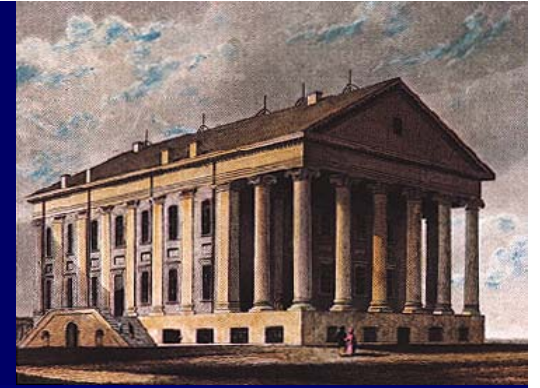


Virginia State Crime Commission

Sex Offender Registry Requirements of
the Adam Walsh Act: HB 1898, 1928,
1962, 1963, 2274

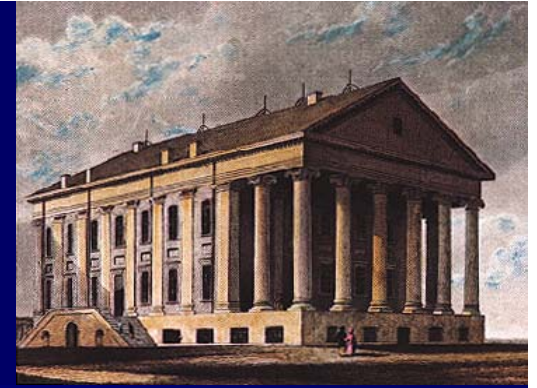
September 16, 2009

Overview



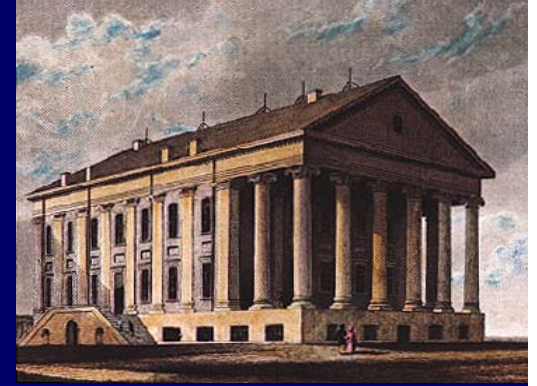
- Study Authority
- Adam Walsh Act and SORNA
- Analysis of referred House Bills 1898, 1928, 1962, 1963, and 2274
- Other areas where Virginia is not in compliance
- Discussion

Study Authority



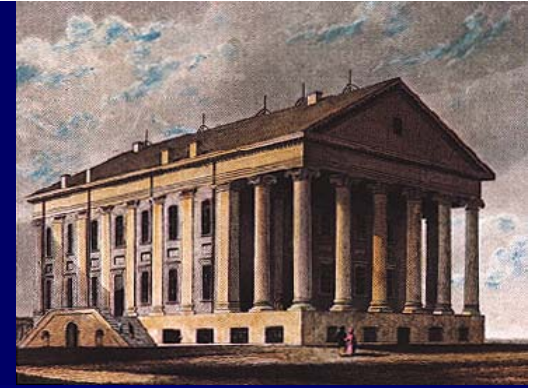
- During the 2009 Regular Session, a number of House bills were introduced that would modify Virginia's sex offender registry laws:
 - HB 1898 (Watts)
 - HB 1928 (Lewis)
 - HB 1962 (Mathieson)
 - HB 1963 (Mathieson)
 - HB 2274 (Poindexter)
- The Senate Courts of Justice Committee passed these bills by, and referred them by letter to the Crime Commission for study.
- Staff was requested to review these bills in light of the requirements of the federal Adam Walsh Act.

