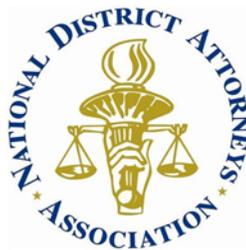


Restriction or Ban of Social Networking Use for Sex Offenders Compilation

Last Updated July 2013



Summary of Content

Eleven states and the federal government have enacted statutes that either restrict or ban the use of social networks by registered sex offenders. These limitations range from providing social networks with online identifiers of registered sex offenders, to outright prohibition of use. Two of the largest social networks, Facebook¹ and MySpace,² forbid sex offenders from using their web services. The limitation on use of social networks presents free speech concerns, challenging the constitutionality of such statutes. This issue was addressed in *Doe v. Marion County Prosecutor*³, in which the 7th Circuit Court of Appeals ruled Indiana's ban an unconstitutional violation of the First Amendment. Since this decision in January of 2013, neither Illinois nor Indiana has repealed the laws enacting the ban on social network use. The Louisiana legislation was also challenged as being overbroad and a violation of free speech in *Doe v. Jindal*.⁴ After being ruled unconstitutional in its previous iteration, the Louisiana legislature amended the statute to comply with this court decision.

Scope of Compilation

This document is a comprehensive compilation of **Restriction or Ban of Social Networking Use for Sex Offenders** statutes from all U.S. jurisdictions including states, territories, and the federal government. It is up-to-date as of **July 2013**. Please note that we recommend checking both case law and current legislation for later modifications to the statutes listed below. The author purposefully excluded **statutes that require sex offenders to include email addresses, social networking profiles or other online identifiers in their registration as sex offenders**. Those statutes are included in a separate compilation. Please see the **Sex Offender Registration** compilation at www.ndaa.org. The dates on the citation of the statutes indicate

¹ FACEBOOK, Statement of Rights and Responsibilities. <https://www.facebook.com/legal/terms> (last visited July 19, 2013).

² MYSPACE, MySpace Services Terms of Use Agreement. <https://myspace.com/pages/terms> (last visited July 19, 2013).

³ *Doe v. Prosecutor*, 705 F.3d 694 (7th Cir. 2013).

⁴ *Doe v. Jindal*, 853 F.Supp.2d 596 (M.D. La. 2012).

they are up-to-date as of the year listed. Please see the credit(s) below for the date of enactment and history.

For further assistance, consult the National District Attorneys Association's National Center for Prosecution of Child Abuse at 703.549.9222, or via the free online prosecution assistance service http://www.ndaa.org/ta_form.php

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FLORIDA

FLA. STAT. ANN. § 943.0437 (2013). COMMERCIAL SOCIAL NETWORKING WEBSITES.

(1) For the purpose of this section, the term “commercial social networking website” means a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger.

(2) The department may provide information relating to electronic mail addresses and instant message names maintained as part of the sexual offender registry to commercial social networking websites or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and instant message names provided by the department.

(3) This section shall not be construed to impose any civil liability on a commercial social networking website for:

(a) Any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an electronic mail address or instant message name contained in the sexual offender registry.

(b) Any action taken to restrict access by such registered user to the commercial social networking website.

ILLINOIS

730 ILL. COMP. STAT. 5/3-6-3 (2013). INCIDENTS AND CONDITIONS OF SUPERVISION.

(8.9) if convicted of a sex offense as defined in the Sex Offender Registration Act committed on or after January 1, 2010 (the effective date of Public Act 96-262), refrain from accessing or using a social networking website as defined in Section 17-0.5 of the Criminal Code of 2012;

730 ILL. COMP. STAT. 5/5-6-3.1 (2013). INCIDENTS AND CONDITIONS OF SUPERVISION.

(t) An offender placed on supervision for a sex offense as defined in the Sex Offender Registration Act committed on or after January 1, 2010 (the effective date of Public Act 96-262) shall refrain from accessing or using a social networking website as defined in Section 17-0.5 of

the Criminal Code of 2012.

