No._____

IN THE SUPREME COURT OF THE UNITED STATES

MARK ALLEN BANES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPENDIX

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INDEX TO APPENDICES

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 21-1188

United States of America

Appellee

v.

Mark Allen Banes

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:20-cr-00019-RGE-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 21, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
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November 19, 2021

Mr. Frederic Montgomery Brown
F.M. BROWN LAW FIRM
Suite 108
1001 Office Park Road
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RE: 21-1187 United States v. Mark Banes
21-1188 United States v. Mark Banes

Dear Mr. Brown:

The court has issued an opinion in these cases. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

BNW

Enclosure(s)

cc: Mr. Mark Allen Banes
Mr. Clerk, U.S. District Court, Southern Iowa
Mr. Andrew H. Kahl
Mr. Richard D. Westphal

District Court/Agency Case Number(s): 4:10-cr-00096-RGE-1
4:20-cr-00019-RGE-1

United States Court of Appeals

For the Eighth Circuit

No. 21-1187

United States of America

Plaintiff - Appellee

v.

Mark Allen Banes

Defendant - Appellant

No. 21-1188

United States of America

Plaintiff - Appellee

v.

Mark Allen Banes

Defendant - Appellant

Appeals from United States District Court
for the Southern District of Iowa - Central

Submitted: September 24, 2021
Filed: November 19, 2021
[Unpublished]

Before SHEPHERD, WOLLMAN, and KOBES, Circuit Judges.

PER CURIAM.

Mark Allen Banes was on supervised release when he was charged in the Southern District of Iowa with failure to register as a sex offender in violation of 18 U.S.C. § 2250 and escape from federal custody in violation of 18 U.S.C. § 751(a). After the district court denied his motion to dismiss the first charge for improper venue, Banes pleaded guilty to both charges and was sentenced to concurrent 60-month terms of imprisonment.[1] He was also sentenced to a consecutive 24-month term of imprisonment for violating the conditions of his supervised release.

[1] The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa, denied the motion to dismiss. The case was thereafter reassigned to the Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa, who imposed Banes's sentences.

Banes appeals the denial of his venue-based motion to dismiss the charge of failure to register as a sex offender. He also appeals all three sentences as substantively unreasonable. We affirm.

I. Venue

In 2011, Banes pleaded guilty to failing to register as a sex offender and was sentenced to 60 months' probation. His terms of probation and supervised release were revoked four times due to violations. Banes's most recent term of supervised release began in July 2019; as a condition thereof, he resided at the Fort Des Moines Correctional Facility in Iowa.

Banes left the facility without permission in late October 2019 and traveled by bus to Oklahoma, where police arrested him four weeks later. Banes did not register as a sex offender in Oklahoma. After being charged with the above set forth counts, Banes moved to dismiss the failure to register count, arguing that venue was improper in Iowa because the offense conduct took place solely in Oklahoma. The district court concluded that venue was proper in Iowa because the offense required interstate travel and thus had begun in Iowa. We review *de novo* the denial of a motion to dismiss for improper venue. United States v. Howell, 552 F.3d 709, 712 (8th Cir. 2009).

The Sixth Amendment to the U.S. Constitution provides criminal defendants with the right to be tried "by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI. If an offense is "begun in one district and completed in another," venue is proper "in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a). A violation under § 2250(a) for failure to register as a state sex offender has three elements: (1) the defendant is subject to the registration requirements under the Sex Offender Registration and Notification Act (SORNA); (2) the defendant "travels in interstate

or foreign commerce"; and (3) the defendant "knowingly fails to register." 18 U.S.C. § 2250(a); see also Carr v. United States, 560 U.S. 438, 446 (2010) (examining "the statute's three elements"). At issue here is whether a § 2250(a) violation begins in the state from which a sex offender departs when traveling in interstate commerce, which would make venue proper in that state.

We concluded in United States v. Howell that, because a state "sex offender violates SORNA only when he or she moves between states," the violation is begun in the state of origin, which is thus a proper venue under 18 U.S.C. § 3237(a). Howell, 552 F.3d at 718. Banes argues that the Supreme Court's subsequent holding in Nichols v. United States contradicts Howell. Venue was not at issue in Nichols, however, with the Court ruling only that SORNA does not require a sex offender to update his now-departed state's registry. Nichols v. United States, 136 S. Ct. 1113, 1118 (2016).