Adam Walsh Act



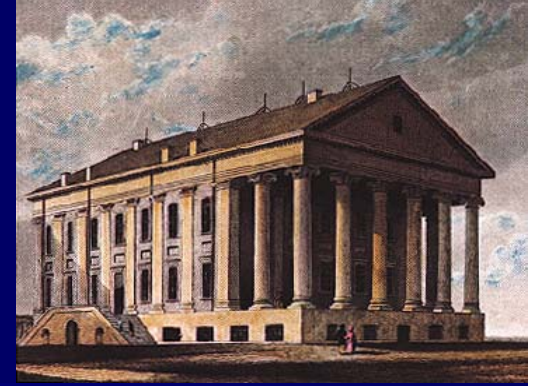
- Title I of the Adam Walsh Child Protection and Safety Act, 42 U.S.C. § 16901 *et seq.*, creates a uniform set of sex offender registry rules to be implemented by all 50 states.
 - More commonly called SORNA (the Sex Offender Registration and Notification Act).
- SORNA specifically allows the Attorney General of the United States to expand or exempt the requirements that are listed in the federal statutes.

Adam Walsh Act



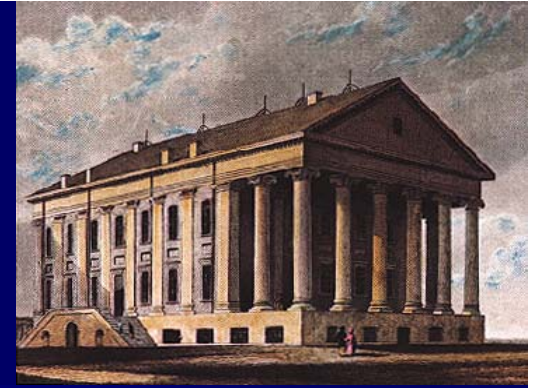
- States do not have to follow the requirements of SORNA, but if they choose not to, they are penalized by having a 10% reduction in the amount of federal funding they would otherwise receive under the Omnibus Crime Control and Safe Streets Act of 1968 (Byrne funds).
- The U.S. Attorney General is given the authority by the Adam Walsh Act to decide which states are in “substantial compliance” with SORNA.

Adam Walsh Act



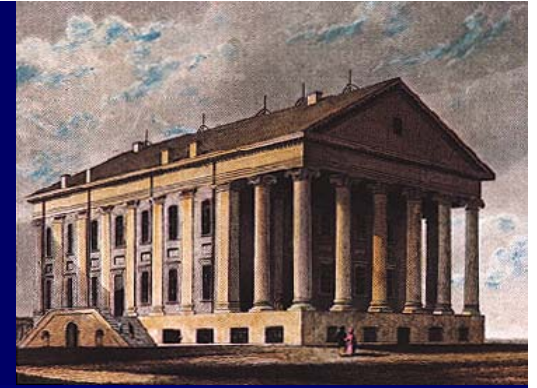
- Because the requirements of SORNA are so detailed, no state has yet been deemed by the U.S. Attorney General to be in compliance.
- The U.S. Attorney General has currently given all 50 states a one year waiver, and has the ability to extend that waiver for additional years.

House Bill 1898



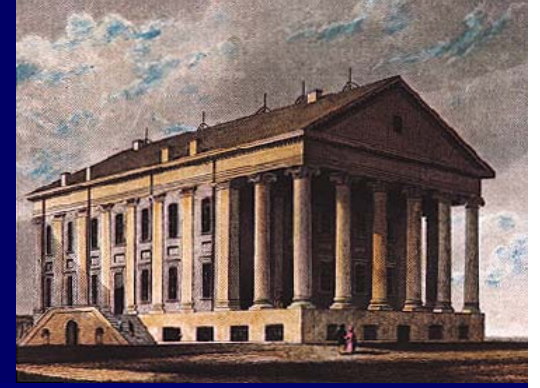
- Requires that any telephone number a registered sex offender uses, or intends to use, be added to the registry.
 - This is not required by SORNA, but is required pursuant to the authority of the U.S. Attorney General to mandate additional information be added to registries. The A.G. recommends that the numbers not be made available to the general public.
- Requires that immigration status information be added to the registry.
 - This is not required by SORNA, but is required by the U.S. Attorney General. Note that travel and immigration document numbers may NOT be provided to the general public.
- Requires that information on any professional or occupational license be added to the registry.
 - This is not required by SORNA, but is required by the U.S. Attorney General.

