

# Sex Offender Registration Laws and the Uniform Code of Military Justice: A Primer

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*Everything should be made as simple as possible, but not simpler.*<sup>1</sup>

## I. Introduction

Before 2006, most trial defense counsel had little reason to consider sex offender registration laws in their day-to-day business. In late-2006, this changed completely when the Court of Appeals for the Armed Forces (CAAF) created a new rule that gave sudden attention to sex offender registration laws in courts-martial practice.<sup>2</sup> The CAAF held that a trial defense counsel's failure to advise an accused charged with a sex offense of potential sex offender registration requirements on the record<sup>3</sup> would not constitute "per se ineffective assistance of counsel, . . . [but would] be one circumstance [that the CAAF would] carefully consider in evaluating allegations of ineffective assistance of counsel."<sup>4</sup>

The dilemma for trial defense counsel stems from the fact that the federal criminal justice system, including the military justice system, does not dictate the registration of sex offenders.<sup>5</sup> The individual states dictate sex offender registration requirements. As a result, a defense counsel advising an accused charged with a sex offense would need to study all fifty state sex offender registration laws in order to completely advise a client. Thankfully the CAAF did not require this; they only required "trial defense counsel to be aware of the federal statute addressing mandatory reporting and registration for those who are convicted of offenses within the scope of this statute."<sup>6</sup>

This article addresses the minimum standard articulated by the court and also provides a state-by-state analysis of sex offender registration laws and their requirements. First, this article analyzes the background of sex offender registration laws and defines what constitutes a sex offender. Second, this article addresses the different state methodologies regarding sex offender registration and what constitutes an offense requiring registration. Finally, the appendices address each state

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<sup>1</sup> Attributed to Albert Einstein. THE EXPANDED QUOTABLE EINSTEIN 314 (Alice Calaprice ed., 2000). Einstein was describing his version of Occam's Razor. William of Ockham [sic] was a 14th Century Franciscan Friar who propagated the theory that "plurality should not be posited without necessity." Sugihara Hiroshi, *What is Occam's Razor?*, 1997, <http://math.ucr.edu/home/baez/physics/General/occam.html> (originally written by Phil Gibbs). Over time this became known as a razor because it "shaves" away any unnecessary theories to get to the root of the issue. *Id.* Today we would often say "all things being equal, the simple solution is the best." *Id.* In the author's opinion, the military version of Occam's Razor is "K.I.S.S." or "Keep It Simple Stupid." On its face, sex offender registration would appear to be a simple matter, but this primer will show that it is anything but simple.

<sup>2</sup> See *United States v. Miller*, 63 M.J. 452 (C.A.A.F. 2006).

<sup>3</sup> The specific requirement was "inform an accused prior to trial as to any charged offense listed on the DoD Instr. 1325.7 Enclosure 27: Listing of Offenses Requiring Sex Offender Processing." *Id.* at 459. There are eighteen listed offenses in the DoD Instruction. See U.S. DEP'T OF DEFENSE, INSTR. 1325.7, ADMINISTRATION OF MILITARY CORRECTIONAL FACILITIES AND CLEMENCY AND PAROLE AUTHORITY encl. 27 (17 July 2001) (C1, 10 June 2003) [hereinafter DoDI 1325.7].

<sup>4</sup> *Miller*, 63 M.J. at 459.

<sup>5</sup> There is no federal sex offender registry, but the federal government does maintain a comprehensive sex offender registration website that incorporates all of the state registries. See Dru Sjödin National Sex Offender Public Website, <http://www.nsopw.gov> (last visited July 6, 2009). There is a federal criminal statute that punishes failing to register as a sex offender, and it specifically mentions convictions under the Uniform Code of Military Justice. 18 U.S.C. § 2250 (2006).

<sup>6</sup> *Miller*, 63 M.J. at 459 (referring to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071).

specifically. This article provides trial defense counsel with sufficient information to advise a client on the specific collateral consequences<sup>7</sup> of a possible sex offense conviction, depending on the state where the client will live after confinement.

## II. Background

California was the first state to pass a sex offender registration law back in 1944;<sup>8</sup> however, this law did not compare to modern sex offender registration requirements. For example, the law was primarily used by California law enforcement agencies.<sup>9</sup> The public had no access to the list until 1995, and even then only by telephone via the Child Molester Identification Line.<sup>10</sup> California waited until 2004 to make sex offender registration information available through the Internet.<sup>11</sup> Despite California's early action with sex offender registration laws, many states did not pass their own version until much later.<sup>12</sup> Unfortunately, the tragic death of Megan Kanka in New Jersey in 1994 was the primary force driving the modern sex offender registration and notification laws, including the applicable federal laws.<sup>13</sup>

### A. Federal Law

Federal sex offender registration does not exist.<sup>14</sup> However, since 1994, the federal government has mandated that all states establish sex offender registration laws under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (Jacob Wetterling Registration Program).<sup>15</sup> The statute requires registration by the states for three categories of offenses: criminal offenses against a victim who is a minor,<sup>16</sup> sexually violent offenses,<sup>17</sup> and, sexually violent offenses where the offender suffers from a mental abnormality that makes the person likely to engage in further predatory sexually violent offenses.<sup>18</sup> Congress applies this statute to military offenders and offenses through the inclusion of a provision that requires "each State [to] include in its registration program resident[s] who were convicted in another State and [to] ensure that procedures are in place to accept registration from—residents who were . . . sentenced by a court martial [sic]."<sup>19</sup> As this article illustrates, some states have not completely met this requirement.<sup>20</sup>

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<sup>7</sup> A collateral consequence is "[a] penalty for committing a crime, in addition to the penalties included in the criminal sentence." BLACK'S LAW DICTIONARY 278 (8th ed. 2004).

<sup>8</sup> See SCOTT MATSON & ROXANNE LIEB, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, SEX OFFENDER REGISTRATION: A REVIEW OF STATE LAWS 5 (1996), available at <http://www.wsipp.wa.gov/pub.asp?docid=96-07-1101>.

<sup>9</sup> See California Megan's Law—California Department of Justice—Office of the Attorney General, <http://www.meganslaw.ca.gov/homepage.aspx?lang=ENGLISH> (last visited July 6, 2009).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *infra* Part II.B.

<sup>13</sup> There are dozens of articles on the internet that give an in-depth look into Megan Kanka's story. Previous New Jersey sex offender registration laws did not require community notification when a predator moved into the area. See, e.g., Seamus McGraw, *Megan Kanka*, TRUTV, [http://www.trutv.com/library/crime/serial\\_killers/predators/kanka/1.html](http://www.trutv.com/library/crime/serial_killers/predators/kanka/1.html) (last visited July 6, 2009). The federal statute is actually named for another eleven-year-old child, Jacob Wetterling, who went missing in 1989 in Minnesota and remains missing today. See *Snatched by a Stranger* photo gallery, <http://www.trutv.com/library/crime/photogallery/missing-kids.html?curPhoto=9> (last visited July 6, 2009). However, the statute is also called the federal "Megan's Law." See Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14,071 (2006).

<sup>14</sup> See *supra* note 5 (discussing the lack of a federal registration system).

<sup>15</sup> 42 U.S.C. § 14071. Through this act, any state that fails to implement a sex offender registration program will lose ten percent of the funds they would have received under the Bureau of Justice Assistance Grant Program, 42 U.S.C. § 3756 (2000) (note that this statute has been revised numerous times, with the current version enacted in 1996). See 42 U.S.C. § 14,071(g)(2).

<sup>16</sup> Criminal offenses against a victim who is a minor include: kidnapping, except by a parent; false imprisonment, except by a parent; criminal sexual conduct toward a minor; solicitation of a minor to engage in sexual conduct; use of a minor to engage in sexual conduct; use of a minor in a sexual performance; solicitation of a minor to practice prostitution; any conduct that by its nature is a sexual offense against a minor; production or distribution of child pornography; and attempts to commit these offenses if the state criminalizes such attempts. See *id.* § 14,071(a)(3)(A).

<sup>17</sup> A sexually violent offense "means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse." *Id.* § 14,071(a)(3)(B).

<sup>18</sup> See *id.* § 14,071(a)(3)(A)–(D).

<sup>19</sup> *Id.* § 14,071(b)(7).

<sup>20</sup> See *infra* Part III.A.

Current federal law includes the Adam Walsh Child Protection and Safety Act of 2006.<sup>21</sup> The primary purpose of this statute was to expand the definition of a sex offense,<sup>22</sup> and to mandate that the Department of Justice (DOJ) establish a national sex offender registry website to collect all relevant sex offender information from the states so that it could be found in one location.<sup>23</sup> One measure in this statute required the Secretary of Defense to define what the term “sex offense” meant with regards to military offenses.<sup>24</sup> This statute also created the DOJ Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART).<sup>25</sup> On 2 July 2008, the SMART office published The National Guidelines for Sex Offender Registration and Notification.<sup>26</sup> These guidelines included language about military offenders consistent with the previous statutes. The guidelines require “military correctional and supervision personnel to notify the receiving jurisdiction’s authorities concerning the release to their areas of such sex offenders.”<sup>27</sup>

## B. State Law

Despite California’s sex offender registration requirements from 1944, only twenty-two states had enacted sex offender registration laws by the time the Jacob Wetterling Registration Program was passed in 1994.<sup>28</sup> All fifty states and the District of Columbia have now enacted sex offender registration laws with Massachusetts being the last in August 1996.<sup>29</sup>

Despite the sex offender registration requirements, several states still have issues. For example, the Missouri Constitution prohibits laws of retrospective operation,<sup>30</sup> which is uncommon in other states. The U.S. Supreme Court has ruled that the Ex Post Facto Clause of the U.S. Constitution<sup>31</sup> does not apply to retroactive sex offender registration requirements because the requirement to register is administrative, not punitive.<sup>32</sup> However, the Missouri Supreme Court has read its state constitution to forbid any retroactive registration of sex offenders in Missouri.<sup>33</sup>

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<sup>21</sup> 42 U.S.C.A. §§ 16901–16962 (West 2009). This act is also known as the Sex Offender Registration and Notification Act (SORNA). Adam Walsh was a six-year-old boy abducted from a Sears in Florida in 1981. Only his severed head was later recovered in a canal 120 miles away. His father later hosted the famous TV show, *America’s Most Wanted*. See Mark Gado, *My Baby is Missing!*, TRUTV, [http://www.trutv.com/library/crime/criminal\\_mind/psychology/child\\_abduction/9.html](http://www.trutv.com/library/crime/criminal_mind/psychology/child_abduction/9.html) (last visited July 6, 2009). No one was ever convicted of this crime, but the case was recently closed. Law enforcement concluded that Otis Edward Toole, who died while incarcerated for another offense in 1996, killed Adam. See Donna Leinwand & Emily Bazar, *Walsh’s Murder Had Impact Across USA*, USA TODAY, Dec. 17, 2008, available at [http://www.usatoday.com/news/nation/2008-12-17-walshinside\\_N.htm](http://www.usatoday.com/news/nation/2008-12-17-walshinside_N.htm).

<sup>22</sup> For example, video voyeurism and using the internet to facilitate criminal sexual conduct involving a minor were added to the definition. See 42 U.S.C.A. § 16,911(7)(F), (H).

<sup>23</sup> See Dru Sjodin National Sex Offender Public Website, <http://www.nspow.gov> (last visited July 6, 2009). Dru Sjodin was a twenty-two year-old woman who was sexually assaulted and murdered in 2003 in North Dakota. See Rachael Bell, *The Murder of Dru Sjodin*, TRUTV, [http://www.trutv.com/library/crime/notorious\\_murders/classics/dru\\_sjodin/1\\_index.html](http://www.trutv.com/library/crime/notorious_murders/classics/dru_sjodin/1_index.html) (last visited July 6, 2009).

<sup>24</sup> The statute states, “the term ‘sex offense’ means—a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note).” 42 U.S.C.A. § 16911(5)(A)(iv). The referenced section, enacted in 1997, requires the Secretary of Defense to specify categories of conduct that are sex offenses; proscribe procedures to provide notice concerning the release from confinement of such persons convicted; inform them of registration obligations; and, track compliance with registration requirements during any period of parole, probation, or other conditional release. See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, § 115(a)(8)(C)(i), 111 Stat. 2440, 2464 (1997). The Secretary of Defense complied by publishing DoDI 1325.7, *supra* note 3.