Banes argues that venue is not proper in the Southern District of Iowa because under Nichols he did not commit a violation by failing to update his registration in Iowa, and thus the violation occurred solely in Oklahoma.[2] Although this is our first case to address venue post-Nichols, we had reached the same holding as Nichols three years earlier. In United States v. Lunsford, we saw no contradiction between our holding in Howell and concluding that the failure to update the registry of the departed state is not a violation of SORNA. 725 F.3d 859, 863–64 (8th Cir. 2013).

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[2] Compare United States v. Haslage, 853 F.3d 331, 334 (7th Cir. 2017) (holding that venue is improper in the state of origin because "Nichols tells us that no criminal conduct even *begins* until she fails to register in [the destination state]"), with United States v. Lewallyn, 737 F. App'x 471, 473 (11th Cir. 2018) (per curiam) ("Nichols did not address venue, . . . and venue was proper [where the defendant] began his travel . . . ."), and United States v. Holcombe, 883 F.3d 12, 15–16 (2d Cir. 2018) (same), cert. denied, 140 S. Ct. 820 (2020).

We instead described venue as an independent issue. Id. at 864 ("[A] determination whether SORNA required [the defendant] to update the registry in Iowa was not necessary . . . to the court's decision on venue."). Nichols therefore does not represent an intervening change in law, and thus we are bound by our precedent in Howell. See United States v. Anderson, 771 F.3d 1064, 1066–67 (8th Cir. 2014). We conclude that venue in the Southern District of Iowa was proper because Banes's violation began when he began traveling in Iowa.

II. Sentences for New Offenses

With respect to the failure to register and escape offenses, the district court concluded that the U.S. Sentencing Guidelines (Guidelines) advisory range was 37 to 46 months' imprisonment. The district court rejected Banes's request for a downward variance to 24 months' imprisonment and instead varied upward. We review substantive reasonableness under an abuse-of-discretion standard. United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc).

Banes argues that his concurrent 60-month sentences are substantively unreasonable because the district court gave too little weight to his background, including his chaotic childhood, mental health issues, and lack of prior sex offender treatment. His childhood did receive significant weight, however, as the court cited it as a reason for not imposing the statutory maximum of 15 years' imprisonment. The court also considered that Banes had failed to undergo a required mental health evaluation or to take advantage of treatment opportunities provided by the probation office. Accordingly, the record reflects that the district court considered these and other mitigating factors in sentencing Banes. See United States v. King, 898 F.3d 797, 810 (8th Cir. 2018) ("The district court's decision not to weigh mitigating factors as heavily as [the defendant] would have preferred does not justify reversal." (internal quotation marks and citation omitted)).

We likewise reject Banes's contention that the court gave too much weight to his "offense conduct and inappropriate behavior while on supervised release." The court was required to consider "the history and characteristics of the defendant" and the need "to protect the public from further crimes of the defendant." 18 U.S.C. § 3553(a)(1), (2)(C). Banes has repeatedly violated the terms of supervised release, and his recent conduct in soliciting nude pictures of underage girls and requesting sex with them demonstrates a continued willingness to act on his sexual interest in children. The district court did not abuse its discretion by giving these factors significant weight. See United States v. Roberts, 747 F.3d 990, 992 (8th Cir. 2014) ("[A] sentencing court has wide latitude to weigh the section 3553(a) factors in each case and assign some factors greater weight than others." (internal quotation marks and citation omitted)).

III. Revocation Sentence

Banes stipulated to six violations of the conditions of his supervised release, and the district court found that he had committed two additional violations. The advisory Guidelines sentencing range was 24 to 30 months' imprisonment for the violations of supervised release. See U.S.S.G. § 7B1.4(a) (based on a Grade A violation and a criminal history category of IV).[3] As mentioned above, the district

[3] The district court stated that Banes's advisory sentencing range would be 18 to 24 months' imprisonment if he had only Grade B and C violations; this was error, as that would require Banes to have had a criminal history category of V at the time of his underlying offense. His criminal history category at that time was IV. Banes concedes, however, that he had a Grade A violation, so the correct sentencing range was 24 to 30 months' imprisonment. The actual sentence imposed—24 months' imprisonment—is within Banes's correct Guidelines range and adequately justified by the court, so this plain error in calculating the Guidelines range did not substantially affect the defendant's rights. See Fed. R. Crim. P. 52(b).

court sentenced Banes to 24 months' imprisonment, to be served consecutively to his 60-month sentences. We review the substantive reasonableness of a revocation sentence under the same abuse-of-discretion standard as an initial sentence, and a revocation sentence within the applicable Guidelines range is presumed to be reasonable. United States v. Petreikis, 551 F.3d 822, 824 (8th Cir. 2009).