House Bill 1898 (cont.)



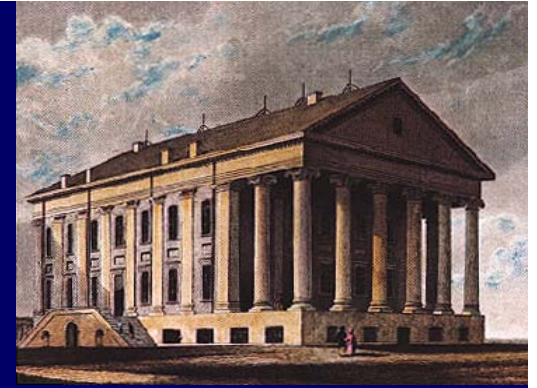
- Requires that the registry information on “place of employment” include all places and physical job site locations, including volunteer work.
 - This is not precisely required by SORNA – “name and address of any place where the sex offender is an employee....”
 - Final Guidelines issued by the U. S. Attorney General (June 2008) state “if the sex offender is employed but does not have a definite employment address, other information about where the sex offender works.”
 - Final Guidelines do allow for “with whatever definiteness is possible under the circumstances, such as information about normal travel routes or the general area(s) in which the sex offender works,” and specifically state that daily changes do not require daily updates to the registry.
 - Employing similar language in the bill may be preferable to the phrase “physical job site locations.”
 - Including volunteer work on the registry is required by the U.S. Attorney General.

House Bill 1898 (cont.)



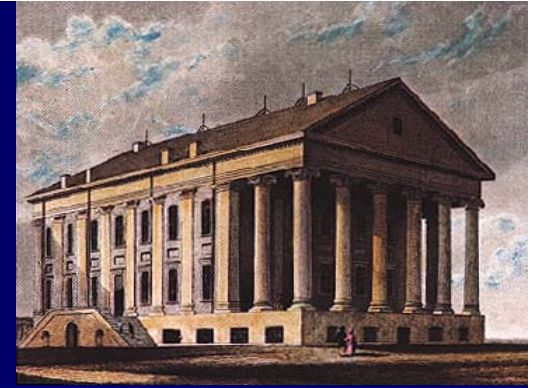
- Requires that the vehicle registration information for all vehicles regularly used, not just owned, by the offender be added to the registry.
 - This is required by SORNA.
 - In addition, this information must be made available to the public. Virginia does not currently provide this information.

House Bill 1898 (cont.)



- Specifies that if a registered sex offender stays in one location, apart from his residence, for seven days, that “temporary lodging” address must be added to the registry.
 - This is not required by SORNA, but is required by the U.S. Attorney General.
- Specifies that a change in “temporary lodging” must be reported in person within 3 days.
 - This is not required by SORNA; reporting is required by the U.S. Attorney General, but does not have to be done in person.

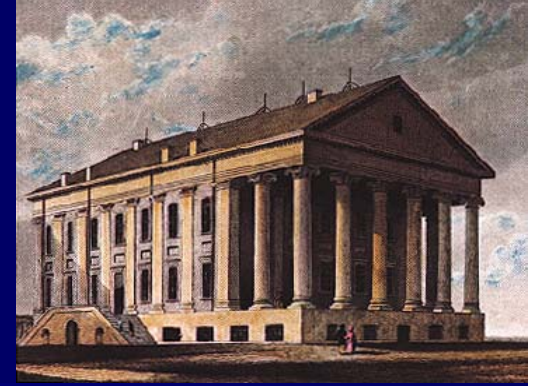
House Bill 1898 (cont.)



