# SEX OFFENDER NOTIFICATION AND REGISTRATION ACT (SORNA): BARRIERS TO TIMELY COMPLIANCE BY STATES

## HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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# SEX OFFENDER NOTIFICATION AND REGISTRATION ACT (SORNA): BARRIERS TO TIMELY COMPLIANCE BY STATES

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**TUESDAY, MARCH 10, 2009**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Perluisi, Jackson Lee, Gohmert, Poe, Smith, and Rooney.

Staff Present: Bobby Vassar, Minority Chief Counsel; Ameer Gopalani, Majority Counsel; Mario Dispenza, Fellow, ATF Detailee; Karen Wilkinson, Fellow, Federal Public Defender Office Detailee; Jesselyn McCurdy, Majority Counsel; Veronica Eligan, Majority Professional Staff Member; Caroline Lynch, Minority Counsel; and Kimani Little, Minority Counsel.

Mr. SCOTT. The Subcommittee will now come to order.

I am pleased to welcome you today.

First of all, I want to apologize for being late. We had votes that we just completed, but I am pleased to welcome you here today to the hearing before the Subcommittee on Crime, Terrorism, and Homeland Security on "Sex Offender Registration and Notification Act: Barriers to Timely Compliance by States."

In 2006, Congress passed the Adam Walsh Act, which included the Sex Offenders Registration and Notification Act, known as SORNA. That set forth a uniform national registration and notification system for sex offenders that required States, tribes, the District of Columbia, and U.S. territories to comply with its mandates by July 27, 2009, or lose 10 percent of its Byrne Grant money.

With less than 4.5 months ago, not a single State, tribe, territory or the District of Columbia has been found to be in compliance with the provisions of SORNA. According to the Office of Inspector General, it is unlikely the jurisdictions will fulfill their requirements by July. The reasons for this situation appear to be many, but one thing is clear: Everyone has the same goal in mind, protecting the children and communities. There may be differences of opinion on

how best to do that, but we all agree that protection must be a priority.

The purpose of this hearing is to learn more about why no one has been found to have met the requirements of SORNA and to determine whether congressional action is needed. The immediate question before us is whether Congress needs to extend the current deadline of July 27. Many States, organizations and individuals, including some of the witnesses here before us today, are urging us to do so, and hopefully, the information received today will help us answer this question.

There are several issues that I hope our witnesses will help us address. One is the fact that SORNA requires juveniles as young as 14 to be placed on a public registry. This applies not only to juveniles who are tried as adults but also to those who are merely adjudicated of certain sex offenses in juvenile courts. Inclusion in the public registry is mandatory, even when the juvenile court judge does not believe it is appropriate. This requirement is contrary to our traditional criminal practice in treating juveniles differently from adults and focusing on their rehabilitation. Juvenile sex offenders have a low recidivism rate. In Virginia, data collected in 2006 found that none of the juvenile sex offenders released in 2005 had been re-arrested for a sex offense.

There are many groups and States that are urging Congress to change how SORNA treats juveniles. I would like to hear about any studies that address whether the mandatory inclusion of such juveniles in a public registry furthers our purpose of community safety and the effect that that inclusion has on the rehabilitation of juveniles.

The juvenile adjudication procedures do not provide the same procedural protections as adult courts. For example, juveniles are not entitled to a jury trial, and placing juveniles adjudicated in sex offenses under the same registration and notification system as adults may raise constitutional questions, particularly when SORNA is applied retroactively. I am interested in learning of the legal challenges that have been made to this aspect of SORNA and the results of those challenges. I am looking toward to that statement also.

SORNA classifies sex offenses into three categories. Depending on the nature of the offense, these classifications are critical because they determine what registration and notification procedures are required for the sex offender. Under the offense-based classification, the only consideration is the code section of the underlying offense. There appears to be a difference of opinion regarding whether SORNA's offense-based classification is the best way to go. Some have argued that a classification system based on individual risk assessment provides greater protection to communities, and we would like to hear what people have to say about that.

SORNA also applies to certain tribes. The National Congress of American Indians, which represents 250 tribes as members, has called upon Congress to amend SORNA. Their concerns focus on tribal sovereignty and the delegation of Federal law enforcement authority to States when no such delegation exists in other areas of law, and there is the lack of funding. We need to consider those concerns.

Now, there have been legal challenges to the constitution of SORNA that either have or may have the impact on the ability of States and others to comply with their requirements. We need to know about these challenges. It is certainly unfair to punish a State whose court has prevented it from implementing SORNA. If certain portions of SORNA have been found to be unconstitutional by courts, we need to know so we can address that problem.

As States approach the deadline for implementation, some are looking hard at the cost of implementation. Some have estimated that it will cost California at least $37 million to implement SORNA, and the Byrne Grant it might lose if it does not implement SORNA will be approximately $2 million. In my home State of Virginia, the implementation of SORNA has been estimated to cost about $12 million while the loss of Byrne Grant money would be only $400,000. So I have been told that, after implementation, it will cost Virginia nearly $9 million a year just to maintain compliance.

In addition to these implementation and operational costs, there are costs of litigation. For example, the State of Nevada passed a new sex offender registration law in an attempt to comply with SORNA. The constitutionality of these laws was challenged in court. The Federal District Court found that these new State laws, which were retroactive, violated the ex post facto, double jeopardy, due process, and Contract Clauses of the Constitution and permanently enjoined Nevada from enforcing its laws. Other courts have held the application of SORNA to offenders who cross State lines before this law's enactment violates the ex post facto clause.

At least six Federal District Courts have found SORNA to be unconstitutional on the grounds that Congress exceeded its authority under the Commerce Clause. No doubt these cases will be appealed. There are but a few examples of the hundreds of legal challenges that have been made in both State and Federal courts. These litigation costs have yet to be quantified.

So, finally, the question is: How effective is SORNA in protecting our children and communities? Do we increase safety by requiring States to change their current registry system? What does the research show? Even in today's economy, we will pay whatever it takes to protect our children and communities from these crimes, but we have to be sure that we are getting the best protection possible for the money the we spend.

I am looking forward to hearing from all of our experts in this area and to working together to ensure that we develop the best approach for ensuring safe communities.

I know that there are many people who wanted to be heard today but who could not be accommodated because of time and space limitations on the panel. We hope to continue this dialogue in the future and to provide all who wish to make statements an opportunity to be heard.

To this end, several organizations and individuals, including the American Bar Association; the National Congress of American Indians; the Professional Advisory Board to the Coalition of a Useful Registry; Beata Roberts; Laurie Peterson; Charles McGonagle; the Association for the Treatment of Sex Abusers; and the Mid-Atlantic Juvenile Defender Center have submitted written statements, or

transcripts, for the record. And without objection, these will be included in the record.

[The information referred to follows:]

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**Approved by the ABA House of Delegates, February 2009**

**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES**

**FEBRUARY 16, 2009**

**RECOMMENDATION**

RESOLVED, That the American Bar Association urges Congress and the state and territorial legislatures to re-examine and revise laws, policies, and practices that require youth to register as sex offenders or be subject to community notification provisions otherwise imposed upon adult sex offenders, based upon a juvenile court adjudication.

FURTHER RESOLVED, That the American Bar Association urges Congress to amend Public Law 109-248 regarding sexual crimes committed by juveniles, to require that juvenile court judges consider factors relevant to the specific offense and the individual juvenile offender in determining whether they should be placed on sex offender registries, subjected to sex offender registration requirements and community notification of their offense(s), or otherwise face additional restrictions generally placed on adult sexual offenders.

FURTHER RESOLVED, That the American Bar Association urges states and territories to:

a) Apply the provisions of Public Law 109-248 prospectively only to adjudicated juveniles, so that they are not subjected to collateral punishment or other sanctions that would go beyond that originally handed down by the juvenile court after a juvenile delinquency adjudication; and

b) Provide a remedy through which adjudicated persons may later apply for relief from sex offender registration and other related requirements after an appropriate period of supervision, treatment, and lawful community adjustment.

FURTHER RESOLVED, That the American Bar Association urges Congress and the state and territorial legislatures to provide increased funding for assessment and effective treatment interventions for juveniles adjudicated for sexual offenses, as well as for specialized juvenile probation service monitoring of these adolescents.

FURTHER RESOLVED, That the American Bar Association urges Congress and the state and territorial legislatures to provide increased funding to better meet both the short and long-term treatment needs of child victims of sex crimes.

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**REPORT**

American Bar Association policy has long promoted individualized treatment of juveniles, limited the dissemination of juvenile records, and prohibited collateral consequences for juvenile behavior. The ABA juvenile justice policy — developed in conjunction with the Institute of Judicial Administration and set forth in twenty volumes of IJA-Juvenile Justice Standards ("Standards") — calls for individually tailored treatment of juveniles that is fair in purpose and scope:

> The purpose of the juvenile correctional system is to reduce juvenile crime by maintaining the integrity of the substantive law proscribing certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of juveniles, and that give juveniles access to opportunities for personal and social growth.[1]

The Standards also set forth clear parameters for juvenile justice sanctions, stating that the definition and application of sanctions should not only address public safety, but also give fair warning about prohibited conduct and recognize "the unique physical, psychological, and social features of young persons."[2] These Standards—along with accepted clinical research—recognize that juveniles differ from adults in terms of culpability,[3] and that their patterns of offending differ from those of adults, as well. Thus, ABA policy supports sanctions that vary in restrictiveness and intensity, are developmentally appropriate, and are limited in duration.

In light of these goals of the juvenile justice system, and of the transitory characteristics of youth offenders, ABA policy also limits the compilation and dissemination of juvenile records. In general, the Standards disapprove of "labeling" offenders, call for very careful control of records, and prohibit making juvenile records public:

> Access to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to juveniles, or an interference with the purposes of official intervention.[4]

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[1] Standard Relating to Disposition.
[2] Standards Relating to Juvenile Delinquency and Sanctions, 1.1 Purposes.
[3] *Id.* at Part III: General Principles of Liability. *See also Roper v. Evans*, 543 U.S. 551, 570 (2005) ("From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.").
[4] Standards Relating to Juvenile Records and Information Services, Part XV: Access to Juvenile Records.

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This privacy requirement is essential because most adolescent anti-social activity is not predictive of future criminal activity.

Finally, ABA policy prohibits collateral consequences for delinquent behavior. The Standards state that "[n]o collateral disabilities extending beyond the term of the disposition should be imposed by the court, by operation of law, or by any person or agency exercising authority over the juvenile."[5] Long-term registration not only violates this standard but is detrimental to both rehabilitation and crime prevention.

**Background**

On July 27, 2006, President George W. Bush signed into law the Adam Walsh Child Protection and Safety Act (Public Law 109-248),[6] thereby establishing minimum requirements for statewide sex offender registration and notification. Title I of the Act, which is to be applied retroactively, requires the inclusion of even juvenile adjudications if the youth offender was at least 14 years old and the offense was comparable to, or more severe than, aggravated sexual abuse.[7]

Leaving almost no discretion to the states — or to individual judges — the Act specifies the extent and duration of registration requirements, the information to be included in the registries, and the scope of community notification. The law further requires the imposition of a criminal penalty for failure to comply with the registration requirements.[8] Youthful offenders can petition to be removed from the registry, but not until twenty-five years have passed.[9] Furthermore, while the Act established a new *baseline* sex offender registry standard,[10] jurisdictions remain free to enact even more stringent requirements. Inappropriately, the laws, policies, and practices of many states and the federal government are publicly identifying and labeling pre-teen through age seventeen youth – for lengths of time ranging from ten years to their entire lifetimes – as "sex offenders" as a result of unlawful sexual conduct that is often their first and only sexual offense. These children, throughout their adolescence and into adulthood, face substantial loss of privacy as well as potential stigmatization, harassment, or vigilantism.

Many states currently exclude juvenile adjudications from their registries—a policy choice consistent with youth sex offenders' responsiveness to treatment and correspondingly low recidivism rates. However, if a state fails to comply with the Act by July 2009, it is likely to forfeit certain federal funds: specifically, a state's failure to come into "substantial compliance" with the law will result in an annual ten percent

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[5] Standards Relating to Dispositions, Part I, 1.2.
[6] Title I of the Adam Walsh Act, also known as the Sex Offender Registration and Notification Act (SORNA), has been codified in large part at 42 U.S.C. § 16911 *et. seq.*
[7] *Id.* § 16911(8).
[8] 18 U.S.C. § 2250(a) (2007).
[9] 42 U.S.C. § 16915(b).
[10] The Act is intended to be a full replacement of the Jacob Wetterling sex offender registration requirements, located at 42 U.S.C. § 14071 *et. seq.*, which were enacted during the 1990s.

(10%) reduction in funds the state receives through Byrne grants.[11] The federal government will redistribute these withheld funds to the states that comply with the Adam Walsh Act for that fiscal year.[12]

**Congress and State Legislatures Should Re-Examine and Revise Laws Requiring Public Identification of Youths as "Sex Offenders" For Conduct That Is Often Their First and Only Sexual Offense**

The ABA opposes those provisions of the Adam Walsh Act that apply to juvenile offenders. Sexually inappropriate behavior by children is wrong—but it requires a response that recognizes the major differences between youths and adults in order to best serve the interests of the child as well as those of the community. Importantly, sex offending in adolescence has only a limited correlation to adult sex offending. In fact, the number of false positives is approximately ninety percent (90%).[13] Numerous studies have revealed rates of recidivism among juvenile sex offenders to fall between three and seven percent (3%-7%).[14] Furthermore, youth sex offenders generally engage in fewer abusive behaviors over shorter periods of time.[15] Such low incidence rates suggest that the long-term negative impact to youth of appearing on a public registry—stigmatization, loss of employment and housing opportunities, susceptibility to harassment and vigilantism—may well out-weigh the limited public safety benefit promised by the registries.

In addition, community notification requirements can complicate youth rehabilitation and hinder treatment. Often, youths are harassed at school and forced to drop out,[16] and the stigma that arises from registration and community notification

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[11] 42 U.S.C. §§ 16294(a)(1) and 16925(a) (2007). Nearly $2.74 million was apportioned as the *minimum* grant for each state in fiscal year 2006. *See* 42 U.S.C. § 3758 (2006) (allocating $1.095 billion in grants for fiscal year 2006); 42 U.S.C. § 3755(a)(2)(A) (2006) (setting the minimum disbursement to each state at 0.25 percent of the total amount allocated for grants under 42 U.S.C. § 3758).

[12] 42 U.S.C. § 16925(c) (2006).

[13] *See* Frank E. Zimring, *The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort* (2007). More than ninety percent (90%) of the time, the arrest of a juvenile for a sex offense is a one-time event, although the juvenile may be apprehended for *non*-sex offenses typical of other juvenile delinquents. Frank E. Zimring, *An American Travesty*, 66 (2004). Multiple studies have confirmed extremely low rates for sexual re-offending for juveniles convicted of sex offenses. *Id.* at Appendix C. Moreover, ninety-two percent (92%) of the incidents leading to juvenile arrests for sexual offenses would not be eligible as evidence of a pedophilia disorder under American Psychiatric Association diagnostic criteria for abusive sexual uses of children. *Id.* at 65.

[14] For example, one study concluded that only 6.6% of 196 juvenile sex offenders committed a sexually violent offense during the follow-up period. *See* Michael Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Sex Offenders*, 19 SEXUAL ABUSE 107 (2007).

[15] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juveniles Who Have Sexually Offended: A Review of the Professional Literature Report* (2001), *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/184739.pdf (last visited August 21, 2008).

[16] Robert E. Freeman-Longo, *Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem*. American Probation and Parole Association, 9 (2000). Available at http://www.app-net.org/revisitingmegan.pdf.

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exacerbates what are already, for many juvenile offenders, "poor social skills."[17] In the process, the social networks necessary for successful rehabilitation are destroyed.[18]

These negative effects of registration and notification are doubly unfortunate in light of the fact that recent social science research indicates that juveniles generally stand to benefit much more than do adults from sex offender treatment.[19] Juvenile treatment efforts benefit not only from youths' emerging development,[20] but also from the involvement of parents, caregivers, and family members—all of whom rarely participate in adult offender treatment. Notwithstanding that juveniles are more amenable to treatment and less susceptible to recidivism, however, juveniles adjudicated delinquent of offenses which subject them to the Act will be classified as sex offenders and are thereby subject to lifetime registration. This is in conflict not only with ABA policy, but also with the juvenile justice system's longstanding commitment to a rehabilitative focus with regard to juvenile sexual offenders.[21] Accordingly, the ABA urges Congress and the states to reconsider and revise laws requiring juveniles to publicly register as sex offenders.

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[17] *See* Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles*, 91 CAL. L. REV. 163 (2003).

[18] *See id.*

[19] Melissa Y. Carpenter, *et al.*, *Randomized Trial of Treatment for Children with Sexual Behavior Problems: Ten-Year Follow-Up*, JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY, 74(3), 482-88 (June 2006).

[20] *See* Coalition for Juvenile Justice, *Childhood on Trial—The Failure of Trying and Sentencing Youth in the Adult Criminal System*, 36 (2005) ("Adolescents are not miniature grown-ups. They differ from adults in critical physiological and psychological ways. Certain parts of the brain—particularly the frontal lobe and the cable of nerves connecting both sides of the brain—are often not fully formed, which can limit cognitive ability. This is also the part of the brain that has to do with making good judgments, moral and ethical decisions, and reining in impulsive behavior. New research increasingly demonstrates such differences. For instance, the way in which a common mental illness, depression, manifests in the brains of teenagers is entirely different from the way in which it manifests in adults, because throughout adolescence young people are developing new neurons and adults are not.").

The American Medical Association stated in their Amicus Brief to the United States Supreme Court in *Roper v. Evans*, 543 U.S. 551 (2005), that "[t]he adolescent's mind works differently from ours. Parents know it. This Court has said it. Legislatures have presumed it for decades or more. And now, new scientific evidence sheds light on the differences." Amicus Brief on behalf of the American Medical Association, *et. al, Roper v. Simmons*, at 2 (Supreme Court of the United States, No. 03-633).

[21] *See In re Gault*, 387 U.S. 1, 15-16 (1967) (The philosophy behind the creation of this country's juvenile justice system was that "society's role was not to ascertain whether the child was 'guilty' or 'innocent,' but '[w]hat is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career'"; thus "[t]he idea of crime and punishment was to be abandoned," and the focus shifted to rehabilitation.); *see also* David O. Brink, *Immaturity, Normative Competence, and Juvenile Transfer: How (Not) to Punish Minors for Major Crimes*, 82 TEX. L. REV. 1555, 1559-61 (2004).

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**Congress and the States Should Grant Juvenile Court Judges Sole Discretion to Decide Whether Juveniles Should Be Placed On Sex Offender Registries**

Just as recent research suggests important distinctions between juvenile and adult sexual offenders,[22] it similarly indicates that not all juvenile sexual offenders are the same. Treatment of these youths should be based upon a thorough and comprehensive assessment that allows for the careful tailoring of interventions based upon the risks presented. This Act, in contrast, creates a strict liability scheme whereby the discretion of the judge and prosecutor are eliminated. Meanwhile, there are neither provisions for a risk assessment hearing in the case of juveniles adjudicated delinquent and subject to registration, nor exceptions for intrafamilial cases of sexual abuse.

The legal response to juveniles who exhibit sexually inappropriate behavior should take into account youths' developmental status, and should not automatically subject them to registry and notification requirements that will likely prohibit them from ever leading a normal life. Because registration and notification have questionable public safety benefits when applied against juveniles[23] and are likely to foster peer rejection, isolation, and increased anger in adolescents, they should be imposed—if at all for juveniles—conscientiously and selectively.

Juvenile court judges are uniquely qualified to decide pursuant to state law—taking into account the youth's specific offense, risk of re-offending, prior delinquent acts, dangerousness to the community, and other pertinent personal and family information—whether a youth should be subjected to the registration and notification requirements that are usually made of adult offenders. While this approach does not guarantee that all juveniles will be exempted from community notification, it permits the judiciary to exercise discretion in determining whether a juvenile's offense history and identifying information should be subject to public disclosure. The ABA urges Congress and the states to grant juvenile court judges sole discretion in this delicate matter that is handled far too uniformly by the Act.

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[22] As mentioned *supra* note 20, scientific research confirms important cognitive differences between adolescents and adults. The frontal lobe—vital to controlling impulsive behavior, moral reasoning, and emotions—is the last part of the brain to fully develop. Coalition for Juvenile Justice, *Applying Research to Practice: What are the Implications of Adolescent Brain Development for Juvenile Justice?* 6-7 (2006).

[23] Few adult offenders ever committed sex crimes as youths. Human Rights Watch, *No Easy Answers: Sex Offender Laws in the United States*, 70 (2007) *available at* http://www.hrw.org/reports/2007/us0907/ (last visited August 21, 2008).

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**Congress and the States Should Provide a Reasonable Method for Juvenile Offenders to Petition for Removal from Registries, and Should Reject Retroactive Application of the Act to Minors**

A large percentage of juvenile sex offenses occur within families[24] and do not rise to the level of sexual predation targeted by the Act. Furthermore, the "Lifetime Registration" provisions of the Act, which do not permit petitions for removal until at least twenty-five years have passed, are likely to have a chilling effect on the reporting of these crimes and will reduce admissions to the charges in the cases that do get reported. The results will be: far more contested proceedings in these cases; far fewer delinquency adjudications; and far fewer juveniles getting the help they need. To the extent possible, Congress and the states should provide a reasonable method for low-risk offenders to petition to be removed from federal and state sex offender registries.

Also troubling is the retroactivity of the Act. In general, the fact-finding and delinquency plea processes in juvenile courts have fewer safeguards than has the adult system because the law has long realized that children are less culpable than adults. In *McKeiver v. Pennsylvania,*[25] the United States Supreme Court rejected the idea that juveniles are deserving of all the procedural rights guaranteed to adults accused of committing a crime, and instead instituted a "fundamental fairness" approach.[26] Later, in *Bellotti v. Baird,*[27] the Court articulated three specific factors warranting disparity between the constitutional rights of youth and adults: (1) the unique vulnerability of children; (2) their inability to make critical decisions in an informed and mature manner; and (3) the importance of the parental role.

Thus, juvenile sex offenders are deprived of the procedural protections provided to adult offenders, and juvenile adjudications for sex offenses consequently tend to lack the precision required by ABA policy. These Supreme Court rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, youths frequently lack the experience, perspective, and judgment necessary to recognize and avoid choices that could be detrimental to them.[28] Accordingly, Congress and the states should reject retroactive application of the Act to those who where were minors at the time of their offenses.

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[24] This highlights another potential danger of registration of juvenile sexual offenders: that publicly available information about the youth's crime could inadvertently expose the identified victims, particularly when the victim is a family member.

[25] 403 U.S. 528 (1971).

[26] *Id.* at 533.

[27] 443 U.S. 622 (1979).

[28] *Id.* at 635.