Banes argues that, in light of his above-Guidelines sentence for the new offenses, his 24-month sentence for the revocation of his supervised release is unreasonable. He offers no legal authority in support of his position that consideration of the same factors in both sentences was improper. We have previously stated that a defendant's sentences for new offenses "can have no bearing on the reasonableness of his revocation sentence, because they are separate and distinct from it." United States v. Olson, 839 F. App'x 30, 32 (8th Cir. 2021) (per curiam) (rejecting defendant's argument that his revocation sentence was unreasonable because the sum of that sentence and sentences for new offenses exceeded the maximum revocation sentence); see also United States v. Watters, 947 F.3d 493 (8th Cir. 2020) (rejecting defendant's argument that his sentence for new offense was unreasonable because it did not vary downward in light of his revocation sentence based on the same facts). The district court did not abuse its discretion in considering the factors relevant to sentencing for revocation of Banes's supervised release.

The judgment is affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA, Plaintiff, v. MARK ALLEN BANES, Defendant.	*	4:20-CR-00019 ORDER

Before the Court is Defendant Mark Allen Banes's Motion to Dismiss Count I, filed on March 11, 2020. ECF No. 20. The Government filed its resistance on March 26. ECF No. 24. The matter is fully submitted.

I. BACKGROUND

Defendant was convicted of a state-law sex offense in Nebraska.[1] ECF No. 21 at 1. In 2019, as a condition of federal supervised release, he lived at the Fort Des Moines Residential Re-entry Center (RRC) in the Southern District of Iowa. *Id.* Defendant registered as a sex offender in Iowa as required by law. *Id.*

The Government alleges Defendant left the RRC without permission on October 28, 2019, and did not return. *Id.* The Government further alleges Defendant traveled to Oklahoma City, Oklahoma, and remained there until November 22, 2019, when federal agents arrested him. *Id.* at 2–3. Defendant did not register as a sex offender in Oklahoma. *Id.* at 3.

The Government charged Defendant with failing to register as a sex offender, in violation of 18 U.S.C. § 2250(a) (Count I), and escape from federal custody, in violation of 18 U.S.C.

[1] The Court accepts facts alleged in the Government's filings as true *only* to assess Defendant's claim that venue is improper as to Count I and no other purpose.

§ 751(a) (Count II). ECF No. 1. Defendant moved to dismiss Count I, arguing federal law, the U.S. Constitution, and Supreme Court precedent dictate that venue is proper only in the Western District of Oklahoma, where he was living at the time of the alleged offense, not the Southern District of Iowa, where he used to live. ECF No. 21.

II. ANALYSIS

The U.S. Constitution guarantees a criminal defendant "an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation." U.S. Const. amend. VI. Thus, the Federal Rules of Criminal Procedure state that "the government must prosecute an offense in a district where the offense was committed." Fed. R. Crim. P. 18. Other federal laws elaborate as to what counts as "committed." As relevant here, "any offense against the United States *begun in one district* and completed in another, or committed in more than one district, may be inquired of and *prosecuted in any district in which such offense was begun*, continued, or completed." 18 U.S.C. § 3237(a) (emphasis added).

A state-law sex offender must do three things in sequence to be convicted under § 2250(a). *Carr v. United States*, 560 U.S. 438, 446 (2010). First, the defendant must be "required to register under the Sex Offender Registration and Notification Act" (SORNA). § 2250(a)(1). Second, as relevant here, the defendant must "travel[] in interstate or foreign commerce."[2] § 2250(a)(2)(B). And third, the defendant must "knowingly fail[] to register or update a registration as required by [SORNA]." § 2250(a)(3). Among other things, SORNA requires a defendant register with the jurisdiction in which he currently lives within three days of arriving. *United States v. Lunsford*, 725 F.3d 859, 861–62 (8th Cir. 2013).