- Specifies that if an out-of-state registered sex offender enters the Commonwealth for an extended visit of just seven days, not thirty, he must register in person.
 - This is not required by SORNA, and is probably not required by the U.S. Attorney General, unless an extremely expansive definition of “temporary lodging” is used.

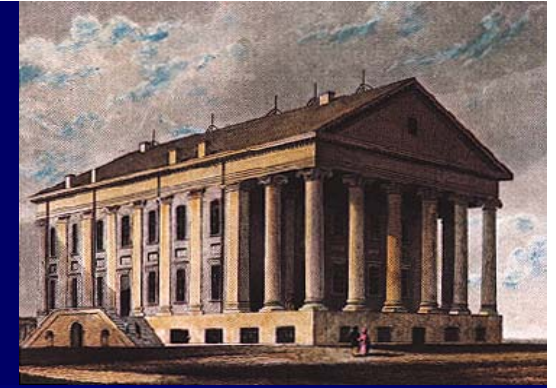
- Specifies that if an out-of-state registered sex offender enters Virginia for employment for a period exceeding seven, not fourteen, days, he must register in person.
 - This is not required by SORNA, nor the U.S. Attorney General.

House Bill 1928



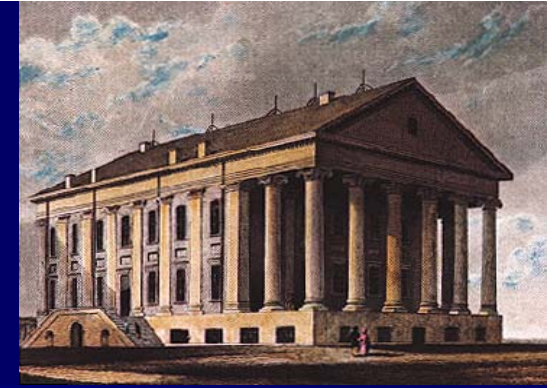
- Clarifies an ambiguity as to how soon after a change of name a registered person must reregister in person with law enforcement.
 - The current law indicates that reregistration must be done within 3 days; the bill makes this explicit.
 - This is in accordance with the requirements of SORNA, which allows for 3 business days.
- Creates a new requirement that a “substantial change in appearance” would also necessitate a reregistration in person within 3 days.
 - This is not required by SORNA, nor by the U.S. Attorney General.

House Bill 1962



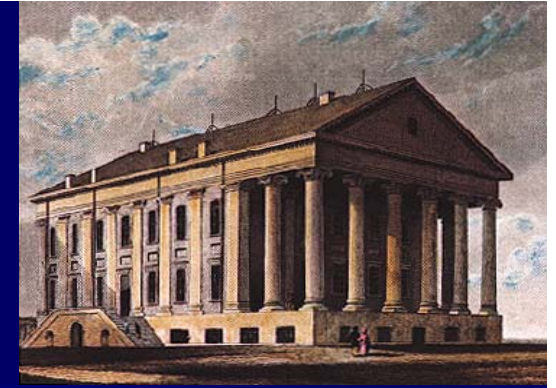
- Creates a statute mandating that any court Order which contravenes the registration requirements of Virginia's Sex Offender and Crimes Against Minors Registry Act is void ab initio (i.e., completely without any legal effect).
- Requires the State Police to notify the chairmen of House Courts, Senate Courts, House Militia and Police, and the Supreme Court of the name of any judge who issues such an Order.
 - This bill is outside of the direct scope of SORNA, but SORNA does require all defendants convicted of a qualifying offense to register, without exception.