<sup>25</sup> 42 U.S.C.A. § 16,945.

<sup>26</sup> OFFICE OF THE ATTORNEY GENERAL, U.S. DEP’T OF JUSTICE, THE NATIONAL GUIDELINES FOR SEX OFFENDER REGISTRATION AND NOTIFICATION (2008) [hereinafter GUIDELINES]. These guidelines were required by the Adam Walsh Child Protection and Safety Act of 2006. See 42 U.S.C.A. § 16,912(b).

<sup>27</sup> GUIDELINES, *supra* note 26, at 47. The way the U.S. Disciplinary Barracks at Fort Leavenworth, Kansas handles this requirement is to follow the precise counseling and notification procedures in Army Regulation (AR) 190-47. See U.S. DEP’T OF ARMY, REG. 190-47, THE ARMY CORRECTIONS SYSTEM ch. 14 (15 June 2006).

<sup>28</sup> These states were: Alabama, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Kansas, Louisiana, Maine, Minnesota, Montana, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Utah, Washington, and Wisconsin. *Id.* Only six enacted sex offender registration laws prior to 1980: Alabama, Arizona, California, Florida, Nevada, and Ohio. See MATSON & LIEB, *supra* note 8, at 13–20.

<sup>29</sup> See H.B. 5949, 1996 Leg., 2d Sess. (Mass. 1999).

<sup>30</sup> “That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted.” MO. CONST. art. I, § 13.

<sup>31</sup> “No Bill of Attainder or ex post facto Law shall be passed.” U.S. CONST. art. I, § 9, cl. 3.

<sup>32</sup> *Smith v. Doe*, 538 U.S. 84 (2003).

<sup>33</sup> See generally *Doe v. Blunt*, 225 S.W.3d 421 (Mo. 2007) (holding that retroactive sex offender registration was retrospective law prohibited by state constitution).

Another issue is due process. The Supreme Court of Hawaii has ruled that the due process clause of the Hawaii Constitution forbids public notification of sex offender registration.<sup>34</sup> The court concluded that the public notification aspect of the Hawaii sex offender registration law violated due process because the law harmed the defendant's reputation and other "tangible interests" without a process in place to ensure erroneous sex offender registration did not occur.<sup>35</sup>

State sex offender registration laws change frequently and they also vary widely in size and scope.<sup>36</sup> Alabama's law is only two pages printed<sup>37</sup> while Ohio's law is sixty-five pages.<sup>38</sup> Alabama's laws are silent on many issues: there is no specific mention of the military; the list of covered offenses includes only seven crimes; and there is no public access to the registry.<sup>39</sup> By comparison, Ohio's law includes an eight-page list of definitions.<sup>40</sup>

### III. Analysis

#### A. Which States Require Military Registration?

Not all states have fully complied with the federal statute requirement to ensure that military offenders are included in state sex offender registration systems.<sup>41</sup> Before analyzing which states have not fully complied with the federal requirements, the first step is to look at the language of the statutes. The first major piece of analysis involves which states require military offenders to register. The states have implemented four main registration categories: the "federal court" or "federal law" category; the "another jurisdiction" category; the "requires registration in the federal or military system" category; and the "military offense" or "military court" category.<sup>42</sup> All fifty states and the District of Columbia fall into at least one of these categories, and most fall into several of the categories. The language describing these categories comes from the specific language in each state statute that describes who must register under that state system. The language varies from state to state, but the general theme of each of these four categories stays consistent across the country. Appendix A lists each state and which category or categories that they use.<sup>43</sup>

##### 1. "Federal Court" or "Federal Law"

Eleven states use the "federal court" or "federal law" category to determine who must register in their state.<sup>44</sup> Five of these states also apply language from one of the other three categories.<sup>45</sup> The language used varies slightly and includes "the

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<sup>34</sup> "No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry." HAW. CONST. art. I, § 5.

<sup>35</sup> See *Hawaii v. Bani*, 36 P.3d 1255, 1264 (Haw. 2001).

<sup>36</sup> For example, VA. CODE ANN. § 9.1-902 (West 2009) has been amended eighteen times since 2003. See 2003 Va. Legis. Serv. 732 (West); 2004 Va. Legis. Serv. 414 (West); 2004 Va. Legis. Serv. 444 (West); 2005 Va. Legis. Serv. 586 (West); 2005 Va. Legis. Serv. 603 (West); 2005 Va. Legis. Serv. 631 (West); 2006 Va. Legis. Serv. 857 (West); 2006 Va. Legis. Serv. 875 (West); 2006 Va. Legis. Serv. 914 (West); 2006 Va. Legis. Serv. 931 (West); 2007 Va. Legis. Serv. 463 (West); 2007 Va. Legis. Serv. 718 (West); 2007 Va. Legis. Serv. 759 (West); 2007 Va. Legis. Serv. 823 (West); 2008 Va. Legis. Serv. 592 (West); 2008 Va. Legis. Serv. 747 (West); 2008 Va. Legis. Serv. 772 (West); 2008 Va. Legis. Serv. 877 (West).

<sup>37</sup> See ALA. CODE §§ 13A-11-200 to -204 (2009).

<sup>38</sup> See OHIO REV. CODE ANN. §§ 2950.01-99 (West 2009).

<sup>39</sup> See ALA. CODE § 13A-11-201.

<sup>40</sup> See OHIO REV. CODE ANN. § 2950.01.

<sup>41</sup> See *supra* note 19 and accompanying text (discussing the federal statute requirement). Although generally speaking, most of the states do require military sex offenders to register. Most of the confusion results from the wording of the state statutes.

<sup>42</sup> These registration schemes are the author's own for purposes of analysis for this primer. There are no formal categories of registration schemes amongst the states.

<sup>43</sup> See *infra* app. A.

<sup>44</sup> See ALA. CODE §§ 13A-11-200 to -204 (2009); D.C. CODE §§ 22-4001 to -4017 (2009); DEL. CODE ANN. tit. 11, §§ 4120-4122 (2009); GA. CODE ANN. §§ 42-1-12 to -15 (2009); N.D. CENT. CODE § 12.1-32-15 (2009); N.H. REV. STAT. ANN. §§ 651-B:1-12 (2009); N.J. STAT. ANN. §§ 2C:7-1 to -21 (West 2009); 42 PA. CONS. STAT. ANN. §§ 9791-99.9 (West 2009); S.C. CODE ANN. §§ 23-3-400 to -550 (2009); VA. CODE ANN. § 9.1-900 to -922 (West 2009); WASH. REV. CODE ANN. §§ 9A.44.130-145 (West 2009).

<sup>45</sup> See D.C. CODE §§ 22-4001 to -4017; GA. CODE ANN. §§ 42-1-12 to -15; 42 PA. CONS. STAT. ANN. §§ 9791-99.9; VA. CODE ANN. § 9.1-900 to -922; WASH. REV. CODE ANN. §§ 9A.44.130-145.

United States,”<sup>46</sup> or “the federal government.”<sup>47</sup> Alabama’s statute is an example of the common usage of this language, “[i]f any person . . . has heretofore been convicted, or shall be convicted in any state or municipal court in Alabama, or federal court . . . for any of the offenses hereinafter enumerated, such person shall, upon his or her release from legal custody, register with the sheriff . . . .”<sup>48</sup> An example of different language can be found in Delaware’s statute: “Any person convicted of any offense specified in the laws of another state, the United States or any territory of the United States . . . .”<sup>49</sup>

The application of this federal court or federal law category to the military is uncertain without further insight to establish what each state means by their own statute language. While undoubtedly a military court-martial is a federal court applying federal law, there are distinct differences between a court-martial and a federal district court. For example, a court-martial is an Article I court under the U.S. Constitution,<sup>50</sup> while a federal district court is an Article III court.<sup>51</sup> Another key difference is that federal district courts normally apply Title 18, U.S. Code, in criminal matters,<sup>52</sup> while courts-martial generally apply the Uniform Code of Military Justice (UCMJ) under Title 10, U.S. Code.<sup>53</sup> Either way, without legislative history reports or case law interpreting the specific portion of the state statute, the application of this language to a military offender is not very clear. However, the five states that apply another scheme on top of this language plainly include military offenders. For instance, Georgia specifically includes those who were “convicted under the laws of another state or the United States, under the Uniform Code of Military Justice, or in a tribal court of a sexually violent offense,” among other requirements.<sup>54</sup>

## 2. “Another Jurisdiction”

Thirteen states use the “another jurisdiction” language to determine who must register in their state.<sup>55</sup> Of these thirteen, eight also apply language from one of the other three categories.<sup>56</sup> The language used varies slightly from state to state, and includes the words “any court.”<sup>57</sup> The common usage of this language may be found in Alaska’s statute, which reads: “sex offender or child kidnapper” means a person convicted of a sex offense or child kidnapping in this state or another jurisdiction . . . .”<sup>58</sup> Another example using similar language comes from Iowa: “‘convicted’ or ‘conviction’ means a person who is found guilty of . . . an act which is an indictable offense in this state or in another jurisdiction . . . .”<sup>59</sup>

The application of another jurisdiction category to the military is not clear without case law or other applicable references to determine what each state means by that language. The five states that use this category alone are the most difficult to apply to the military. Alaska’s law presents a prime example.<sup>60</sup> Alaska’s statute does not mention the military,

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<sup>46</sup> See DEL. CODE ANN. tit. 11, § 4120(e)(1).

<sup>47</sup> See N.H. REV. STAT. ANN. § 651-B:1(b).

<sup>48</sup> ALA. CODE § 13A-11-200 (2009).

<sup>49</sup> DEL. CODE ANN. tit. 11, § 4120(e)(1).

<sup>50</sup> “These provisions [article I] show that Congress has the power to provide for the trial and punishment of military and naval offenses in the manner then and now practiced by civilized nations.” *Dynes v. Hoover*, 61 U.S. (20 How.) 65, 79 (1857).

<sup>51</sup> “The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.” U.S. CONST. art. III, § 1.

<sup>52</sup> 18 U.S.C. §§ 2–6005 (2006).

<sup>53</sup> UCMJ arts. 77–134 (2008).

<sup>54</sup> GA. CODE ANN. § 42-1-12(e)(5) (2009).

<sup>55</sup> ALASKA STAT. §§ 12.63.010–100 (2009); ARIZ. REV. STAT. ANN. §§ 13-3821 to -3829 (2009); D.C. CODE §§ 22-4001 to -4017 (2009); FLA. STAT. ANN. § 944.607 (West 2009); IOWA CODE ANN. §§ 692A.1–16 (West 2009); ME. REV. STAT. ANN. tit. 34-A, §§ 11,201–11,256 (2009); MISS. CODE ANN. §§ 45-33-21 to -59 (West 2009); N.M. STAT. ANN. §§ 22-11A-1 to -10 (West 2009); N.Y. CORRECT. LAW § 168 (McKinney 2009); OR. REV. STAT. ANN. §§ 181.592–606 (West 2009); R.I. GEN. LAWS §§ 11-37.1-1 to -20 (2009); UTAH CODE ANN. § 77-27-21.5 (West 2009); WYO. STAT. ANN. §§ 7-19-301 to -308 (2009).

<sup>56</sup> D.C. CODE §§ 22-4001 to -4017; FLA. STAT. ANN. § 944.607; IOWA CODE ANN. §§ 692A.1–16; ME. REV. STAT. ANN. tit. 34-A, §§ 11,201–11,256; MISS. CODE ANN. §§ 45-33-21 to -59; N.M. STAT. ANN. §§ 22-11A-1 to -10; N.Y. CORRECT. LAW § 168; WYO. STAT. ANN. §§ 7-19-301 to -308.

<sup>57</sup> N.M. STAT. ANN. § 22-11A-3(A).

<sup>58</sup> ALASKA STAT. § 12.63.100(5).

<sup>59</sup> IOWA CODE ANN. § 692A.1(3).

