a request from the person to the CBI.

(c) Deleted by Laws 2005, Ch. 174, § 2, eff. May 27, 2005.

(d) Upon receipt of a request for information from a law enforcement agency pursuant to this subsection (3), the CBI shall mail the requested information to the person making the request.

(e) A local law enforcement agency may post on its website sex offender registration information of a person from its registration list only if the person is:

(I) An adult convicted of a felony requiring the adult to register pursuant to section 16-22-103;

(II) An adult convicted of a second or subsequent offense of any of the following misdemeanors:

(A) Sexual assault as described in section 18-3-402(1)(e), C.R.S.;

(B) Unlawful sexual contact as described in section 18-3-404, C.R.S.;

(C) Sexual assault on a client as described in section 18-3-405.5(2), C.R.S.;

(D) Sexual exploitation of a child by possession of sexually exploitive material as described in section 18-6-403(3)(b.5), C.R.S.;

(E) Indecent exposure as described in section 18-7-302, C.R.S.; or

(F) Sexual conduct in a penal institution as described in section 18-7-701, C.R.S.;

(III) A juvenile with a second or subsequent adjudication involving unlawful sexual behavior or for a crime of violence as defined in section 18-1.3-406, C.R.S.; or

(IV) A juvenile who is required to register pursuant to section 16-22-103 because he or she was adjudicated for an offense that would have been a felony if committed by an adult and has failed to register as required by section 16-22-103.

(4) Information released pursuant to this section, at a minimum, shall include the name, address or addresses, and aliases of the registrant; the registrant's date of birth; a photograph of the registrant, if requested and readily available; and a history of the convictions of unlawful sexual behavior resulting in the registrant being required to register pursuant to this article. Information concerning victims shall not be released pursuant to this section.

(5) Any information released pursuant to this section shall include in writing the following statement:

The Colorado sex offender registry includes only those persons who have been required by law to register and who are in compliance with the sex offender registration laws. Persons should not rely solely on the sex offender registry as a safeguard against perpetrators of sexual assault in their communities. The crime for which a person is convicted may not accurately reflect the level of risk.

C.R.S.A. § 16-22-113

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Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-113. Petition for removal from registry

(1) Except as otherwise provided in subsection (3) of this section, any person required to register pursuant to section 16-22-103 or whose information is required to be posted on the internet pursuant to section 16-22-111 may file a petition with the court that issued the order of judgment for the conviction that requires the person to register for an order that discontinues the requirement for such registration or internet posting, or both, as follows:

(a) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 1, 2, or 3 felony, after a period of twenty years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(b) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 4, 5, or 6 felony or the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404, C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed prior to July 1, 2000, after a period of ten years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(c) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a misdemeanor other than the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404, C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed prior to July 1, 2000, after a period of five years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(d) If the person was required to register due to being placed on a deferred judgment and sentence or a deferred adjudication for an offense involving unlawful sexual behavior, after the successful completion of the deferred judgment and sentence or deferred adjudication and dismissal of the case, if the person prior to such time has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

(e) If the person was younger than eighteen years of age at the time of disposition or adjudication, after the successful completion of and discharge from the sentence, if the person prior to such time has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior. Any person petitioning pursuant to this paragraph (e) may also petition for an order removing his or her name from the sex offender registry. In determining whether to grant the order, the court shall consider whether the person is likely to commit a subsequent offense of or involving unlawful sexual behavior. The court shall base its determination on recommendations from the person's probation or parole officer, the person's treatment provider, and the prosecuting attorney for the jurisdiction in which the person was tried

and on the recommendations included in the person's presentence investigation report. In addition, the court shall consider any written or oral testimony submitted by the victim of the offense for which the petitioner was required to register.

(f) If the information about the person was required to be posted on the internet pursuant to section 16-22-111(1)(d) only for failure to register, if the person has fully complied with all registration requirements for a period of not less than one year and if the person, prior to such time, has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior; except that the provisions of this paragraph (f) shall apply only to a petition to discontinue the requirement for internet posting.

(1.5) If the conviction that requires a person to register pursuant to the provisions of section 16-22-103 was not obtained from a Colorado court, the person seeking to discontinue registration or internet posting or both may file a civil case with the district court of the judicial district in which the person resides and seek a civil order to discontinue the requirement to register or internet posting or both under the circumstances specified in subsection (1) of this section.

(2)(a) Prior to filing a petition pursuant to this section, the petitioner shall notify each of the following parties by certified mail of the petitioner's intent to file a request pursuant to this section:

- (I) Each local law enforcement agency with which the petitioner is required to register;
- (II) The prosecuting attorney for the jurisdiction in which each such local law enforcement agency is located; and
- (III) The prosecuting attorney who obtained the conviction for which the petitioner is required to register.

(b) When filing the petition, the petitioner shall attach to the petition copies of the return receipts received from each party notified pursuant to paragraph (a) of this subsection (2).

(c) Upon the filing of the petition, the court shall set a date for a hearing and shall notify the victim of the offense for which the petitioner was required to register, if the victim of the offense has requested notice and has provided current contact information. If the court enters an order discontinuing the petitioner's duty to register, the petitioner shall send a copy of the order to each local law enforcement agency with which the petitioner is registered and the CBI. If the victim of the offense has requested notice, the court shall notify the victim of the offense of its decision either to continue or discontinue the petitioner's duty to register.

(d) On receipt of a copy of an order discontinuing a petitioner's duty to register as provided in paragraph (c) of this subsection (2):

- (I) The CBI shall remove the petitioner's sex offender registration information from the sex offender registry; and
- (II) If the local law enforcement agency maintains a local registry of sex offenders who are registered with the local law enforcement agency, the local law enforcement agency shall remove the petitioner's sex offender registration information from the local sex offender registry.

(3) The following persons shall not be eligible for relief pursuant to this section, but shall be subject for the remainder of their natural lives to the registration requirements specified in this article or to the comparable requirements of any other jurisdictions in which they may reside:

- (a) Any person who is a sexually violent predator;
- (b) Any person who is convicted as an adult of:

(I) Sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000, or sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000; or

(II) Sexual assault on a child, in violation of section 18-3-405, C.R.S.; or

(III) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or

(IV) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.; or

(V) Incest, in violation of section 18-6-301, C.R.S.; or

(VI) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(c) Any adult who has more than one conviction or adjudication for unlawful sexual behavior in this state or any other jurisdiction.

C.R.S.A. § 16-22-114

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Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-114. Immunity

State agencies and their employees and local law enforcement agencies and their employees are immune from civil or criminal liability for the good faith implementation of this article.

C.R.S.A. § 16-22-115

West's Colorado Revised Statutes Annotated Currentness

Title 16. Criminal Proceedings

Offenders—Registration

Article 22. Colorado Sex Offender Registration Act (Refs & Annos)

§ 16-22-115. CBI assistance in apprehending sex offenders who fail to register

In an effort to ensure that a sexual offender who fails to respond to address-verification attempts or who otherwise absconds from registration is located in a timely manner, the Colorado bureau of investigation shall share information with local law enforcement agencies. The Colorado bureau of investigation shall use analytical resources to assist local law enforcement agencies to determine the potential whereabouts of sex offenders who fail to respond to address-verification attempts or who otherwise abscond from registration. The Colorado bureau of investigation shall review and analyze all available information concerning a sex offender who fails to respond to address-verification attempts or otherwise absconds from registration and provide the information to local law enforcement agencies in order to assist in locating and apprehending the sex offender.