House Bill 1963



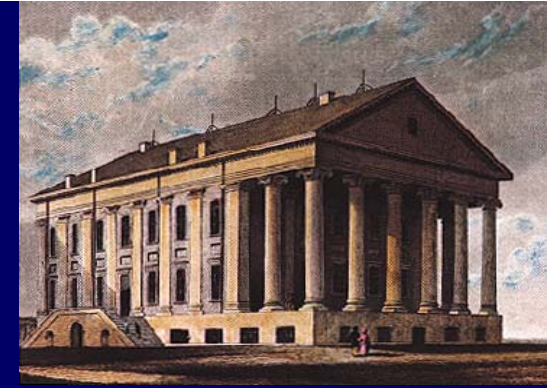
- States that if an offense requires registration if the victim is a minor, is physically helpless, or is mentally incapacitated, neither the charging document nor the final Order of conviction need to state the relevant condition.
- The relevant condition may be established by outside information other than the final Order.

House Bill 1963 (cont.)



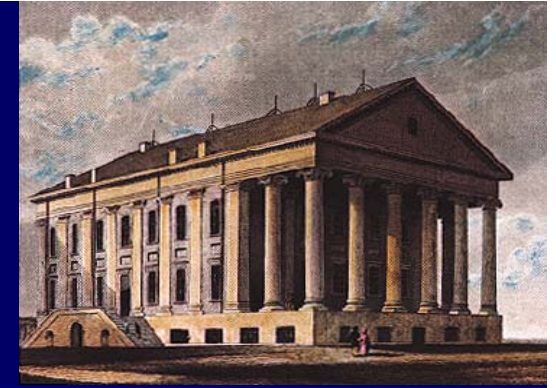
- Existing law in Virginia does not require that the final Order mention the relevant condition.
- The requirement to register is triggered upon conviction of an offense “where the victim is a minor or is physically helpless or mentally incapacitated.”
 - This is also required by SORNA.
- The Code of Virginia does not specify if the State Police may prove a relevant condition if the entry of an offender’s name on the registry is challenged.
 - The provision of the bill allowing outside information does not conflict with SORNA, and may be required in some cases. SORNA does not address any requirements for civil hearings regarding a person’s initial status.

House Bill 2274



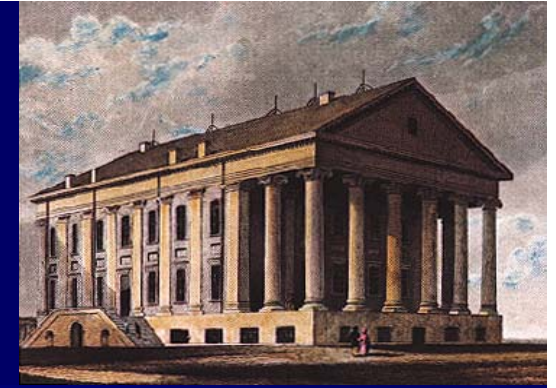
- Mandates the Internet sex offender registry information system include a “wanted” notice for an offender if he is wanted for any criminal offense, not just for failing to register or reregister.
 - Under current Virginia law, State Police could include this information if they deemed it necessary for public safety.
 - This bill is required by SORNA; however, the current guidelines (June 2008) issued by the U.S. Attorney General exempt this additional “wanted” information from public disclosure. States may make this information publically available, but are not required to do so.

Other areas of non-compliance



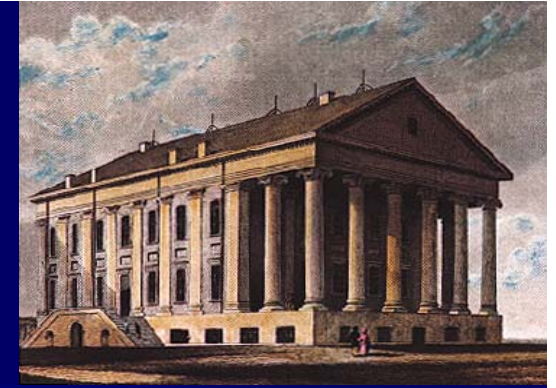
- Virginia currently prohibits retroactive application of certain offenses.
 - If committed before July 1, 2006, a felony conviction under § 18.2-67.5:1, a conviction under § 18.2-91, or a conviction for possession of child pornography do not require registration.
- This is in violation of SORNA, federal regulation, and the U.S. Attorney General.

