

**DEPARTMENT OF JUSTICE****Bureau of Prisons****28 CFR Part 571**

[BOP-1090-I]

RIN 1120-AA85

**Designation of Offenses Subject to Sex Offender Release Notification**

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule with request for comments.

**SUMMARY:** This interim rule designates various offenses as sexual offenses for purposes of 18 U.S.C. 4042(c). The designations ensure that notifications can be made for military offenders, for District of Columbia Code offenders, and for these and other federal inmates with a sex offense in their criminal history. This order is necessary for the protection of the public.

**DATES:** December 16, 1998; comments must be received by February 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534, telephone (202) 307-3062.

**SUPPLEMENTARY INFORMATION:** Section 4042(c) of Title 18, United States Code, effective as of November 26, 1998, provides for notification of sex offender release and certain related functions to facilitate effective sex offender registration and tracking. Notifications must be made for persons convicted of the federal offenses noted in subsection (c)(4)(A) through (D). Subsection (c)(4)(E) provides that the Attorney General may also designate other offenses as sexual offenses for purposes of subsection (c). The Attorney General has delegated this authority to the Director of the Bureau of Prisons. This interim rule designates additional offenses which are to be considered sexual offenses for purposes of 18 U.S.C. 4042(c). These additional designations being listed in new 28 CFR 571.72 include state sexual offenses, District of Columbia Code sexual offenses, and certain Uniform Code of Military Justice offenses.

Paragraph (a) of § 571.72 designates offenses under the law of any jurisdiction in certain descriptive categories. For example, an inmate may be serving a federal sentence for a non-sexual offense but may also be serving a concurrent sentence for a state offense which is sexual in nature or may have a prior conviction for a state offense which is sexual in nature. Notifying state and local law enforcement and

registration authorities about such an inmate's release from Bureau custody is consistent with the intent of the statute and meets the goal of enhanced public safety. Paragraph (b) designates certain offenses under the Uniform Code of Military Justice (UCMJ). The Bureau has custody of some military offenders. While separate statutory authority (section 115(a)(8)(C)(iv) of Title I of Pub. L. 105-119) exists for release notification by the Bureau for military offenders, designating UCMJ offenses in this regulation makes it clear that persons convicted of military offenses in the pertinent categories are persons described in 18 U.S.C. 4042(c)(4) for all purposes, including post-release change of address notice by federal probation officers for persons under their supervision pursuant to section 4042(c)(2). Paragraph (c) designates pertinent District of Columbia Code offenses. Including District of Columbia Code offenses is a practical consequence of the Bureau's role in assuming custody of District of Columbia Code offenders under the National Capital Revitalization and Self-Government Improvement Act of 1997.

The Bureau finds that good cause exists under 5 U.S.C. 553(b) and (d)(3) for adopting this rule as an interim rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. The Bureau is publishing these additional designations as an interim rule in order to provide for the protection of the public by ensuring that state and local authorities receive timely notification of the release of sex offenders. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

**Executive Order 12866**

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

**Executive Order 12612**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulatory Flexibility Act**

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons:

This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Plain Language Instructions**

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514-6655.

**List of Subjects in 28 CFR Part 571**

Prisoners.  
**Dennis R. Bidwell,**  
*Acting Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 571 in 28 CFR, chapter V, subchapter D, is amended as set forth below.

**SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE**

**PART 571—RELEASE FROM CUSTODY**

1. The authority citation for 28 CFR part 571 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3565, 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

2. A new subpart H, consisting of §§ 571.71 and 571.72, is added to read as follows:

**Subpart H—Designation of Offenses for Purposes of 18 U.S.C. 4042(c)**

Sec.

571.71 Purpose and scope.

571.72 Additional designated offenses.

**Subpart H—Designation of Offenses for Purposes of 18 U.S.C. 4042(c)**

**§ 571.71 Purpose and scope.**

The Director of the Bureau of Prisons is required to provide release and registration information (offender's name, criminal history, projected address, release conditions or restrictions) to state/local law enforcement and registration officials at least five calendar days prior to release of offenders who have been convicted of certain sexual offenses listed in 18 U.S.C. 4042(c)(4)(A) through (D). Under 18 U.S.C. 4042(c)(4)(E), the Attorney General is authorized to designate additional offenses as sexual offenses for the purpose of sex offender release notification and other related purposes. This authority has been delegated to the Director.