<sup>60</sup> ALASKA STAT. §§ 12.63.010–100.

nor does it define the meaning of another jurisdiction.<sup>61</sup> One possible reading of another jurisdiction is very broad: another jurisdiction includes any court of competent jurisdiction in the United States.<sup>62</sup> However, it may also be read narrowly: another jurisdiction includes only other state courts. Unfortunately, no Alaska appellate court has interpreted the application of their sex offender registration laws to the military.<sup>63</sup>

For the eight states that include language from one of the other categories, application to the military is clearer. For example, Iowa specifically requires registration for “[a] person who has been convicted of a criminal offense against a minor, an aggravated offense, sexual exploitation, an [sic] other relevant offense, or a sexually violent offense in this state or in another state, or in a federal, military, tribal, or foreign court.”<sup>64</sup> This language, combined with the conviction in another jurisdiction language above, shows the Iowa legislature’s intent to require military sex offenders to register in their jurisdiction.

### 3. “Requires Registration in Federal or Military System”

This category, the least common, requires registration for convicted individuals when the federal or military system requires registration. Only seven states use this method and all seven include language from another registration category.<sup>65</sup> The most common language follows the example of Virginia’s statute: “‘Offense for which registration is required’ includes . . . [a]ny offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.”<sup>66</sup> Another example can be seen in Maine’s statute: “[a]t any time of an offense that requires registration in the jurisdiction of conviction pursuant to that jurisdiction’s sex offender registration laws or that would have required registration had the person remained there.”<sup>67</sup>

Standing alone, this category would almost conclusively not apply to the military because the military (and the federal government) do not register sex offenders.<sup>68</sup> Therefore, if any state based their system solely upon the requirement to register in the military system, then no military sex offenders would have to register in that state.<sup>69</sup>

Four of the seven states also use the “military offense” or “military court” category: Connecticut, Maryland, Missouri, and Nebraska.<sup>70</sup> Their statutes specifically mention how their sex offender registration laws apply to the military.<sup>71</sup> Maine and New York both use the “another jurisdiction” category and their requirements are as unclear as Alaska’s.<sup>72</sup> The last state, Virginia, applies the “federal court” scheme.<sup>73</sup> Based solely upon a reading of the statute, application of Virginia law to a military conviction is vague at best. Virginia uses the following language: “any similar offense under the laws of any

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<sup>61</sup> *Id.*

<sup>62</sup> This is the plain meaning of the statute and the one likely to control. Out of an abundance of caution, a defense counsel should probably use this definition when advising their client.

<sup>63</sup> At least as of 14 July 2009. Research on file with the author.

<sup>64</sup> IOWA CODE ANN. § 692A.2(1).

<sup>65</sup> CONN. GEN. STAT. ANN. §§ 54-250 to -261 (West 2009); ME. REV. STAT. ANN. tit. 34-A, §§ 11,201–11,256 (2009); MD. CODE ANN., CRIM. PROC. §§ 11-701 to -727 (West 2009); MO. ANN. STAT. §§ 589.400–426 (West 2009); NEB. REV. STAT. §§ 29-4001 to -4014 (2009); N.Y. CORRECT. LAW § 168 (McKinney 2009); VA. CODE ANN. §§ 9.1-900 to -922 (West 2009). The reader may ask why the author even included this section. The primary reason for including this section is that this language appears frequently in the statutes. Seven states is a sizeable minority. Even though this section is not technically required since all seven states use one of the other schemes, the author wanted to ensure that the reader did not get misled by this language.

<sup>66</sup> VA. CODE ANN. § 9.1-902(A)(6).

<sup>67</sup> ME. REV. STAT. ANN. tit. 34-A, § 11202(2)(A).

<sup>68</sup> See *supra* note 5.

<sup>69</sup> Although some states interpret this portion of their statute to require registration for those offenses included in DoDI 1325.7. DoDI 1325.7, *supra* note 3. The primary reason for this interpretation is that the military does require registration processing for those offenses. See *infra* note 77 for further information.

<sup>70</sup> CONN. GEN. STAT. ANN. §§ 54-250 to -261 (West 2009); MD. CODE ANN., CRIM. PROC. §§ 11-701 to -727 (West 2009); MO. ANN. STAT. §§ 589.400–426 (West 2009); and, NEB. REV. STAT. §§ 29-4001 to -4014 (2009).

<sup>71</sup> For further discussion see *infra* Part III.A.4.

<sup>72</sup> ME. REV. STAT. ANN. tit. 34-A, §§ 11,201–11,256 (2009); N.Y. CORRECT. LAW § 168 (McKinney 2009); see *supra* Part III.A.2. As of 14 July 2009, no Maine court has applied their sex offender registration law to the military (research on file with the author). New York courts have applied their sex offender registration laws to the military. Those cases will be discussed further in Part III.C.

<sup>73</sup> VA. CODE ANN. §§ 9.1-900 to -922 (West 2009).

foreign country or any political subdivision thereof, the United States or any political subdivision thereof . . . .”<sup>74</sup> While the military is part of the U.S. government, the question of whether the military is a political subdivision of the United States is uncertain.<sup>75</sup> Most likely, Virginia meant to include the military in this definition.<sup>76</sup> Unfortunately, no appellate court has interpreted the Virginia sex offender registration law as applied to the military.<sup>77</sup>

#### 4. “Military Offense” or “Military Court”

Thirty-six states use the “military offense” or “military court” language to ensure that military sex offenders register in their state.<sup>78</sup> Twelve of these states also apply one of the other three categories discussed above.<sup>79</sup> The language used can vary widely and includes “Uniform Code of Military Justice,”<sup>80</sup> “felony [sex] offense subject to a court-martial,”<sup>81</sup> and “military . . . jurisdiction.”<sup>82</sup> As an example, Florida’s statute states: “Conviction of a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States . . . .”<sup>83</sup> Another example using different language comes from Idaho: “‘Offender’ means an individual convicted of an offense listed . . . or a substantially similar offense under the laws of another state or in a federal, tribal or military court or the court of another country.”<sup>84</sup>

This category provides the clearest application to convictions at a court-martial. The language covers all military sex offenders and court-martial convictions for sex offenses.<sup>85</sup> Unlike the other three categories, the statutory intent to reach

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<sup>74</sup> *Id.* § 9.1-902(F).

<sup>75</sup> However, even as part of the U.S. government, the law does not gain clarity. As discussed previously, courts-martial are different than a U.S. federal district court. See *supra* Part III.A.1.

<sup>76</sup>

Any entity which has been created directly by the State, so as to constitute a department or administrative arm of the government, or administered by individuals who are controlled by public officials and responsible to such officials or to the general electorate, shall be deemed to be a “State or political subdivision thereof . . . .”

Coverage of Employees under the Williams-Steiger OSHA 1970, 29 C.F.R. § 1975.5(b) (2009). While this is not directly on point, this definition is probably what Virginia meant. Using these definitions, the military is a department of the federal government administered by public officials. Therefore it is a political subdivision of the United States.

<sup>77</sup> As of 14 July 2009. Research on file with the author. However, Virginia does register military sex offenders. They apply a “substantially similar” analysis to the offenses a military accused was charged with, and they consider a military court-martial to be a part of the U.S. court system. Interview with Thomas Lambert, Legal Specialist, Office of the Va. State Police in Richmond, Va. (Mar. 10, 2009). All but one of the Virginia circuit courts to analyze military sex offenders has upheld the registration requirement. *Id.* The one that did not was because the record of trial showed the offense as consensual sodomy. *Id.* Virginia also interprets their statute to require registration when the offense is listed in DoDI 1325.7. *Id.*; DoDI 1325.7, *supra* note 3.

<sup>78</sup> ARK. CODE ANN. §§ 12-12-901 to -923 (West 2009); CAL. PENAL CODE §§ 290–294 (West 2009); COLO. REV. STAT. ANN. §§ 16-22-101 to -115 (West 2009); CONN. GEN. STAT. ANN. §§ 54-250 to -261 (West 2009); FLA. STAT. ANN. § 944.607 (West 2009); GA. CODE ANN. §§ 41-1-12 to -15 (West 2009); HAW. REV. STAT. §§ 846E-1 to -13 (2009); IDAHO CODE ANN. §§ 18-8301 to -8331 (2009); 730 ILL. COMP. STAT. ANN. 150/1-12 (West 2009); IND. CODE ANN. §§ 11-8-8-1 to -22 (West 2009); IOWA CODE ANN. §§ 692A.1–16 (West 2009); KAN. STAT. ANN. §§ 22-4901 to -4913 (2009); KY. REV. STAT. ANN. §§ 17.500–580 (West 2009); LA. REV. STAT. ANN. §§ 15:540–552 (2009); MD. CODE ANN., CRIM. PROC. §§ 11-701 to -727 (West 2009); MASS. GEN. LAWS ANN. ch. 6, §§ 178C–178Q (West 2009); MICH. COMP. LAWS ANN. §§ 28.721–736 (West 2009); MINN. STAT. ANN. § 243.166 (West 2009); MISS. CODE ANN. §§ 45-33-21 to -59 (West 2009); MO. ANN. STAT. §§ 589.400–426 (West 2009); MONT. CODE ANN. §§ 46-23-502 to -507 (2009); NEB. REV. STAT. §§ 29-4001 to -4014 (2009); N.M. STAT. ANN. §§ 22-11A-1 to -10 (West 2009); NEV. REV. STAT. ANN. §§ 179D.010–850 (West 2009); N.C. GEN. STAT. ANN. §§ 14-208.5–45 (West 2009); OHIO REV. CODE ANN. §§ 2950.01–99 (West 2009); OKLA. STAT. ANN. tit. 57, §§ 581–90 (West 2009); 42 PA. CONS. STAT. ANN. §§ 9791–99.9 (West 2009); S.D. CODIFIED LAWS §§ 22-24B-1 to -30 (2009); TENN. CODE ANN. §§ 40-39-201 to -306 (West 2009); TEX. CODE CRIM. PROC. ANN. art. 62.001-408 (Vernon 2009); VT. STAT. ANN. tit. 13, §§ 5401–14 (2009); WASH. REV. CODE ANN. §§ 9A.44.130–145 (West 2009); WIS. STAT. ANN. §§ 301.45 to -46 (West 2009); W. VA. CODE ANN. §§ 15-12-1 to -10 (West 2009); WYO. STAT. ANN. §§ 7-19-301 to -308 (2009).

<sup>79</sup> CONN. GEN. STAT. ANN. §§ 54-250 to -261; FLA. STAT. ANN. § 944.607; GA. CODE ANN. §§ 41-1-12 to -15; IOWA CODE ANN. §§ 692A.1–16; MD. CODE ANN., CRIM. PROC. §§ 11-701 to -727; MISS. CODE ANN. §§ 45-33-21 to -59; MO. ANN. STAT. §§ 589.400–426; NEB. REV. STAT. §§ 29-4001 to -4014; N.M. STAT. ANN. §§ 22-11A-1 to -10; 42 PA. CONS. STAT. ANN. §§ 9791–99.9; WASH. REV. CODE ANN. §§ 9A.44.130–145; WYO. STAT. ANN. §§ 7-19-301 to -308.

<sup>80</sup> TEX. CODE CRIM. PROC. ANN. art. 62.001(5)(H).

<sup>81</sup> KY. REV. STAT. ANN. § 17.500(8).

<sup>82</sup> COLO. REV. STAT. ANN. § 16-22-103(1)(b).

<sup>83</sup> FLA. STAT. ANN. § 944.607(1)(b).

<sup>84</sup> IDAHO CODE ANN. § 18-8303(8).