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**Conclusion**

Because the Adam Walsh Act is overbroad and inconsistent with ABA juvenile justice policy, the ABA urges Congress and the states to re-examine and revise the laws so that youths are not automatically publicly identified as "sex offenders" and consequently subjected to stigmatization, harassment, or vigilantism as a result of unlawful conduct that was likely their first and only offense. The ABA supports an amendment to the laws that would give juvenile court judges sole discretion to decide juvenile sex offender requirements pursuant to state law—in accordance with the youth's specific offense, risk of re-offending, prior delinquent acts, dangerousness to the community, and other pertinent personal and family background information. In addition, the ABA urges Congress and the states to provide a reasonable method for low-risk offenders to petition to be removed from sex offender registries, and to reject retroactive application of the Act to minors. Finally, the ABA calls for Congress and the states to provide enhanced funding for specialized treatment and monitoring of juveniles adjudicated for sexual offenses, as well as for both the short- and long-term treatment needs of child victims of sex crimes.[29]

Respectfully submitted,

Anthony Joseph
Chair, Criminal Justice Section
February 2009

[29] Approximately twenty to fifty-five percent (20%-55%) of juveniles who commit sexual offenses self-report sexual abuse. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report* (2001), *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/184739.pdf (last visited August 21, 2008).

# 101A

**Executive Summary**

1. **Summary of the recommendation**
The Criminal Justice Section recommends that the ABA adopt new policy *that calls for a re-examination of federal and state law and policy relating to collateral sanctions imposed on juvenile sex offenders, and proposes that juvenile court judges be the key decision-makers in whether those sanctions are imposed.*

2. **Summary of the issue which the recommendation addresses**
Because the Adam Walsh Act is overbroad and inconsistent with ABA juvenile justice policy, the recommendation urges Congress and the states to re-examine and revise the laws so that youths are not automatically publicly identified as "sex offenders" and consequently subjected to stigmatization, harassment, or vigilantism as a result of unlawful conduct that was likely their first and only offense. The recommendation supports an amendment to the laws that would give juvenile court judges sole discretion to decide juvenile sex offender requirements pursuant to state law—in accordance with the youth's specific offense, risk of re-offending, prior delinquent acts, dangerousness to the community, and other pertinent personal and family background information. In addition, the recommendation urges Congress and the states to provide a reasonable method for low-risk offenders to petition to be removed from sex offender registries, and to reject retroactive application of the Act to minors. Finally, the recommendation calls for Congress and the states to provide enhanced funding for specialized treatment and monitoring of juveniles adjudicated for sexual offenses, as well as for both the short- and long-term treatment needs of child victims of sex crimes

3. **How the proposed policy position will address the issue**
The proposed resolution calls for an amendment in the law.

4. **A summary of any minority views or opposition which have been identified**
None have been identified yet.

# United States House Committee on the Judiciary
# Subcommittee on Crime, Terrorism, and Homeland Security

## Hearing on Sex Offender Registration and Notification Act (SORNA): Barriers to Timely Compliance by States

### Testimony of the National Congress of American Indians

### March 10, 2009

Thank you for holding this important hearing today. Indian Country strongly supports Congress's efforts to keep our communities safe from sexual predators. Unfortunately, SORNA is structured in a way that will undermine its overall public safety effectiveness and has created unnecessary challenges for the tribal and state officials charged with implementing the law on the ground. American Indian and Alaska Native women have a one-in-three chance of being raped in their lifetime.[1] Likewise, devastatingly high rates of sexual abuse of Native children, particularly in government and church run schools, have long plagued Native communities. The Indian Health Service estimates that one in every four Native girls and one in every seven Native boys will be sexually abused.[2] As tribal leaders know, gaps in criminal jurisdiction and law enforcement on tribal lands have caused sexual predators to target Indian communities.[3] Perhaps no other group in the United States is as effected by, or concerned about, sexual violence and sexual predators as tribal communities.

Unfortunately, federal requirements related to the tracking of sex offenders on tribal lands have become a source of great confusion and frustration for many tribes over the past two years. In 2006, Congress passed two bills addressing sex offender tracking on tribal lands—the Violence Against Women Act of 2005 (VAWA), and, six months later, SORNA. While the tribal provisions in VAWA were developed in close consultation with Indian tribes and are widely supported by tribal governments, the provisions addressing Indian tribes in SORNA were included without any input from Indian tribes and represent a dramatic departure from the way other criminal justice matters are handled on tribal lands.

NCAI has stated before that the distribution of authority in SORNA is an affront to tribal sovereignty (NCAI Resolution ECWS 07-003, *attached*). The law strips a subset of tribes that are subject to state jurisdiction under PL 280 of civil regulatory authority over their members. It also has the potential to create state criminal jurisdiction in non-PL 280 states where it has never

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[1] This is compared with an incidence rate of 1 in 5 for women nationwide. Tjaden and Nancy Thoennes, *Prevalence, Incidence and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey* (November 2000, NCJ 183781), exhibit 7 p. 22, available at http://www.ncjrs.org/pdffiles1/nij/183781.pdf.

[2] Department of Health and Human Services, Indian Health Service, Child Abuse Project, *available at,* http://www.oyccap.ihs.gov/.

[3] At a 2006 SCIA Hearing, Chairman John McCain stated that "The Indian Child Protection and Family Violence Prevention Act was enacted in 1990 in response to the findings … that certain BIA schools had become safe havens for child abusers. The investigation of these crimes revealed that the perpetrators knew that the reporting and investigation of these heinous acts were in such a sorry state that they would rarely be detected." HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE ON S. 1899, March 15, 2006.

before existed. The delegation of tribal criminal and civil authority to the states contemplated by the Act is an unnecessary complication of the already confusing system of criminal and civil jurisdiction on tribal lands. The Act also represents a substantial unfunded mandate for tribes, many of whom already suffer from a severe shortage of resources for public safety.

I commend the Committee for proactively addressing implementation of SORNA in advance of the compliance deadline. It is clear the tribes and states need significant additional resources in order to implement the law. In addition, the structural defects of the statute require additional Congressional action in order to make the goal of a seamless sex nationwide sex offender tracking system a reality. NCAI's testimony today will touch on many of the challenges tribes are encountering as they attempt to implement SORNA and make recommendations for how these challenges can be addressed. I strongly encourage the Committee to solicit additional testimony from Indian tribes at future hearings on this topic.

**SORNA Implementation**

SORNA addresses tribes in two key ways. First, the statute created a new federal criminal offense applicable to individuals who have been convicted of a qualifying sex offense in tribal court and fails to register in the jurisdiction where the offender works, lives, and attends school.[4] The law also requires all jurisdictions to include tribal court convictions for qualifying sex offenses in their registries.[5] Second, Section 127 of SORNA provides a mechanism for a subset of Indian tribes to participate in the national sex offender registration system as "registration jurisdictions." Section 127 created two classes of tribes: 1) those subject to PL 280 jurisdiction in MN, WI, NE, OR, CA, and AK, and 2) all other tribes. Tribes in the second category were given one year to pass a resolution stating their intention to comply with the mandates of SORNA. For those tribes that failed to pass a resolution within one year, as well as the PL 280 tribes in the first category, the responsibility to implement the new law was delegated to the state or states in which the tribe's lands are located.

It was deeply problematic that SORNA required Indian tribes to take affirmative action to preserve their existing authority. Of the 212 tribes that were eligible to elect to comply with the law, 198 did so before the July 27, 2007 deadline. An additional 5 tribes passed resolutions delegating their responsibilities to the state.[6] It is NCAI's understanding from our communications with tribal leaders, that many of the tribes passed resolutions to preserve their rights under the law and intend to negotiate agreements with the state or other tribes to share the burden of implementation.

As the Committee knows, all states and tribes have until July 27, 2009 to come into compliance with the mandates of the Act. To date, there has been very little money made available to assist tribes with implementation of the law. Many tribes have begun discussions with other tribes and the states about how they can work together to best implement the law.

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[4] 18 U.S.C. § 2250. The Department of Justice has issued Guidelines instructing that this registration requirement have retroactive application. DOJ Interim Rule, 28 C.F.R. § 72.3.

[5] Adam Walsh Child Protection and Safety Act, §111 (6).

[6] NCAI commends Leslie Hagen, in the SMART Office for her efforts to ensure that Indian tribes receive timely information regarding implementation of the Act. It is vitally important that the SMART Office continue to have a knowledgeable staffer dedicated to implementation of the Act in Indian Country.

At this point, however, there is still a great deal of confusion. A number of states have complained about the stringent requirements set out in the federal law and have suggested that coming into compliance will be more expensive than accepting a 10% reduction in their Byrne grant funding. It will be very difficult for tribes to comply with the law as a practical matter if the state in which the tribe is located is choosing not to comply. In addition, it remains to be seen how the National Tribal Sex Offender Registry authorized in VAWA will be reconciled with the tribal provisions in SORNA. Section 905 of VAWA authorizes $1 million a year for five years to be granted to a tribe or tribal organization to develop both a national tribal sex offender and order of protection registry.[7] Consistent with the long-standing federal policy of respect for tribal self-determination, this provision is very flexible and would create a voluntary registry available for the use of all tribal governments. Congress appropriated $940,000 for the Tribal Registry last year, but those funds have not yet been expended by the DOJ.

***Procedure for Addressing Tribal Compliance***

One of the major issues that has not yet been addressed by Congress or the DOJ, is the process that will be used to assess tribal compliance with SORNA. Under Section 127(2)(C) the Act, Congress vested the Attorney General with the authority to assess the compliance of those tribes who have elected to participate as a registration jurisdiction. If the Attorney General finds that the tribe is not in compliance, he has the power to delegate the tribe's authority under the Act to the state. Such a delegation would represent a major infringement on tribal sovereign authority, and Congress' unprecedented decision to vest the Attorney General with this power may well be an unconstitutional delegation of Congress' authority under the Indian Commerce Clause. At the very least, it undermines the government-to-government relationship and long-standing policy of respect for tribal sovereignty on the part of the Congress.

If the Attorney General chooses to exercise this authority, it will dramatically change the current scheme of civil and criminal jurisdiction in Indian Country. As a practical matter, such a delegation will undoubtedly create a great deal of confusion among law enforcement agencies on the ground and will require significant adjustments in the state plan for implementation of the Act. It will also have the potential to destabilize countless carefully negotiated cross-jurisdictional collaborative agreements that currently exist between tribes and the states. This confusion and destabilization could easily undermine the effectiveness of the Act for the protection of both Native and non-Native communities.

Despite these potentially serious consequences, the DOJ Guidelines provide no indication of the process that will be used by the Attorney General to assess tribal compliance and make this delegation. The federal government's unique trust responsibility to Indian nations, the federal policy of promoting and supporting tribal self-determination, and the requirement in EO 13175 that the federal government "shall grant Indian tribal governments the maximum administrative discretion possible," require that Congress revisit this portion of Section 127. At the very least, the Attorney General must engage in meaningful consultation with Indian tribal governments to develop a process that requires DOJ to provide adequate notice to tribes of their noncompliance

[7] Violence Against Women and Department of Justice Reauthorization Act, Pub. L. 109-162, Sect. 905(b), 119 Stat. 2960 (2006) ("VAWA").

and to take all actions that may be necessary to provide technical assistance to help a tribe come into compliance.

The goal of the DOJ should be to work cooperatively with the tribe to assist in bringing the tribe into compliance. The primary goal of the federal government should be to improve public safety on reservations and facilitate tribal self-determination. This should be an open and flexible process that reflects the longstanding relationships between the federal and tribal governments and the federal trust responsibility. This process should be informed by Executive Order No. 13175 and the DOJ Consultation Policy.

***Tribes Not Acting as "Registration Jurisdictions"***

Even in those places where tribal governments did not have the option of participating as a registration jurisdiction under Section 127 of the Act, the tribal government will play an important role in the successful implementation of the national sex offender registration system. Although the statute treats tribes and states as if they are interchangeable, the state simply cannot fulfill all of the responsibilities of tribal governments. For example, even where a state has the authority under the Act on tribal lands, tribal courts will still have the responsibility of notifying offenders of their registration obligation. Tribal detention facilities will still be housing offenders. The state will need access to tribal codes in order to include the text of the law violated by the offender in the state registry. Most importantly, tribal or BIA law enforcement officers will be the officers most likely to be in need of information about the whereabouts of registered offenders for investigation purposes and best positioned to assist registration personnel with tracking down non-compliant offenders. In many places the states do not have the infrastructure in place in tribal communities to successfully implement the requirements of SORNA. Alaska officials, for example, have expressed concerns in private conversations that they simply will not be able to implement SORNA in the Native villages.

The DOJ has attempted to mitigate the problems created by the exclusion of a subset of tribes subject to PL 280 jurisdiction in Section 127. In the Guidelines DOJ clarifies that nothing in the law prohibits a tribe whose authority has been delegated to the state under Section 127 from carrying out registration and notification programs consistent with their sovereign authority to do so, so long as it does not interfere with the state's responsibility under SORNA. The Guidelines further clarify that nothing in the law precludes the states and tribes from agreeing that tribal authorities will play some role in carrying out state registration and notification functions.

While this is an important clarification, it leaves those tribes that were excluded from participation under Section 127 dependent on the goodwill of the state. NCAI has heard from a number of tribes that they are experiencing resistance when they attempt to negotiate a sharing of responsibilities with the states. In addition, throughout the Guidelines provisions are included requiring the sharing of information between "jurisdictions" of an offender's whereabouts or updates to registration information. Indian tribes who have not opted-in under Section 127 have the same law enforcement and public safety need to receive this information as do other jurisdictions. Unfortunately, the definition of "jurisdiction" in the statute would leave them out and, as a result, the local law enforcement agency would not have the information it needs to keep the community safe. NCAI strongly recommends that Congress consider amending the

Adam Walsh to remove the arbitrary distinction made in Section 127 and allow all tribes to participate in the national sex offender registration system on an equal basis.

***The Responsibilities of the Bureau of Indian Affairs***

We are very concerned that the Bureau of Indian Affairs (BIA) is not mentioned in the law nor in the DOJ Guidelines. In many locations the BIA is the primary law enforcement agency for the tribe, and may also operate the tribal court and detention facility. The BIA funds fifty-nine detention facilities on tribal lands, and directly operates twenty.[8] Forty-seven tribal law enforcement programs are BIA-operated, and an additional 154 programs are BIA-funded.[9] Forty-six tribal communities are served by BIA-operated courts.[10] It is unclear from the statute and the Guidelines what role the BIA will play when a tribe opts in where the BIA has the responsibility for one of these important functions. Or where the state has the responsibility for implementing SORNA and will need to coordinate with BIA. NCAI recommends that Congress clarify that where a tribal government has elected to participate as a registration jurisdiction, the Bureau of Indian Affairs must take all necessary action to assist with tribal implementation of the Act.

***Registration of Federal Inmates***

We also have significant concerns about the provisions in the Guidelines exempting federal corrections facilities from the Act's requirement that offenders be registered prior to release from incarceration. SORNA mandates that "an appropriate official shall, shortly before the release of the sex offender from custody, or if the sex offender is not in custody, immediately after the sentencing of the sex offender... ensure that the sex offender is registered."[11] However, under the Guidelines all federal corrections facilities will merely provide the sex offender with notice that the individual must register within three days. Sex offenders in federal prisons have often committed particularly heinous crimes. It is irresponsible to release these prisoners without ensuring that they are registered and their home jurisdiction is notified of their release. This provision leaves Indian tribes particularly vulnerable because of the high proportion of offenders whose crimes arose in Indian Country that are incarcerated in federal prisons. Today, over 60% of federal sex offense cases occur in Indian Country and the majority of such offenders will return to Indian reservations. [12]

In addition to undermining public safety, this provision in the Guidelines will substantially shift the cost burden of initial registration from the federal government to the tribes. The responsibility of initially registering an incarcerated offender, including the collection of DNA and fingerprints, is a responsibility that clearly lies with the federal government under the Act. At a consultation session with tribal leaders on July 31, 2007 federal representatives stated that the federal prisons could not register offenders because there is no federal registry. Many tribes,

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[8] Guillermo Rivera, Bureau of Indian Affairs, Testimony before the National Prison Rape Elimination Commission, March 27, 2007.

[9] Steven Perry, Bureau of Justice Statistics, "Census of Tribal Justice Agencies in Indian Country, 2002," (Dec. 2005).

[10] *Id.*

[11] Adam Walsh Child Protection and Safety Act, § 117 (a)(3).

[12] Report of the Native American Advisory Group, United States Sentencing Commission 2 (Nov. 4, 2003), *available at* http://www.ussc.gov/NAAG/NativeAmer.pdf.

however, also do not currently have registry systems in place. The costs that would be associated with developing the federal infrastructure necessary to fulfill this responsibility are no greater than the cost the Indian tribes will incur in building the same infrastructure. NCAI strongly recommend that Congress clarify that federal corrections facilities, like state and tribal facilities, are required to ensure that offenders are entered into the registry before their release.

***Federal Database Access and Technology Infrastructure***

The SORNA will require tribes to have access to the National Sex Offender Registry (NSOR) maintained by the FBI and other federal criminal information databases. Currently, Indian tribes can access the federal databases only by going through the state in which the tribe is located. Some tribes have been able to negotiate agreements with state governments to gain this access. These agreements vary between states with some states charging substantial sums or requiring criminal information sharing before granting access to the tribes. Many tribes have been unable to negotiate an agreement with the state and remain shut out of the federal criminal databases. Indian tribes have been advocating for direct access to the federal database for years, and a provision was included in VAWA stating that the "Attorney General shall permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into Federal criminal information databases and to obtain information from the databases." However, the FBI continues to assert that tribes can only access the databases by negotiating with the state.[13]

A census of tribal justice agencies conducted by the BJS in 2002 found that fifty-four tribes were submitting information on tribal sex offenders to the National Sex Offender Registry.[14] However, less than 12% of tribes were electronically connected to jurisdictions off the reservation, nearly half of tribal justice agencies reported that they do not have access to the National Criminal Information Center database, and only fourteen tribes reported that they were routinely sharing crime statistics with the state or local governments or the FBI.[15] In addition, the vast majority of tribal law enforcement agencies are still using ink and paper fingerprinting techniques that will have to be upgraded to LiveScan technology before tribes can comply with SORNA. NCAI recommends that Congress clarify that the FBI must permit tribal law enforcement agencies to directly access the federal criminal information database.

***Resources and Timelines***

Perhaps the biggest challenge facing tribal communities attempting to implement SORNA is the cost. Because of a desire to preserve tribal authority vis-à-vis the states, many tribes have opted-in as registration jurisdictions under Section 127 even though they likely will not have the capacity to meet the onerous requirements set out in SORNA without a substantial expenditure of resources. As noted above, tribes also face substantial technological and infrastructure deficits. The states have had over a decade to build the sex offender management systems that will be modified and updated to comply with the new law. Many tribes, however, are starting

[13] Comments of the Federal Bureau of Investigation at the "Government-to-Government Consultation on Violent Crime in Indian Country," March 5, 2008.
[14] BJS Census of Tribal Justice Agencies, 2002.
[15] *Id.*

from scratch, and it will be extremely costly for Indian tribes to build the infrastructure necessary to comply with the law's mandates. To date, very little money has been made available from the Department of Justice to assist tribes in complying with the law. In addition, appropriations for implementing the law were cut in FY 2008 from more than $20 million to just over $4 million, making it increasingly unlikely that significant funding will be made available prior to the 2009 compliance deadline. As a result, many tribal governments may be forced to divert limited tribal public safety resources away from other priorities. Or, more likely, they will be compelled to opt-in and then submit their sovereign authority to states. The statute currently allows for 2 one-year extensions of the deadline, but the burden will be on the tribe to apply for such an extension.

In light of the delays in the promulgation of the Guidelines, the limited nature of the funding available, and the practical reality that many tribes are playing catch up, NCAI recommends that Congress extend the compliance deadline for Indian tribes, and convene a group of stakeholders to develop recommend solutions to the underlying structural issues with the treatment of tribes under SORNA. NCAI also strongly recommends that Congress appropriate funds specifically for tribal implementation of SORNA.

**Conclusion**

The tribal governments represented by NCAI share the federal government's commitment to protecting our communities and citizens from sexual predators. We have no doubt that there are solutions to the many challenges and concerns outlined above, however finding those solutions will require bringing all of the necessary stakeholders together to develop solutions that will work for the diverse tribal governments across the nation.

NATIONAL CONGRESS OF AMERICAN INDIANS

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## The National Congress of American Indians
## Resolution #ECWS-07-003

**Title: Urging Congress to Amend Section 127 of the Adam Walsh Act**

**WHEREAS,** we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS,** the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, according to Department of Justice statistics, 1 in 3 Native women will be sexually assaulted in her lifetime; and

**WHEREAS**, tribal governments are committed to fulfilling their responsibility to protect and promote public safety on tribal lands and a number of tribes have developed innovative strategies for tracking sex offenders on tribal lands; and

**WHEREAS,** on July 27, 2006 Congress passed the Adam Walsh Act, which created a National Sex Offender Registry and Notification System; and

**WHEREAS**, Section 127 of the Adam Walsh Act addresses Indian tribes and was included without any hearings, consultation or consideration of the views of tribal governments and current tribal practices; and

**WHEREAS**, Section 127 forces tribal governments to affirmatively elect to comply with the mandates of the Act by July 27, 2007 or *the state in which the tribe is located will be given jurisdiction to enforce the Act and would then have the right to enter tribal lands to carry out and enforce the requirements of the Act*; and

**WHEREAS**, tribal governments in the mandatory P.L. 280 states would be forced to relinquish civil jurisdiction to the states for limited purposes under the Act; and

**WHEREAS**, the Act requires tribes who elect to comply with the Act, to maintain a sex offender registry that includes a physical description, current photograph, criminal history, fingerprints, palm prints, and a DNA sample of the sex offender; and

**WHEREAS,** the tribal provisions of the Adam Walsh Act make no reference to the National Tribal Sex Offender Registry authorized in Title IX of the reauthorization of the Violence Against Women Act passed in 2005 that was developed in consultation with Tribal governments and is more consistent with principles of tribal sovereignty; and

**WHEREAS**, Congress has failed to appropriate any money to develop the National Tribal Sex Offender Registry, nor to assist tribes into developing the systems necessary to comply with the mandates of the Adam Walsh Act and is unlikely to do so prior to the July 27, 2007 deadline for tribes to opt-in; and

**WHEREAS**, the Department of Justice has not yet issued any regulations or guidance for implementation of the Act and it seems increasingly unlikely that any such guidance will be promulgated prior to the July 27, 2007 deadline; and

**WHEREAS**, the provision in the Adam Walsh Act that gives states enforcement authority essentially delegates federal law enforcement authority on many reservations where no such delegation has occurred for any other area of law and states are not currently exercising criminal jurisdiction; and

**WHEREAS,** requiring tribes to take affirmative action to avoid an expansion of state jurisdiction on tribal lands represents an unprecedented diminishment of tribal sovereignty and will likely result in an expansion of state jurisdiction that will unnecessarily complicate the already confusing system of criminal jurisdiction on tribal lands and diminish cooperation between states and tribes on law enforcement; and

**WHEREAS,** the existing scheme of criminal jurisdiction on tribal lands is sufficient to fully enforce the registration requirements of the Adam Walsh Act without the provision delegating federal enforcement authority to the state in places where states do not currently have this authority; and

**NOW THEREFORE BE IT RESOLVED,** that the NCAI does hereby call upon the Congress to amend the Adam Walsh Act to remove the existing tribal provisions and engage in a process of consultation with tribal governments to determine how best to include tribal nations in the national sex offender registry; and

**BE IT FURTHER RESOLVED,** that the NCAI does hereby call upon the Congress to remove the arbitrary July 27, 2007 deadline for tribes to elect to participate; and

**BE IT FURTHER RESOLVED,** that NCAI calls upon Congress to strike the portion of the Adam Walsh Act that delegates federal enforcement authority under the statute to the states; and

**BE IT FINALLY RESOLVED,** that NCAI calls upon Congress to appropriate sufficient funds for tribes to develop registration systems that will comply with the mandates of the Adam Walsh Act and for the development of the National Tribal Sex Offender Registry, and calls upon the Department of Justice to authorize tribal registration numbers.