**§ 571.72 Additional designated offenses.**

The following offenses are designated as additional sexual offenses for purposes of 18 U.S.C. 4042(c):

(a) Any offense under the law of any jurisdiction that involved:

(1) Engaging in sexual contact with another person without obtaining permission to do so (forcible rape, sexual assault, or sexual battery);

(2) Possession, distribution, mailing, production, or receipt of child pornography or related paraphernalia;

(3) Any sexual contact with a minor or other person physically or mentally incapable of granting consent (indecent liberties with a minor, statutory rape, sexual abuse of the mentally ill, rape by administering a drug or substance);

(4) Any sexual act or contact not identified in paragraphs (a)(1) through (3) of this section that is aggressive or abusive in nature (rape by instrument, encouraging use of a minor for prostitution purposes, incest);

(5) An attempt to commit any of the actions described in paragraphs (a)(1) through (4) of this section.

(b) The following Defense Incident Based Reporting System (DIBRS) Code offenses under the Uniform Code of Military Justice:

(1) 120A (Rape);

(2) 120B1/2 (Carnal knowledge);

(3) 125A (Forcible sodomy);

(4) 125B1/2 (Sodomy of a minor);

(5) 133D (Conduct unbecoming an Officer [involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnaping of a minor]);

(6) 134–B6 (Prostitution involving a minor);

(7) 134–C1 (Indecent assault);

(8) 134–C4 (Assault with intent to commit rape);

(9) 134–C6 (Assault with intent to commit sodomy);

(10) 134–R1 (Indecent act with a minor);

(11) 134–R3 (Indecent language to a minor);

(12) 134–S1 (Kidnaping of a minor (by a person not a parent));

(13) 134–Z (Pornography involving a minor);

(14) 134–Z (Conduct prejudicial to good order and discipline (involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnaping of a minor));

(15) 134–Y2 (Assimilative crime conviction (of a sexually violent offense or a criminal offense of a sexual nature against a minor or kidnaping of a minor)).

(16) 080–A (Attempt (to commit any offense listed in paragraphs (b)(1)–(15) of this section));

(17) 081–A (Conspiracy (to commit any offense listed in paragraphs (b)(1)–(15) of this section));

(18) 082–A (Solicitation (to commit any offense listed in paragraphs (b)(1)–(15) of this section)).

(c) The following District of Columbia Code offenses:

(1) § 22–501 (Assault) if it includes assault with the intent to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse;

(2) § 22–2012 (Sexual performances using minors—prohibited acts);

(3) § 22–2013 (Sexual performances using minors—penalties);

(4) § 22–2101 (Kidnaping) where the victim is a minor;

(5) § 22–2401 (Murder in the first degree) if it includes murder while committing or attempting to commit first degree sexual abuse;

(6) § 22–2704 (Abducting or enticing child from his or her home for purposes of prostitution; harboring such child);

(7) § 22–4102 (First degree sexual abuse);

(8) § 22–4103 (Second degree sexual abuse);

(9) § 22–4104 (Third degree sexual abuse);

(10) § 22–4105 (Fourth degree sexual abuse);

(11) § 22–4106 (Misdemeanor sexual abuse);

(12) § 22–4108 (First degree child sexual abuse);

(13) § 22–4109 (Second degree child sexual abuse);

(14) § 22–4110 (Enticing a child);

(15) § 22–4113 (First degree sexual abuse of a ward);

(16) § 22–4114 (Second degree sexual abuse of a ward);

(17) § 22–4115 (First degree sexual abuse of a patient or client);

(18) § 22–4116 (Second degree sexual abuse of a patient or client);

(19) § 22–4118 (Attempts to commit sexual offenses);

(20) § 22–4120 (Aggravating circumstances).

(21) § 22–103 (Attempts to commit crime) if it includes an attempt to commit any offense listed in paragraphs (c)(1)–(20) of this section.

[FR Doc. 98–33260 Filed 12–15–98; 8:45 am]

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