<sup>85</sup> For example, Massachusetts uses the language “or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.” MASS. GEN. LAWS ANN. ch. 6, § 178C (West 2009). The practitioner still must analyze whether or not the military offense matches the state registration offenses, but this language makes application to the military clearer.

military sex offenders could not be more apparent. The fifteen states that do not use this category, create the greatest source of confusion for the military practitioner.<sup>86</sup>

## B. Which Offenses under the UCMJ Require Registration in Each State?

After analyzing which states require registration for military offenders, the practitioner must next determine which offenses under the UCMJ require registration in each state. The states generally apply five different methodologies in deciding which offenses require registration: the comprehensive list of offenses; the statutory cross-reference list; the partial or limited list; federal statute references; or, the “required to register elsewhere” method.<sup>87</sup> As with the analysis of the states that require military registration, all fifty states and the District of Columbia use at least one of these methodologies. Some states apply more than one methodology in determining offenses that require registration.<sup>88</sup> The names of these methodologies comes from the way that the state lists (or do not list) the offenses requiring registration in that state. Appendix B lists the states and the methodologies that each state uses.<sup>89</sup>

### 1. Comprehensive List

Twenty-six states apply the comprehensive list methodology when determining which offenses require sex offender registration.<sup>90</sup> These states list every offense that requires registration in their sex offender registration statutes. For example, Colorado lists twenty-seven different offenses that qualify for registration, ranging from common offenses, such as sexual assault, to offenses that few states include, such as “engaging in sexual conduct in a penal institution.”<sup>91</sup>

Application of the comprehensive list methodology to the military is clear in most cases.<sup>92</sup> Generally speaking, the practitioner should compare offenses in Department of Defense Instruction (DoDI) 1325.7 against the list of offenses in the state comprehensive list.<sup>93</sup> If the offense is listed in DoDI 1325.7 and the state statute, then a conviction for that offense requires registration in that state.<sup>94</sup> The most common pitfalls include Article 134 offenses that are not listed in DoDI 1325.7 and the revised Article 120 offenses.<sup>95</sup>

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<sup>86</sup> Those fifteen states are: Alabama, Alaska, Arizona, Delaware, District of Columbia, Maine, New Hampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Carolina, Utah, and Virginia. See ALA. CODE §§ 13A-11-200 to -204 (2009); ALASKA STAT. §§ 12.63.010–100 (2009); ARIZ. REV. STAT. ANN. §§ 13-3821 to -3829 (2009); DEL. CODE ANN. tit. 11, §§ 4120–4122 (2009); D.C. CODE §§ 22-4001 to -4017 (2009); ME. REV. STAT. ANN. tit. 34-A, §§ 11,201–11,256 (2009); N.H. REV. STAT. ANN. §§ 651-B:1–12 (2009); N.J. STAT. ANN. §§ 2C:7-1 to -21 (West 2009); N.Y. CORRECT. LAW § 168 (McKinney 2009); N.D. CENT. CODE § 12.1-32-15 (2009); OR. REV. STAT. ANN. §§ 181.592–606 (West 2009); R.I. GEN. LAWS §§ 11-37.1-1 to -20 (2009); S.C. CODE ANN. §§ 23-3-400 to -550 (2009); UTAH CODE ANN. § 77-27-21.5 (West 2009); VA. CODE ANN. §§ 9.1-900 to -922 (West 2009).

<sup>87</sup> As before, these methodologies are the author’s own creation. There are no formal categories of offense lists amongst the states.

<sup>88</sup> Arkansas, Missouri, Nevada, New York, Rhode Island, and Virginia each use three methods. See ARK. CODE ANN. §§ 12-12-901 to -923 (West 2009); MO. ANN. STAT. §§ 589.400–426 (West 2009); NEV. REV. STAT. ANN. §§ 179D.010–850 (West 2009); N.Y. CORRECT. LAW § 168; R.I. GEN. LAWS §§ 11-37.1-1 to -20; VA. CODE ANN. §§ 9.1-900 to -922.

<sup>89</sup> See *infra* app. B.

<sup>90</sup> ARIZ. REV. STAT. ANN. §§ 13-3821 to -3829; ARK. CODE ANN. §§ 12-12-901 to -923; COLO. REV. STAT. ANN. §§ 16-22-101 to -115 (West 2009); D.C. CODE §§ 22-4001 to -4017; GA. CODE ANN. §§ 41-1-12 to -15 (West 2009); IDAHO CODE ANN. §§ 18-8301 to -8331 (2009); 730 ILL. COMP. STAT. ANN. § 150/1-12 (West 2009); IND. CODE ANN. §§ 11-8-8-1 to -22 (West 2009); IOWA CODE ANN. §§ 692A.1–16 (West 2009); KAN. STAT. ANN. §§ 22-4901 to -4913 (2009); LA. REV. STAT. ANN. §§ 15:540–552 (2009); MASS. GEN. LAWS ANN. ch.6, §§ 178C–178Q (West 2009); MISS. CODE ANN. §§ 45-33-21 to -59 (West 2009); NEB. REV. STAT. §§ 29-4001 to -4014 (2009); NEV. REV. STAT. ANN. §§ 179D.010–850; N.J. STAT. ANN. §§ 2C:7-1 to -21; N.M. STAT. ANN. §§ 22-11A-1 to -10 (West 2009); N.C. GEN. STAT. ANN. §§ 14-208.5–45 (West 2009); OR. REV. STAT. ANN. §§ 181.592–606; 42 PA. CONS. STAT. ANN. §§ 9791–99.9 (West 2009); S.C. CODE ANN. §§ 23-3-400 to -550; S.D. CODIFIED LAWS §§ 22-24B-1 to -30 (2009); TENN. CODE ANN. §§ 40-39-201 to -306 (West 2009); TEX. CODE CRIM. PROC. ANN. art. 62.001-408 (Vernon 2009); UTAH CODE ANN. § 77-27-21.5; VT. STAT. ANN. tit. 13, §§ 5401–14 (2009).

<sup>91</sup> COLO. REV. STAT. ANN. § 16-22-102(9)(u).

<sup>92</sup> See *infra* Part III.D for further analysis.

<sup>93</sup> See DoDI 1325.7, *supra* note 3, enclosure 27.

<sup>94</sup> Of course the careful practitioner should still apply the analysis from Part III.A, *infra*, to determine if the state properly recognizes military convictions.

<sup>95</sup> See *infra* app. C for a list of the offenses included in the instruction. See *infra* note 134 for the proposed revisions to the instruction that include the new Article 120 offenses.



## 2. Statutory List

Twenty-four states apply the statutory list methodology when determining which offenses require sex offender registration.<sup>96</sup> In their sex offender registration statutes these states include a cross reference list of offenses that require registration. For example, Florida lists sixteen different criminal statutes that qualify for registration.<sup>97</sup> However, reading the Florida statute quickly becomes complex because there are no details of what these statutes actually proscribe. In order to determine which offenses Florida requires sex offender registration for, a practitioner must look up all sixteen of the statutes spread across the Florida criminal code.<sup>98</sup>

Application of the statutory list methodology to the military is clear in most cases. As with the comprehensive list, the practitioner should compare the list of offenses in DoDI 1325.7 against the state's statutory list to apply that state law to the military.<sup>99</sup> This extra step of looking up the statutory cross-references to determine what the listed offenses contain is the only substantive difference between these first two methodologies. The remainder of the analysis does not change.<sup>100</sup>

## 3. Partial or Limited List

Only one state applies the partial or limited list methodology when determining which offenses require sex offender registration: Alabama.<sup>101</sup> Alabama does not list every offense that requires registration either through a comprehensive list or a statutory list. Instead, Alabama lists a few offenses and then includes a broad general statement designed to capture other sexual offenses. Alabama's statute reads,

any act of sexual perversion involving a member of the same or the opposite sex, or any sexual abuse of any member of the same or the opposite sex or any attempt to commit any of these acts, and without limiting the generality of the above statement shall include specifically . . . .<sup>102</sup>

Application of the limited list methodology to the military is unclear.<sup>103</sup> On the one hand, the general statement of application implies that almost all sexual offenses are included in Alabama. This would mean that even offenses not included in other states could apply in Alabama, such as sexual misconduct.<sup>104</sup> States that follow the comprehensive list methodology rarely include such misdemeanor crimes in their sex offender statutes.<sup>105</sup>

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<sup>96</sup> ALASKA STAT. §§ 12.63.010–100 (2009); CAL. PENAL CODE §§ 290–294 (West 2009); CONN. GEN. STAT. ANN. §§ 54-250 to -261 (West 2009); DEL. CODE ANN. tit. 11, §§ 4120–4122 (2009); FLA. STAT. ANN. § 944.607 (West 2009); HAW. REV. STAT. §§ 846E-1 to -13 (2009); KY. REV. STAT. ANN. §§ 17.500–580 (West 2009); ME. REV. STAT. ANN. tit. 34-A, §§ 11,201–11,256 (2009); MD. CODE ANN., CRIM. PROC. §§ 11-701 to -727 (West 2009); MICH. COMP. LAWS ANN. §§ 28.721–736 (West 2009); MINN. STAT. ANN. § 243.166 (West 2009); MO. ANN. STAT. §§ 589.400–426 (West 2009); MONT. CODE ANN. §§ 46-23-502 to -507 (2009); N.H. REV. STAT. ANN. §§ 651-B:1–12 (2009); N.Y. CORRECT. LAW § 168 (McKinney 2009); N.D. CENT. CODE § 12.1-32-15 (2009); OHIO REV. CODE ANN. §§ 2950.01–99 (West 2009); OKLA. STAT. ANN. tit. 57, §§ 581–90 (West 2009); R.I. GEN. LAWS §§ 11-37.1-1 to -20 (2009); VA. CODE ANN. §§ 9.1-900 to -922 (West 2009); WASH. REV. CODE ANN. §§ 9A.44.130–145 (West 2009); W. VA. CODE ANN. §§ 15-12-1 to -10 (West 2009); WIS. STAT. ANN. §§ 301.45 to -46 (West 2009); WYO. STAT. ANN. §§ 7-19-301 to -308 (2009).

<sup>97</sup> FLA. STAT. ANN. § 944.607(1)(a)(1).

<sup>98</sup> Generally speaking, the sixteen offenses are (1) kidnapping of a child under 13; (2) false imprisonment of a child under 13; (3) luring or enticing a child; (4) sexual battery; (5) sexual activity with minors; (6) prostitution of a minor; (7) sex trafficking of minors; (8) lewd acts with a minor; (9) lewd acts with the elderly; (10) sexual performance by a child; (11) giving obscene materials to minors; (12) child pornography possession; (13) distribution of child pornography; (14) distribution of child pornography to minors; (15) selling a minor; and, (16) teacher/student sexual acts. See FLA. STAT. ANN. §§ 787.01, 787.02, 787.025(2)(c), 794.011, 794.05, 796.03, 796.035, 800.04, 825.1025, 827.071, 847.0133, 847.0135, 847.0137, 847.0138, 847.0145, 985.701.

<sup>99</sup> See *supra* Part III.B.1.

<sup>100</sup> See *infra* Part III.D for further analysis.

<sup>101</sup> ALA. CODE §§ 13A-11-200 to -204 (2009).

<sup>102</sup> *Id.* § 13A-11-200(b).

<sup>103</sup> Alabama almost certainly requires military sex offenders to register for at least some offenses. A former member of the Air Force was recently convicted and sentenced to six years confinement for failing to register after having been released from military confinement for indecent assault. See News Release, Alabama Attorney General, AG King Announces Conviction of Sex Offender (Feb. 19, 2009), available at [http://www.ago.state.al.us/news\\_template.cfm?Item=1251](http://www.ago.state.al.us/news_template.cfm?Item=1251).

<sup>104</sup> Alabama defines this misdemeanor crime as “[b]eing a male, he engages in sexual intercourse with a female without her consent, under circumstances other than those covered by [rape statutes]; or with her consent where consent was obtained by the use of any fraud or artifice.” ALA. CODE § 13A-6-65(a)(1). The military now has a similar crime in the revised Article 120 called wrongful sexual contact. See UCMJ art. 120(m) (2008).

<sup>105</sup> See, e.g., GA. CODE ANN. §§ 41-1-12 to -15 (West 2009) (showing that Georgia does not list misdemeanor sex crimes in its statutes).