**CERTIFICATION**

The foregoing resolution was adopted by the Executive Council at the 2007 Executive Council Winter Session of the National Congress of American Indians, held at the Wyndham Washington and Convention Center on February 26-28, 2007 with a quorum present.

President

**ATTEST:**

Recording Secretary

February 27, 2009

Rep. John Conyers, Chairman
U.S. House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Attn. Karen Wilkinson
B370B Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Conyers,

The Professional Advisory Board to the Coalition for a Useful Registry is a multi-disciplinary group of professionals with expertise in criminal and juvenile justice, sex offender management, victim and sexual offender treatment, education, research, and employment. Public safety is our highest priority. For this reason we have many substantive concerns about the efficacy of the Adam Walsh Act and sexual offender registries.

It is our professional opinion that:

- Broad offense-based inclusion of individuals on registries is counterproductive to public safety.
- Significant fundamental and developmental differences exist between juvenile and adult sexual offenders.
- Juveniles must be regarded in a manner that is consistent with the goals of the juvenile justice system. As described by the US Department of Justice "the purpose of a delinquency proceeding is to remove juveniles from the ordinary criminal process applied to adults, in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation." Sex offender registries, public or private, which require juveniles to register are contrary to these goals.
- Sex offender registry laws should not be applied to those without a criminal conviction on their record.
- Sex offender registries should not be applied retroactively.
- Assessment and treatment of both juveniles and adults with sexual behavior problems, by qualified professionals, is vital to the prevention of future sexual abuse.
- Fact patterns associated with the various types of sexual misconduct are too vast to rely on a statutory-based scheme without further considerations. Some fact patterns involve non-violent conduct and non-predatory conduct. For this reason, a label such as "sex offender" which is so commonly used synonymously with violence, predation and pedophilia, must not be applied without scrutiny. Such labels should be determined only after assessment and review of an individual's risk/threat to public safety. Just as there are individuals with registerable offenses that should not be on the registry, there are individuals with non-registerable offenses (often due to pleas) that should be on the registry.
- Labeling of "sex offenders" results in great stigma and many additional requirements are imposed on these individuals (public and private registrants). Research shows that in almost all cases, this

negatively affects the individual's ability to not only be positive contributing members of society, but also to obtain life's most basics needs – a home, education, job, safety, family, and healthy relationships. Such instability jeopardizes public safety.

- Inconsistencies in criminal sexual conduct statutes across states and the processing of cases, results in great inconsistency as to who is placed on the registry. For example, an individual in one state might be charged, resulting in registration, while in another state the exact same behavior isn't charged. This is especially evident with juveniles and young adults. It's problematic when federal laws are applied to an inconsistent foundation of state laws. This again underscores the need for a law that uses risk assessments as a basis for labeling.

- Financial and staffing resources are displaced when we track individuals that should not be on the registry. This includes additional costs and/or staff to perform registry related functions that apply to individuals that are not a threat to public safety. With increasing registration requirements, this problem is only getting worse. Further, "given the lack of demonstrated effect of Megan's Law, the researchers are hard-pressed to determine that the escalating costs are justifiable" (Zgoba, et.al. 2008).

We strongly oppose:

1) the application of the Sex Offender Registration and Notification Act (SORNA) to juvenile offenders, including those on state registries that do not meet the federal definition of sex offender, and

2) the labeling of individuals as sex offenders without consideration of risk assessments.

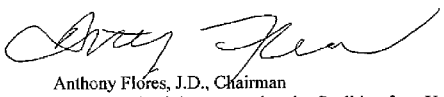
We strongly encourage:

- the use of evidence-based prevention, treatment and rehabilitation programs, to prevent sexual abuse,

- the use of risk assessments in determining who should be labeled a sex offender, and

- the U.S. Legislature to revisit the Adam Walsh Act, and make significant changes that address these concerns.

Sincerely,



Anthony Flores, J.D., Chairman
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## Professional Advisory Board of the Coalition for a Useful Registry

**Academia (Criminology) & Research** – Dr. Roger Kernsmith Ph.D., Researcher and Professor of Criminology, Eastern Michigan University

**Academia (Law) & Former Prosecutor** - Tony Flores J.D., Cooley Law Professor, Former Chief of the Criminal Sexual Conduct Unit, Ingham County Prosecuting Attorney's Office

**Academia (Social Work) & Research** – Dr. Poco Kernsmith, MSW, Ph.D., Researcher and Assistant Professor of Family and Sexual Violence, Wayne State University School of Social Work; Wayne County

***Academia & Research** – Erin Comartin, MSW, Research Assistant, Wayne State University School of Social Work; Wayne County

***Assessment** - Dr. Gary Rasmussen, Ph.D., Clinical and Forensic Psychology, Founder and Past President of Macomb County Care House

**Assessment & Treatment (Victims, Offenders & Residential Treatment)** – Ron Grooters, LMSW, ACSW, Wedgewood Christian Services, Kent County, 2009 President of MI Chapter of the Association for the Treatment of Sexual Abusers (ATSA); Kent County

**Assessment & Treatment (Secured Facility)** – Annette Henderson, LMSW, ACSW, 30th Judicial Circuit Court, Juvenile Sex Offender Treatment Program (HALT - Healthy Attitudes and Lifestyles for Teens); Formerly a Certified Professional Adolescent Sexual Offender Treatment Provider, Bureau of Juvenile Justice, Michigan Department of Human Services at Maxey Boys Training Center until program closed

**Assessment & Treatment (Administration)** - Laura Marsh, LMSW, Director, Adolescent Sexual Offender Treatment Program, 17th Circuit Court, Kent County

***Assessment & Treatment** - Patrick McFarlane, MSW, LLP, Therapist and Educational Psychologist, 2007 President of MI Chapter of the Association for the Treatment of Sexual Abusers (ATSA); Mason County

**Assessment & Treatment** - Dr. Barry Mintzes, Ph.D., Adolescent and Adult Psychologist, former Warden of Jackson and Kinross Prisons; former Chief of Psychiatric Clinic at Jackson Prison; Ingham County

***Assessment & Treatment** – Ron VanderBeck*, Ph.D. Forensic Psychologist, Human Resource Associates, Kent County

**Defense Attorney** – Cheryl Carpenter, J.D., Juvenile and Adult Defense Attorney; Wayne, Oakland, and Macomb Counties

**Defense Attorney** - Charles Clapp, J.D., Juvenile Defense Attorney; Kent and Ottawa Counties

**Defense Attorney** - Lynn D'Orio, J.D., LPC, Juvenile and Adult Defense Attorney, Ann Arbor, Criminal Defense Attorney's Association of Michigan Board Member; Washtenaw County

**Department of Human Services** - Mary A. Eldredge, LMSW, Foster Care Specialist, Department of Human Services, Monroe County; former Quality Assurance Analyst, Bureau of Juvenile Justice, Department of Human Services

**Employment** - Glenn Rutgers, M.A. Executive Development, Michigan Works! (Work Force Development Agency), Ottawa County

**Employment** - David Griep, M.A. Counseling and Guidance, Workforce Development Program Manager, Kandu Inc. (Prisoner Re-entry Agency and Michigan Works! Service Provider), Ottawa County

**Faith Based** - Dave Burnett, M.Div., Recently Retired Director of Chaplains, Michigan Department of Corrections

**Foster Care & Learning Disabilities** - Judi New, J.D., Family Law Attorney, Guardian Ad Litem for Foster Children, Wayne and Washtenaw Counties, President of Learning Disabilities Association (LDA) of Washtenaw County

**Judicial** - Honorable William Buhl, J.D., Circuit Court Judge, 7th Circuit Court, Van Buren County

**Judicial** – Honorable Patricia Gardner, J.D., Juvenile and Family Court Judge, 17th Circuit Court, Kent County

***Law Enforcement** – Owen Keaton, B.S. Criminal Justice and Psychology, Law Enforcement Officer, Detective Bureau, School Resource Officer Division (Juvenile Division); Wayne County

**Learning Disability Community** - Larry Wright, M.A. Sp. Ed. Administration, Retired in Vocational Rehabilitation Services for Learning Disabled, Board of Trustees Muskegon Community College, Civic Leader, Former Special Education Teacher; Muskegon County

**Medical & Legislative** - Dr. Paul DeWeese, M.D., Emergency Room Physician, Eaton County, former Michigan Legislator in Ingham County

**Probation (Juvenile)** – Kathleen Cojanu, BSW, Juvenile Probation Officer, Oakland County

**Probation and Parole (Adult)** – Todd Bechler, B.S. Criminal Justice, Adult Probation Officer and Parole Agent, 20th Circuit Court, Ottawa County

***Prosecution** – John Jarema, J.D., Chief Prosecutor, 33rd Circuit Court, Charlevoix County

**School Social Work** – Susan Rogers, LMSW, School Social Worker, Birmingham Public Schools, Developed and Implemented Health and Sexual Education Curriculum for Students with Special Needs, Oakland County

**Victim Expert** – Dr. James Henry, MSW, Ph.D., Professor of Social Work, Western Michigan University, teaching courses in child sexual abuse; Director of the Southwestern Michigan Children's Trauma and Assessment Clinic; Co-Chair of Kalamazoo Community Mental Health Board; formerly with Child Protective Services for many years; Kalamazoo County

**Pending New Members:**

**Prosecution** - Michael Chealtenam, Sex Crimes Unit Chief, Ingham County Prosecuting Attorney's Office
**Prosecution** – John Dewane, Ingham County Prosecuting Attorney's Office

* Designates Consulting Member (all other members are Full Members)

Karen Wilkinson, Council
House Sub-Committee on Crime

Dear Ms. Wilkinson:

As a unit supervisor for a sex offender treatment program for juvenile offenders, I would like to offer the following for your consideration.

The Adam Walsh Act, as it is written, seems to disregard the data regarding recidivism rates for juveniles. The research conducted by numerous researchers over the past forty years supports the idea that juveniles who sexually offend differ from adult offenders; juveniles who successfully complete sex offender treatment are at a very low risk to re-offend – under 8% nationally compared to much higher rates of re-offense in other criminal offenders.

It is my belief that the stigma associated with a label of sex offender would create a situation in which the juvenile would feel powerless and helpless to change which has proven to be a large contributing factor to an offense cycle.

Treatment offers young offenders hope; hope that they have the power to change their behaviors; hope that they will be successful adults and remain offense free; hope that they are better people because of what they have learned in treatment. Sex offender specific treatment also teaches the skills necessary to realize these hopes. Upon the successful completion of treatment, they have acquired new skills that allow them to correct the cognitive distortions which led to irrational decision making and culminated in a sexual offense. Treatment encompasses assault cycle studies, anger/stress management, development of a sense of responsibility for harm caused, empathy development, victim restoration, relapse prevention planning, family reunification, and reentry/aftercare support, resulting in healthier, more productive young adults in our communities.

It is my belief that mandatory registration would be detrimental to the successful rehabilitation of the juveniles with whom I work. As treatment providers, we do what we do because we believe that treatment works and there is indeed hope for the young men in our program. We believe that one of the best ways to repair harm to victims and communities is to foster in these young offenders the chance and hope for offense free adult lives.

Inherent in the juvenile system in the United States is a belief that juveniles can change; that with physical development, education and emotional maturity, they are capable of developing and maintaining a value system congruent with society as a whole. We believe this to be true of all juveniles, including those who have been adjudicated for sexual offenses.

Based on my years of working with juvenile sex offenders, I make the following recommendations:

- Review the data regarding recidivism rates among juveniles who have been adjudicated for sexual offenses.
- Allow a juvenile who has successfully completed a treatment program that focuses on responsibility, relapse prevention planning and victim restoration to obtain a waiver from registration.
- Develop a tier system that would allow for minimal registration time for juveniles when an administered risk assessment indicates a low risk for re-offense.
- Significantly reduce the length of time registration is mandatory.

Beata Roberts
Unit Supervisor
McLaughlin Youth Center

The Adam Walsh Child Protection & Safety Act's Sex Offender Registration and Notification Act (SORNA): Barriers to Timely Compliance by States Tuesday, 03/10/2009 - 2:00 P.M.

Dear Members of the U.S. House Judiciary Subcommittee on Crime, Terrorism and Homeland Security,

The phrase 'sex offender' is no longer a descriptive label; it has become an active dirty noun in America. These two words are synonymous with evil, the enemy child molester: a person worthy of moral exclusion. To illustrate this point, there are painfully few elected officials in this country who are brave enough to suggest that some on the registry do not belong there.

As the proud wife of a wonderful man who is required to register, I have witnessed the collateral damage of these laws firsthand in our family. Thirteen years ago at the age of nineteen, my husband believed he was having lawful sexual relations with a seventeen year old young lady in the State of New Hampshire. I won't impose the details on you, but the end result was that she was ninety-five days shy of the age of consent (sixteen) and with no mistake of age defense available in New Hampshire, he was convicted of statutory rape and required to register under the Jacob Wetterling Act for life. The rules of registration have changed many times since then and it's become increasingly frustrating and discouraging to keep up.

With a decade of sex offender law behind us, many families like my own eagerly anticipated reform. Unfortunately the Adam Walsh Act has fallen short in many ways. The Act fails to recognize registrants as individuals. All convictions within a categorized tier are assumed to contain the same level of deviousness and harm. It also fails to recognize a job as one of the most stabilizing elements in a registrant's life by requiring employer *addresses* to be posted publicly (employer names are optional). It fails to adequately control the duration of registration by requiring that a State meet the minimum standard, where many States had already exceeded the minimum under the Wetterling Act. This failure has resulted in a hodgepodge mix of laws on the duration to register across the fifty States'. It is complicated by State legislators who are reluctant to reduce duration requirements under the AWA where they can (and should) because they do not wish to appear 'weak' on sex offenders.

Ironically while the AWA recognizes that my husband is not a sex offender (he is within 4 years of age of his partner) the State of New Hampshire has categorized him as a tier III offender in their efforts to comply with the Act. Seven convictions for one night of consensual intercourse with a peer are viewed as 'multiple offenses' in New Hampshire, worthy of Tier III status based entirely on the number of convictions, with no recognition that these convictions resulted from one night, no determination of the level of dangerousness or the risk to reoffend. Over the last decade, we've seen registration law change from once a year on a private list to every ninety days in person on a public list, with ever increasing reporting requirements, all of which will result in a felony charge if he fails to comply perfectly with the law. The daily anxiety we live with is palpable in my home. We cannot afford (emotionally or financially) to misunderstand the registration laws in our home State or any other State we may travel to with our three children. My husband is not alone in this nightmare of the ever-changing goal post.

Felony convictions coupled with sex offender registration are a heavy burden for a young man to carry at the dawn of his adult life. Many of you have children and but for the grace of God, this could have been your family. Can you imagine the difficulty your son would have in finding a spouse, a job, a good neighborhood? Or the teasing your grandchildren would be subjected to by their peers in school? There are tens of thousands of registrants that are like my husband. They are

individuals, with individual circumstances who are labeled 'sex offenders' and equated with unthinkable evil in the eyes of the public. When will it end? An entire population of our society has been dehumanized. The public hatred for this group, and any one associated with a registered offender, is evident in the comments left by online readers of articles on sex offender issues. "Send them all to an island", "Put them on a slow boat to China", "Kill them all", "Castrate them all".... Is there any doubt that society views anyone with this label as less than human?

The barriers to timely Compliance of the Adam Walsh Act are due largely to concerns that the Act ignores and what those on the ground level of sex offender management and compliance have learned to be true. We've learned that actuarial risk assessment is a valuable tool in defining the balance between a former offender's right to a productive and law abiding life and the interests of justice and society. We've learned that a stable place to live and work is essential for compliance and there are numerous studies that support this. We've learned that not everyone who wears the label based on conviction is a danger to the public. I'm asking this committee to recognize for the record, the collateral damage done to the families and children of those required to register and to work toward minimizing that damage by carefully tailoring registration to individuals, not broad categories of convictions.

Sincerely,

Laurie Peterson
100 Dunbar St.
Manchester, NH 03103

To the members of the US House Judiciary Subcommittee on Crime, Terrorism and Homeland Security

March 9, 2009

Testimony

My name is Charles McGonagle. First I wish to thank you for taking the time to read my testimony. What you are about to read is my life dealing with "sex offender" laws for the past 24 years. My story began in 1985. I was twenty years old and met a young woman at a party. It never occurred to me to ask her age, as she appeared to be in the same age range as myself and the other partygoers. We fooled around, but never had intercourse. I liked her and gave her my phone number. Her parents found my phone number later and turned it over to the police. I did not know she was actually underage and I was told by the police that it was in my best interest to speak with them and that everything would be alright. I pled guilty, served a couple months in county jail and moved on with my life. A full 10 years after my conviction I was thrown into the nightmare I've been living ever since.

Before being required to register as a sex offender, I had moved on with my life. I got married and had two children. In 1990 I went back to college and got my degree. I was living the American dream of owning my own home. I had a great career as an executive chef and was doing rather well. Then in 1996 I was informed by my state of residence (NH) that I was now considered an offender against children. I was told I must register as a sex offender until I die. I was also informed that there was nothing I could do about this. I had never told my wife about the past situation as it was just that, the past. She did not understand. This along with the fact that the registration had put me into a great depression ended up causing my divorce by 1997. I had lost everything. All marital bills and child support were placed on me by the court because my wife's lawyer made sure she told the court that I was a "sex offender". I ended up having to live in my car so I could afford to pay everyone and support my children. I was angry and rightfully so for the next few years. I got into some minor trouble with the law in the years directly following my initial registration, but none that could be considered another sexual crime. Over the years I have rebuilt me life. I have been the executive chef on the seacoast of NH for eight years now. I purchased another home again and my daughter from my first marriage came to live with me in December of 2006.

In 2007, with passing of more retroactive "sex offender" laws, I placed on the public list for the very first time for all to see, labeled an offender against children, more than 20 years after my first and only statutory rape conviction. It took only about a month for my neighbors to find out. One moved telling me I dropped his property value. Others started a petition to have me removed from the neighborhood. Most just think I rape children. My daughter is harassed at school and she is not allowed to have friends over to the house as I fear everything. One evening in the dinning room at my job a woman stood up and pointed me out as a sex offender in front of about 60 guests. These laws also affect my romantic life and my ability to be intimate with my current wife because the

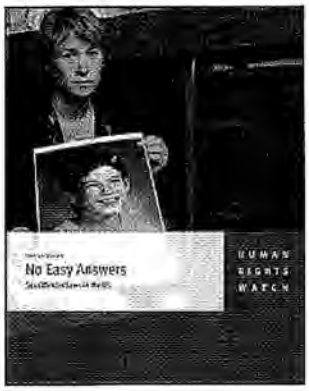
overwhelming stigma makes me feel dirty and worthless. The list of so called "non-punishing" situations I deal with on a daily basis does go on but I hope you've got a feel for what happens to someone who is labeled a sex offender and treated like a pedophile when he never was such a thing to begin with.

Since completing my sentence all those years ago I have been subjected to the Jacob Wetterling Act, Megan's Law and now the Adam Walsh Act, and let's not forget any state laws I am required to abide by as well. The Adam Walsh act would in fact allow me to be removed from the duty to register after 25 years however the state of NH has interpreted the Act as allowing them exceed the 25 years required and will continue with lifetime registration to look 'tough on sex crimes'. Over two decades ago I made a careless and stupid mistake when fooling around at a party and I can't seem to get past that one night in my life. Today, because of what I feel are retroactive laws, I will go to prison if I fail to follow all of these extraneous rules. It is ironic that I never went to prison for this "crime" in the first place. Worse yet, I am constantly reminded by law makers that I am not being further punished. But if this isn't punishment, what is?

Twenty-five years is a long time to wait for a young man who made a foolish mistake with another teenager, whom he believes to be of age. Circumstance matters and intent should as well. I never intended harm to anyone, never forced this young lady to kiss me back; never harmed her in any way. My only crime was being stupid and careless by not asking her age and I paid for that crime in county jail and with probation over twenty years ago. When will I be done paying for my crime? When will my family not have to live with the shame and stigma of the sex offender label? Please consider making wide reform efforts to all sex offender law in the nation by reviewing the individuals on the registry. It is the only way we can begin to separate those who do not belong from those who do.

Sincerely

Charles A. McGonagle




Patty Wetterling, holding a picture of her son, Jacob.

**Human Rights Watch**
**No Easy Answers**
**Sex Offender Laws in the US**
By Sara Tofte
September 11, 2007

This 146-page report is the first comprehensive study of US sex offender policies, their public safety impact, and the effect they have on former offenders and their families. During two years of investigation for this report, Human Rights Watch researchers conducted over 200 interviews with victims of sexual violence and their relatives, former offenders, law enforcement and government officials, treatment providers, researchers, and child safety advocates.

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Laws aimed at people convicted of sex offenses may not protect children from sex crimes but do lead to harassment, ostracism and even violence against former offenders.

**A project narrated by Sarah Tofte, Researcher, US Program**

**CHAPTER ONE**

**PATTY WETTERLING**: When Jacob was kidnapped, and I was told the motive behind kidnapping was for sexual purposes, I'm sure I stared blankly at these investigators – most of us don't think about sexual crimes against children; it's just something you don't want to think about ever.

**SARAH TOFTE**: Sexual violence affects tens of thousands of people each year, many of them children. For the most part, the media has tended to focus on cases where children are abducted by strangers, who were often previously convicted sex offenders. This leads many to believe that children are most at risk from strangers and those with a history of abusing kids. Perhaps it's not surprising law-makers have also taken this view – many of us who began work on this report thought the same way as well.

But now we believe current legislation may do more harm than good. I'm Sarah Tofte, US researcher at Human Rights Watch, and for close to two years, I've spoken to victims, former offenders, and child safety advocates for a report on United States sex offender laws. We examined various laws – on registration, community notification, and residency restrictions – that apply to former offenders.

We called the report "No Easy Answers."

**CHAPTER TWO**

**PATTY WETTERLING**: Jacob was 11 years old, and was kidnapped by a masked man with a gun in front of his brother and his best friend, when they were biking home from a convenience store – they were half a mile from our home.

**SARAH TOFTE**: That was Patty Wetterling. Sex offender registration laws came out of a horrific crime that took place in 1989 in St. Joseph, Minnesota – the abduction of her 11-year-old son, Jacob Wetterling by a man in a ski mask. Jacob is still missing today. When the police were conducting the investigation Jacob's mother Patty Wetterling was very surprised to find that the police had no list of ready suspects at hand.