[2] "The act of travel by a convicted sex offender may serve as a jurisdictional predicate for § 2250, but it is also . . . the very conduct at which Congress took aim." *Carr*, 560 U.S. at 454.

At first blush, Eighth Circuit precedent seems to dispose of Defendant's motion. In *United States v. Howell*, the defendant registered as a sex offender in Iowa. 552 F.3d 709, 711 (8th Cir. 2009). Authorities arrested Howell in Texas when he moved there and did not register, but federal prosecutors filed SORNA charges in Iowa. *Id.* The Eighth Circuit held venue was proper because "Howell's SORNA violation commenced in the Northern District of Iowa." *Id.* at 718. Thus, if *Howell* was the only case on point, Defendant's motion clearly fails.

Then the Supreme Court issued its decision in *Nichols v. United States*, 136 S. Ct. 1113 (2016). *Nichols* stands for the proposition that SORNA does not require a sex offender moving out of a state to update his registration in the state where he *lived* but only in the state where he now *lives*. *See id.* at 1117–18. In that case, the defendant, a *federal* sex offender, moved to the Philippines without updating his Kansas sex-offender registration.[3] *Id.* at 1115. The Supreme Court held the defendant did not violate SORNA because he had no obligation to update his Kansas registration and he *could not* register under SORNA in a foreign country. *Id.* at 1117. Additional language in the opinion suggests the same rule would apply to domestic moves: the offender must have up-to-date registration in the state where he lives, not where he lived. *Id.* at 1119 (considering a defendant who moves from Kansas to Missouri).

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[3] Section 2250 contains slightly different elements for both federal and state sex offenders. While federal offenders like Nichols are subject to § 2250(a)(2)(A), state offenders like Defendant are subject to § 2250(a)(2)(B):

> (a) In general.—Whoever—
> (1) is required to register under the Sex Offender Registration and Notification Act;
> (2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or
> (B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and
> (3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act.

§ 2250(a).

Nichols triggered a circuit split as to whether federal venue law still allows prosecutors to bring SORNA charges in the defendant's departure district (where he lived) rather than his destination district (where he lives). The Second Circuit and Eleventh Circuit held venue remained proper in the departure district because that is where a defendant's travel in interstate commerce—a necessary element of § 2250[4]—began. *United States v. Holcombe*, 883 F.3d 12, 13 (2d Cir. 2018), *cert. denied*, 140 S. Ct. 820 (2020) (holding a SORNA violation begins in the departure district and is completed in the destination district, thus making venue proper in both states); *United States v. Lewallyn*, 737 F. App'x. 471, 473 (11th Cir. 2018) (per curiam) (same); *see also United States v. Elias*, No. 5:19-CR-190, 2019 WL 3803111, at *4 (S.D. Tex. Aug. 12, 2019) (same). By contrast, the Seventh Circuit, in a divided panel, held that because *Nichols* bars prosecution for failing to update registration in the departure state, it follows that venue is improper in the departure state, too. *United States v. Haslage*, 853 F.3d 331, 336 (7th Cir. 2017).

Here, the Court concludes venue is proper as to Count I because it remains possible to reconcile *Nichols* with the Eighth Circuit's still-binding *Howell* decision. This is so because *Nichols* only concerned whether one has committed a federal crime, not the distinct question of where one began committing that crime. Here, Defendant's interstate travel—an element of his § 2250(a) violation—"commenced" in the Southern District of Iowa, thus making venue proper under circuit precedent. *Howell*, 552 F.3d at 718.

To be sure, *Nichols* seriously undercuts at least one part of *Howell*. *Howell* suggested the defendant's offense commenced in Iowa, in part, because he failed to update his Iowa registration as required by state law. *Id.* But *Nichols* makes clear that while such conduct may violate state law, it does not violate SORNA. Even so, that does not necessarily mean venue is

[4] *See Carr*, 560 U.S. at 446.

improper here. Rather, as several courts have noted, it remains possible to say Defendant's offense began in the Southern District of Iowa because that is where he began his interstate travel. *Holcombe*, 883 F.3d at 13; *see also* § 3237(a).