On the other hand, the general statement of application could mean that other crimes would not apply unless they are similar to the listed offenses. For example, Article 134 sex offenses that are not specifically listed, such as child pornography, may not fall under the Alabama statute. Child pornography is not one of the listed offenses.<sup>106</sup> Under the general statement above, child pornography arguably only falls under the sexual abuse category, but even that link is tenuous.<sup>107</sup>

#### 4. Federal Statute References

Six states include references to federal statutes when determining which offenses require sex offender registration.<sup>108</sup> All six states also apply at least one other methodology.<sup>109</sup> Normally, the state cites the federal statutes in order to define a specific set of crimes or to capture a specific category of crimes. For example, Arkansas uses a federal statute to define aggravated sexual offense<sup>110</sup> and New York specifically incorporates convictions for eight federal statutes in their sex offender registration methodology.<sup>111</sup>

Because these states also use other methodologies in determining who must register, application of the federal statute reference to the military is plain in most cases. Generally speaking, the federal statute reference will only add clarity to the set of crimes for which the state requires registration. The Arkansas's statute references the federal aggravated sexual abuse statute which adds clarity to military application because the revised Article 120 borrows heavily from the federal statute.<sup>112</sup> The clarity is also seen in the New York statute which incorporates one of the most frequently assimilated federal crimes in the military under Article 134—child pornography.<sup>113</sup>

#### 5. "Required to Register Elsewhere"<sup>114</sup>

The "required to register elsewhere" methodology allows the states to incorporate by reference the sex offender registration requirements of the rest of the states. Twenty-seven states include this clause in their registration statutes.<sup>115</sup> The usual way this clause works involves requiring registration in the state if any other state would require registration, even if

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<sup>106</sup> Obscenity is a listed offense, but the offense of obscenity is a class C misdemeanor for displaying an obscene sign or bumper sticker. See ALA. CODE § 13A-12-131. Strangely enough, Alabama might require sex offender registration for displaying an obscene bumper sticker, but not for child pornography!

<sup>107</sup> Under the revised Article 120, abusive sexual contact is a very specific set of crimes, none of which include child pornography. See UCMJ art. 120(h), (i). The meaning of sexual abuse in the Alabama statute is probably similar to that of Article 120.

<sup>108</sup> ARK. CODE ANN. §§ 12-12-901 to -923 (West 2009); MO. ANN. STAT. §§ 589.400-426 (West 2009); NEV. REV. STAT. ANN. §§ 179D.010-850 (West 2009); N.Y. CORRECT. LAW § 168 (McKinney 2009); R.I. GEN. LAWS §§ 11-37.1-1 to -20 (2009); VA. CODE ANN. §§ 9.1-900 to -922 (West 2009).

<sup>109</sup> In fact, all six use three methodologies: Arkansas applies the comprehensive list and the required to register elsewhere; Missouri applies the statutory list and the required to register elsewhere; Nevada applies the comprehensive list and the required to register elsewhere; New York applies the statutory list and the required to register elsewhere; Rhode Island applies the comprehensive list and the required to register elsewhere; and, Virginia applies the statutory list and the required to register elsewhere. See generally ARK. CODE ANN. §§ 12-12-901 to -923; MO. ANN. STAT. §§ 589.400-426 (West 2009); NEV. REV. STAT. ANN. §§ 179D.010-850 (West 2009); N.Y. CORRECT. LAW § 168 (McKinney 2009); R.I. GEN. LAWS §§ 11-37.1-1 to -20 (2009); VA. CODE ANN. §§ 9.1-900 to -922 (West 2009) (showing that these states apply multiple methodologies in their statutes).

<sup>110</sup> "Aggravated sex offense" means an offense in the Arkansas Code substantially equivalent to 'aggravated sexual abuse' as defined in 18 U.S.C. § 2241 as it existed on March 1, 2003 . . . ." ARK. CODE ANN. §§ 12-12-903(3).

<sup>111</sup> "Sex offense" means . . . a conviction of . . . any of the provisions of 18 U.S.C. 2251, 18 U.S.C. 2251A, 18 U.S.C. 2252, 18 U.S.C. 2252A, 18 U.S.C. 2260, 18 U.S.C. 2422(b), 18 U.S.C. 2423, or 18 U.S.C. 2425 . . . ." N.Y. CORRECT. LAW § 168-a(2)(d).

<sup>112</sup> Compare UCMJ art. 120, with 18 U.S.C. § 2241 (2006).

<sup>113</sup> See 18 U.S.C. § 2252A.

<sup>114</sup> This term is the author's own for this registration methodology borrowed from any number of states using this system. For example, Colorado uses the language, "would be required to register if he or she resided in the state or jurisdiction of conviction." COLO. REV. STAT. ANN. § 16-22-103(3) (West 2009).

<sup>115</sup> ARIZ. REV. STAT. ANN. §§ 13-3821 to -3829 (2009); ARK. CODE ANN. §§ 12-12-901 to -923; CAL. PENAL CODE §§ 290-294 (West 2009); COLO. REV. STAT. ANN. §§ 16-22-101 to -115 (West 2009); CONN. GEN. STAT. ANN. §§ 54-250 to -261 (West 2009); GA. CODE ANN. §§ 41-1-12 to -15 (West 2009); HAW. REV. STAT. §§ 846E-1 to -13 (2009); IND. CODE ANN. §§ 11-8-8-1 to -22 (West 2009); IOWA CODE ANN. §§ 692A.1-16 (West 2009); KAN. STAT. ANN. §§ 22-4901 to -4913 (2009); ME. REV. STAT. ANN. tit. 34-A, §§ 11,201-11,256 (2009); MD. CODE ANN., CRIM. PROC. §§ 11-701 to -727 (West 2009); MICH. COMP. LAWS ANN. §§ 28.721-736 (West 2009); MINN. STAT. ANN. § 243.166 (West 2009); MISS. CODE ANN. §§ 45-33-21 to -59 (West 2009); MO. ANN. STAT. §§ 589.400-426 (West 2009); NEB. REV. STAT. §§ 29-4001 to -4014 (2009); NEV. REV. STAT. ANN. §§ 179D.010-850 (West 2009); N.H. REV. STAT. ANN. §§ 651-B:1-12 (2009); N.Y. CORRECT. LAW § 168; N.C. GEN. STAT. ANN. §§ 14-208.5-45 (West 2009); OR. REV. STAT. ANN. §§ 181.592-606 (West 2009); 42 PA. CONS. STAT. ANN. §§ 9791-99.9 (West 2009); R.I. GEN. LAWS §§ 11-37.1-1 to -20 (2009); S.C. CODE ANN. §§ 23-3-400 to -550 (2009); VA. CODE ANN. §§ 9.1-900 to -922 (West 2009); W. VA. CODE ANN. §§ 15-12-1 to -10 (West 2009).

the registering state would not normally require registration for that offense. For example, South Carolina requires registration for “[a]ny person . . . who has been convicted of . . . an offense for which the person was required to register in the state where the conviction or plea occurred.”<sup>116</sup> A more complex wording is found in Hawaii’s statute which requires registration for

[a] person who establishes or maintains a residence in this state and who has been designated as a covered offender . . . or any other sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration . . . without regard to whether the person otherwise meets the criteria for registration as a covered offender, shall register in the manner provided . . . .<sup>117</sup>

Application of this methodology to the military can be confusing at best. By incorporating every other state’s registration requirements into their own, these twenty-seven states have basically created a “super registration” statute that consists of the offenses requiring registration from all of the states.<sup>118</sup> Again, the problem of lack of clarity is heightened when dealing with the non-listed Article 134 offenses.<sup>119</sup>

### C. State-Specific Cases

A few state courts have had the opportunity to apply their sex offender registration statutes to military convictions, with mixed results. In 2006, the New York Court of Appeals<sup>120</sup> held that a former Sailor convicted of indecent assault under Article 134<sup>121</sup> did not have to register as a sex offender under New York law.<sup>122</sup> However, this holding has since been narrowed.<sup>123</sup>

Another state with a specific case on point is Illinois. In this case, the plaintiff filed a civil suit to seek declaratory judgment that he did not have to register as a sex offender.<sup>124</sup> He had been convicted at a court-martial for indecent assault in violation of UCMJ, Article 134.<sup>125</sup> Because Illinois was a military offense or military court jurisdiction<sup>126</sup> with a comprehensive list statute,<sup>127</sup> application of their law to the plaintiff hinged on whether or not indecent assault was “substantially equivalent” to an offense in the state statute.<sup>128</sup> The court held that it was and affirmed the registration requirement.<sup>129</sup>

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<sup>116</sup> S.C. CODE ANN. § 23-3-430(A).

<sup>117</sup> HAW. REV. STAT. § 846E-2(b) (2009). To make matters even more complicated, Hawaii allows the offender to “petition[] the attorney general for termination of registration requirements by . . . [d]emonstrating that the out-of-state convictions upon which the sexual offender designation was established are not covered offenses.” *Id.* § 846E-2(b)(2). An out-of-state convicted offender moving to Hawaii for an offense not requiring registration in Hawaii would have to register until they can petition the attorney general to terminate the requirement on the grounds that Hawaii does not require registration for that offense.

<sup>118</sup> Unfortunately, even trying to write them all down would be an exercise in futility due to constantly changing state laws and the differences in how each state handles the same offense.

<sup>119</sup> See *infra* Part III.D for further analysis.

<sup>120</sup> The Court of Appeals is the highest court in New York. New York State Court of Appeals Home Page, <http://www.nycourts.gov/ctapps/> (last visited Mar. 10, 2009).

<sup>121</sup> MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 63 (2005) (indecent assault).

<sup>122</sup> See *People v. Kennedy*, 850 N.E.2d 661 (N.Y. 2006).

<sup>123</sup> See *North v. Bd. of Exam’rs of Sex Offenders*, 871 N.E.2d 1133 (N.Y. 2007). This case applied several other provisions of the New York law to ensure the defendant (who had not been convicted at a court-martial, but rather in federal court) had to register for possession of child pornography. *Id.*

<sup>124</sup> See *Rodimel v. Cook County Sheriff’s Office*, 822 N.E.2d 7 (Ill. App. Ct. 2004).

<sup>125</sup> *Id.* at 8.

<sup>126</sup> See *supra* Part III.A.4.

<sup>127</sup> See *supra* Part III.B.1.

<sup>128</sup> *Rodimel*, 822 N.E.2d at 10.

<sup>129</sup> *Id.* at 12.

#### D. Determining Which Offenses Require Registration

One of the largest steps for the practitioner involves determining which offenses require registration in each state. The most logical place to start is DoDI 1325.7.<sup>130</sup> All of the military confinement facilities require sex offender processing for individuals convicted of the listed offenses.<sup>131</sup> Appendix C<sup>132</sup> lists the offenses that DoDI 1325.7 requires sex offender processing for in the military corrections system.<sup>133</sup> Appendix C also includes a list of the offenses not included in the outdated DoDI 1325.7.<sup>134</sup>

Next, the practitioner must apply those offenses to the state registration methodology. Using the state of Georgia as an example, most of the offenses from DoDI 1325.7 match up with the state comprehensive list.<sup>135</sup> Kidnapping of a minor in the military is equivalent to kidnapping of a minor in Georgia.<sup>136</sup> Confusion arises when comparing Article 134 offenses with the Georgia comprehensive list. Most of the offenses are still covered, such as pornography involving a minor in the military which is equivalent to computer pornography in Georgia.<sup>137</sup> However, Georgia does not use a “conduct prejudicial to good order and discipline”<sup>138</sup> standard as a catch-all that the military uses. But it does use a catch-all of sorts by including “[a]ny conduct which, by its nature, is a sexual offense against a minor or an attempt to commit a sexual offense against a minor.”<sup>139</sup>

Another factor for the practitioner to consider is that DoDI 1325.7 does not include “service discrediting” crimes.<sup>140</sup> While this might have been an oversight, it appears to be intentional because of the specific listing of “conduct prejudicial to good order and discipline” crimes.<sup>141</sup>

The solution for analyzing unlisted crimes or those that do not quite compare to the state comprehensive list is to look at the overall theme of the crimes listed. Returning to the Georgia statute, all of the offenses have either a sex crime against children component,<sup>142</sup> or a dangerous sex crime component.<sup>143</sup> Applying this theme to the military would show that adultery, while clearly a sex crime, would not require registration as a sex offender under the Georgia statute. Not only is adultery not listed in DoDI 1325.7, but adultery is also not a sex crime against children or considered a dangerous sex crime.<sup>144</sup>

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<sup>130</sup> See *supra* note 3.

<sup>131</sup> See DoDI 1325.7, *supra* note 3, enclosure 27.

<sup>132</sup> See *infra* app. C.

<sup>133</sup> See DoDI 1325.7, *supra* note 3, enclosure 27.