730 ILL. COMP. STAT. 5/3-3-7 (2013). INCIDENTS AND CONDITIONS OF SUPERVISION.

(7.12) if convicted of a sex offense as defined in the Sex Offender Registration Act committed on or after January 1, 2010 (the effective date of Public Act 96-262), refrain from accessing or using a social networking website as defined in Section 17-0.5 of the Criminal Code of 2012;

INDIANA

IND. CODE ANN. § 11-10-11.5-11 (2013). RULES AND CONDITIONS

(a) While assigned to a community transition program, a person must comply with:

(1) the rules concerning the conduct of persons in the community transition program, including rules related to payments described in section 12 of this chapter, that are adopted by the community corrections advisory board establishing the program or, in counties that are not served by a community corrections program, that are jointly adopted by the courts in the county with felony jurisdiction; and

(2) any conditions established by the sentencing court for the person.

(b) As a rule of the community transition program, a person convicted of a sex offense (as defined in IC 11-8-8-5.2) may not use a social networking web site (as defined in IC 35-31.5-2-307) or an instant messaging or chat room program (as defined in IC 35-31.5-2-173) to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age. However, the rules of the community transition program may permit the offender to communicate using a social networking web site or an instant messaging or chat room program with:

(1) the offender's own child, stepchild, or sibling; or

(2) another relative of the offender specifically named in the rules applicable to that person.

IND. CODE ANN. § 35-42-4-12 (2013). APPLICATION OF SECTION; USE OF INTERNET SOCIAL NETWORKING SITE OR CHAT ROOM PROGRAM.

(a) This section applies only to a sex offender (as defined in IC 11-8-8-4.5).

(b) A sex offender who knowingly or intentionally violates a:

(1) condition of probation;

(2) condition of parole; or

(3) rule of a community transition program; that prohibits the offender from using a

social networking web site or an instant messaging or chat room program to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age commits a sex offender Internet offense, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

(c) It is a defense to a prosecution under subsection (b) that the person reasonably believed that the child was at least sixteen (16) years of age.

KENTUCKY

KY. REV. STAT. ANN. § 17.546 (2013). REGISTRANT PROHIBITED FROM USING SOCIAL NETWORKING WEBSITE OR INSTANT MESSAGE OR CHAT ROOM PROGRAM ACCESSIBLE BY MINORS.

(1) As used in this section:

(a) “Instant messaging or chat room program” means a software program that allows two (2) or more persons to communicate over the Internet in real time using typed text; and

(b) “Social networking Web site” means an Internet Web site that:

1. Facilitates the social introduction between two (2) or more persons;
2. Allows a person to create a Web page or a personal profile; and
3. Provides a person who visits the Web site the opportunity to communicate with another person.

(2) No registrant shall knowingly or intentionally use a social networking Web site or an instant messaging or chat room program if that Web site or program allows a person who is less than eighteen (18) years of age to access or use the Web site or program.

Any person who violates subsection (2) or (3) of this section shall be guilty of a Class A misdemeanor.

LOUISIANA

LA. REV. STAT. ANN. §14:91.5 (2012). UNLAWFUL USE OF A SOCIAL NETWORKING WEBSITE

A. The following shall constitute unlawful use of a social networking website:

(1) The intentional use of a social networking website by a person who is required to register as a sex offender and who was convicted of R.S. 14:81 (indecent behavior with

juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), or R.S. 14:283 (video voyeurism) or was convicted of a sex offense as defined in R.S. 15:541 in which the victim of the sex offense was a minor.

(2) The provisions of this Section shall also apply to any person convicted for an offense under the laws of another state, or military, territorial, foreign, tribal, or federal law which is equivalent to the offenses provided for in Paragraph (1) of this Subsection, unless the tribal court or foreign conviction was not obtained with sufficient safeguards for fundamental fairness and due process for the accused as provided by the federal guidelines adopted pursuant to the Adam Walsh Child Protection and Safety Act of 2006.¹

B. For purposes of this Section:

(1) “Minor” means a person under the age of eighteen years.