**PATTY WETTERLING**: When I asked investigators, and asked what would have helped? What tools do you need, and they said it would have helped to know who's in the area, so we could go through these people and contact the ones find out where they were that night. So I wanted personally to give law enforcement every possible tool, so that they could go after somebody who would do this type of crime.

**SARAH TOFTE**: Patty began pushing for the very first sex offender laws, and managed to get a law passed in her home state of Minnesota. Soon after, the registration law for sex offenders went federal. But there is a difference between Jacob's Law, which passed in 1994, and the laws on the books today.

**PATTY WETTERLING**: The Jacob Wetterling Act stated that sex offenders when released from prison, would have to register their name and address with local law enforcement, and if they moved they would have to re-register within a certain timeframe so that law enforcement would know where they were.

**CHAPTER THREE**

**SARAH TOFTE**: Increased restrictions now exist even for those who committed their crimes as children, and registries are easily searchable by the public at large.

Garet Daley was 15 when he was accused by his adopted sister, Devon, 11, of molesting her. Nancy, Garet's stepmother, reported Devon's claim to the police and Garet was arrested at school the next day. He served two years in jail for the offense. Nancy Daley described Garet's struggle to re-enter his community.

**NANCY DALEY**: We got this little home for Garet to live in and I purposely went out and met the neighbors and shook their hands and said that I was doing this for my son, but didn't really get into what my son, you know, that my son was...that he was a registered sex offender. When you meet Garet he's just like this likeable kid, you just like him when you meet him, and you can tell he's just a good kid, and so they just really built up a relationship with him. Well, yes, it was on the internet, and yes, then the flyers went out in the community.

**SARAH TOFTE**: Police distribute flyers alerting neighbors to Garet's presence. This has made the neighbors suspicious of nearly anything Garet does.

**NANCY DALEY**: A neighbor's turned him in because they've heard him ask somebody to come in and watch a movie, or go to a movie with him. A neighbor has, you know, gone to another neighbor and said, "you better watch your kid because I've watched Garet and he's looking out his shutters at him."

**SARAH TOFTE**: Garet lost a job bagging groceries when his probation officer revealed that he was a registered sex offender.

**NANCY DALEY**: His probation officer walked into the store and she stood in front of the grocery store and pointed to Garet and said "Do all of you people know that this is an f-ing sex offender? He's a molester, he's a pervert.

**SARAH TOFTE**: Garet is subject to lifetime registration and community notification, so his name and personal information are on an online sex offender registry in his home state of Arizona, available to anyone with an Internet connection.

**CHAPTER FOUR**

**SARAH TOFTE**: Laws that restrict former sex offenders are created in part out of a widespread belief that, once a sex offender, always a sex offender. But the evidence doesn't support this idea.

**JILL LEVENSON**: These laws really are predicated on common beliefs throughout our society, and you have see these comments cited, that because of the very high recidivism rates of sex offenders that we need special legislation to protect ourselves from them.

**SARAH TOFTE**: Jill Levenson, a professor at Lynn University in Boca Raton, Florida is an expert on sex offender management, and has conducted extensive research on recidivism rates for convicted offenders.

**JILL LEVENSON**: It's an interesting concept that's one of these common knowledge sorts of things, that everybody knows that all sex offenders will re-offend, and the truth is that that is simply not supported by the scientific data, or the scientific literature. There have been several large and credible studies looking at recidivism, in other words, how often or how many sex offenders go on to commit new crimes, once they've already been convicted of a first. Our very own Department of Justice found, in a report from 2003, that the recidivism rate for sex offenders was about 5 percent over the three years following their release from prison.

The Canadian government, Canadian researchers, have also done some really sophisticated studies, tracking almost 30,000 sex offenders from North America and Europe, and they have found a remarkably consistent 14 percent recidivism rate, over four to six years.

**SARAH TOFTE**:
The statistics may not convince Garet's neighbors. But his sister Devon's experience points to another misconception about sexual violence against children: the myth that strangers are the people to fear most. In fact, the painful truth about sex crimes against children is that over 90 percent of children are molested by someone they know and trust.

**PATTY WETTERLING**: It's a huge percentage of violence that occurs where it is someone related to, or someone close to the family – it's someone that's known to the family and I think that so much of the legislation and so much the dialogue and the mental perspective is of the stranger, that really bad predatory guy.

**CHAPTER FIVE**

**SARAH TOFTE**: In the course of my research, I came across family members of offenders who had molested children. One woman I spoke to, Amy, didn't want to reveal her real name but told him that her daughter was abused by Amy's husband, who is also her daughter's step-father. When Amy's daughter told her about the abuse, Amy reported her husband to the police. He was arrested, served a year and a half in jail, and underwent counseling. And then, Amy's husband rejoined the family.

**AMY**: I think my daughter's very strong. I was a battered women's counselor, for about eight years, and I'm about the strongest woman you'll ever meet, so it's not that I'm a weak woman, and I'm a standing by my man kind of gal, cause I'm not, I want to give my daughter all the tools and techniques she needs to empower her to get on with her life, I don't want her to be a professional victim the rest of her life. I don't want this to define her.

Through restorative justice methods, that is confronting the abuser, having the abuser acknowledge and, I mean really, really acknowledge what he has done, to the victim and other family members, you can get past it. We had a successful family reunification over 10 years ago.

**SARAH TOFTE**: But though Amy's family has lived together for 10 years, she says current registration and community notification laws make their lives almost impossible. When they go grocery shopping, they go thirty miles away because she is afraid somebody will recognize them. She no longer has friends around where she lives.

**CHAPTER SIX**

**SARAH TOFTE:** Human Rights Watch believes registration and community notification laws should be reformed. The abduction of Jacob Wetterling prompted Jacob's law, one of the first sex offender laws, but Patty who has worked ever since a child safety advocate also believes much of the legislation for offenders today is based on myths that keep getting perpetuated about sex crimes against children. The myths make it hard to closely consider the real concerns around this kind of violence.

**PATTY WETTERLING:** It's really hard for me to understand – we've gotten to being just outrageously angered and vindictive and punitive in our mindset and, I think it's sort of a momentum that's grown, and for legislators you know, it's an easy thing to get support for –and it's always not the best well thought out plan to build safer communities. The goal we started with was "no more victims."

**SARAH TOFTE:** Thanks very much for listening. This is Sarah Tofte for Human Rights Watch. For more about the findings in this report, please visit the "No Easy Answers" webpage in the US Program section of our website at www.hrw.org.

The Mid-Atlantic Juvenile Defender Center
District of Columbia • Maryland • Puerto Rico • Virginia • West Virginia

*ensuring excellence in juvenile defense*
*and promoting justice for all children*

**Testimony of Melissa Coretz Goemann**
**Director, Juvenile Law and Policy Clinic**
**Co-Director, Mid-Atlantic Juvenile Defender Center**
**University of Richmond School of Law**

**Before the United States House Judiciary Subcommittee on Crime, Terrorism and Homeland Security**

on

**The Sex Offender Registration and Notification Act (SORNA)**
**Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248)**

March 10, 2009

Dear Chairman Scott and Members of the Subcommittee,

Thank you for the opportunity to submit written comments regarding the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006. I am providing this testimony in my capacity as the Director of the Juvenile Law and Policy Clinic at the University of Richmond School of Law and Co-Director of the Mid-Atlantic Juvenile Defender Center. I appreciate the opportunity to comment on this critically important juvenile justice issue.

The Mid-Atlantic Juvenile Defender Center (MAJDC) is a multi-faceted juvenile defense resource center serving Virginia as well as the District of Columbia, Maryland, West Virginia and Puerto Rico. We are committed to working within communities to ensure excellence in juvenile defense and justice for all children. We are a regional affiliate of the National Juvenile Defender Center in Washington, D.C. and are based at the University of Richmond School of Law.

We urge you to reconsider the SORNA directive mandating the registration of all youthful sex offenders. Recent reports have affirmed the different nature of juvenile sex offenders from adult sex offenders, specifically finding that adolescent sex offenders are more responsive to treatment than adult offenders and have low rates of sexual re-offenses.[1] Virginia, in particular, has a small number of juvenile sex offenders and our juvenile sex offenders have very low rates of recidivism. Only 1.1% of the total juvenile intake complaints in 2008 were for juvenile sex

[1] National Center on Sexual Behavior of Youth Fact Sheet, http://www.ncsby.org/pages/publications/What%20Research%20Shows%20About%20Adolescent%20Sex%20Offenders%20060404.pdf; Justice Policy Institute: Youth Who Commit Sex Offenses, Fact and Fiction, Sept. 2, 2008, http://www.justicepolicy.org/images/upload/08-08_FAC_SORNAFactFiction_JJ.pdf.

*The Children's Law Center; University of Richmond School of Law; 28 Westhampton Way; University of Richmond, VA 23173.*
*(804) 287-6468 (phone); (804) 287-6489 (fax); mgoemann@richmond.edu*

offenses.[2] Data collected in 2006 by the Virginia Department of Juvenile Justice found that **none** of the juvenile sex offenders released in 2005 had been rearrested for a sex offense and of those released since 2001 re-arrest rates for sex offenses ranged from 3.5% to 7.1%. Compare this to the much higher re-arrest rates for general juvenile delinquents in Virginia of 48.9% for those released in 2005 after 12 months.[3]

Allowing juvenile court judges the discretion to determine whether to order a child to register as a sex offender, as Virginia and many other states currently do, is essential to preserving a rehabilitative model of juvenile court.[4] Requiring that children as young as fourteen register as sex offenders for the next twenty-five years and possibly the rest of their life, makes their ability to successfully re-enter school and the workplace virtually impossible. Many children that are forced to register are so severely harassed by their schoolmates that they are forced to drop-out of school and some commit suicide. Even if they complete school, many jobs are now closed to sex offenders.

Additionally, many juveniles that commit sex offenses do so within the confines of their family. Publicizing their offense not only humiliates the child but the family, as well. As a result, the threat of requiring registration may have the disastrous effect of keeping families from coming forward to report a child's sexual misdeeds, thereby exposing the family to further harm and preventing the child-offender and the victim from getting the treatment they need. Finally, not only does inappropriately requiring children to register harm the child and the family but it harms public safety, as well, by making it much for difficult, as noted above, for these young people to get the education and job skills that they need to become productive members of society.

As Virginia and other states continue to grapple with how best to handle juvenile sex offenders, we urge you to respect the decisions of the many states that have found it to be in their citizens' best interests not to mandate the registration of juvenile sex offenders. We respectfully ask that you reconsider the mandatory juvenile registration requirements of SORNA soon and allow the registration decision to be a discretionary determination that a juvenile court judge makes based on his or her knowledge of the child, the particular circumstances of each offense, and the needs of their families and the community.

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[2] Virginia Department of Juvenile Justice, FY2008 Statistical Information, http://www.djj.state.va.us/About_Us/Administrative_Units/Research_and_Evaluation_Unit/pdf/DJJ%20Statistical%20Summary_2008.pdf.

[3] Virginia Department of Juvenile Justice, Judicial Liaison: Sex Offender Treatment Program, May 4, 2007, http://www.djj.state.va.us/Resources/DJJ_Presentations/pdf/sex_offender_treatment_program.pdf.

[4] Note that juveniles who commit offenses serious enough to justify transfer to adult court are treated as adults and are subject to the same mandatory registration requirements as those imposed on adults. The SORNA registration requirements discussed in this testimony are those requirements for children being tried as juvenile delinquents for sex offenses.

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Mr. SCOTT. It is now my pleasure to recognize the Ranking Member of the Subcommittee, the gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott.

In 2006, Congress passed the Adam Walsh Act to protect the public, particularly children, from sexual predators. The Adam Walsh Act included the Sex Offender Registration and Notification Act, or SORNA, which was enacted to create a consistent and uniformed system of sex offender registries throughout the country. This system would enable law enforcement officials and the public to better track sex offenders. SORNA would also prevent offenders from eluding the authorities, especially when they move out of State.

The deadline for compliance by the States with SORNA is July 27, 2009. The act directed the Department of Justice to certify that States are compliant with SORNA, but it allows the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking—or SMART Office—to give States up to two 1-year extensions to comply upon request. To date, no State has been certified as SORNA-compliant, but a number of States have requested an extension.

If a State does not comply with SORNA, the Department of Justice may penalize the State by eliminating 10 percent of the award of any Byrne JAG crime prevention grants for which the State may be eligible. Regarding the cost, some States have calculated that losing a portion of their Byrne JAG funds would be far less expensive than meeting SORNA's requirements, just as the Chairman mentioned.

However, considering that Congress has appropriated now $2.225 billion in Byrne JAG funding for this year, compared with last year's amount of $374 million, I would hope that many State officials are rethinking that position. Clearly, this huge increase of funding will do more to offset the cost of the State implementation of SORNA.

Some States take issue with SORNA's offense-based approach of categorizing sex offenders by their crimes and requiring individuals who committed similar crimes to have similar registration obligations. These States advocate a risk-assessment approach to registration that utilizes actuarial tools to predict recidivism by taking an individual's criminal history, victim profile, and age into account.

However, there is little consistency to these various programs. They are not uniform in the criteria they apply or in who performs the assessments. This creates discrepancies over which sex offenders should be tracked nationwide.

Despite these discrepancies, risk-assessment States allege their approach is better than SORNA's offense-based approach. Washington State uses the risk-assessment approach, but it cannot properly track Darrin Sanford, a convicted sex offender with a history of failure in registering as a sex offender. Sanford had been identified as a person with a high likelihood to re-offend, so much so that he was forced to wear a GPS tracking device. Although Mr. Sanford was under Washington's highest level of supervision, this did not

stop him from assaulting and killing a 13-year-old girl in Walla Walla last month, a crime that he confessed to committing.

Until there is some uniformity to these risk-assessment programs and they demonstrate a better track record, the most reliable approach is to track offenders by offense and to lock those up who fail to register.

Some States and advocates claim that SORNA should not require that States register juveniles because they are more amenable to treatment and are therefore less likely than adults to become recidivists. I have great sympathy for that position. However, SORNA does not track all juveniles but only those who were tried as adults because of the severity of their offenses or juveniles who were adjudicated delinquent for a sex offense that involved the use of force, serious bodily harm or involved a victim who was drugged or under the age of 12.

A number of lawsuits have challenged the constitutionality of SORNA, as the Chairman mentioned. At least 18 Federal trial court judges have upheld SORNA, while three others have found it violated the Commerce Clause. However, the 12 Federal Appellate Circuits, three of them—the 7th, 8th and 10th—have addressed the Commerce Clause issue, and all have upheld the statute. At this point, the courts have determined that SORNA is constitutional. The suggestions that Congress water down or gut SORNA seem to be premature at this time.

The first deadline has not passed, and all States can still seek extensions of time. Before we hastily pass judgment over the Adam Walsh Act, we must remain mindful of the need to effectively track sex offenders. We all know Mr. John Walsh for his decades-long efforts as an advocate for missing children and crime victims. As you know, Mr. Walsh has been a tireless supporter of the legislation being reviewed here that bears his son's name.

The 27-year-old investigation into the murder of his 6-year-old son, Adam, was closed by Florida police in December of last year. This, hopefully, brought some closure to the Walsh family. I would have hoped that Mr. Walsh could have served as a witness at this hearing, but he was unable to come today. He has, however, submitted a written statement to the Subcommittee in support for SORNA and for the other child protection laws in the Adam Walsh Act.

I would ask unanimous consent that his statement be entered into the record.

Mr. SCOTT. Without objection, so ordered.

[The information referred to follows:]

PREPARED STATEMENT OF JOHN WALSH

On July 27, 2006, the anniversary of the abduction of my son Adam, I was proud to stand alongside President Bush in the Rose Garden, along with other parents who tragically lost their children to predators, for the signing of the Adam Walsh Child Protection and Safety Act. My wife Revé and I will always be grateful to the Members of both the House and the Senate, Democrats and Republicans alike, for the way they all came together to pass one of the toughest child protection laws ever.

This law was necessary because the patchwork of sex offender registries around the nation made it too easy for predators to slip through the cracks. There are about 100,000 of these sex offenders who are not where law enforcement thinks they are. The lack of consistency among the state laws makes it easy for them to disappear.

These missing sex offenders could be preying on someone's child at this very minute. We cannot allow this situation to continue.

No one thought that the law named for my son would be an instant solution to this problem. We knew that this would be just the first step toward an improved system of keeping track of those who victimize our children. But enacting the Adam Walsh Act by itself wasn't enough. States want to do a better job of keeping our communities safe but they are frustrated in trying to implement the Act because of the lack of funding or because there are specific provisions in the Act that they can't comply with. We need more time to work out these problems before the states' deadline for compliance, in July of this year.

I know that the House and Senate Appropriations Committees want to give the states the federal funding they need, and I applaud Representative Mollohan, Representative Wolf, Senator Mikulski and Senator Shelby for the efforts they're making to include Adam Walsh Act funding in the 2009 appropriations bills. I urge Congress to make this funding a priority in our nation's budget this year and every year.

I thank the Members of this Subcommittee for bringing attention to the Adam Walsh Act and for helping to keep our children safe.

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Mr. GOHMERT. Thank you, Mr. Chairman.

With that, I thank you. I thank the witnesses for being here. As the Chairman said, I think we all want to protect children. That is the bottom line. We just need to figure out the best way to do it. Thank you.

I yield back the balance of my time.

Mr. SCOTT. Thank you.

The gentleman from Puerto Rico, did you have a statement?

Mr. PIERLUISI. Yes, Mr. Chairman. Thank you very much.

I thank you for holding this timely and important hearing on SORNA. Like you, I am eager to hear from our panel of witnesses, so I will be brief.

SORNA, when it was enacted in 2006, established a national sex offender registry. As we all know, the goal was to ensure that convicted sex offenders could not evade detection simply by moving from a State or territory with stricter registration and notification requirements to a jurisdiction with less burdensome requirements.

Accordingly, SORNA required each State and territory to modify its sex offender registration and notification systems to comply with extensive requirements set forth in the same. The deadline for compliance is approaching, July 2009. Failure to comply will result in a jurisdiction's losing 10 percent of its Byrne grant funding. For many, perhaps most jurisdictions, the cost of compliance is likely to be greater than the amount of Federal funding that would be forfeited in the event of noncompliance.

Mr. Chairman, what concerns me are the reasons cited by some of the States and territories for their noncompliance to date. In certain cases, the grounds given are not primarily related to cost or to other logistical impediments. Instead, the rationale offered by this these jurisdictions is rooted in their profound misgivings over some of SORNA's substantive requirements.

Let me say this from the heart and from my experience; I am a former Attorney General. What troubles me the most is that, clearly, this system is not working. When you have most, if not all, of the States not complying, it speaks for itself. So it sounds to me like we have no way other than extending this deadline, but it should not be simply for the purposes of extending it. We have to take a hard look at this and make sure it works. We definitely

need a national sex offender registry. We definitely need to prevent these types of crimes, the worst possible crimes I can think of.

Certainly, we have to look at things such as, for example, the use of an offense-based classification system instead of one based on the assessment of future risk. We have to also look at the inclusion of certain juveniles who were not tried as adults, yet were treated as such for purposes of the registry, and the retroactivity aspects of this law, which have cost some legal challenges before the courts.

So I am not happy. I would like the law to be enforced. I would like to prevent these crimes from happening. This registry makes all the sense in the world, but let us make it better. Let us extend the deadline, but I will listen to you, the witnesses, and hopefully, we can do it better the next time around.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

The Ranking Member of the full Committee, the gentleman from Texas.

Mr. SMITH. Thank you, Mr. Chairman.

This past weekend, on Saturday afternoon, 13-year-old Esme Kenney, from Ohio, went for a jog in her neighborhood. She took her usual route along the water reservoir near her house. Tragically, Esme never made it home. Her body was found on Sunday morning.

Local police have arrested 40-year-old Anthony Kirkland for her murder. Kirkland was previously convicted of sexually soliciting another 13-year-old girl. Just last week, a warrant was issued for his arrest for failing to update his address as a sex offender. Kirkland also is a suspect in two additional murders, one involving a 14-year-old girl and another involving a 45-year-old woman. When Esme's family and friends grieve, there are a lot of questions that need to be answered:

Why was a dangerous convict like Kirkland allowed to roam the streets? Would Esme still be alive if Kirkland had registered his current address? How can we prevent this from happening again?

This sad story is all too real for one of our witnesses today. Following the murder of his own daughter, Mark Lunsford has begun a nationwide crusade to protect our children. He has fought for legislation to provide more stringent tracking to released sex offenders and has urged legislatures to adopt longer sentences for criminals who sexually abuse children. This type of legislation, often called Jessica's Law in remembrance of Mr. Lunsford's daughter, has been introduced or adopted in 42 States, a real credit to him.

As we listen to the statement and consider congressional action, we must remember Esme, Jessica and thousands of other young child victims. We have a solemn duty to protect the most vulnerable among us. Congress should take additional steps to give law enforcement officials the tools they need to keep our children safe.

In 2006, Congress passed the Adam Walsh Act to better protect children from sexual predators. A number of the Adam Walsh Act grant programs that were authorized to help States improve sex offender registration will expire at the end of this year. These programs were established to enable the Justice Department and State and local law enforcement agencies to track and to appre-

hend absconders from the sex offender registry, individuals like Anthony Kirkland. That is why I and others introduced legislation to reauthorize these programs for the next 5 years. I am hopeful that, after today's hearing, many of our colleagues on both sides of the aisle will join us as well.

One of the six programs reauthorized by this legislation is the Jessica Lunsford Address Verification Grant Program. This program provides grants to States, counties, cities, and Indian tribes so they can verify the addresses of registered sex offenders. Unfortunately, many of the Adam Walsh Act programs, including the Jessica Lunsford grant program, have received insufficient or no direct funding from Congress. Congress is willing to tackle the economic crisis and budget issues, but we should not lose sight of other congressional priorities. Keeping children safe from sexual predators is not about partisan politics. It is about children like Esme, Jessica, and the thousands of other child victims nationwide.

Today we should begin a bipartisan effort that will help protect children tomorrow. It is my hope that, as a result of the sex offender registration legislation, fewer families will have to face the loss of a child in the future.

Thank you, Mr. Chairman. I yield back.

Mr. SCOTT. Thank you.

We have been joined by the gentleman from Texas and the gentleman from Florida.

Does the gentleman from Texas have a statement?

Mr. POE. Yes, Mr. Chairman.

Thank you, Mr. Chairman. I appreciate all of you being here, especially Mark Lunsford and Ernie Allen for being here.

In my former life, I was a trial court judge of criminal cases for 22 years. I saw about 25,000 people work their way to the courthouse, charged with the worst crimes that can be imagined, and those crimes continue to occur, including that which occurred against Jessica.

Mark, that is the reason you are here today.

Those victims are prey. They are picked by some criminal. It crosses all races, all ages and both sexes, and they become prey. Some of them suffer death because of the crime. Some of those people who commit such bad crimes have done it before, and unless the law intervenes, they will do it again. We know all of the statistics that, when a child molester goes to the penitentiary, most of them get out, and most of them re-offend as soon as they can. They just do.