<sup>134</sup> See *infra* app. C. The primary changes since then consists of the revised Article 120 and the deletion of several Article 134 offenses such as indecent assault. See Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007). The proposed revision to this instruction is forthcoming. A copy of the new list of offenses will also be included in the new Army Regulation (AR) 27-10. Additional offenses in the revision include rape of a child; aggravated sexual assault; aggravated sexual assault of a child; aggravated sexual contact; aggravated sexual abuse of a child; aggravated sexual contact with a child; abusive sexual contact; abusive sexual contact with a child; indecent liberty with a child; indecent acts with a minor; forcible pandering; wrongful sexual contact; indecent exposure to a minor; and attempts, conspiracies, and solicitations to commit the foregoing. See U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE para. 25-2 (n.d. draft) (on file with author).

<sup>135</sup> GA. CODE ANN. § 41-1-12(a)(9), (10) (West 2009).

<sup>136</sup> Compare *id.* § 16-5-40, with MANUAL FOR COURTS-MARTIAL, UNITED STATES, pt. IV, ¶ 92 (2008) [hereinafter MCM] (kidnapping) (showing that the two kidnapping offenses are similar).

<sup>137</sup> Compare GA. CODE ANN. § 16-12-100.2, with 18 U.S.C. § 2252A (2006) (showing that the most commonly charged child pornography federal statute in the military is similar to the Georgia computer pornography law).

<sup>138</sup> MCM, *supra* note 136, pt. IV, ¶ 92c(1) (commonly referred to as a clause 1, Article 134 offense).

<sup>139</sup> GA. CODE ANN. § 42-1-12(a)(10)(A)(xix).

<sup>140</sup> MCM, *supra* note 136, pt. IV, ¶ 92c(2) (commonly referred to as a clause 2, Article 134 offense).

<sup>141</sup> See DoDI 1325.7, *supra* note 3, enclosure 27. This oversight has not been corrected in the proposed revision to DoDI 1325.7. See *supra* note 134.

<sup>142</sup> Georgia calls offenses like this a “[c]riminal offense against a victim who is a minor.” See GA. CODE ANN. § 42-1-12(a)(9)(B).

<sup>143</sup> In fact, Georgia lists some of these offenses under the category “[d]angerous sexual offense.” See *id.* § 42-1-12(a)(10)(A).

<sup>144</sup> In the author’s opinion, adultery does have real harms associated with it, but it is not normally dangerous in the sense of violence during the sexual act itself.

## E. Step-by-Step Method for Advising a Potential Sex Offender Client<sup>145</sup>

The first step in advising a potential sex offender client is to learn which state the client will live in after they serve any potential confinement time. With that information, you can apply the methodologies in this primer to learn about the registration requirements of that state.

The second step is to determine what military registration language that state uses.<sup>146</sup> This step is particularly critical if the state your client will live in is one of the fifteen that does not use the “military court” or “military offense” language.<sup>147</sup> Most likely by itself, this step will not keep your client from the requirement to register. This is particularly true if the language of each state statute is read broadly.<sup>148</sup>

The third step is to compare the charge sheet against DoDI 1325.7.<sup>149</sup> If the offense your client faces is one of the listed offenses, such as rape, then move to step four. If the offense your client faces is not one of the listed offenses, then you must compare that offense to each offense in the state statute.

This leads you to the fourth step, which is to analyze which offenses under the UCMJ require registration in that state.<sup>150</sup> This step can be completed very quickly and easily if the state uses a comprehensive list. On the other hand, it can be a slow process if the state uses a statutory list. Either way, the best method to figure out if the offense your client faces requires registration is to do an elements test against the state statute. If the military offense is “substantially equivalent” to the state offense, then your client will likely have to register.<sup>151</sup>

Step five is only applicable in rare cases where the courts of that state the client wishes to live in have rendered opinions about their registration laws as applied to the military. Currently only two states have this distinction.<sup>152</sup> If your client is moving to New York or Illinois, then you should apply those cases to your client’s charges.

The sixth step is to advise your client of your analysis at this point. If registration is clearly applicable,<sup>153</sup> then advise your client he will probably have to register. If registration is not clearly applicable, or your client faces charges that might not be included,<sup>154</sup> then you should contact the state registration authorities for further clarification.<sup>155</sup> Either way you interpret the law, as a precaution, have your client sign a memorandum for record advising them of the probable requirement to register.<sup>156</sup>

Along the way, a savvy trial defense counsel should attempt to negotiate for a favorable pre-trial agreement that does not include a conviction for any offense which requires registration.<sup>157</sup> If that is not possible, then you should attempt to negotiate for a sex offense that might not require registration in the state your client wants to live in after any potential confinement.<sup>158</sup>

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<sup>145</sup> This Part is entirely the author’s opinion.

<sup>146</sup> See *supra* Part III.A.

<sup>147</sup> See *supra* Part III.A.4.

<sup>148</sup> See *supra* note 77 for an example of a state that reads their statute broadly (Virginia).

<sup>149</sup> DoDI 1325.7, *supra* note 3, enclosure 27.

<sup>150</sup> See *supra* Part III.B.

<sup>151</sup> This test was applied in both *People v. Kennedy*, 850 N.E.2d 661 (N.Y. 2006), and *Rodimel v. Cook County Sheriff’s Office*, 822 N.E.2d 7 (Ill. App. Ct. 2004). Virginia also applies this standard. See *supra* note 77.

<sup>152</sup> See *supra* Part III.C.

<sup>153</sup> The clearest case in the author’s opinion would be a client facing a serious charge, such as rape, who will move to a state that applies the “military court” methodology and uses a comprehensive list of offenses.

<sup>154</sup> Such as a UCMJ, art. 134, cl. 2, offense or a novel sex crime under UCMJ, art. 134.

<sup>155</sup> See *infra* app. D for a complete state listing of points of contact.

<sup>156</sup> See *infra* app. E for a sample memorandum for record. Even if you interpret the statute as not requiring registration, the fact that state laws change rapidly should encourage you to use such a memorandum in almost all sex crime cases. See *supra* note 36 for an example of how frequently state laws can change.

<sup>157</sup> For example, a client charged with sexual assault who pleads guilty to simple assault instead. No state includes simple assault in their registration system.

<sup>158</sup> An example of this: a client charged with sexual assault who pleads guilty to indecent exposure. Many states do not include indecent exposure as a listed offense.

If none of these strategies work in your client's favor, argue to the panel or to the judge for an acquittal. All states require a conviction before registration requirements take effect. If a full acquittal is not likely, at least argue for a lesser included offense or ask for instructions on a lesser included offense that will not require registration in the state your client will eventually live in.

#### IV. Conclusion

The mandate from the CAAF seems simple on its face.<sup>159</sup> At a bare minimum, a trial defense counsel must advise their client charged with a sex offense on the record of the potential sex offender registration requirements.<sup>160</sup> The challenge arises when a trial defense counsel wants to do more than the bare minimum for their client. With four categories for determining whether or not the state includes military convictions,<sup>161</sup> five methodologies for determining which offenses the state includes in their registration programs,<sup>162</sup> and an almost six-year-old DoDI 1325.7 that does not include the 2007 revisions to Article 120, UCMJ,<sup>163</sup> a trial defense counsel can quickly be overwhelmed by the magnitude of sex offender registration requirements. With careful application of the principles in this article, a trial defense counsel can adequately advise any potential sex offender client of the registration requirements in all fifty states. Due to the harsh realities and the lasting impacts of sex offender registration, military clients deserve the best advice from their trial defense counsel, not just the bare minimum standard required by the CAAF.<sup>164</sup>

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<sup>159</sup> See *United States v. Miller*, 63 M.J. 453, 459 (C.A.A.F. 2006).

<sup>160</sup> See *id.*

<sup>161</sup> See *supra* Part III.A.

<sup>162</sup> See *supra* Part III.B.

<sup>163</sup> See DoDI 1325.7, *supra* note 3, at enclosure 27.

<sup>164</sup> See *Miller*, 63 M.J. at 459.

Appendix A

Which states require military registration?<sup>165</sup>

State registration categories

State	Federal Court or Federal Law	Another Jurisdiction	Requires Registration In Federal / Military System	Military Offense or Military Court
	<i>Includes "United States" or "Federal Government"</i>	<i>Includes "Any Court"</i>		<i>Includes "Military Jurisdiction" or "UCMJ"</i>
Alabama ALA. CODE §§ 13A-11-200 to -204 (2009).	X			
Alaska ALASKA STAT. §§ 12.63.010–100 (2009).		X		
Arizona ARIZ. REV. STAT. ANN. §§ 13-3821 to -3829 (2009).		X		
Arkansas ARK. CODE ANN. §§ 12-12-901 to -923 (West 2009).				X
California CAL. PENAL CODE §§ 290–294 (West 2009).				X
Colorado COLO. REV. STAT. ANN. §§ 16-22-101 to -115 (West 2009).				X
Connecticut CONN. GEN. STAT. ANN. §§ 54-250 to -261 (West 2009).			X	X
Delaware DEL. CODE ANN. tit. 11, §§ 4120–4122 (2009).	X			
District of Columbia D.C. CODE §§ 22-4001 to -4017 (2009).	X	X		
Florida FLA. STAT. ANN. § 944.607 (West 2009).		X		X
Georgia GA. CODE ANN. §§ 41-1-12 to -15 (West 2009).	X			X

<sup>165</sup> Research on file with author.

State	Federal Court or Federal Law	Another Jurisdiction	Requires Registration In Federal / Military System	Military Offense or Military Court
Hawaii HAW. REV. STAT. §§ 846E-1 to -13 (2009).				X
Idaho IDAHO CODE ANN. §§ 18-8301 to -8331 (2009).				X
Illinois 730 ILL. COMP. STAT. ANN. 150/1-12 (West 2009).				X
Indiana IND. CODE ANN. §§ 11-8-8-1 to -22 (West 2009).				X
Iowa IOWA CODE ANN. §§ 692A.1-16 (West 2009).		X		X
Kansas KAN. STAT. ANN. §§ 22-4901 to -4913 (2009).				X
Kentucky KY. REV. STAT. ANN. §§ 17.500-580 (West 2009).				X
Louisiana LA. REV. STAT. ANN. §§ 15:540-552 (2009).				X
Maine ME. REV. STAT. ANN. tit. 34-A, §§ 11,201-11,256 (2009).		X	X	
Maryland MD. CODE ANN., CRIM. PROC. §§ 11-701 to -727 (West 2009).			X	X
Massachusetts MASS. GEN. LAWS ANN. ch.6, §§ 178C-178Q (West 2009).				X
Michigan MICH. COMP. LAWS ANN. §§ 28.721-736 (West 2009).				X
Minnesota MINN. STAT. ANN. § 243.166 (West 2009).				X



State	Federal Court or Federal Law	Another Jurisdiction	Requires Registration In Federal / Military System	Military Offense or Military Court
Mississippi MISS. CODE ANN. §§ 45-33-21 to -59 (West 2009).		X		X
Missouri MO. ANN. STAT. §§ 589.400–426 (West 2009).			X	X
Montana MONT. CODE ANN. §§ 46-23-502 to -507 (2009).				X
Nebraska NEB. REV. STAT. §§ 29-4001 to -4014 (2009).			X	X
Nevada NEV. REV. STAT. ANN. §§ 179D.010–850 (West 2009).				X
New Hampshire N.H. REV. STAT. ANN. §§ 651-B:1–12 (2009).	X			
New Jersey N.J. STAT. ANN. §§ 2C:7-1 to -21 (West 2009).	X			
New Mexico N.M. STAT. ANN. §§ 22-11A-1 to -10 (West 2009).		X		X
New York N.Y. CORRECT. LAW § 168 (McKinney 2009).		X	X	
North Carolina N.C. GEN. STAT. ANN. §§ 14-208.5–45 (West 2009).				X
North Dakota N.D. CENT. CODE § 12.1-32-15 (2009).	X			
Ohio OHIO REV. CODE ANN. §§ 2950.01–99 (West 2009).				X
Oklahoma OKLA. STAT. ANN. tit. 57, §§ 581–90 (West 2009).				X