(2)(a) “Social networking website” means an Internet website, the primary purpose of which is facilitating social interaction with other users of the website and has all of the following capabilities:

- (i) Allows users to create web pages or profiles about themselves that are available to the general public or to any other users.
- (ii) Offers a mechanism for communication among users.

(b) “Social networking website” shall not include any of the following:

- (i) An Internet website that provides only one of the following services: photo-sharing, electronic mail, or instant messaging.
- (ii) An Internet website the primary purpose of which is the facilitation of commercial transactions involving goods or services between its members or visitors.
- (iii) An Internet website the primary purpose of which is the dissemination of news.

(iv) An Internet website of a governmental entity.

(3) “Use” shall mean to create a profile on a social networking website or to contact or attempt to contact other users of the social networking website.

C. (1) Whoever commits the crime of unlawful use of a social networking website shall, upon a first conviction, be fined not more than ten thousand dollars and shall be imprisoned with hard labor for not more than ten years without benefit of parole, probation, or suspension of sentence.

(2) Whoever commits the crime of unlawful use of a social networking website, upon a second or subsequent conviction, shall be fined not more than twenty thousand dollars and shall be imprisoned with hard labor for not less than five years nor more than twenty years without benefit of parole, probation, or suspension of sentence.

MINNESOTA

MINN. STAT. § 244.05 (2013). Supervised Release Term

(c) As a condition of release for an inmate required to register under section 243.166 who is placed on intensive supervised release under this subdivision, the commissioner shall prohibit the inmate from accessing, creating, or maintaining a personal Web page, profile, account, password, or user name for: (1) a social networking Web site, or (2) an instant messaging or chat room program, which permits persons under the age of 18 to become a member or to create or maintain a personal Web page. An intensive supervised release agent may modify the prohibition described in this paragraph if doing so does not jeopardize public safety and the modification is specifically described and agreed to in advance by the agent.

NEBRASKA

NEB. REV. STAT. ANN. § 28-322.05 (2012). UNLAWFUL USE OF THE INTERNET BY A PROHIBITED SEX OFFENDER; PENALTIES

(1) Any person required to register under the Sex Offender Registration Act who is required to register because of a conviction for one or more of the following offenses, including any substantially equivalent offense committed in another state, territory, commonwealth, or other jurisdiction of the United States, and who knowingly and intentionally uses a social networking web site, instant messaging, or chat room service that allows a person who is less than eighteen years of age to access or use its social networking web site, instant messaging, or chat room service, commits the offense of unlawful use of the Internet by a prohibited sex offender:

- (a) Kidnapping of a minor pursuant to section 28-313;
- (b) Sexual assault of a child in the first degree pursuant to section 28-319.01;
- (c) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;
- (d) Incest of a minor pursuant to section 28-703;
- (e) Pandering of a minor pursuant to section 28-802;
- (f) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;
- (g) Possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;

- (h) Criminal child enticement pursuant to section 28-311;
- (i) Child enticement by means of an electronic communication device pursuant to section 28-320.02;
- (j) Enticement by electronic communication device pursuant to section 28-833; or
- (k) An attempt or conspiracy to commit an offense listed in subdivisions (1)(a) through (1)(j) of this section.

(2) Unlawful use of the Internet by a prohibited sex offender is a Class I misdemeanor for a first offense. Any second or subsequent conviction under this section is a Class IIIA felony.