Congress needs to be aware of the real world. Sometimes we forget about the real world because we are doing other things, but it happens to families throughout the country every day. I am disappointed that the States have not been able to comply with the requirements. It seems like bureaucracy is getting in the way of justice, and I am talking about the Federal bureaucracy.

These people need to be registered, and we need to be able to track them wherever they go in the United States because they give up the right for us—or not for us to follow them when they commit that crime against a child, and Congress should make sure that we fund this program completely so there are no problems in the future.

It seems to me that we as a society are never going to be judged by the way we treat the rich, the famous, the important folks. We are going to be judged by the way we treat the innocent, the weak, the elderly, and the children. In some ways, we are the only voice they have, and it is important that Congress gets with the program and appropriates the appropriate money to track these sex offenders.

The Adam Walsh Child Safety Act is one of the best pieces of legislation to ever come out of Congress, and now we need to make sure it is implemented so that it works.

I would yield back the remainder of my time. Thank you.

Mr. SCOTT. Thank you.

Does the gentleman from Florida have a statement?

Mr. ROONEY. No, Mr. Chairman.

Thank you.

Mr. SCOTT. Thank you. We will begin with our witnesses then. Our first panelist is Laura Rogers.

In December 2006, she was appointed by President Bush to be the founding director of the newly established SMART Office of the Department of Justice, which was responsible for overseeing the implementation of SORNA. She served in that position until earlier this year. Prior to that appointment, she was the director of the National Institute for Training Child Abuse Professionals. She has also worked for the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse, and for the District Attorney's Office in San Diego. She received her Bachelor of Arts degree from Santa Clara University and her Juris Doctorate from the California Western School of Law.

After she testifies, our next panelist will be Deputy Attorney General Emma Devillier. She has worked in the Office of the Attorney General for Louisiana for 12 years. She currently serves as chief of the Attorney General's Sexual Predator Unit and oversees the Sex Offender Registration and Notification system for the State of Louisiana. She has served as a Louisiana State representative and as an assistant district attorney prosecuting sex crimes. She is a graduate of Louisiana State University, having received a BA in foreign languages and a Juris Doctorate from LSU School of Law.

Our next panelist will be Madeline Carter, who is the principal with the Center for Effective Public Policy, and is the founding director of the Center for Sex Offender Management. She has published widely on critical criminal justice issues, including offender reentry and sex offender management. She holds a Bachelor of Science degree and a Master of Science degree in criminal justice from the American University in Washington, DC, and has conducted postgraduate work in organizational development at Johns Hopkins University.

Next will be Ernie Allen, who is the cofounder of the National Center for Missing and Exploited Children. He has served as its president and chief executive officer since 1989. He is also the founder of the International Center for Missing and Exploited Children, and serves as its CEO. He has received numerous awards for his work in this field, and he is a graduate of the Brandeis School of Law.

Our next panelist is Mark Lunsford. He is the father of Jessica Lunsford, who, at the age of 9 years old, was the victim of a sex offense and was murdered. He is the founder of the Jessica Marie Lunsford Foundation, which advocates for tougher laws for crimes against children. He is a board member of Stop Child Predators and is a member of the Surviving Parents Coalition.

Next will be Detective Robert Shilling, who is a 27-year veteran of the Seattle Police Department. He leads the department's Sex and Kidnapping Offender detail and has instigated over 300 cases of sexual abuse. He serves on two INTERPOL groups, the INTERPOL specialist group on Crimes Against Children and the INTERPOL Sex Offender Management Theme group. He has received numerous awards and has authored a chapter on sex offender registry and community notification, published in the INTERPOL Handbook of Best Practices.

Our final panelist will be Amy Borror, who is a public information officer with the Office of the Ohio Public Defender where she is the office's primary contact for media and the public. Prior to her work, she has worked for the Ohio House of Representatives and the Ohio State Bar Association. She is a graduate of the University of Toledo.

So we will begin with Ms. Rogers.

**TESTIMONY OF LAURA ROGERS, PREVIOUS DIRECTOR OF THE DEPARTMENT OF JUSTICE SMART OFFICE, WASHINGTON, DC**

Ms. ROGERS. Good afternoon, Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to join you today.

My statement this afternoon concerns progress in implementing the Sex Offender Registration and Notification Act and how this progress undermines some of the special interest groups' and jurisdictions' criticism of the law.

Special interest groups and individual jurisdictions find fault with sections of SORNA. Those with myopic perspective often do not understand the significance of individual modifications that they seek. We must recognize that every jurisdiction is unique with distinct issues. No single modification to SORNA will resolve all of the hurdles to substantial implementation.

As the SMART Office has and currently does, each jurisdiction must be worked with individually to achieve success. However, a significant hurdle of substantial implementation that can be solved is the lack of funding provided to support the jurisdictions and the SMART Office in their efforts.

The facts show that sex offender registration and a public registry are highly valued by the public. In the calendar year of 2008, the National Sex Offender Public Web site had nearly 5 million users, and over 772 million sex offender sheets, or files, were hit on. SORNA provides a comprehensive system that gives our children and families access to the same minimum level of information regardless of where they live, work or go to school.

I am going to focus on three issues today: the challenge to achieve SORNA compliance, the flexibility for jurisdictions with SORNA and the resources that are needed to fully achieve SORNA's vital purpose.

My first point is that SORNA compliance is challenging, but it is achievable and it is on track. The fact that no jurisdiction has yet met substantial compliance does not mean that SORNA, as currently constituted, is too burdensome or unachievable. Congress set July 27 of 2009 as the initial compliance date. It also built in two 1-year extensions, extending the final deadline to July of 2011.

When I left office in January, no jurisdiction yet had achieved substantial compliance. However, several jurisdictions, including Ohio, had been working quickly and were extremely close to achieving substantial compliance years in advance of the deadline. Numerous jurisdictions have already demonstrated enough progress to be granted extensions.

Jurisdictions still, realistically, have 2 years and 4 months to substantially comply with SORNA. The final national guidelines on sex offender registration and notification were only published July 1 of 2008 by the SMART Office. Dozens of jurisdictions have already submitted new or amended legislation, compliance packages, tiering structures, extension requests, and other items for review to the SMART Office. The Attorney General, who was deemed by Congress to have the authority to identify compliance by the jurisdiction, delegated that responsibility to the SMART Office.

Prior to my departure from the SMART Office, I put into formation the establishment of an appeals process for jurisdictions which disagreed with compliance decisions. During my tenure, we resolved all issues through simple discussion. I expect that this informal and pragmatic process will continue over the next 2 years until most, if not all, of the jurisdictions are in substantial compliance.

My second point is that SORNA, as it has been implemented, offers significant flexibility to the jurisdictions. Though SORNA in its statutory language appeared somewhat inflexible, the SMART Office resolved many problematic issues and built greater flexibility into the system. The final guidelines reflect these efforts.

An example: Initially, the juvenile registration requirement was highly problematic and did not make sense to many jurisdictions and to other stakeholders, including myself. Working within the confines of the law, the final guidelines allow jurisdictions complete jurisdiction now regarding registering juveniles who engage in the low-end "consensual" sexual activity. Now only older juveniles who are forcible rapists, are forcible sodomists and the like, are mandatory registrants under SORNA. Jurisdictions have complete discretion—I repeat, complete discretion—and are not required to register statutory rape-type offenders.

Another example is the clean record example. As written, SORNA seemed to require mandatory implementation, thereby forcing jurisdictions to completely overhaul their already well-functioning registration systems that predated SORNA. This was clearly not SORNA's intent. Through the guidelines, the SMART Office gave jurisdictions far greater flexibility and discretion.

A final example is SORNA's recordkeeping requirement. SORNA appropriately requires all information to be collected in a digital format or to be digitally linked. Many jurisdictions balked at the expense of reacquiring all existing fingerprint and palm prints in digital format. After consulting numerous subject matter experts, the SMART Office afforded all jurisdictions the flexibility to simply

scan existing ink prints, allowing them to avoid the significant costs of purchasing live-scan systems to achieve the same goal. I would add that this is one of the major cost items in California's budget for implementation.

As these examples demonstrate, SORNA, as it is being implemented, is far from an inflexible system that its critics paint it to be.

My final point is that SORNA is affordable. Though it is affordable, far more resources are needed to achieve its promise. During my tenure, the SMART Office created, paid for and provided a secure communication portal system to all 253 SORNA registration jurisdictions to allow for full compliance with SORNA for immediate communication and information sharing. We created the Tribal and Territory Sex Offender Registry System, TTSORS, which we provided to each tribe and territory and an individual digital sex offender registry system fully connected to the National Sex Offender Public Web site. We created an automated community notification system to allow for proactive notification to the public when sex offenders register, and we provided mapping and other types of information.

These points undermine the chief arguments raised against SORNA. SORNA is retroactive, but it does not require jurisdictions to proactively seek out sex offenders who are not currently registering but only those who are convicted of a new offense, who were convicted of a sex offense prior to SORNA. SORNA does not control where sex offenders live and go to school. It has nothing to do with residency restrictions.

Finally, there is no workable alternative to the system like SORNA. SORNA requires registration based on the fact that the sex offender has already assaulted a real person. Risk-assessment tools remain available for treatment purposes but do not determine if a convicted sex offender should register or guess whether they will offend again. Rightly so, Congress recognized that risk assessments are not foolproof and are not useful for juveniles. Only a minority of jurisdictions use them for registration purposes, and an insufficient amount of trained professionals are available to administer these tools properly.

I am happy to answer any questions you have regarding SORNA-related topics. Thank you for your time.

[The prepared statement of Ms. Rogers follows:]

PREPARED STATEMENT OF LAURA L. ROGERS, FORMER DIRECTOR OF THE SMART OFFICE, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. Chairman and members of the sub-Committee, thank you for the opportunity to testify and submit this statement for the record. Until recently, I served as director of the Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office in the Depart of the Justice. Prior to my appointment, I prosecuted child homicide and child sexual abuse cases for over a decade at the San Diego District Attorney's Office. In have tried over 120 jury trials as a prosecutor, and have a 92% success rate. Additionally, I served as a senior attorney for the National District Attorney's Association's National Center for Prosecution of Child Abuse for 5 years where I trained front line child abuse prosecutors, police, doctors, first responders and others on how to investigate and prosecute child homicide (including shaken baby syndrome cases) and child physically and sexual abuse cases. After leaving NDAA, I established a consulting firm, the National Institute for the Training of Child Abuse Professionals (NITCAP), and continued to train frontline child abuse professionals in the United States and around the world. In short, I

have dedicated my entire professional career to protecting children, and holding perpetrators accountable.

Protecting children is not a partisan, or political issue. It is simply the right thing to do. The Adam Walsh Act, which I had the privilege to help implement, is part of a larger framework in our country to protect children. It is not the only law designed to protect children, nor is it the most important law, but it is sound public policy. It should be supported by this body, financially and otherwise. Like many laws, it is not perfect, and there is room for improvement.

The Adam Walsh Act was signed into law on July 26, 2006. Since that day, there has been much progress throughout this nation in the implementation of the Sex Offender Registration and Notification Act (SORNA). However, the momentum with which this progress is being made stands to be undermined if special-interest groups' and individual jurisdiction's myopic criticisms of the law is allowed to change the statutory language of SORNA. Individuals who do not have a national perspective do not understand the significance of the jurisdiction-specific modifications they seek.

Congress intended to give this country and its citizens a comprehensive system for sex offender registration and notification under SORNA. SORNA recognized that every jurisdiction is unique, with distinct systems and issues, and SORNA provides significant flexibility that will allow for the comprehensive nature of the Act to be achieved, while still requiring jurisdictions to meet or exceed equivalent minimum standards.

Modification to SORNA will not resolve all hurdles to substantial implementation. Modifications to SORNA will create new and different issues. As the SMART Office currently does, each jurisdiction must be worked with individually to achieve success in a unique way.

The facts show that sex offender registration and a public registry are highly valued by the public. In Calendar Year 2008, NSOPW had nearly 5 million users and over 772 million sex offender files were accessed. Currently SORNA provides a comprehensive system that gives our children and families access to the same minimum level of information regardless of where they choose to live, work and go to school. SORNA was created because of the fact that sex offenders do reoffend. It was never intended to reduce recidivism rates—because only sex offenders themselves can change this statistic. SORNA and the public registry are intended to allow families and individuals to inform themselves regarding which sex offenders, both adult and serious juveniles offenders lurks in their communities and, based on this knowledge, to allow for informed decision making to occur. SORNA is about accountability.

This statement will focus on three issues:

(1) the challenge to achieve SORNA compliance

(2) flexability for jurisdictions within SORNA, and

(3) the resources that are needed to fully achieve SORNA's vital purpose.

1. SORNA compliance is challenging but achievable and on-track. Currently, no jurisdiction has met substantial compliance. However, this does not mean that SORNA, as currently constituted, is too burdensome or unachievable. All this indicates is that the deadline for compliance has not yet arrived.

Congress set July 27, 2009, as the initial compliance date. It also built in two one-year extensions, extending the final deadline into July 2011. When I left office in January 2009, several jurisdictions had been working quickly and were extremely close to achieving substantial compliance years in advance of the final deadline. Numerous jurisdictions had already demonstrated enough progress to be granted an extension. Information on the SMART Office website reveals that several more jurisdictions have been granted since my departure.

The reality is that jurisdictions *still* have two years and four months to substantially comply with SORNA. The Final National Guidelines on Sex Offender Registration and Notification were only published July 1, 2008. Dozens of jurisdictions have already submitted new or amended legislation, compliance packages, tiering structures, extension requests and other items for review to the SMART Office. Jurisdictions will work within whatever time frame is available. Extending the current time line will assure that many jurisdictions will delay in the process of substantial implementation. The issue of the necessity for an additional extension in addition to the two already provided for in SORNA is not yet ripe.

The Attorney General is responsible for determining substantial compliance by the jurisdictions with SORNA, and that duty was delegated to the SMART Office. Prior to my departure from SMART, I was working with the Office of General Counsel to put into formation the establishment of a formal appeals process for jurisdictions which disagreed with compliance decisions. During my tenure, we resolved all

issues through simple discussion. I expect that this informal and pragmatic process will continue over the next two years until most or all jurisdictions are compliant.

As a practical matter, the term substantial compliance means just that; complying with the minimum standards as required by SORNA. It does not, and has never in practice, meant total compliance. States such as Louisiana, whom I had the privilege of working with, have held an unreasonable and incorrect understanding of "substantial compliance." To "substantially comply" with SORNA, at jurisdictions, at minimum must require persons convicted of offenses included under SORNA to register in accordance with the minimum standards set by SORNA.

Further, Congress included in SORNA a method to resolve any conflicts that might exist between SORNA and a jurisdiction's constitution. Prior to my departure, only two jurisdictions had submitted potential conflicts to the SMART Office, and upon thorough review, neither met the requirements for relief under SORNA.

2. SORNA offers significant implementation flexibility to jurisdictions. The statutory language of SORNA, with respect to certain sections was initially somewhat inflexible. Through the Final Guidelines, I resolved many problematic issues and built in greater flexibility to the system. The SMART Office received over 650 pages of comments to the Proposed Guidelines. Those comments were quite helpful and instructive. The open comment period, and the feedback we got during that timeframe, guided us in the drafting of the Final Guidelines. As a frontline child abuse prosecutor, I know how important it is for guidelines and regulations to assist practitioners, not hinder them.

Of all of the issues, the most common refrain we heard during the public comment period to the proposed guidelines was the requirement that juvenile sex offenders register. Congress originally wrote the juvenile registration requirement to include registration of adjudicated juveniles 14 years or older who committed acts of rape, sexual acts against unconscious or intoxicated individuals and sexual conduct against children under 12 years old. As written by Congress, this section was highly problematic and did not make sense to many jurisdictions and other stakeholders. I found the provision particularly troubling. The comments provided during the publication of the proposed guidelines echoed the same concerns. Working within the confines of the law, I worked to ensure that the Final Guidelines allow jurisdictions complete discretion regarding registering juveniles who engage in low end "consensual" sexual conduct against children under age 12. Now, only older juveniles who are forcible rapists and the like are mandatory registrants under SORNA.

Congress wisely provided jurisdictions complete discretion to not register statutory rape type offenders. Cases involving participants are at least 13 years old with a partner not more than 4 years older are not required to register under SORNA's registration scheme. If consensual sexual activity does occur between partners with more than 4 years of separation, then prosecutors have several options: charge the case as a felony qualifying as a tier II offense under SORNA; charge the case as a misdemeanor;, or decide not to file the case. In many cases, the best result from a local prosecutor exercising wise discretion is not to file a case in the first case. SORNA does not require any prosecutor to file any case. In most cases, when charged most severely, the offender would be no more than a tier two-type offender, but often a tier one offender and therefore not necessarily required to be on a public registry.

Another example is the clean-record example. The clean record exception allows tier one and adjudicated juvenile tier three sex offenders to discontinue their registration obligations after successfully completing four criteria as set out in the statutory language of SORNA. As written, SORNA seemed to require mandatory implementation by individual jurisdictions. Because some jurisdictions that have registration systems that far exceed the minimum requirements of SORNA, mandatorily requiring implementation of this exception would cause some jurisdictions to completely overhaul their already well functioning registration systems. Clearly SORNA's intent was to allow great flexibility to the jurisdictions and not force already well functioning systems to revamp. Through the Final Guidelines, we made sure to give those jurisdictions far greater discretion and flexibility.

A final example is SORNA's recordkeeping requirement. SORNA appropriately requires all information be collected in a digital format or be digitally linked. Many jurisdictions balked at the expense of reacquiring all existing finger and palm prints in digital format. After consulting numerous subject matter experts, we afforded jurisdictions the flexibility to simply scan existing ink prints, allowing them to avoid the significant costs of purchasing live scan systems to achieve the same goal. This decision was made for two reasons; first, it was good policy; and two, this decision can significantly reduce the costs jurisdictions, such as Californias' claim they must shoulder in order to be in substantial compliance.

These are just a few of the myriad examples of the flexibility that we built into the Final Guidelines. As these examples demonstrate, SORNA, as it is being implemented, is far from the inflexible system that its critics paint it to be.

However, there is a significant hurdle to substantial implementation that can be solved by Congress: the lack of funding. Congress should provide resources to support the jurisdictions and the SMART Office in their ongoing efforts.

3. My final point is that although SORNA is affordable, far more resources are needed to achieve its promise. During my tenure, the SMART Office created, paid for, and provided a secure communication portal system to all 253 SORNA registration jurisdictions to allow full compliance with SORNA for immediate communication and sharing of information. On January 20, 2009, we made available to relevant jurisdictions the Tribal and Territory Sex Offender Registry System (TTSORS), which provides each tribe and territory an individual digital sex offender registry fully connected to the NSOPW. In only a couple of months, tribes have embraced this opportunity and approximately 35 tribes are currently testing the software and three tribes have requested to be connected to the system. We created an automated community notification system to allow for proactive notification to the public when sex offenders register in a community, the ability to conduct an email address search, a several mile radius search map where sex offenders live, work and go to school and we renovated the NSOPW. We did this all with a limited amount of staff and money; imagine what we could have been achieved with adequate resources.

Another controversial issue is the retroactivity of SORNA. Congress intended SORNA to provide a national blanket of comprehensive standards. The only way to achieve this goal is to require all sex offenders who are currently active in the legal system to be required to register. Blindly excluding all sex offenders convicted prior to July 2006 would significantly impact SORNA's effectiveness. The United States Supreme Court has determined that retroactivity is constitutional, as it regulatory and is not a punitive measure.

To clarify how the retroactive component works, SORNA does not require jurisdictions to proactively seek out sex offenders that have completed their registration requirements and that are not currently registering or on some type of criminal supervision (parole/probation). Only sex offenders currently registering, who are currently being supervised or who are convicted of another crime are captured under SORNA requirements. The retroactivity issue, though controversial now, will ultimately fade away as more sex offenders receive convictions post implementation.

SORNA does not control where a sex offender lives, works or goes to school. It has nothing to do with residency restrictions which are all the result of state and local legislation.

There is no workable alternative to a system like SORNA. SORNA is an evidence-based system that requires registration based on the fact that the sex offender has ALREADY been convicted of assaulting a real person. There is a movement afoot however, to remove the evidence based component of SORNA and replace it with a soft (and unproven) artifice called "risk assessments." Congress wisely recognized that risk assessment tools should not used to determine if a convicted sex offender should register—by guessing whether they will re-offend. Rightly so, Congress recognized that risk assessments are not foolproof and are not useful for juveniles. However, "risk assessment" tools remain available for treatment purposes. Currently, only a minority of jurisdictions use them for registration purposes, and it should remain that way for good reason. For one reason, besides the obvious (they are not reliable) there are an insufficient amount of trained professionals available to appropriately administer risk assessment tools to all the sex offenders in the United States.

SORNA is a strong law. It is part of the tool kit that child abuse professionals need to protect children. It provides for a standardized minimum level of sex offender registration and notification throughout the United States. SORNA is not meant to be a panacea for sexual abuse, assault, rape and sexual murders. It is meant to and does provide information that allows parents and others to make informed decisions regarding adult sex offenders and serious juvenile sex offenders who reside, work and go to school in their communities. The amount of use of the NSOPW demonstrates that the public has embraced the type of knowledge and information that SORNA provides.

Thank you for the opportunity to provide my thoughts, and I am eager to work with the Congress on this important issue in the future in any way I can be of assistance.

Mr. SCOTT. Thank you, Ms. Rogers.

We neglected to point out the timing device that is on the table. We would like the witnesses to try to confine their remarks to 5 minutes to the best of their ability.

Ms. Devillier.

**TESTIMONY OF EMMA J. DEVILLIER, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, OFFICE OF THE ATTORNEY GENERAL OF LOUISIANA, CHIEF, SEXUAL PREDATOR UNIT, BATON ROUGE, LA**

Ms. DEVILLIER. I am here on behalf of Attorney General Caldwell and the State of Louisiana. I am grateful to the Chairman, to the Ranking Member and to the other esteemed Members of the Subcommittee for the opportunity to testify regarding the current barriers to the implementation of SORNA. We are very grateful for your commitment to exploring and to crafting the sex offender registration and notification policy that works to enhance public safety.

I come before you this afternoon as someone who has been and is currently a front-line prosecutor and is a representative of an Attorney General who has 30 years of experience as a front-line prosecutor. We understand the difficulties involved in prosecuting child sex cases. We also understand how registration issues affect our ability to administer justice in those cases, and as parents, we understand that we want to know if a predator lives next-door to us, but we have to balance all of these interests. We believe very strongly that SORNA did not get it right.

SORNA is not the pinnacle of good policy for sex-offender tracking. In fact, in some respects, it is not good policy at all. We all believe in mandatory sex offender registration and in child predator registration. The devil, however, is in the details. I am here to tell you why no State will be able to come into compliance with SORNA, as defined by the current Federal guidelines, by July of 2009, and I am here to respectfully implore you to extend the deadline and to take a hard look at what it will take to have an effective public policy that will accomplish the goals of SORNA. It is important to remember that all States will lose millions of dollars in critical law enforcement funding through the Byrne Grant program when we do not meet the July deadline.