State	Federal Court or Federal Law	Another Jurisdiction	Requires Registration In Federal / Military System	Military Offense or Military Court
Oregon OR. REV. STAT. ANN. §§ 181.592–606 (West 2009).		X		
Pennsylvania 42 PA. CONS. STAT. ANN. §§ 9791–99.9 (West 2009).	X			X
Rhode Island R.I. GEN. LAWS §§ 11-37.1-1 to -20 (2009).		X		
South Carolina S.C. CODE ANN. §§ 23-3-400 to -550 (2009).	X			
South Dakota S.D. CODIFIED LAWS §§ 22-24B-1 to -30 (2009).				X
Tennessee TENN. CODE ANN. §§ 40-39-201 to -306 (West 2009).				X
Texas TEX. CODE CRIM. PROC. ANN. art. 62.001-408 (Vernon 2009).				X
Utah UTAH CODE ANN. § 77-27-21.5 (West 2009).		X		
Vermont VT. STAT. ANN. tit. 13, §§ 5401–14 (2009).				X
Virginia VA. CODE ANN. §§ 9.1-900 to -922 (West 2009).	X		X	
Washington WASH. REV. CODE ANN. §§ 9A.44.130– 145 (West 2009).	X			X
West Virginia W. VA. CODE ANN. §§ 15-12-1 to -10 (West 2009).				X
Wisconsin WIS. STAT. ANN. §§ 301.45 to -46 (West 2009).				X

State	Federal Court or Federal Law	Another Jurisdiction	Requires Registration In Federal / Military System	Military Offense or Military Court
Wyoming WYO. STAT. ANN. §§ 7-19-301 to -308 (2009).		X		X

## Appendix B

### Which UCMJ offenses require registration?<sup>166</sup>

#### State registration methodologies

State	Comprehensive List	Statutory List	Partial or Limited List	Federal Statute References	“Required to Register Elsewhere”
Alabama ALA. CODE §§ 13A-11-200 to -204 (2009).			X		
Alaska ALASKA STAT. §§ 12.63.010–100 (2009).		X			
Arizona ARIZ. REV. STAT. ANN. §§ 13-3821 to -3829 (2009).	X				X
Arkansas ARK. CODE ANN. §§ 12-12-901 to -923 (West 2009).	X			X	X
California CAL. PENAL CODE §§ 290–294 (West 2009).		X			X
Colorado COLO. REV. STAT. ANN. §§ 16-22-101 to -115 (West 2009).	X				X
Connecticut CONN. GEN. STAT. ANN. §§ 54-250 to -261 (West 2009).		X			X
Delaware DEL. CODE ANN. tit. 11, §§ 4120–4122 (2009).		X			
District of Columbia D.C. CODE §§ 22-4001 to -4017 (2009).	X				
Florida FLA. STAT. ANN. § 944.607 (West 2009).		X			
Georgia GA. CODE ANN. §§ 41-1-12 to -15 (West 2009).	X				X
Hawaii HAW. REV. STAT. §§ 846E-1 to -13 (2009).		X			X
Idaho IDAHO CODE ANN. §§ 18-8301 to -8331 (2009).	X				

<sup>166</sup> Research on file with author.

State	Comprehensive List	Statutory List	Partial or Limited List	Federal Statute References	“Required to Register Elsewhere”
Illinois 730 ILL. COMP. STAT. ANN. 150/1-12 (West 2009).	X				
Indiana IND. CODE ANN. §§ 11-8-8-1 to -22 (West 2009).	X				X
Iowa IOWA CODE ANN. §§ 692A.1-16 (West 2009).	X				X
Kansas KAN. STAT. ANN. §§ 22-4901 to -4913 (2009).	X				X
Kentucky KY. REV. STAT. ANN. §§ 17.500-580 (West 2009).		X			
Louisiana LA. REV. STAT. ANN. §§ 15:540-552 (2009).	X				
Maine ME. REV. STAT. ANN. tit. 34-A, §§ 11,201-11,256 (2009).		X			X
Maryland MD. CODE ANN., CRIM. PROC. §§ 11-701 to -727 (West 2009).		X			X <sup>167</sup>
Massachusetts MASS. GEN. LAWS ANN. ch.6, §§ 178C-178Q (West 2009).	X				
Michigan MICH. COMP. LAWS ANN. §§ 28.721-736 (West 2009).		X			X
Minnesota MINN. STAT. ANN. § 243.166 (West 2009).		X			X
Mississippi MISS. CODE ANN. §§ 45-33-21 to -59 (West 2009).	X				X
Missouri MO. ANN. STAT. §§ 589.400-426 (West 2009).		X		X	X

<sup>167</sup> Requirement to register elsewhere is limited to offenses committed elsewhere before enactment of state statute. “A person shall register . . . if the person is . . . an offender . . . who, before moving into this [s]tate, was required to register in another state or by a federal, military, or Native American tribal court for a crime that occurred before July 1, 1997 . . . .” MD. CODE ANN., CRIM. PROC. § 11-704(a)(6) (West 2009).

State	Comprehensive List	Statutory List	Partial or Limited List	Federal Statute References	“Required to Register Elsewhere”
Montana MONT. CODE ANN. §§ 46-23-502 to -507 (2009).		X			
Nebraska NEB. REV. STAT. §§ 29-4001 to -4014 (2009).	X				X
Nevada NEV. REV. STAT. ANN. §§ 179D.010–850 (West 2009).	X			X	X
New Hampshire N.H. REV. STAT. ANN. §§ 651-B:1–12 (2009).		X			X
New Jersey N.J. STAT. ANN. §§ 2C:7-1 to -21 (West 2009).	X				
New Mexico N.M. STAT. ANN. §§ 22-11A-1 to -10 (West 2009).	X				
New York N.Y. CORRECT. LAW § 168 (McKinney 2009).		X		X	X
North Carolina N.C. GEN. STAT. ANN. §§ 14-208.5–45 (West 2009).	X				X
North Dakota N.D. CENT. CODE § 12.1-32-15 (2009).		X			
Ohio OHIO REV. CODE ANN. §§ 2950.01–99 (West 2009).		X			
Oklahoma OKLA. STAT. ANN. tit. 57, §§ 581–90 (West 2009).		X			
Oregon OR. REV. STAT. ANN. §§ 181.592–606 (West 2009).	X				X
Pennsylvania 42 PA. CONS. STAT. ANN. §§ 9791–99.9 (West 2009).	X				X
Rhode Island R.I. GEN. LAWS §§ 11- 37.1-1 to -20 (2009).		X		X	X

State	Comprehensive List	Statutory List	Partial or Limited List	Federal Statute References	“Required to Register Elsewhere”
South Carolina S.C. CODE ANN. §§ 23-3-400 to -550 (2009).	X				X
South Dakota S.D. CODIFIED LAWS §§ 22-24B-1 to -30 (2009).	X				
Tennessee TENN. CODE ANN. §§ 40-39-201 to -306 (West 2009).	X				
Texas TEX. CODE CRIM. PROC. ANN. art. 62.001-408 (Vernon 2009).	X				
Utah UTAH CODE ANN. § 77-27-21.5 (West 2009).	X				
Vermont VT. STAT. ANN. tit. 13, §§ 5401–14 (2009).	X				
Virginia VA. CODE ANN. §§ 9.1-900 to -922 (West 2009).		X		X	X
Washington WASH. REV. CODE ANN. §§ 9A.44.130–145 (West 2009).		X			
West Virginia W. VA. CODE ANN. §§ 15-12-1 to -10 (West 2009).		X			X
Wisconsin WIS. STAT. ANN. §§ 301.45 to -46 (West 2009).		X			
Wyoming WYO. STAT. ANN. §§ 7-19-301 to -308 (2009).		X			

## Appendix C

### Department of Defense Instruction 1325.7 List of Offenses<sup>168</sup>

#### Offenses Listed in DoDI 1325.7

UCMJ Article	Offense
120	Rape <sup>169</sup>
120	Carnal Knowledge <sup>170</sup>
125	Forcible Sodomy
125	Sodomy of a Minor
133	Conduct Unbecoming (involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnapping of a minor)
134 <sup>171</sup>	Prostitution Involving a Minor
134	Assault with Intent to Commit Rape
134	Assault with Intent to Commit Sodomy
134	Indecent Act with a Minor <sup>172</sup>
134	Indecent Language to a Minor
134	Kidnapping of a Minor (by a person not parent)
134	Pornography Involving a Minor
134	Conduct Prejudicial to Good Order and Discipline (involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnapping of a minor)
134	Assimilative Crime Conviction (of a sexually violent offense or a criminal offense of a sexual nature against a minor or kidnapping of a minor)
80	Attempt (to commit any of the foregoing)
81	Conspiracy (to commit any of the foregoing)
82	Solicitation (to commit any of the foregoing)

<sup>168</sup> DoDI 1325.7, *supra* note 3, at enclosure 27.

<sup>169</sup> Because DoDI 1325.7 was last updated in June 2003, it does not specifically cover the revised Article 120 effective 1 Oct. 2007. See *supra* note 134 for the proposed additional covered offenses.

<sup>170</sup> *Id.*

<sup>171</sup> In the original text, this Article designation is missing, but the “DIBRS Code” is 134-B6, indicating that they meant this to be an Article 134 offense. See DoDI 1325.7, *supra* note 3, at enclosure 27. The article designation is probably missing because prostitution involving a minor was not a listed offense in the 2002 edition of the *Manual for Courts-Martial*, nor is it listed today as a specific offense. Compare MANUAL FOR COURTS-MARTIAL, UNITED STATES, pt. IV, ¶ 97 (2002) (pandering and prostitution), with MCM, *supra* note 136, pt. IV, ¶ 97 (pandering and prostitution) (showing that the only change from 2002 to the present was the addition of the crime of patronizing a prostitute). Forcible pandering was added to the new Article 120, but that offense does not require the victim to be a minor. See UCMJ art. 120(l) (2008).

<sup>172</sup> This offense has been deleted pursuant to Executive Order No. 13,447. Exec. Order No. 13,447, 72 Fed. Reg. 56,179 (Sept. 28, 2007).



Offenses Not Listed in DoDI 1325.7<sup>173</sup>

UCMJ Article	Offense
120	(All revised Article 120 offenses) <sup>174</sup>
134	Conduct Service Discrediting (involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnapping of a minor)
80	Attempt (to commit any of the foregoing)
81	Conspiracy (to commit any of the foregoing)
82	Solicitation (to commit any of the foregoing)

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<sup>173</sup> Research on file with author.

<sup>174</sup> UCMJ art. 120. In all likelihood, most of these offenses would be included in any state registration scheme. The offenses to pay particular attention to include wrongful sexual contact and indecent exposure. Many states do not include these offenses. See *supra* note 134 for the proposed additional offenses in the revised DoDI 1325.7.