Indeed, the Eighth Circuit already has shown it at least is possible to reconcile any tension between *Howell* and *Nichols*. This is so because the Eighth Circuit adopted *Nichols*'s rule three years before the Supreme Court did. *See Lunsford*, 725 F.3d at 861–62. *Lunsford* involved all-but-the-same facts as *Nichols*—a defendant who left the Kansas City area for the Philippines without updating his sex-offender registration. *Id.* at 860. For reasons discussed above, the Eighth Circuit held this did not violate SORNA. *Id.* at 861. Critically, the panel concluded its decision could be harmonized with *Howell*, even if it undermined some of the opinion's "dicta." *See id.* at 864. This was so because *Howell* merely held that "the offender's act of travel began in Iowa, where he *started his interstate journey* to Texas, so the SORNA registration violation could be prosecuted in Iowa." *Id.* at 863 (emphasis added) (citing *Howell*, 552 F.3d at 718). In other words, because *Lunsford* did not disturb *Howell*, it follows that *Nichols*—the Supreme Court's *Lunsford* clone—likely did not as well. And because it is possible to reconcile the two cases, it is not for this Court to disregard Eighth Circuit precedent that remains plausibly valid. Venue thus is proper.

III. CONCLUSION

For the reasons stated herein, Defendant's Motion to Dismiss Count I (ECF No. 20) is DENIED.

IT IS SO ORDERED.

Dated this 9th day of April 2020.

Robert W. Pratt

ROBERT W. PRATT, Judge
U.S. DISTRICT COURT

§2250. Failure to register

(a) In General.-Whoever-

(1) is required to register under the Sex Offender Registration and Notification Act;

(2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

(b) International Travel Reporting Violations.-Whoever-

(1) is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.); [1]

(2) knowingly fails to provide information required by the Sex Offender Registration and Notification Act relating to intended travel in foreign commerce; and

(3) engages or attempts to engage in the intended travel in foreign commerce;

shall be fined under this title, imprisoned not more than 10 years, or both.

(c) Affirmative Defense.-In a prosecution for a violation under subsection (a) or (b), it is an affirmative defense that-

(1) uncontrollable circumstances prevented the individual from complying;

(2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

(3) the individual complied as soon as such circumstances ceased to exist.

(d) Crime of Violence.-

(1) In general.-An individual described in subsection (a) or (b) who commits a crime of violence under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States shall be imprisoned for not less than 5 years and not more than 30 years.

(2) Additional punishment.-The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a) or (b).

(Added Pub. L. 109–248, title I, §141(a)(1), July 27, 2006, 120 Stat. 602 ; amended Pub. L. 114–119, §6(b), Feb. 8, 2016, 130 Stat. 23 .)

§3237. Offenses begun in one district and completed in another

(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

(b) Notwithstanding subsection (a), where an offense is described in section 7203 of the Internal Revenue Code of 1986, or where venue for prosecution of an offense described in section 7201 or 7206(1), (2), or (5) of such Code (whether or not the offense is also described in another provision of law) is based solely on a mailing to the Internal Revenue Service, and prosecution is begun in a judicial district other than the judicial district in which the defendant resides, he may upon motion filed in the district in which the prosecution is begun, elect to be tried in the district in which he was residing at the time the alleged offense was committed: *Provided*, That the motion is filed within twenty days after arraignment of the defendant upon indictment or information.

(June 25, 1948, ch. 645, 62 Stat. 826 ; Pub. L. 85–595, Aug. 6, 1958, 72 Stat. 512 ; Pub. L. 89–713, §2, Nov. 2, 1966, 80 Stat. 1108 ; Pub. L. 98–369, div. A, title I, §162, July 18, 1984, 98 Stat. 697 ; Pub. L. 98–473, title II, §1204(a), Oct. 12, 1984, 98 Stat. 2152 ; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095 .)

§20913. Registry requirements for sex offenders

(a) In general

A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

(b) Initial registration

The sex offender shall initially register-

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) Keeping the registration current

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

(d) Initial registration of sex offenders unable to comply with subsection (b)

The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).

(e) State penalty for failure to comply

Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter.

(Pub. L. 109–248, title I, §113, July 27, 2006, 120 Stat. 593 .)