Let us talk about some of those major goals. I encourage all of you to please ask me questions so I can expound upon this, but because of the limited time, I am going to have to hit the highlights.

The final guidelines were not promulgated until June of 2008. That is 2 full years after SORNA was passed. The States, therefore, have only had since June 2008 to be finally told what it is they have to do. Louisiana has been working since 2006 and, actually, did not wait until the final guidelines came out to attempt compliance, and yet we still stand here today, having been found not to be in compliance.

The second hurdle is that the guidelines, once we did get them, are impractical. Once the guidelines were published, it became abundantly clear that what was expected of the States by the SMART Office was impractical, ill-conceived, not advisable for the

good of the criminal justice system and, in some instances, was not required by the congressional act itself. Let me explain.

One of the impracticalities is that it requires all child sex cases 25-year registration or lifetime registration. This will definitely and has in Louisiana resulted in the lack of ability to get pleas in difficult child sex cases. Remember that registration of a sex offender presupposes that we have convicted that person.

When you tell me that I have nowhere to go; I have a 7-year-old-child telling me, "Ms. Devillier, please do not make me go to trial. Please find a way to get this guy to plea," and even though the courts have said this is regulatory and not punitive, defendants do not see it that way. When that 25-year registration or lifetime registration is an impediment to getting a plea in a difficult case that I believe I will lose or, because of which, I will re-victimize this child by putting him through a public trial, I have got to have somewhere to go.

Right now, what is happening is that we are going to some prosecutors outside of sex crime offenses to get that plea and are just requiring registration as a condition of supervision. It is a real problem, and it does not effect the policy that you want to effect with SORNA. The requirement that tiering should be based on underlying facts which are not necessarily an element of the offense does not afford due process, and it limits the flexibility that prosecutors must have in dealing with tough cases involving traumatized child victims.

The guidelines say we have to look at the actual age of the victim as to whether or not that is an element of the offense. How can that possibly afford due process? That ties my hands as a prosecutor in trying to get pleas.

The third hurdle is that the SMART Office's determination in the guidelines deemed the substantial compliance in the language of the act itself to be actual or strict compliance. Basically, they are telling us that you have to adopt every aspect of SORNA, or you are not going to be in compliance. This leaves no room for the States to maneuver around and to accommodate our unique criminal statutes and existing policies, laws and procedures with regard to sex offender registration, which many States have invested large amounts of resources developing. And I submit to you that it completely ignores the actual language of the act, which only requires substantial compliance and not actual or strict compliance.

The fourth hurdle has been retroactive application of the act. This will interfere with obtaining pleas in non-sex-offense felony cases because it says, when a defendant comes back into the criminal justice system, you can renew his old registration requirements. It will affect being able to get pleas in other types of felony cases.

And also, retroactive application will allow defendants whose plea agreement legally included waiver of registration because, before 1999, you could waive registration legally, it will allow them—the courts in Louisiana have rules that they can withdraw their pleas if you try now to make them do this, because that was an inducement for them to give up their right to a trial.

In conclusion, A.G. Caldwell and I urge the Members of the Committee to consider an extension of the deadline for the States to

comply with the act, to establish task forces that invite those like me and the other members of this esteemed panel to talk to you about the issues involved and have the input.

Even Ms. Rogers, the former director of the SMART Office, has admitted, even though the intentions of those who crafted the Adam Walsh Act were good, that they did not consult front-line prosecutors, like myself, in that process. Not to do so now would jeopardize the viability of the overall goal of SORNA, and it would put States at imminent risk of losing vital Byrne Grant dollars for worthy law enforcement programs beginning in July of this year.

Thank you for your time. I welcome any questions that would allow me to expound upon these comments.

[The prepared statement of Ms. Devillier follows:]

PREPARED STATEMENT OF EMMA J. DEVILLIER

My name is Emma Devillier. I am here on behalf of Attorney General James D. "Buddy" Caldwell, as an Assistant Attorney General for the State of Louisiana where I serve as Chief of A.G. Caldwell's Sexual Predator Unit. I come before you this afternoon as someone who has been a frontline prosecutor of sexual offenders for over a decade and also as a representative of A.G. Caldwell, who has thirty years of experience as a frontline prosecutor. It should first be said that A.G. Caldwell and I believe that establishing some uniformity among the states regarding sex offender registration laws is a worthwhile goal. Ultimately, a reasonable degree of uniformity will lead to increased compliance by offenders and fewer legal defenses for those who continue to be non-compliant. A.G. Caldwell and I also speak to you today as parents, who want to know if there is a predator next door. As prosecutors and parents, we understand what it takes to successfully prosecute sex offender and child predator cases, how registration issues affect the administration of justice in some of those cases and we understand a parent's desire to have information that will allow them to protect their children against such predators. We, however, believe very strongly that SORNA, did not get it right. SORNA is not the pinnacle of good public policy where sex offender tracking is concerned. In fact, in some respects it is not good policy at all. When you look at what Louisiana has done to craft and implement a tough and targeted policy of mandatory sex offender registration which maintains the integrity of the criminal justice system and does not impede the administration of justice, it will become abundantly clear to you where SORNA falls short of the mark and why states are having difficulty adhering to it.

We all believe in mandatory sex offender and child predator registration, but if we do not do it right we are helping the true predators go undetected. The devil is in the details. I am here to tell you why Louisiana has not and why other states probably will not come into compliance with the current legislation and to respectfully implore you to take a hard look at what it will take to have an effective public policy that accomplishes effective tracking of sex offenders and child predators while not impeding the administration of justice.

A.G. Caldwell and I are grateful to Chairman Robert C. "Bobby" Scott, Ranking Member Louie Gohmert, and the other esteemed members of the subcommittee for the opportunity to testify regarding the current *Barriers to Implementation of the Sex Offender Registration and Notification Act* (hereinafter referred to as *"SORNA"*) and for your commitment to exploring and crafting sex offender registration and notification policy that works to enhance public safety.

The Office of the Attorney General of Louisiana suggest that the Subcommittee delay the July 27, 2009 enforcement date of SORNA and create task forces to examine the significant barriers to implementing the Act. This is not just an arbitrary suggestion. It is an informed and educated analysis developed over time.

**The Hurdles of Implementing SORNA in Louisiana**

I was the Assistant Attorney General responsible for coordinating Louisiana's efforts to implement SORNA compliant legislation. In fact, I was one of the first Assistant Attorneys General in the country to work with the SMART Office when it first opened for business. Between late 2006 and mid-2007, my office worked closely with all stakeholders (District Attorneys, Sheriffs, Corrections officials, etc) to help craft Louisiana's version of SORNA, House Bill 970, which passed in the 2007 Regular Session of the Louisiana Legislature which session concluded in June of 2007.

Because Louisiana was trying to comply within the first year of passage of the Adam Walsh Act, key members of the Louisiana Legislature and I had the dubious charge of trying to get SORNA compliant legislation passed before the release of the SORNA Final Guidelines. After passing HB 970 in the 2007 Regular Session, Louisiana submitted the legislation to the SMART office for determination of substantial compliance. Despite best efforts, in late fall of 2007, the SMART Office determined that though the State of Louisiana had made "substantial efforts to achieve compliance with SORNA", the State had "not achieved substantial compliance with SORNA." Former Director of the SMART Office, Laura Rogers, stated that Louisiana had failed to enact all provisions of SORNA.

In our Compliance Audit by the SMART Office, Louisiana was told that in some instances HB 970 had exceeded what is required by SORNA. By this time, Louisiana had no choice but to wait for the release of the final guidelines to be issued before making another attempt at full compliance. However, some, though not all, of the changes recommended in the compliance audit were enacted in the 2008 regular session of the Louisiana Legislature. The Final Guidelines were not released until July 1, 2008, *after* the 2008 Regular Session of the Louisiana Legislature and a full year after Louisiana had originally submitted HB 970 to the SMART Office. Additionally, *Louisiana takes issue with the guideline's interpretation of the substantial compliance language in the Act to mean actual ( strict) compliance is required. There is a huge difference in substantial compliance with the intended purposes of the Act, versus actual compliance with the poorly drafted and illogically formulated provisions of the final guidelines as hereinafter discussed.*

This entire experience has been difficult for several reasons. *First,* Louisiana received very little guidance from the SMART Office. Though Louisiana tried very hard to work with the SMART Office, we received no clear instruction or guidance on whether the legislation we were proposing was sufficient or even close to being in "substantial compliance" with SORNA. *Second,* the SORNA final Guidelines are not practical. We experienced great difficulty in determining which of our State's substantive sex crimes belonged in which tier. The elements of Louisiana's sex crimes do not fit neatly into the elements of each tier proposed by SORNA. The Final Guidelines do not take into account the elements of a sex crime that vary from jurisdiction to jurisdiction. *Third,* it is quite obvious that the SMART office interprets "substantial compliance" to mean *"actual" or "strict compliance.* The SORNA Final Guidelines determined that SORNA offered jurisdictions a "floor" in which to comply, not a guideline. In this vein, Louisiana was even advised in its compliance audit by the SMART office that it would have to amend some of its substantive sex crimes in order to comply. *Fourth,* as a prosecutor who has specialized in sex crimes, I can tell you that SORNA's offense-based (at least as interpreted by the SMART Office), retroactive system is overinclusive, overly burdensome on the state, exorbitantly costly, and will actually do more to erode community safety than to strengthen it. This is generally true, I am advised, not just for Louisiana but for most states.

FIRST HURDLE: LACK OF TIMELY AND ACCURATE GUIDANCE

Louisiana seeks this extension because the implementation phase has been delayed by lack of proper guidance from the SMART office. As outlined previously, though perhaps through no fault of the SMART office, there were undue delays by the SMART office in responding to the request for guidance from Louisiana. Though our criminal statutes were outlined to the SMART office before the beginning of our legislative session in 2007, we did not get a response until well after the session was over. Additionally, this response was not a firm one as the final guidelines were not published until after the end of the 2008 legislative session. After reviewing the final guidelines, Louisiana believes in some instances they are ill conceived and are not practical or advisable for the good of the criminal justice system and Louisiana seeks this extension in order have an opportunity to discuss these issues with the Congress. Even former Director of the SMART office, Laura Rogers, in her recent comments to the Surviving Parents Coalition, agrees that though the drafters of the Adam Walsh Act had good intentions, "they did not consult professional child abuse prosecutors or those with frontline experience and knowledge." Having been a legislator, I am acutely aware that even with the best intentions and the best attempt to consult all stakeholders, mistakes in the drafting of legislation is difficult to avoid, particularly when it is as comprehensive as the Adam Walsh Act. Those mistakes are inevitable and understandable. What would not be understandable is not addressing those mistakes once they become apparent.

SECOND HURDLE: GUIDELINES ARE NOT PRACTICAL

The final guidelines indicate that all state sex offenses must be "tiered" by comparing the state sex offense to the described federal offense to determine if the state sex offense is comparable to or more severe than the federal offense. This is fairly consistent with the AWA. However, the problem comes in the interpretation as to how that comparison is performed. The problem in trying to compare our offenses to the federal offenses is that the federal offenses differentiate seriousness based on facts not necessarily made elements in the State definition of the crime.

To understand the problem you will first have to understand that the Federal statutes to which the state statutes are to be compared are distinguished between sexual acts and sexual contact and require categorization based on the method used (physical force/drugs) to complete the sexual act or contact and the age of the victim. For example the guidelines require that any offense which involves force and penetration must fall into tier 3 and require lifetime registration and any offense involving penetration or any type of sexual touching (through the clothes or otherwise) of a child under 12 requires lifetime registration whether or not force or drugs were used to accomplish the task. Given that requirement, in which tier should Louisiana's indecent behavior statute be categorized? The indecent behavior statute in Louisiana requires lewd and lascivious behavior upon the person or in the presence of a child under the age of seventeen when there is an age difference of greater than two years between the child and the perpetrator. The elements of the indecent behavior do not necessarily include a sexual act (penetration or direct touching of the genitals) or sexual contact (fondling of genitals through the clothing). Indecent behavior could be accomplished by performing a sexual act in the presence of a child. A good prosecutor will not list the nature of the lewd or lascivious behavior except to state that it happened upon the person OR in the presence of a child and that the child was under the age of sixteen and the perpetrator was more than two years older. The prosecutor will always only plead the facts he necessarily has to prove because he will be held to whatever facts are alleged.

The SMART offices compliance audit of Louisiana's 2007 legislation stated that Indecent Behavior should not be listed as a tier I crime (requiring 15 years of registration) because it could involve a sexual act or contact with a minor. The audit stated that this crime should be listed as a tier II (requiring 25 years of registration) and, if the victim was under the age of 12, it should be listed in tier III (requiring lifetime registration). The audit and the final guidelines state that the age of the victim should be controlling as to the tier of the offense, whether or not it is an element of the offense. This is not enforceable. If the age of the victim is not in the bill of information how will you hold the offender accountable for a fact that has not been established in a court of law? The guidelines state that you will have to look at the underlying facts of the offense to determine the age of the victim. How does this possibly afford due process? Basically, the guidelines seem to be stating that we must allow some bureaucrat to determine what the underlying facts of a conviction were and then apply the appropriate tier to that offense based on the determination of this bureaucrat. *We are essentially basing an offender's future legal obligation to register on facts that have not been established in a court of law*. Because SORNA requires that time period of registration and number of in-person renewals per year be tied to the elements of the offense of conviction, the Louisiana legislature thought it necessary to have a judicial determination of these facts. Therefore, we placed offenses in tier I which did not necessarily include the types of elements described in SORNA for tier II and tier III placement. The SMART office's test was the opposite, if the elements of tier II or tier III were not necessarily excluded, then it should be placed into the higher tier. This means all offenses involving a child victim must require a 25 year or lifetime registration period.

If no crimes against children are left in tier I, i.e., indecent behavior with a juvenile, prosecutors who run into difficulty with a reluctant and terrified victim will have to go outside of the sex offense statutes to accomplish a plea where there will be no resulting sex offender/child predator registration required. Even though the courts have ruled that registration is regulatory and not intended to be punitive, the courts did recognize that registration does have punitive effects. When these punitive effects interfere with getting a plea in a child sex case because the offender refuses to plead to anything that requires 25 year or lifetime registration and you have no sex offense in tier I that you can offer because your victim is seven and traumatized about trial, the prosecutor will go outside of the child sex crimes statutes to effectuate a plea. This is not based on laziness or not caring, it is based on the realities of what we, as sex crimes prosecutors, deal with on a regular basis in trying to seek justice while not re-victimizing the victim.

*Registration is supposed to be a product of a conviction. In order to maintain prosecutorial discretion which is essential for the administration of justice, if registration is to be offense based, it must be based on the facts as alleged in the bill of information. If the facts in the bill of information leave doubt as to the specific act involved or the specific age of the victim which would establish that the offender's actions were of the type described as a tier II or tier III offense, then the offense should be categorized in tier I.*

*Sex cases involving minor victims are the most difficult cases to prove. Often your whole case comes down to the word of a child versus that of an adult. Many of these offenses are not reported until the perpetrator (often a family member) is separated from the victim through divorce or a change in living circumstances. There is rarely any physical evidence. The child is often reluctant to participate in a public trial. We cannot mandate sex offenders register until we convict them. Good public policy will not impede a prosecutor's ability to get a plea is these most difficult cases. The current requirements of SORNA will impede this process much to the detriment of public safety and criminal justice.*

THIRD HURDLE: SMART OFFICE DETERMINATION THAT SUBSTANTIAL COMPLIANCE MEANS ACTUAL (STRICT) COMPLIANCE

Louisiana addressed some of its concerns outlined above by banking on the "substantial compliance" language of the act. The substantial compliance language, we thought, would allow us to leave certain child sex cases in tier I so that prosecutors would have a place to go in child sex cases in which the victim recants or indicates that a trial is not something they can handle and registration for 25 years or life was a deterrent to getting a plea as charged. Again, even though the courts have found that registration is not part of the punishment for a crime but is regulatory, offenders surely do not see it that way. It is particularly burdensome in Louisiana because we require, in addition to publication of the information on the registry, that the offender send a post card with his picture and the details of his conviction to all of his neighbors within a certain radius of his home. This must be done every time the offender changes addresses and every five years, whether or not the offender has a change of address. Additionally, we require offenders to carry a driver's license or identification card with SEX OFFENDER in red letters across the bottom of the offender's photo. Also, in Louisiana, no matter the tier of your first sex offense conviction, a second conviction will require lifetime registration. Still further, if the offense of conviction requires registration for any period less than life, the prosecutor upon showing by a preponderance of the evidence that the offender poses a substantial risk of re-offending, the court may order the offender to register for life. All of these additional provisions go far beyond what is required by SORNA. By determining that "substantial compliance" means strict compliance, the SMART office has taken away Louisiana's ability to address the problems outlined above in a fashion that does no harm to the intent of the act. To the contrary, we believe that what Louisiana has done actually enhances public safety by maintaining prosecutorial discretion and targeting resources towards the worst offenders. Louisiana submits that no where in the Adam Walsh Act does the Act require strict compliance or suggest that these are minimum standards which must be adhered to religiously. Such a requirement is unrealistic and impractical.

FOURTH HURDLE: RETROACTIVE APPLICATION OF THE ACT

With respect to sex offenders whose convictions predate the enactment or implementation of SORNA, the Guidelines require that a jurisdiction register the following offenders: (1) those who are incarcerated or under supervision for the registration offense or for some other crime; (2) those who are already subject to a preexisting sex offender registration requirement; and (3) those who subsequently reenter the jurisdiction's justice system for a conviction for some other crime, even a non-sexual offense.

One of the practical problems with this retroactive provision is that it fails to give proper guidance to enable law enforcement to identify such offenders and to classify them in a tier. When the requirement of retroactive application of SORNA is taken into consideration, the problem of "tiering" offenses becomes even more evident. Even if the age of the victim or specific facts relating to the offense are put forth in the Bill of Information, law enforcement agencies tasked with enforcement of registration laws will spend countless man hours tracking down bills of information, often from out of state convictions, trying to ascertain the facts alleged in each bill rather than just looking at the criminal statute violated in the conviction to determine if it necessarily includes a forced sexual act or sexual contact with a child under the age of 12.

Retroactivity as required by the guidelines is also problematic in that it requires an offender who has long ago finished his legal obligation to register to register once again if he is subsequently convicted of any felony. States do have the discretion to give the offender credit for the time that has elapsed since he last registered, but that is small solace to an offender who under SORNA will have to register for life if convicted of the subsequent felony. Prosecutors have real concerns about the effect of this provision on the ability to get pleas in cases having nothing to do with a sex offense. For example, an offender who has a felony theft charge pending who twenty five years ago was convicted of indecent behavior with a juvenile under the age of 12, will, if convicted of the felony theft charge, have to register again for the rest of his life, under the current requirements of the guidelines. Louisiana, therefore, adopted a limited retroactivity provision making the new registration periods applicable to all sex offenders who were under an active obligation to register as of the effective date of the act. Retroactivity was also limited in Louisiana because prior to 1999, a Judge could legally waive sex offender registration and many did, as part of a plea agreement. There was real concern that convictions could be overturned if the new registration statute was made to apply to these offenders. There is Louisiana case law supportive of the offender's right to withdraw his plea if the waiver was part of the plea agreement.

Furthermore, I ask you, how will juveniles who never had an existing duty to register be subjected to the Act? How would we find them? Louisiana, therefore, adopted a prospective only application for a very limited number of juvenile offenders age 14 and above adjudicated or convicted of only the most heinous acts—aggravated rape, forcible rape, 2nd Degree Kidnapping of a child under 13, aggravate kidnapping of a child under 13, aggravated incest involving penetration and aggravated crime against nature.

Another issue stemming from the retroactive provision of SORNA is the "recapturing" of offenders. Once a jurisdiction enacts SORNA legislation, that jurisdiction is required to "recapture" and register "retroactive" sex offenders within the following time frames" Tier I offenders within one year; Tier II offenders within six (6) months; and, Tier III offenders within three (3) months. How is this to be accomplished? We can barely keep up with the ones we know about now given our limited resources.

Compliance Issues Plaguing Other Jurisdictions

I participate in a national sex offender management listserv and have engaged with other offices of Attorneys General through the National Association of Attorneys General to discuss issues related to SORNA implementation. Through this process I have learned that not only Louisiana but many other states are experiencing the same or similar difficulties as evidenced by the failure of any state to achieve substantial compliance as of this date. In addition to the above issues faced by Louisiana, discussions with other States through NAAG and otherwise, have raised other issues with regard to AWA compliance which need to be considered:

1) Many States currently have risk-based assessment schemes to determine the length and conditions of registration rather than offense-based schemes in which they have invested lots of time and money and which they believe accomplish the same goal as the AWA but just arrives there through a different avenue. These States have indicated that, at least informally, the SMART office has indicated that they will have to switch to an offense based scheme or be deemed to be non-compliant. Massuchusetts has jurisprudence which establishes that sex offenders have a state constitutional right to a risk assessment before being placed on a public registry.
2) Most other States have indicated similar problems with retroactivity as faced by Louisiana.
3) Some States are concerned that the inclusion of the sex offender's employment address and school address will impede reintegration of sex offenders into the community by making it much more difficult to obtain employment, de-stabilize offenders and be counter productive to public Safety.
4) Some States are concerned that quarterly registration will divert law enforcement resources away from the more important public safety task of compliance checks to do less important administrative tasks.
5) The requirement that the States get palm prints which can only be provided by agencies that use Livescan technology will prove too expensive and difficult for all registering agencies to acquire.
6) Whether those States who allow a sex offender to be relieved of the obligation to register by obtaining a certificate of rehabilitation will, due to the

retroactivity requirement, have to revive those obligations. (The SMART office has now said any provisions to relieve an offender from registration before the allotted time periods in the AWA would not be in substantial compliance with the AWA)

7) The significant cost of compliance versus the loss of Byrne funds. SORNA Compliance motivated by loss of Byrne Funds

8) Some States have significant concerns about juvenile registration based on their constitutions, on public opinion or on their juvenile systems which are design to not permanently label a child in hopes of rehabilitation.

**Conclusion**

As a State AG, we support the idea of having more homogeneous sex offender registration laws across the nation. Louisiana specifically, submits that it has achieved "substantial compliance" as required by SORNA because we disagree with the SMART office's interpretation of that language in the ACT to mean strict compliance. However, any such federal attempt to help all state's achieve this goal must take into consideration the varying states' current substantive criminal statutes and the varying sex offender registration laws and policies with the goal of making enforcement of such laws when an offender crosses state lines more feasible. To ensure that federal legislation in this regard is based on sound public policy and that it will be effectively implemented, all stakeholders must be brought to the table.

In addition to the issues highlighted above there are many more which need discussion. Not the least of which is SORNA's inadequate provision of sex offender registration computer programs to jurisdictions. The program made available only addresses the needs of the central registry in each jurisdiction. SORNA fails to recognize that the central registries would have no information but for the information provided by local law enforcement agencies which actually register the offenders. In order to meet the time restrictions required by SORNA on transfer of registration information from the local sex offender registrar to the central registry, local law enforcement must have the ability to transfer this information electronically. No provisions in the act address this essential element. Louisiana has addressed this by imposing a fee on all felony probationers which is paid into a technology fund to support the implementation of a web-based program for the collection, storage and transfer of this data to our central registry at no cost to the tax payer. We not only believe we are substantially compliant with SORNA we believe we have far exceeded its goals.