NEW YORK

N.Y. PENAL LAW § 65.10 (2013). CONDITIONS OF PROBATION AND CONDITIONAL DISCHARGE

4.(b) When imposing a sentence of probation or conditional discharge upon a person convicted of an offense for which registration as a sex offender is required pursuant to subdivision two or three of section one hundred sixty-eight-a of the correction law, and the victim of such offense was under the age of eighteen at the time of such offense or such person has been designated a level three sex offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law or the internet was used to facilitate the commission of the crime, the court shall require, as mandatory conditions of such sentence, that such sentenced offender be prohibited from using the internet to access pornographic material, access a commercial social networking website, communicate with other individuals or groups for the purpose of promoting sexual relations with persons under the age of eighteen, and communicate with a person under the age of eighteen when such offender is over the age of eighteen, provided that the court may permit an offender to use the internet to communicate with a person under the age of eighteen when such offender is the parent of a minor child and is not otherwise prohibited from communicating with such child. Nothing in this subdivision shall be construed as restricting any other lawful condition of supervision that may be imposed on such sentenced offender. As used in this subdivision, a “commercial social networking website” shall mean any business, organization or other entity operating a website that permits persons under eighteen years of age to be registered users for the purpose of establishing personal relationships with other users, where such persons under eighteen years of age may: (i) create web pages or profiles that provide information about themselves where such web pages or profiles are available to the public or to other users; (ii) engage in direct or real time communication with other users, such as a chat room or instant messenger; and (iii) communicate with persons over eighteen years of age; provided, however, that, for purposes of this subdivision, a commercial social networking website shall not include a website that permits users to engage in such other activities as are not enumerated herein.

NORTH CAROLINA

N.C. GEN. STAT. § 14-202.5 (2013). BAN ON USE OF COMMERCIAL SOCIAL NETWORKING WEB SITES BY SEX OFFENDERS

(a) Offense.--It is unlawful for a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages on the commercial social networking Web site.

(b) For the purposes of this section, a “commercial social networking Web site” is an Internet Web site that meets all of the following requirements:

(1) Is operated by a person who derives revenue from membership fees, advertising, or other sources related to the operation of the Web site.

(2) Facilitates the social introduction between two or more persons for the purposes of friendship, meeting other persons, or information exchanges.

(3) Allows users to create Web pages or personal profiles that contain information such as the name or nickname of the user, photographs placed on the personal Web page by the user, other personal information about the user, and links to other personal Web pages on the commercial social networking Web site of friends or associates of the user that may be accessed by other users or visitors to the Web site.

(4) Provides users or visitors to the commercial social networking Web site mechanisms to communicate with other users, such as a message board, chat room, electronic mail, or instant messenger.

(c) A commercial social networking Web site does not include an Internet Web site that either:

(1) Provides only one of the following discrete services: photo-sharing, electronic mail, instant messenger, or chat room or message board platform; or

(2) Has as its primary purpose the facilitation of commercial transactions involving goods or services between its members or visitors.

(d) Jurisdiction.--The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(e) Punishment.--A violation of this section is a Class I felony.

SOUTH CAROLINA

S.C. CODE ANN. § 23-3-555 (2012). INTERNET ACCOUNT, ACCESS PROVIDER, IDENTIFIERS, REPORTING REQUIREMENTS; NOTIFICATION OF CHANGE; FAILURE TO COMPLY; PUNISHMENT; INFORMATION PROVIDED TO INTERACTIVE COMPUTER SERVICES; JUDICIAL LIMITATIONS ON INTERNET USAGE BY CERTAIN REGISTERED SEX OFFENDERS

(D) If a person commits a sexual offense in which the victim is under the age of eighteen at the time of the offense or the person reasonably believes is under the age of eighteen at the time of the offense, and the offender is required to register with the sex offender registry for the offense, then, upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere, the judge must order as a condition of probation or parole that the person is prohibited from using the Internet to access social networking websites, communicate with other persons or groups for the purpose of promoting sexual relations with persons under the age of eighteen, and communicate with a person under the age of eighteen when the person is over the age of eighteen. The judge may permit a person to use the Internet to communicate with a person under the age of eighteen when such a person is the parent or guardian of a child under the age of eighteen, or the grandparent of a grandchild under the age of eighteen, and the person is not otherwise prohibited from communicating with the child or grandchild.

