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## **SUGGESTED RESPONSES FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS TO IOWA'S AMENDED SEX OFFENDER STATUTE**

**By: Jeffrey A. Krausman  
Russell L. Samson**

Contractors working on projects for schools, child care facilities and other child friendly projects may be asked to certify that sex offenders will not be employed on the project. We want you to be aware of the changes in the law that have led to these certification requests and what you might think about doing both in anticipation of receiving such a request and if you should receive one.

The 2009 session of the Iowa Legislature made significant changes in the sex offender registry laws of Iowa. Some of these changes aligned Iowa's laws with the federal Sex Offender Registration and Notification Act (SORNA), part of the Adam Walsh Child Protection and Safety Act of 2006.

Senate File 340, which became effective July 1, 2009, creates "exclusion zones" and prohibits certain employment related activities for sex offenders who have committed a sex offense involving a minor. These sex offenders can be in an "exclusion zone" only with the permission of the appropriate governmental official.

As written, a sex offender who has been convicted of a sex offense against a minor is not permitted to do any of the following:

- Operate, manage, be employed by, or act as a contractor or volunteer at any municipal, county, or state fair or carnival when a minor is present on the premises.
- Operate, manage, be employed by, or act as a contractor or volunteer on the premises of any children's arcade, an amusement center having coin or token operated devices for entertainment, or facilities providing programs or services intended primarily for minors, when a minor is present.
- Operate, manage, **be employed by**, or act as **a contractor** or volunteer **at a public or nonpublic elementary or secondary school, child care facility, or public library.**

- Operate, manage, **be employed by**, or act as a **contractor** or volunteer at **any place intended primarily for use by minors including but not limited to a playground, a children's play area, recreational or sport-related activity area, a swimming or wading pool, or a beach.** [Boldface emphasis added.]

These prohibitions are directed at the sex offender and not the schools, the cities or the counties. We have learned, however, that some government units are asking contractors to "certify" that they will not employ sex offenders covered by these prohibitions at all, or at least that contractors will not employ such individuals for projects that involve these facilities. At this juncture, one cannot say for certain which reading of the statute is "more correct." Because the prohibitions run against the individual sex offender, and not the "contractor" the risk of guessing wrong on the proper reading is on the sex offender.

If you, as a contractor are doing, or if you in the future anticipate doing, any work which may be covered by these provisions (e.g., at an elementary or secondary school, a child care facility, a public library, a playground or swimming pool, etc.), it is suggested that you immediately develop and promulgate a policy which requires your employees to report to you immediately if they are, or if they in the future are determined to be, a sex offender who has committed a sex offense against a minor. It is suggested that the policy inform individuals that a failure to make the required report will result in discipline up to and including termination of the employment relationship.

In conjunction with that policy, it is suggested that you consider a separate form to be completed by applicants informing them of your status as a "contractor" which does work subject to Iowa's law, and informing them of the policy, and asking them whether or not they are a sex offender who has committed a sex offense against a minor.

If you as a contractor receive a request from some owner (which, because the statute extends to certain private entities like primary or secondary schools, is not limited to governmental entities) for a "certification," you may wish to consider offering to "certify" to the requesting party the following:

\_\_\_\_ [COMPANY NAME] \_\_\_\_\_ certifies that it is not owned, managed or operated by a person that is a sex offender who has committed a sex offense against a minor. The company further certifies that it has a policy under which its employees are required to report to the company if the employee has been in the past or may be in the future convicted of a sex offense against a minor. The company certifies that, as of the date of this certification, no person working for the company has reported that he or she is such an offender. [OR "The company certifies that it will not knowingly assign any employee to work on a project covered by Iowa Code Section 692A.113, as added by Section 13 of S.F. 340, 2009 General Assembly who it knows has committed a sex offense against a minor."]