Respectfully, Attorney General Caldwell and I urge the members of this Subcommittee to consider an extension of the deadline for states to comply with the Act, the establishment of a task force comprised of prosecutors, law enforcement, state registries, corrections, experts in the field of sex offender management, victims and all other stakeholders in this complex issue to examine the practical effects of the Act on public safety and possible reform to address the concerns raised here and those recommended by the task force. Not to do so would jeopardize the viability of the overall goal of SORNA and would put states at imminent risk of losing vital BYRNE grant dollars for worthy law enforcement programs beginning July of 2009.

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Mr. SCOTT. Thank you.

Ms. Carter.

**TESTIMONY OF MADELINE M. CARTER, PRINCIPAL, CENTER FOR SEX OFFENDER MANAGEMENT, CENTER FOR EFFECTIVE PUBLIC POLICY, SILVER SPRING, MD**

Ms. CARTER. Thank you.

Good afternoon, Chairman Scott, and Members of the Committee. I want to thank you for convening this hearing and for offering me the privilege of speaking to you.

I want to acknowledge the enormous respect I have for the other witnesses at this table. Each of us comes to this table with a unique background. As a result, we may see this issue of sex offender management through a different lens and perhaps have divergent thoughts about the most beneficial public policy approach.

I am certain, however, that we all share the same goal, to prevent sexual victimization.

I am a principal with a nonprofit organization. For 26 years, we have worked with government officials across the country to advance sound policy solutions in criminal justice. Twelve years ago, we were awarded funds by the Justice Department to establish the Center for Sex Offender Management. I am its director.

Our mission is to prevent further victimization by improving the management of adult and juvenile sex offenders. We have worked with professionals throughout the country to understand and to translate research into practice. Our goal is to support efforts to end sexual violence. As a professional, as a mother, and as the victim of an attempted rape when I was a youth, I, like you, have a major stake in the safety of victims and of potential victims. I have five points to share that I believe can guide us in our collective thinking on this matter.

Point one, sex offender policy and practice should be evidence-based. Today, following three decades of extensive research, we have a wealth of knowledge about the factors associated with re-offense risk and methods to intervene with and to reduce that risk. This research should shape our public policy because it can result in fewer new crimes. It has shaped practice in local communities across the country for more than a decade. The results are promising and in need of ongoing support and study.

Point two, not all sex offenders are alike. One of the fundamental problems in our field is that we tend to paint all sex offenders with the same brush. Professionals have long recognized key differences among them. These differences relate to the types of crimes they commit, to the victims they target, to their risk for re-offense, and to the types of interventions that will most likely reduce their risk.

These differences have important implications. For example, among adult sex offenders, while some are extremely dangerous, others can be safely managed in the community. Research further distinguishes adult sex offenders from juveniles who are developmentally quite different from adults. These findings suggest that a one-size-fits-all approach is inappropriate. A more tailored approach is called for. I respectfully recommend that this Committee support further examination of the differences between these offenders and the interventions needed to prevent future crimes.

Point three, risk assessment is an important tool in our management arsenal. A one-size-fits-all approach is not appropriate. We need a way to distinguish among offenders. Until recently, we had no choice but to categorize offenders primarily on the basis of the offenses they had committed. Risk-assessment instruments offer a scientifically based method to distinguish among individuals. Today, many States use actuarial tools to differentiate between offenders. I encourage you to establish a commission to examine the use of risk assessment to guide the tiering of sex offenders for the purposes of registration and notification.

Point four, there is no silver bullet. We want desperately to find the silver bullet that will solve the problem, but there is no single answer to the problem of sexual violence. We have developed a comprehensive policy framework. It is built on research and a set of core values, the most fundamental of which is victim protection

and safety. It acknowledges that there are many elements involved in effectively managing sex offenders. Research suggests that some of the strategies are more powerful in reducing risk than others.

For example, the evidence suggests that a combination of sex-offender-specific treatment and community supervision can increase public safety. Thus far, the research on registration and notification has not demonstrated similar results. More study is needed. From a public policy perspective, we should invest our limited resources in those strategies that show promise for reducing re-offense and, at the very least, be judicious in our investment in options that do not.

Point five, we should use research and experience to build our approach to reducing victimization. We know from experience that we can hold offenders accountable while providing support and safety to victims. Most importantly, we know we can reduce the likelihood of new sex crimes.

To achieve those goals, we must be deliberate. Some of the efforts in the past in the name of public safety have proven ineffective. We should let go of those. Others hold promise for recidivism reduction, and we should embrace these.

Let me conclude by reiterating that my goal is to prevent future sexual violence. To this end, I endorse efforts to reconsider any provisions of SORNA that are not supported by research, to advance policy around those strategies that are evidence-based and to expand our national research agenda in the area of sexual violence. Congress can provide important leadership to the Nation on this critical issue.

I and my colleagues across the country would be most pleased to partner with you to understand how best to implement these approaches strategically to end sexual violence. Thank you.

[The prepared statement of Ms. Carter follows:]

PREPARED STATEMENT OF MADELINE M. CARTER

Good afternoon Chairman Scott and members of the Committee. My name is Madeline Carter. I want to begin by thanking the Committee for convening this hearing and for offering me the privilege of addressing you. I also want to acknowledge the enormous respect I have for the other witnesses who are speaking today. Each of us comes to this issue with a unique background and set of experiences—including law enforcement, prosecution, defense, and victim advocacy. As a result we may see the issue of sex offender management through different lenses and perhaps have divergent thoughts about the public policy approach that will result in the greatest benefit. I am certain of one thing however: that we all share the same goal-to prevent sexual victimization.

Let me begin by saying a few words about my background. I am a Principal with a non-profit organization in Maryland. For 26 years we have worked with state and local government officials across the country to advance sound policy solutions within the criminal justice system. Nearly 12 years ago we were awarded funds by the Justice Department to establish the Center for Sex Offender Management. I have served as its director since that time.

CSOM's mission is to enhance public safety by preventing further victimization through improving the management of adult and juvenile sex offenders. Over 12 years, we have produced nearly 40 policy and practice briefs and other resource documents; trained nearly 50,000 professionals; and provided training and technical assistance to officials in almost every state. We do not conduct original research ourselves. Our role is to assist policymakers and practitioners in understanding the research and translating its findings into policy and practice.

I want there to be no misunderstanding about the purpose of our efforts. We do not view ourselves as advocates for anything more than sound policy approaches that result in safer communities. Our goal is to support efforts to end sexual vio-

lence. I personally am deeply concerned about the threat posed by sexual violence. I am a professional in this field and also the mother of two children. I pray they never experience sexual assault. I am a friend to many who have, and as a young teenager I was the victim of an attempted rape by an individual that was described to me by police as most likely a serial rapist. Like you, I have a major stake in the safety of victims and potential victims and the safety of our communities.

I would like to share with you five points that I believe can guide our collective thinking on this matter.

**Point #1: Sex offender policy and practice should be evidence based.** When empirical research is applied to both policy and professional practice it is referred to as evidence-based policy or practice. Today, we have a wealth of knowledge about the factors associated with recidivism risk, and methods to intervene with and reduce that risk. Important and extensive research regarding criminal offenders, including sex offenders, has been conducted over the past three decades.

Within the context of this hearing it is not possible to reasonably review all of the significant findings, although I and perhaps some of my colleagues will touch upon a few major findings. The point I want to make at this moment, however, is an important and over-arching one: that there is a wide body of research that can and *should* shape public policy because it can increase public safety by reducing new crimes, including sexual offenses.

This research has shaped practice in local communities across this country over the last decade or more. The results are promising and need ongoing support and evaluative study.

**Point #2: Not all sex offenders are alike.** Perhaps one of the most illuminating research findings relates to the label "sex offender." One of the fundamental problems in our field is that we tend to paint all sex offenders with the same brush when professionals in the field have long recognized key *differences* among these offenders. These differences relate to the types of crimes they commit and the victims they target, the pathways that lead to their abusive behavior, the degree to which they are motivated to change, their risk for recidivism, and the types of interventions that will most likely reduce their risk for reoffense.

These key differences have important implications. For example, among adult sex offenders, research tells us that some are at higher risk to reoffend than others. While some are extremely dangerous others can be safely managed in the community. Research further distinguishes adult sex offenders from their juvenile counterparts: Juveniles are developmentally different, have lower recidivism rates, and seem to respond well to treatment.

These research findings suggest that a "one size fits all" approach to sex offender policy is inappropriate. Instead, a more tailored and strategic approach is called for.

I respectfully recommend that this Committee support further examination of the differences between juvenile and adult sex offenders, and the treatment, supervision, and other supports needed to prevent specific sub-populations of offenders from committing new crimes.

**Point #3: Risk assessment is an important tool in our management arsenal.** If a one size fits all approach is not appropriate, we need a way to distinguish among sex offenders. Until recently, we had no choice but to categorize offenders primarily on the basis of the specific offense they had committed. Risk assessment instruments offer a scientifically-based method to distinguish important differences among individuals. While these tools are not perfect, they have been consistently demonstrated to be more reliable than professional judgment.

Given the significant advances in research-both in terms of our understanding that sex offenders are not all alike, and in terms of our ability to distinguish sex offenders from one another through the use of risk assessment tools—a tailored approach to sex offender management, based upon risk to reoffend, should be employed to all of our sex offender management strategies.

The road to moving the criminal justice system from an offense-based to a risk based system, not only for sex offenders but also with other offender types, has been a long one. Today, many states use actuarial risk assessment to differentiate between offenders; resource allocation and management strategies are deployed accordingly. I encourage this Committee to consider establishing a commission to examine the use of actuarial risk assessment tools to guide the tiering of sex offenders for registration and notification purposes.

**Point #4: There is no silver bullet.** We want desperately to find the "silver bullet" that will solve this problem, but there are no silver bullets—there is no single answer to the problem of sexual violence. It is much too complicated for any one solution.

CSOM has developed a model policy framework for sex offender management. We call it the Comprehensive Approach. It is built on solid research and a set of core

values, the most fundamental of which is that our efforts should focus squarely on victim protection and safety. The Comprehensive Approach acknowledges that there are many elements involved in an effective approach to protecting public safety: thorough investigative practices; appropriate charging and plea negotiations; informed sentencing; and management practices based in research around assessment, treatment, and institutional and community management. Among these elements are registration and notification. Research suggests that some of the strategies that we have at our disposal are more powerful tools in reducing recidivism than others. Admittedly the research is not yet complete; there is still much we do not know. But thus far, the evidence suggests that a combination of sex offender specific treatment and community based supervision can increase public safety by reducing new sex crimes. Thus far the research on registration and notification has not demonstrated the same results. Therefore, the research suggests that we cannot rely on this as our only strategy, and it also suggests that we should invest our limited resources in those strategies that show promise for greater public safety by reducing new sex crimes and, *at the very least,* be judicious in our investment in options that do not.

**Point #5: We should use the lessons of research and experience to build a better, stronger approach to reducing victimization.** There was a time not too long ago when little was known about sex offenders. I still remember it well. When we established CSOM, the research was scant. The professional opinions were oftentimes in sharp disagreement. Our first step was to bring all the voices in the field together. With their help we identified promising practices, synthesized the research, and built an approach that offered the promise of reducing future victimization. As we have learned more, the approach has evolved. We still have more to learn.

But some things we already know. We know that some of the efforts we have made in the past in the name of public safety have proven ineffective. We should let go of those. Others hold promise for recidivism reduction. We should embrace these.

We know now from more than a decade of experience working with communities all across the country that we can hold offenders accountable; we can provide victims with support and safety, and partner with them in our efforts to increase public safety. Most importantly, we know from research that we can reduce the likelihood of new sex crimes and the harm that it causes. But to achieve these goals, we must be thoughtful and deliberate in our strategy. We must bring all of the stakeholders together. We must evaluate the extent to which each community's efforts align with research. We must provide information and training to professionals; educate our communities; and fully invest in strategies proven effective. These are the lessons of more than a decade of work that guides us to meaningful solutions. These lessons are documented in several of the written materials I have supplied along with my testimony. I and my colleagues across the country would be most pleased to partner with you to understand how best to implement these approaches to sex offender management strategically on a national basis.

In closing let me say that my first and only goal is to prevent future sexual violence. To this end, I support efforts to reconsider any provisions of SORNA that are not supported by research; to advance policy around those strategies that are evidence based; and to expand our national research agenda in the area of sexual violence prevention.

Congress can provide important leadership to the nation on this critical issue. I thank you for your concern over this matter and look forward to joining forces with you to end sexual violence.

**ATTACHMENT**

Center for Sex Offender Management
A Project of the U.S. Department of Justice, Office of Justice Programs

# The Comprehensive Approach to Sex Offender Management

November 2008

## Introduction

The problem of sex offending has garnered significant concern and attention in recent years. The impact sexual victimization can have on victims and families, the fear these crimes generate in members of the public, and the unique risks and needs posed by sex offenders have led to more concerted efforts to develop specialized ways to manage known offenders as a means to prevent future sexual victimization.

The dynamics of sexual victimization and sex offending are multifaceted. Responding effectively to sex offending requires involvement from a wide range of disciplines and agencies. Jurisdictions across the country have recognized clearly that the effective management of sex offenders is more than just supervision and treatment; rather, it demands the thoughtful integration of these and other management components (including ensuring effective investigation, adjudication and sentencing; assessment; reentry; supervision; treatment; and registration and notification) and, perhaps as importantly, ongoing collaboration among those who are responsible for carrying out these activities. As such, strategies to address these issues should involve the key agencies, organizations, entities, and individuals who have a stake and role in adult and juvenile sex offender management.

The "Comprehensive Approach" to sex offender management described in this document is one framework that has been developed to define and encourage a strategic and collaborative response to managing sex offenders and reducing recidivism. This approach addresses a wide spectrum of critical issues, in terms of principles, policies, and practices. Moving beyond more traditional and sometimes fragmented and inconsistent responses, it connects each of the core components of an integrated model. As described in this document, the Comprehensive Approach offers a promising and well-grounded framework that jurisdictions can consider as they build an informed, integrated set of policies and practices to promote the shared goal of ensuring victim and community safety.

## Background

It is estimated that 265,000 sex offenders are under some form of supervision in the community (Greenfeld, 1997). These offenders represent a very heterogeneous population, and the risks that these offenders pose to the community vary tremendously.

Approximately 150,000 adult sex offenders are currently incarcerated in state and federal prisons throughout the United States, representing between 10% and 30% of prison populations in some states (see, e.g., Bynum, Huebner, & Burgess-Proctor, 2002; Greenfeld, 1997; Harrison & Beck, 2006a). During the past decade, there has been an 80% increase in the number of sex offenders in the nation's prisons (Beck & Gilliard, 1995; Harrison & Beck, 2006b). And while many sex offenders are entering prisons each year, large numbers are also being released; between 10,000 and 20,000 are estimated to be returning to communities each year (CSOM, 2007). Some convicted sex offenders are sentenced directly to community supervision (e.g., probation), while others may be sentenced to prison or jail and are then released conditionally (e.g., permitted to live in the community under parole or probation supervision). Still others are sentenced to prison or jail and later released with no period of follow-up supervision. Since the overwhelming majority of sex offenders likely will be released into the community at some point (Hughes & Wilson, 2003; Hughes, Wilson, & Beck, 2002)[1], and because research demonstrates that

[1] Almost all criminal offenders – at least 97% – will eventually return to our communities. This equates to as many as 20,000 sex offenders being released into local communities each year.



*Established in June 1997, CSOM's goal is to enhance public safety by preventing further victimization through improving the management of adult and juvenile sex offenders who are in the community. A collaborative effort of the U.S. Department of Justice, Office of Justice Programs, the National Institute of Corrections, the State Justice Institute, and the American Probation and Parole Association, CSOM is administered by the Center for Effective Public Policy.*

observed recidivism rates for sexual, violent, and non-violent crimes are lower when sex offenders receive appropriate interventions, such as proper supervision and treatment (Aos, et al., 2006), it is incumbent upon public safety agencies to provide services to offenders that can ensure the most effective management of these offenders in an effort to reduce future victimization.

## The Comprehensive Approach

Building upon some of the seminal work described above, the Comprehensive Approach defines the core components of sex offender management for those who have a key role and/or vested interest in how to manage most effectively this challenging offender population. Like the Containment Approach and others, the Comprehensive Approach recognizes the complex nature of sex offending and the need for key system stakeholders to facilitate accountability, rehabilitation, and victim and community safety throughout all phases of the justice system. However, the Comprehensive Approach reaches beyond the primary focus on the treatment–supervision–polygraph triad, and expands to a strategy that includes a broader sphere of partnerships and influence.

The Comprehensive Approach to Sex Offender Management addresses three key questions:

- Who are the stakeholders who need to be involved in the full expanse of sex offender management efforts in order for them to have the most potential impact?
- What is the range and scope of activities that are central to managing sex offenders and reintegrating offenders into the community in a way that is safe and effective?
- How should professionals approach the sex offender management process (i.e., what are the foundational tenets and philosophies of the work and what are the evidence-based practices professionals should employ)?

The first question is addressed by the key components listed in the outer circles of the diagram depicted at right.


The second and third questions are addressed by the underlying principles of the Comprehensive Approach. These principles, represented by the innermost circle of the diagram, include an ongoing appreciation of the needs and interests of victims, the importance of specialized training and knowledge for policymakers and practitioners, the value of public awareness and education, the need to monitor and evaluate policies and practices, and the recognition of the critical role of collaboration in effective sex offender management.

### The Fundamental Principles of the Comprehensive Approach

These principles represent the philosophical underpinnings of the approach, answering the question of "what is the foundation upon which our sex offender management policies and practices should be based?" These guiding tenets are described below.

**Victim-Centeredness**: The impact of sexual victimization on victims and communities must be a paramount consideration in sex offender management efforts; such efforts should offer the necessary system supports for victims and their families. Focusing only on the offender without consideration for the safety, interests, and needs of victims will do little to engender public confidence in the criminal justice system, or to prevent further victimization. Sex offender management efforts should include victim advocates in the development of policies and proce-

dures to ensure that their important perspectives are understood and valued and to consider the impact that such policies and practices may have on past and potential victims and their families.

**Specialized Knowledge**: Working with sex offenders is, in some ways, different from managing a general offender population. While these offenders may share some common characteristics with the general offender population, they also have an array of risks and needs specific to their sex offending behavior. As such, professionals in the field must possess specialized knowledge about sex offenders, their victims, effective interventions for this population (e.g., knowledge about specialized instruments that predict risk among sex offenders; understanding that sex offenders may have different offense motivations than other offenders), and legislatively-driven requirements by which offenders are required to abide (e.g., registration and notification). Given their roles and responsibilities relative to sex offender management on a day-to-day basis, supervision officers, treatment providers, and law enforcement officials in particular should have an in-depth knowledge about this population and should receive the intensive, specialized, and ongoing training that is necessary for them to carry out their duties most effectively. Other criminal and juvenile justice system actors (e.g., judges, prosecutors and defenders, law enforcement, releasing authorities) will also benefit from specialized training on sex offender-specific issues to assist them with making informed decisions with respect to their specific roles in the sex offender management process.

**Public Education**: Increasing public awareness and providing the public with accurate information about sex offenders and offender management strategies is central to successful prevention and management efforts. Sharing information about who offenders are (e.g., most offenders are known to their victims; many offenses go undetected; sex offenders do not all present the same level of risk to the community) and how they are managed (e.g., specialized treatment and supervision strategies are essential in maintaining community safety) will help to dispel commonly held myths and equip the general public to better respond to and deal with the issue of sex offending in their communities. Educating the community about myths can equip them to enhance their own self-protection efforts, increase confidence about existing sex offender management efforts in communities, and eliminate or reduce some key barriers for

***The Evolution of Contemporary Sex Offender Management Strategies***

The Comprehensive Approach builds upon and complements the work of many in the sex offender management field who have argued the importance of multiple management components and collaboration over the past two decades. For more references to these earlier approaches, see the following sources:

- Schwartz & Cellini (1988) for information about a "systems approach" to managing sex offenders.
- Hindman, J. (1989) for more information about a "victim-centered approach" that focuses on integrating victim and offender services, and involving prosecutors, police, and other key stakeholders in the management of sex offenders.
- Cumming, G. & Buell, M. (1996) for a discussion about the "external" dimensions of Relapse Prevention and integrating supervision officers, treatment providers, and support networks.
- English, Pullen, Jones, & Krauth (1996) for an overview of the "Containment Approach," an influential model that proposes five key elements as central to the effective management of sex offenders in the community. These include emphases on an overall goal of community and victim safety, sex offender-specific containment strategies, interagency and interdisciplinary collaboration, informed and consistent public policies, and quality control.
- D'Amora, D., & and Burns-Smith, G. (1999) for a proposed model that recommends integrating victim advocates into the management of sex offenders in the community.
- Cumming, G. & McGrath, R.J. (2005) and Cumming, G. & McGrath, R. (2000) for more information about the collaborative and specialized management of sex offenders in the community.
- Wilson, R.J., Picheca, J.E. & Prinzo, M. (2005) for information regarding the "Circles of Support and Accountability" model that promotes providing formal support to offenders in order to help them to reintegrate safely into the community.

offenders (such as the public's efforts to block treatment or residential programs designed to help offenders successfully reintegrate into the community). Therefore, the key stakeholders who represent the core components of the Comprehensive Approach must take active steps to educate the public about the nature of sexual victimization, who is most likely to be targeted and by whom, what the rights of the public are in these cases, how effective management strategies can increase community safety and prevent further victimization, and what role the public might play in monitoring offenders and promoting offender success.

**Monitoring and Evaluation**: As is the case with correctional strategies in general, sex offender management practices should be guided by evidence-based research as well as those practices that are promising in terms of impact and effectiveness. Therefore, agency practices should be assessed on an ongoing basis to ensure that they are consistent with the contemporary research and practice literature. Both policymakers and practitioners alike should be cognizant of the need to keep pace with emerging research in this area. Furthermore, jurisdictions should take care to objectively assess their own policies and practices in order to evaluate the extent to which they result in positive outcomes. In those instances when the desired outcomes are not met (or opposite effects are identified), practices should be realigned.

**Collaboration**: Because of the complex nature of sex offending and the range of strategies used to manage this population, no single entity or approach in and of itself is likely to address this issue adequately or effectively. Stakeholders must work together to ensure that their respective resources, capabilities, and strategies are brought to bear on this problem. The collective involvement of criminal justice agencies, treatment providers, victim advocacy organizations, members of the public, and other relevant stakeholders is central to a Comprehensive Approach to sex offender management. Sex offender management teams should ensure that all relevant disciplines and stakeholders are actively contributing members to these efforts and that a commitment to ongoing collaboration is shared by both policymakers and practitioners.

## Core Components of a Comprehensive Approach to Sex Offender Management

The core components of the Comprehensive Approach are represented by the outermost circles of the diagram depicted on page 2. These components provide the substantive foundation of the Comprehensive Approach.