## Appendix D

### Points of Contact

State	Point of Contact
Alabama	Alabama Department of Public Safety <a href="http://dps.alabama.gov/Information/Contact.aspx">http://dps.alabama.gov/Information/Contact.aspx</a> E-mail available by following "Contact DPS" hyperlink (334) 242-4371 (General Contact Number)
Alaska	Alaska Department of Public Safety <a href="http://www.dps.state.ak.us/sorweb/Sorweb.aspx">http://www.dps.state.ak.us/sorweb/Sorweb.aspx</a> E-mail unavailable (907) 269-0396
Arizona	State of Arizona Department of Public Safety <a href="http://az.gov/webapp/offender/main.do">http://az.gov/webapp/offender/main.do</a> E-mail available by following "Contacts" hyperlink; then following "Main Contacts" hyperlink; then following "Contact us via e-mail" hyperlink. (602) 255-0611
Arkansas	Arkansas Crime Information Center <a href="http://www.acic.org/Registration/index.htm">http://www.acic.org/Registration/index.htm</a> Paula Stitz, Sex Offender Registry Manager (501) 682-2222
California	Office of the Attorney General, Department of Justice <a href="http://www.meganslaw.ca.gov/">http://www.meganslaw.ca.gov/</a> <a href="mailto:meganslaw@doj.ca.gov">meganslaw@doj.ca.gov</a> (916) 227-4974
Colorado	Colorado Bureau of Investigation <a href="http://sor.state.co.us/">http://sor.state.co.us/</a> <a href="mailto:sor@cdps.state.co.us">sor@cdps.state.co.us</a> (303) 239-4222
Connecticut	Connecticut Department of Public Safety <a href="http://www.ct.gov/dps/cwp/view.asp?a=2157&amp;q=294474">http://www.ct.gov/dps/cwp/view.asp?a=2157&amp;q=294474</a> <a href="mailto:sex.offender.registry@po.state.ct.us">sex.offender.registry@po.state.ct.us</a> (860) 685-8060
Delaware	Delaware State Police, State Bureau of Identification <a href="http://sexoffender.dsp.delaware.gov/">http://sexoffender.dsp.delaware.gov/</a> <a href="mailto:soffender@state.de.us">soffender@state.de.us</a> (302) 739-5882
District of Columbia	Metropolitan Police Department <a href="http://mpdc.dc.gov/mpdc/site/default.asp">http://mpdc.dc.gov/mpdc/site/default.asp</a> (follow "Sex Offender Registry" hyperlink under "Services") <a href="mailto:sexoffender.registry@dc.gov">sexoffender.registry@dc.gov</a> (202) 727-4407
Florida	Florida Department of Law Enforcement <a href="http://offender.fdle.state.fl.us/offender/homepage.do">http://offender.fdle.state.fl.us/offender/homepage.do</a> <a href="mailto:sexpred@fdle.state.fl.us">sexpred@fdle.state.fl.us</a> (888) 357-7332 or (850) 410-8572
Georgia	Georgia Bureau of Investigation <a href="http://gbi.georgia.gov/">http://gbi.georgia.gov/</a> (follow "Services" hyperlink; then follow "Georgia Sex Offender Registry" hyperlink) Email unavailable (404) 270-8465
Hawaii	Department of the Attorney General <a href="http://sexoffenders.ehawaii.gov/sexoffender/welcome.html">http://sexoffenders.ehawaii.gov/sexoffender/welcome.html</a> <a href="mailto:hcjdc@hcjdc.hawaii.gov">hcjdc@hcjdc.hawaii.gov</a> (808) 587-3100

Idaho	Idaho State Police Criminal Identification <a href="http://www.isp.state.id.us/sor_id/">http://www.isp.state.id.us/sor_id/</a> idsor@isp.idaho.gov (208) 884-7305
Illinois	Illinois State Police <a href="http://www.isp.state.il.us/sor/">http://www.isp.state.il.us/sor/</a> E-mail unavailable (888) 414-7678 or (217) 785-0653
Indiana	Indiana Sheriffs; Indiana Department of Corrections <a href="http://www.insor.org/insasoweb/">http://www.insor.org/insasoweb/</a> svor@cji.in.gov Sheriffs: (800) 622-4779; Corrections: (317) 232-1232
Iowa	Iowa Department of Public Safety <a href="http://www.iowasexoffender.com/">http://www.iowasexoffender.com/</a> E-mail available by following "Contact" hyperlink Phone not available. Must contact local Sheriff.
Kansas	Kansas Bureau of Investigation <a href="http://www.accesskansas.org/kbi/ro.shtml">http://www.accesskansas.org/kbi/ro.shtml</a> E-mail available by following "Contact Us" hyperlink (785) 296-2841
Kentucky	Kentucky State Police <a href="http://kspsor.state.ky.us/">http://kspsor.state.ky.us/</a> E-mail unavailable (866) 564-5652
Louisiana	Louisiana State Police <a href="http://www.lsp.org/socpr/default.html">http://www.lsp.org/socpr/default.html</a> SOCPR@dps.state.la.us (800) 858-0551
Maine	Maine State Police Department of Public Safety <a href="http://sor.informe.org/sor/">http://sor.informe.org/sor/</a> maine_SOR.help@maine.gov (207) 624-7270
Maryland	Maryland Department of Public Safety & Correctional Services <a href="http://www.dpscs.state.md.us/onlineservs/socem/default.shtml">http://www.dpscs.state.md.us/onlineservs/socem/default.shtml</a> E-mail unavailable (410) 585-3600
Massachusetts	Executive Office of Public Safety and Security <a href="http://mass.gov/sorb/">http://mass.gov/sorb/</a> eopsinfo@state.ma.us (978) 740-6400
Michigan	Michigan State Police <a href="http://www.mipsor.state.mi.us/">http://www.mipsor.state.mi.us/</a> E-mail available by following "Contact MSP" hyperlink (517) 332-2521
Minnesota	Minnesota Department of Corrections <a href="http://www.doc.state.mn.us/level3/search.asp">http://www.doc.state.mn.us/level3/search.asp</a> level3@co.doc.state.mn.us (866) 396-9953
Mississippi	Mississippi Department of Public Safety <a href="http://www.sor.mdps.state.ms.us/sorpublic/hpsor_search.aspx">http://www.sor.mdps.state.ms.us/sorpublic/hpsor_search.aspx</a> msor@mdps.state.ms.us (601) 987-1540
Missouri	Missouri State Highway Patrol <a href="http://www.mshp.dps.missouri.gov/MSHPWeb/PatrolDivisions/CRID/SOR/SORPage.html">http://www.mshp.dps.missouri.gov/MSHPWeb/PatrolDivisions/CRID/SOR/SORPage.html</a> mosor@mshp.dps.mo.gov (888) 767-6747

Montana	Montana Department of Justice <a href="http://www.doj.mt.gov/svor/">http://www.doj.mt.gov/svor/</a> dojsvor@mt.gov (406) 444-2497 or (406) 444-9479
Nebraska	Nebraska State Patrol <a href="http://www.nsp.state.ne.us/SOR/">http://www.nsp.state.ne.us/SOR/</a> sor@nsp.state.ne.us (402) 471-8647
Nevada	Nevada Department of Public Safety <a href="http://www.nvsexoffenders.gov/">http://www.nvsexoffenders.gov/</a> sorhelp@dps.state.nv.us (775) 684-6262
New Hampshire	New Hampshire Division of State Police <a href="http://www.egov.nh.gov/nsor/">http://www.egov.nh.gov/nsor/</a> E-mail unavailable (603) 271-6344
New Jersey	New Jersey State Police <a href="http://www.nj.gov/njsp/info/reg_sexoffend.html">http://www.nj.gov/njsp/info/reg_sexoffend.html</a> E-mail available at: <a href="http://www.nj.gov/lps/formmail.htm">http://www.nj.gov/lps/formmail.htm</a> (609) 882-2000 (General Contact Number)
New Mexico	New Mexico Department of Public Safety <a href="http://www.nmsexoffender.dps.state.nm.us/">http://www.nmsexoffender.dps.state.nm.us/</a> dps.sorna@state.nm.us (505) 827-9297
New York	New York Division of Criminal Justice Services <a href="http://criminaljustice.state.ny.us/nsor/">http://criminaljustice.state.ny.us/nsor/</a> infodcjs@dcjs.state.ny.us (518) 457-3167
North Carolina	North Carolina State Bureau of Investigation <a href="http://ncfindoffender.com/">http://ncfindoffender.com/</a> E-mail available at: <a href="http://ncfindoffender.com/contact.aspx">http://ncfindoffender.com/contact.aspx</a> Phone not available. Must contact local Sheriff.
North Dakota	North Dakota Office of Attorney General <a href="http://www.sexoffender.nd.gov/">http://www.sexoffender.nd.gov/</a> ndag@nd.gov (701) 328-2210
Ohio	Ohio Attorney General <a href="http://www.esorn.ag.state.oh.us/Secured/p1.aspx">http://www.esorn.ag.state.oh.us/Secured/p1.aspx</a> E-mail available at: <a href="http://www.ag4ohio.gov/Public/details.aspx?s=215">http://www.ag4ohio.gov/Public/details.aspx?s=215</a> (877) 244-6446 (General Contact Number)
Oklahoma	Oklahoma Department of Corrections <a href="http://docapp8.doc.state.ok.us/pls/sors">http://docapp8.doc.state.ok.us/pls/sors</a> osor@doc.state.ok.us Phone not available. Must contact local Sheriff.
Oregon	Oregon State Police <a href="http://www.oregon.gov/OSP/SOR/faqs.shtml">http://www.oregon.gov/OSP/SOR/faqs.shtml</a> sexoffender.questions@state.or.us (503) 378-3725 ext. 44429
Pennsylvania	Pennsylvania State Police <a href="http://www.pameganslaw.state.pa.us/">http://www.pameganslaw.state.pa.us/</a> E-mail unavailable (866) 771-3170
Rhode Island	Rhode Island Sex Offender Community Notification Unit <a href="http://www.pardoleboard.ri.gov/sexoffender/agree.php">http://www.pardoleboard.ri.gov/sexoffender/agree.php</a> E-mail unavailable (401) 462-0905

South Carolina	South Carolina Law Enforcement Division <a href="http://services.sled.sc.gov/sor/">http://services.sled.sc.gov/sor/</a> E-mail unavailable (803) 896-1440
South Dakota	South Dakota Division of Criminal Investigation <a href="http://sor.sd.gov/">http://sor.sd.gov/</a> sdsor@state.sd.us (605) 773-3331 (Ask for SOR Compliance Coordinator)
Tennessee	Tennessee Bureau of Investigation <a href="http://www.ticic.state.tn.us/sorinternet/sosearch.aspx">http://www.ticic.state.tn.us/sorinternet/sosearch.aspx</a> E-mail unavailable (888) 837-4170
Texas	Texas Department of Public Safety <a href="https://records.txdps.state.tx.us/DPS_WEB/SorNew/index.aspx">https://records.txdps.state.tx.us/DPS_WEB/SorNew/index.aspx</a> AFIS_CJIS@txdps.state.tx.us (512) 424-2477
Utah	Utah Department of Corrections <a href="http://www.communitynotification.com/cap_main.php?office=54438">http://www.communitynotification.com/cap_main.php?office=54438</a> Registry@utah.gov (801) 495-7700
Vermont	Vermont Criminal Information Center <a href="http://www.dps.state.vt.us/cjs/s_registry.htm">http://www.dps.state.vt.us/cjs/s_registry.htm</a> E-mail unavailable (802) 241-5400
Virginia	Virginia State Police <a href="http://sex-offender.vsp.virginia.gov/sor/">http://sex-offender.vsp.virginia.gov/sor/</a> E-mail available by following "Comments" hyperlink (804) 674-2000 (General Contact Number)
Washington	Washington Association of Sheriffs and Police Chiefs <a href="http://ml.waspc.org/">http://ml.waspc.org/</a> E-mail unavailable (360) 534-2000
West Virginia	West Virginia State Police <a href="http://www.wvstatepolice.com/sexoff/">http://www.wvstatepolice.com/sexoff/</a> registry@wvsp.state.wv.us (304) 746-2133
Wisconsin	Wisconsin Department of Corrections <a href="http://offender.doc.state.wi.us/public/">http://offender.doc.state.wi.us/public/</a> bopadmin@doc.state.wi.us (800) 398-2403 or (608) 240-5830
Wyoming	Wyoming Division of Criminal Investigation <a href="http://wysors.dci.wyo.gov/">http://wysors.dci.wyo.gov/</a> WySORS@dci.wyo.gov Phone not available. Must contact local Sheriff.

**Appendix E**

**Sample Memorandum for Record<sup>175</sup>**

UNITED STATES	)	
	)	
v.	)	
	)	MEMORANDUM FOR RECORD
DOE, JOHN A.	)	
PVT, U.S. Army	)	
2d Brigade Combat Team	)	
10th Mountain Division (Light Infantry)	)	
Fort Drum, New York 13602	)	(DATE)

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I, PVT John A. Doe, have discussed with my attorney, CPT Michael Smith, the requirement that I must register as a sex offender IAW DODI 1325.7 and AR 27-10 if my guilty plea is accepted or if I am found guilty in court. Additionally, I will most likely be required to register as a sex offender with the state and/or local government where I reside regardless of whether I remain in the Army or if I am separated. Registration as a sex offender is accessible by the public and I understand that I may encounter substantial prejudice from being classified as a sex offender. [OPTIONAL: After discussing these requirements and the potential adverse consequences of registering as a sex offender, I still believe that pleading guilty is in my best interest, and I do so voluntarily and without any coercion.]

(DATE)	JOHN A. DOE
	PVT, USA
	Accused

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<sup>175</sup> This sample is just a guideline. You should modify the memorandum as necessary to suit your client's case and the offenses involved.