Other areas of non-compliance



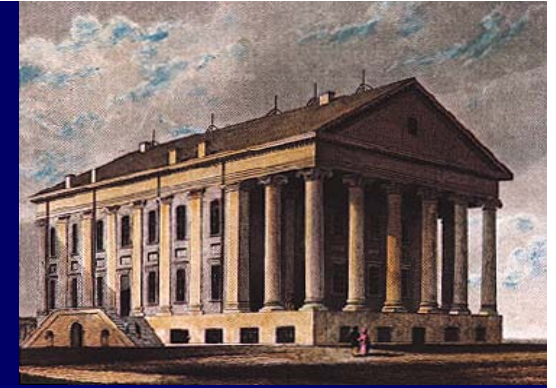
- If a registered sex offender, not convicted of a sexually violent offense, fails to register or reregister, this offense is a Class 1 misdemeanor under Va. Code § 18.2-472.1.
 - A second violation, or a violation by someone convicted of a sexually violent offense, is a felony.
- SORNA requires that a failure to register must be an offense that carries a maximum penalty of more than one year incarceration.
 - SORNA does not specify any minimum penalty that is needed.

Other areas of non-compliance



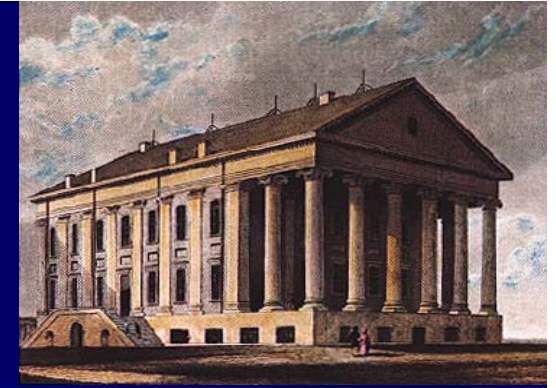
- SORNA requires that all kidnapping offenses against minors, unless committed by a parent or guardian, be registerable offenses, even if the kidnapping was not a sex crime.
- SORNA requires that sexual battery of any minor under the age of 13 be treated as a sexually violent offense.
 - Under Virginia law, it is only if the minor is under the age of 6.
- Under SORNA, a person convicted of sexual battery of anyone 13 years old or older must be on the registry for at least 25 years, if the battery was accomplished through force or threat of death, serious bodily injury, or kidnapping.
 - Under Virginia law, sexual battery of an adult will only result in registration if it is the offender's third offense.
 - Sexual battery of a minor over the age of 6 will place an offender on the registry, but the registered offender could petition a court to be removed from the registry after only 15 years, instead of 25. (A second offense qualifies as a sexually violent offense, though, in which case the requirements of SORNA are met).

Other areas of non-compliance



- SORNA requires that in the case of a person convicted of a sexually violent offense, there be an in-person verification of the registration information by law enforcement every 3 months.
 - Currently, Virginia law only requires State Police to verify the information in person every 6 months.
- SORNA requires juveniles over the age of 14 to be registered if they are adjudicated delinquent of aggravated sexual battery, rape, forcible sodomy, or forcible object penetration.
 - Currently, Virginia law only provides for the possibility that such a juvenile be registered; the Commonwealth must first file a petition, and the judge must agree that the specific facts of the crime warrant registration.

Other areas of non-compliance



- SORNA, when read in conjunction with the Final Guidelines issued by the U.S. Attorney General, probably requires a person convicted of carnal knowledge remain on the registry for at least 25 years, provided there was an age difference of at least 4 years between the offender and the victim. (If the age difference is less than 4 years, registration is not required).
 - Under Virginia law, an offender can petition to be removed from the registry after only 15 years.
- SORNA also requires that a conviction for indecent liberties result in registration for at least 25 years.
 - Under Virginia law, an offender can petition to be removed from the registry after only 15 years.

Discussion