TEXAS

TEX. PENAL CODE ANN. § 62.0061 (2013). REQUEST FOR ONLINE IDENTIFIERS BY SOCIAL NETWORKING SITES

(a) On request by a commercial social networking site, the department may provide to the commercial social networking site:

(1) all public information that is contained in the database maintained under Article 62.005; and

(2) notwithstanding Article 62.005(b)(2), any online identifier established or used by a person who uses the site, is seeking to use the site, or is precluded from using the site.

(b) The department by rule shall establish a procedure through which a commercial social networking site may request information under Subsection (a), including rules regarding the eligibility of commercial social networking sites to request information under Subsection (a). The department shall consult with the attorney general, other appropriate state agencies, and other appropriate entities in adopting rules under this subsection.

(c) A commercial social networking site or the site's agent:

(1) may use information received under Subsection (a) only to:

(A) prescreen persons seeking to use the site; or

(B) preclude persons registered under this chapter from using the site; and

(2) may not use any information received under Subsection (a) that the networking site obtained solely under Subsection (a) in any manner not described by Subdivision (1).

(d) A commercial social networking site that uses information received under Subsection (a) in any manner not described by Subsection (c)(1) or that violates a rule adopted by the department

under Subsection (b) is subject to a civil penalty of \$1,000 for each misuse of information or rule violation. A commercial social networking site that is assessed a civil penalty under this article shall pay, in addition to the civil penalty, all court costs, investigative costs, and attorney's fees associated with the assessment of the penalty. A civil penalty assessed under this subsection shall be deposited to the compensation to victims of crime fund established under Subchapter B, Chapter 56.

(e) This article does not create a private cause of action against a commercial social networking site, including a cause of action that is based on the site:

- (1) identifying, removing, disabling, blocking, or otherwise affecting the user of a commercial social networking site, based on a good faith belief that the person is required to register as a sex offender under this chapter or federal law; or
- (2) failing to identify, remove, disable, block, or otherwise affect the user of a commercial social networking site who is required to register as a sex offender under this chapter or federal law.

TEX. GOV'T CODE ANN. § 508.1861 (2013). PROHIBITIONS ON INTERNET ACCESS FOR CERTAIN SEX OFFENDERS

(a) This section applies only to a person who, on release, will be required to register as a sex offender under Chapter 62, Code of Criminal Procedure, by court order or otherwise, and:

- (1) is serving a sentence for an offense under Section 21.11, 22.011(a)(2), 22.021(a)(1)(B), 33.021, or 43.25, Penal Code;
- (2) used the Internet or any other type of electronic device used for Internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62, Code of Criminal Procedure; or
- (3) is assigned a numeric risk level of three based on an assessment conducted under Article 62.007, Code of Criminal Procedure.

(b) If the parole panel releases on parole or to mandatory supervision a person described by Subsection (a), the parole panel as a condition of parole or mandatory supervision shall prohibit the releasee from using the Internet to:

- (1) access material that is obscene as defined by Section 43.21, Penal Code;
- (2) access a commercial social networking site, as defined by Article 62.0061(f), Code of Criminal Procedure;
- (3) communicate with any individual concerning sexual relations with an individual who is younger than 17 years of age; or

(4) communicate with another individual the releasee knows is younger than 17 years of age.

(c) The parole panel may modify at any time the condition described by Subsection (b)(4) if:

- (1) the condition interferes with the releasee's ability to attend school or become or remain employed and consequently constitutes an undue hardship for the releasee; or
- (2) the releasee is the parent or guardian of an individual who is younger than 17 years of age and the releasee is not otherwise prohibited from communicating with that individual.

FEDERAL LEGISLATION/U.S. TERRITORIES

FEDERAL LEGISLATION

42 U.S.C.S. § 16915B (2013). Checking system for social networking websites

(a) In general

(1) Secure system for comparisons

The Attorney General shall establish and maintain a secure system that permits social networking websites to compare the information contained in the National Sex Offender Registry with the Internet identifiers of users of the social networking websites, and view only those Internet identifiers that match. The system--

(A) shall not require or permit any social networking website to transmit Internet identifiers of its users to the operator of the system, and

(B) shall use secure procedures that preserve the secrecy of the information made available by the Attorney General, including protection measures that render the Internet identifiers and other data elements indecipherable.

(2) Provision of information relating to identity

Upon receiving a matched Internet identifier, the social networking website may make a request of the Attorney General for, and the Attorney General shall provide promptly, information related to the identity of the individual that has registered the matched

Internet identifier. This information is limited to the name, sex, resident address, photograph, and physical description.

(b) Qualification for use of system

A social networking website seeking to use the system shall submit an application to the Attorney General which provides--

- (1) the name and legal status of the website;
- (2) the contact information for the website;
- (3) a description of the nature and operations of the website;
- (4) a statement explaining why the website seeks to use the system;
- (5) a description of policies and procedures to ensure that--
 - (A) any individual who is denied access to that website on the basis of information obtained through the system is promptly notified of the basis for the denial and has the ability to challenge the denial of access; and
 - (B) if the social networking website finds that information is inaccurate, incomplete, or cannot be verified, the site immediately notifies the appropriate State registry and the Department of Justice, so that they may delete or correct that information in the respective State and national databases;
- (6) the identity and address of, and contact information for, any contractor that will be used by the social networking website to use the system; and
- (7) such other information or attestations as the Attorney General may require to ensure that the website will use the system--
 - (A) to protect the safety of the users of such website; and
 - (B) for the limited purpose of making the automated comparison described in subsection (a).

(c) Searches against the system

- (1) Frequency of use of the system
A social networking website approved by the Attorney General to use the system may conduct searches under the system as frequently as the Attorney General may allow.
- (2) Authority of Attorney General to suspend use
The Attorney General may deny, suspend, or terminate use of the system by a social networking website that--
 - (A) provides false information in its application for use of the system;

(B) may be using or seeks to use the system for any unlawful or improper purpose;

(C) fails to comply with the procedures required under subsection (b)(5); or

(D) uses information obtained from the system in any way that is inconsistent with the purposes of this Act.

(3) Limitation on release of Internet identifiers

(A) No public release

Neither the Attorney General nor a social networking website approved to use the system may release to the public any list of the Internet identifiers of sex offenders contained in the system.

(B) Additional limitations

The Attorney General shall limit the release of information obtained through the use of the system established under subsection (a) by social networking websites approved to use such system.

(C) Strict adherence to limitation

The use of the system established under subsection (a) by a social networking website shall be conditioned on the website's agreement to observe the limitations required under this paragraph.

(D) Rule of construction

This subsection shall not be construed to limit the authority of the Attorney General under any other provision of law to conduct or to allow searches or checks against sex offender registration information.

(4) Payment of fee

A social networking website approved to use the system shall pay any fee established by the Attorney General for use of the system.

(5) Limitation on liability

(A) In general

A civil claim against a social networking website, including any director, officer, employee, parent, contractor, or agent of that social networking website, arising from the use by such website of the National Sex Offender Registry, may not be brought in any Federal or State court.

(B) Intentional, reckless, or other misconduct

Subparagraph (A) does not apply to a claim if the social networking website, or a director, officer, employee, parent, contractor, or agent of that social networking website-

(i) engaged in intentional misconduct; or

(ii) acted, or failed to act--

(I) with actual malice;

(II) with reckless disregard to a substantial risk of causing injury without legal justification; or

(III) for a purpose unrelated to the performance of any responsibility or function described in paragraph (3).

(C) Minimizing access

A social networking website shall minimize the number of employees that are provided access to the Internet identifiers for which a match has been found through the system.

(6) Rule of construction

Nothing in this section shall be construed to require any Internet website, including a social networking website, to use the system, and no Federal or State liability, or any other actionable adverse consequence, shall be imposed on such website based on its decision not to do so.