**Investigation, Prosecution, and Disposition**: The investigation, prosecution, and disposition of sex crimes set the stage for the remainder of the offender's contact with the criminal justice system. In order to investigate these cases in the most effective way possible, the involved parties should have knowledge of sexual assault victim issues, including best practice in collecting relevant forensic evidence and interviewing victims. The system must also be committed to the swift and judicious resolution of these cases, ensure that the charges filed accurately reflect the nature and seriousness of the allegations, and protect the individual defendant's rights while maintaining the overarching interests of community safety. Finally, investigators and the courts should be critical consumers of assessment information, should ensure that sensitivity to victim needs throughout the process is safeguarded, and should remain committed to sentencing decisions that are based upon quality evidence and assessment information and promote the accountability of sex offenders.

**Assessment**: Because adult and juvenile sex offenders are such diverse populations, "one size fits all" approaches are neither appropriate nor effective. Determining what to do with which offenders, how and when to do it, and why it should be done demands careful consideration to the varied levels of risk, needs, development, and functioning of these individuals. This requires having access to (and making good use of) comprehensive and sex offender-specific assessment information. Well executed assessments are the key to informed decision making throughout the case management process, because the information gleaned from these reports can help stakeholders to understand the static (or unchangeable) factors in an offender's history that can help to identify risk factors for recidivism over the longer term. Supervision officers and treatment providers should also

maintain an ongoing awareness of the presence or absence of changeable risk factors that relate to recidivism or reoffending in the shorter term. In the Comprehensive Approach, assessment is defined as a collaborative effort, strengthened by input from all parties who are working with offenders and their victims. It contextualizes assessment as an ongoing process that provides practitioners not only with basic information about an offender's level of risk and criminogenic needs, but also about treatment progress, supervision compliance, the presence of community and other prosocial supports, and access to victims, among other issues. Assessed risk and needs information should also drive the allocation of limited resources to this population (e.g., targeting the most intensive services to the highest risk offenders).

**Treatment**: Because research has demonstrated that the provision of sex offender-specific treatment is associated with reductions in both sexual and non-sexual recidivism (see e.g., Aos et al., 2006; Gallagher, et al., 1999; Hanson et al., 2002; Lösel & Schmucker, 2005; Reitzel & Carbonell, 2006), treatment is an essential component of a comprehensive sex offender management system. The primary goal of sex offender treatment is to assist individuals to develop the necessary skills and techniques that will prevent them from engaging in sexually abusive and other harmful behaviors in the future, and lead productive and prosocial lives. Several key elements specific to sex offender treatment (e.g., limited confidentiality, emphasis on group and cognitive-behavioral programming), tailoring the intensity and duration of treatment to the risk level of the offender (e.g., providing more intensive services to higher risk individuals and less intensive services to those at lower risk), and the use of an integrated model through which other professionals involved in the management process are able to provide input and seek information about offenders, are central to promising sex offender management practices. In addition, a comprehensive sex offender management strategy acknowledges that sex offenders are not "just" sex offenders. Indeed, many present general criminal risk behaviors that can be identified through empirically based risk/needs assessment instruments developed for the general offender population, and addressed through effective correctional interventions. In this way, intervention strategies should be both comprehensive and holistic.

**Reentry**: The vast majority of incarcerated sex offenders will ultimately return to the community. It is critical to be aware of and to develop strategies about how to respond to the unique dynamics and barriers that make reentry for sex offenders particularly challenging. For example, myths about sex offenders and victims, misconceptions about recidivism rates, claims that sex offender treatment is ineffective, and highly publicized cases involving predatory offenders fuel negative public sentiment and exacerbate concerns by policymakers and the public alike about the return of sex offenders to local communities. Furthermore, legislation that specifically targets the sex offender population – including longer minimum mandatory sentences for certain sex crimes, expanded registration and community notification policies, and the creation of "sex offender free" zones that restrict residency, employment, or travel within prescribed areas in many communities – can inadvertently but significantly hamper reintegration efforts. As a result, early reentry planning that acknowledges and addresses these challenges is essential. Ensuring that offenders nearing release are provided necessary risk reducing treatment, are linked to treatment services in the community, and are provided with other stabilizing supports (e.g., appropriate and sustainable housing and employment) is vital to successful offender reintegration. Institutional and community staff and treatment providers should coordinate closely both the services provided during the transition phase and the monitoring and supervision of sex offenders under conditional release in order to promote a seamless and safe return of sex offenders from prison to the community.

**Supervision**: Sex offender-specific supervision is a hallmark of contemporary sex offender management efforts. Specialized knowledge and training of staff facilitates: effective assessment and interviewing skills; supervision and field work practices; the development of sex offender-specific case plans with tailored conditions of supervision that enhance offender accountability, victim protection, and community safety; ongoing, individualized case management strategies; periodic reassessments of risk and continual monitoring of dynamic risk factors; and the appropriate use of ancillary supervision strategies as appropriate (e.g., polygraph, GPS monitoring) to promote risk management and public safety. Specialized caseloads, the use of team-based case management, appropriate

use of incentives, and proactive responses to non-compliance are also key. Because research has demonstrated that supervision – coupled with sex offender-specific treatment – can result in marked reductions in recidivism (Aos et al., 2006), an equal emphasis on both is advised. For this reason, community supervision officers, treatment providers, victim advocacy professionals, and others should work closely together in an ongoing fashion to monitor compliance and reinforce progress.

**Registration and Notification**:
Legislative/policy trends specific to sex offenders have become an increasingly central component of sex offender management. Sex offender registration and notification laws have been enacted in an effort to deter offenders from committing future crimes; to provide law enforcement with an additional investigative tool; and to increase public protection by alerting the public to the presence of sex offenders in their communities. In order to most effectively implement sex offender registration practices, jurisdictions should ensure that their policies and procedures detailing the registration process for offenders and the roles of the involved agencies are clear and consistent. Registration policies should encourage collaboration and coordination of efforts among all of the agencies involved in the registration process. Additionally, procedures that delineate a clear system for the collection and maintenance of thorough, accurate, and current information on registered sex offenders should be developed. Important considerations when implementing community notification strategies include: incorporating multi-disciplinary public education efforts into notification practices in an effort to reduce unintended consequences (e.g., vigilantism, homelessness); providing information and resources to the community regarding sexual victimization; and encouraging the community to promote offender success as a way to increase public safety. Ultimately, it will be important for the effectiveness of these and other sex offender-specific laws and legislation to continue to be evaluated in order to assess their impact and effectiveness.

## Special Considerations for Juvenile Offenders

While the fundamental principles and the management components outlined in the Comprehensive Approach can be applied to both adult and juvenile sex offenders and the professionals who serve them, there are several key practical implications for juveniles that should be noted. Most salient are the developmental differences between adults and juveniles, relatively low rates of sexual recidivism among juvenile sex offenders, increasing evidence suggesting that the majority of these youth are not likely to continue offending sexually as adults, the effectiveness of community-based treatment with this population, and concerns about collateral consequences associated with applying policies and legislation designed for adults to juveniles (Chaffin, 2006; Fanniff & Becker, 2006; Garfinkle, 2003; Hunter, Gilbertson, Vedros, & Morton, 2004; Letourneau & Miner, 2005; Reitzel & Carbonell, 2006). In

***Statewide Policy Boards Advance a Comprehensive Approach to Sex Offender Management***

Many states have recognized the value of establishing formal policy boards to inform the development of comprehensive sex offender management policies and practices. Many of these boards have been legislatively mandated and represent "...multi-disciplinary groups of sex offender treatment/management and victim advocacy stakeholders charged with providing standardization, regulation, and policy input/oversight (in order to) work collaboratively to develop empirically supported sex offender management public policy initiatives."

These boards provide an opportunity for stakeholders to collaboratively assess current practice, identify areas of advancement, and suggest strategies to enhance sex offender management practice in a deliberate and informed manner.

To date, six statewide boards have been formally established (California, Colorado, Illinois, New Mexico, Tennessee, and Texas). An additional 16 states have also formed boards to work on specific issues (such as community notification or establishing treatment standards for providers). Several others have developed informal boards that may be formalized in the future. Please visit www.csom.org for more information about statewide policy boards.

*Source: Christopher Lobanov-Rostovsky, Association for the Treatment of Sexual Abusers (ATSA) Forum, Vol. XVIV, No. 3, Summer 2007.*

light of these factors, juvenile sex offender management systems should specifically include: developmentally appropriate treatment and supervision practices; the use of specialized assessment tools designed specifically for use with a juvenile population; outreach to and collaboration with a youth's family and school, as appropriate, in both treatment and supervision practices; and the development of policies, practices, and legislation that are tailored to meet the needs and risks of this unique population.

## Conclusion

Sex offending is a multi-faceted and complex issue that can have a significant impact on victims and the community. To prevent further victimization, stakeholders across disciplines must appreciate the value of one another's roles and responsibilities as part of an overall/broader strategy. Building upon the efforts and insights of researchers and practitioners nationwide, the Comprehensive Approach provides a framework by which policy and practice can be integrated at the state and local level as a means of enhancing sex offender management efforts. Although a growing body of research and practice literature supports several of the tenets and components outlined within this model, additional research is needed. Such research will provide considerable benefits to the field by ensuring that policies and practices are well-informed, maximally effective, and offer the greatest potential to safeguard communities.

## Acknowledgments

The Center for Sex Offender Management (CSOM) was established in 1997 to support state and local jurisdictions in the effective management of adult and juvenile sex offenders. CSOM is administered by the Center for Effective Public Policy and, since its inception, has been funded by the Office of Justice Programs. Early funding partners also included the National Institute of Corrections and the State Justice Institute. The American Probation and Parole Association served as an early substantive partner, helping to launch this initiative nationally. Without the contributions and support of these agencies and organizations, the development of the Comprehensive Approach to Sex Offender Management would not have been possible.

We would like to thank specifically a number of individuals who have played a key role in shaping the initiative, its principles, and the model; as well as the many products and resources that followed.

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*Kim English*, Director of Research, Office of Research and Statistics, Colorado Division of Criminal Justice, Colorado Department of Public Safety

*Faye Fagel*, Juvenile Department Director, Marion County, Oregon

*Ana María Guzmán*, Client Service Specialist, Office of the State Public Defender, Milwaukee, Wisconsin

*Ellen Halbert*, Director of Victim/Witness Services, Harris County, Texas

*Fran Henry*, Founder, Stop It Now!

*Gail Hughes*, Executive Secretary, Association of Paroling Authorities International (Retired)

*John Hunter*, Professor, University of Louisiana

*Michael Lawlor*, State Representative, Connecticut House of Representatives

*Joseph D. Lehman*, Secretary, Washington State Department of Corrections (Retired)

*Robert Longo*, Director of Clinical Services, Old Vineyard Youth Service

*Michael Mowen*, Assistant County Manager, City of Decatur, Illinois

*Sam Olsen*, Adult Probation and Parole Officer, Jackson County Community Corrections, Oregon (Retired)

*Rocco Pozzi*, Commissioner, Westchester County Probation Department, New York

*Robert Prentky*, Associate Professor, Fairleigh Dickinson University

*Ronald Reinstein*, Associate Presiding Judge, Superior Court of Arizona (Retired); Director, Center for Evidence Based Sentencing, Arizona Supreme Court

*Lynn Schafran*, Director, National Judicial Education Program to Promote Equality for Men and Women in Courts

*Lori Scott*, Chief Probation Officer, Maricopa County, Arizona (Retired)

*Anne Seymour*, Victim Advocate and Co-Director, Justice Solutions, Inc.

*Bob Shilling*, Detective, Seattle Police Department

*Lloyd Sinclair*, Associate Treatment Director, Sand Ridge Secure Treatment Center, Wisconsin Department of Health and Family Services

*Lee Solomon*, Superior Court Judge, Camden, New Jersey

*Suzanne Tallarico*, Principal Court Management Consultant, National Center for State Courts

*Carl Wicklund*, Executive Director, American Probation and Parole Association

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*Robert McGrath*, Clinical Director, Vermont Treatment Program for Sexual Aggressors, Vermont Department of Corrections

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-Madeline M. Carter, Director, Center for Sex Offender Management

## For More Information

CSOM has developed a variety of policy and practice publications that address a range of issues related to sex offender management, including the key substantive areas discussed

throughout this document. CSOM has also developed several publications designed to assist jurisdictions in assessing their own sex offender management policies and practices; and a comprehensive curriculum on sex offender management that is available on the web. These documents, along with a number of other tools that have been developed by professionals in the field to aid communities in their efforts to more effectively manage sex offenders and reduce future victimization, can be found at www.csom.org.

Please contact us with specific questions at askcsom@cepp.com or:

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Mr. SCOTT. Thank you.
Mr. Allen.

**TESTIMONY OF ERNIE ALLEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, ALEXANDRIA, VA**

Mr. ALLEN. Mr. Chairman, I have submitted written statement. With your permission, I will summarize briefly.

As you know, the National Center was honored to have been one of the organizations consulted by bipartisan congressional leaders on the Adam Walsh Act, and we believe strongly today that this is vital legislation to keep America's children safe.

We know how serious the problem is. We at the National Center have handled 667,000 reports of child sexual exploitation through our congressionally mandated cyber tip line. Our child victim identification program has reviewed in the past 5 years 21 million child pornography images and videos depicting the sexual abuse of children. Our analysis unit is receiving requests from State law enforcement, from the U.S. Marshal Service to help in the location of missing or noncompliant sex offenders.

In our last survey of State sex offender registries a month or two ago, we found that there are today 673,989 sex offenders in this country required to register. Our estimate is that at least 100,000 of those offenders are noncompliant, many of them literally missing. Many States do not know how many offenders are noncompliant or are missing.

We also partner with ICE, Immigration and Customs Enforcement, in an effort called Operation Predator, which has resulted in 12,000 arrests nationwide, 85 percent of whom are noncitizen sex offenders, 6,300 of whom have been deported.

Congress passed the Adam Walsh Act, and we were supportive for one primary purpose, and that is to create a uniformed, consistent national approach to this problem. There is a stunning lack of consistency, resulting in gaps and cracks in the system which the most serious offenders exploit. By requiring States to enact more uniformed State laws, we felt that this would prevent more offenders from forum shopping in order to remain anonymous.

The States and jurisdictions are trying as you have heard. Working with the SMART Office, 38 jurisdictions have submitted materials for review. Twenty-three have been granted 1-year extensions. A few States have announced that they have implemented SORNA, but only the SMART Office is authorized to make an official determination of that implementation.

Our premise, our message to this Committee today, is very simple: As essential and historic as we believe the Adam Walsh Act is, it is not going to be effective without the appropriations necessary to implement it.

When we first discussed this legislation, a prominent sponsor, an advocate in the Senate, said, "This legislation is essential, but show me the money. If we do not fund it, it is meaningless."

From the beginning, everyone understood that these changes would be difficult and that the States would need help. The bill authorized that help and much more. The Congressional Budget Office scored a version of the act at more than $1 billion over 5 years. In the 3 years since its passage, virtually none of those funds have been appropriated. There has been some funding through the Iraq supplemental to the U.S. Marshals, and the SMART Office has provided some grants to help with compliance and some training as well as some support for juvenile sex offender treatment. It is important to note that the failure to appropriate the funds happened due to larger issues and conflicts completely unrelated to the Adam Walsh Act.

We are grateful to Chairman Alan Mollohan and to the Members of the House CGS Appropriations Committee and to Senator Barbara Mikulski and to Senator Richard Shelby, who have continuously provided seed money in the appropriations bills, but it has been 3 years since the passage of the Adam Walsh Act since there has really been an appropriation. The funding has not happened.

Providing the funding, in our judgment, is the key to being able to implement this critical system fairly, objectively and thoroughly. However, with the compliance date looming and with essentially no funding having been provided to date, we believe it is imperative that Congress act to keep the Adam Walsh Act alive through extending the deadlines for compliance. We understand that resources are scarce and that there are many competing demands. However, it is hard to imagine a greater, more pressing priority.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF ERNIE ALLEN

**TESTIMONY OF**

**ERNIE ALLEN**
**President & CEO**

**THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN**

**for the**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON THE JUDICIARY**
**SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY**

**"SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA)"**

**March 10, 2009**

Mr. Chairman and members of the Subcommittee, I welcome this opportunity to appear before you to discuss the sexual exploitation of children and the importance of the Adam Walsh Act. Chairman Scott, we are deeply grateful for your long history of advocacy for children and for your leadership on these issues.

As you know, the National Center for Missing & Exploited Children is a not-for-profit corporation, mandated by Congress and working in partnership with the U.S. Department of Justice. NCMEC is a public-private partnership, funded in part by Congress and in part by the private sector. For 25 years NCMEC has operated under Congressional mandate to serve as the national resource center and clearinghouse on missing and exploited children. This statutory mandate (see 42 U.S.C. §5773) includes 19 specific operational functions, among which are:

- operating a national 24-hour toll-free hotline, 1-800-THE-LOST® (1-800-843-5678), to intake reports of missing children and receive leads about ongoing cases;
- providing technical assistance and training to individuals and law enforcement agencies in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children;
- tracking the incidence of attempted child abductions;
- providing forensic technical assistance to law enforcement;
- facilitating the deployment of the National Emergency Child Locator Center during periods of national disasters;
- working with law enforcement and the private sector to reduce the distribution of child pornography over the Internet;
- operating a child victim identification program to assist law enforcement in identifying victims of child pornography;
- developing and disseminating programs and information about Internet safety and the prevention of child abduction and sexual exploitation;
- providing technical assistance and training to law enforcement in identifying and locating non-compliant sex offenders; and
- operating the CyberTipline, the "9-1-1 for the Internet," that the public and electronic service providers may use to report Internet-related child sexual exploitation.

The CyberTipline is the national clearinghouse for leads and tips regarding child sexual exploitation crimes. It is operated in partnership with the Federal Bureau of Investigation ("FBI"), the Department of Homeland Security's Bureau of Immigration and Customs Enforcement ("ICE"), the U.S. Postal Inspection Service, the Internet Crimes Against Children Task Forces ("ICAC"), the U.S. Secret Service, the U.S. Department of Justice's Child Exploitation and Obscenity Section, as well as other state and local law enforcement. We receive reports in eight categories of crimes against children:

- possession, manufacture and distribution of child pornography;
- online enticement of children for sexual acts;
- child prostitution;
- sex tourism involving children
- extrafamilial child sexual molestation;
- unsolicited obscene material sent to a child;
- misleading domain names; and
- misleading words or digital images on the Internet.

These reports are made by both the public and by Electronic Service Providers, who are required by law to report to the CyberTipline. The leads are reviewed by NCMEC analysts, who examine and evaluate the content, add related information that would be useful to law enforcement, use publicly-available search tools to determine the geographic location of the apparent criminal act, and provide all information to the appropriate law enforcement agency for investigation. These reports are also triaged to ensure that children in imminent danger get first priority.

The FBI, ICE and Postal Inspection Service have "real time" access to the CyberTipline, and assign agents and analysts to work at NCMEC. In the 10 years since the CyberTipline began, NCMEC has received and processed more than 667,000 reports. To date, electronic service providers have reported to the CyberTipline more than 5 million images of sexually exploited children. To date, 21 million child pornography images and videos have been reviewed by the analysts in our Child Victim Identification Program, which assists prosecutors to secure convictions for crimes involving identified child victims and helps law enforcement to locate and rescue child victims who have not yet been identified.

In 2008, Congress amended NCMEC's authorization to specifically authorize us to provide training and assistance to law enforcement agencies in identifying and locating non-compliant sex offenders. All states/jurisdictions currently require sex offenders to register; California enacted the first such law in 1947. As of our latest survey of the states, there were 673,989 sex offenders who are required by law to register their address and other information with law enforcement and update this information as it changes. However, the mobility of offenders and inconsistencies among current state registration laws have resulted in as many as 100,000 "missing" sex offenders – law enforcement does not know where they are, yet they are living in our communities.

The Adam Walsh Child Protection and Safety Act, passed by Congress in 2006, conveyed "fugitive" status on non-compliant sex offenders who have left the state and failed to register, and charged the U.S. Marshals Service with tracking them down. In response, NCMEC created a Sex Offender Tracking Team. Upon request from the Marshals, we run searches of non-compliant sex offenders against public-records databases donated to us by private companies for the assistance of law enforcement. We also conduct internal searches for potential linkages of non-compliant sex offenders to NCMEC cases of child abduction, online exploitation and attempted abductions. We forward all information to the Marshals, who use it to locate the offenders so they can be charged with the crime of non-compliance. This has resulted in thousands of arrests of fugitive sex offenders by the Marshals. In addition, NCMEC provides assistance to any requesting law enforcement agency trying to locate non-compliant sex offenders. Most of the law enforcement agencies who request assistance from NCMEC have exhausted all of their resources trying to locate these offenders and have been unable to do so. To date, we have provided more than 1,200 analytical leads packages to law enforcement upon request, and act as liaison between local law enforcement and the Marshals Service, where necessary.

NCMEC also partners with ICE on the "Operation Predator" initiative. ICE developed this initiative to identify, investigate and arrest child predators and sex offenders. NCMEC's alliance with ICE is designed to facilitate the exchange of information on exploited children and those who prey upon them. NCMEC supports ICE's efforts by providing analysis utilizing public records database searches and CyberTipline reports on potential child victims and those suspected of crimes against children. An ICE Special Agent has been assigned to work at

NCMEC so that ICE can promptly and efficiently act on the information developed by NCMEC. This alliance has proved enormously successful: nearly 12,000 individuals have been arrested nationwide. Almost 85% of these arrests are of non-citizen sex offenders, more than 6,300 of whom have been deported.

However, despite our progress the victimization of children continues. There has been much attention given to the question of how many children are victimized by sexual offenders. Experts estimate that at least 1 in 5 girls and 1 in 10 boys will be sexually victimized in some way before they reach adulthood, and just 1 in 3 will tell anybody about it. Clearly, those numbers represent a broad spectrum of victimizations from very minor to very severe. Nonetheless, the numbers are powerful testimony to the fact that children are at risk and that we must do more.

There are strong empirical data as well. According to the U.S. Department of Justice, 67 percent of reported sexual assault victims are children[1] – more than two-thirds. And these are only the ones that law enforcement knows about. Most crimes against children are not reported to the police.[2] This means that there are many, many more victims of these heinous crimes than the statistics show.

In recent years, millions of Americans have followed with horror the devastating stories of Jessica Lunsford, Sarah Lunde, Jetseta Gage and others. These tragic cases have generated anger and indignation nationwide, and epitomize an area of great concern: how to effectively track, register and manage the nation's convicted sex offenders. Sex offenders pose an enormous challenge for policy makers. They evoke unparalleled fear among citizens. Their offenses are associated with the greatest risk of psychological harm. Most of their victims are children and youth. And, according to the National Institute of Justice, child abusers have been known to reoffend as late as 20 years following release into the community.[3] As policy makers address the issue of sex offenders, they are confronted with some basic realities:

- most sex offenders are not in prison, and those that are tend to serve limited sentences;

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[1] Snyder, Howard N., *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, July 2000, page 2.
[2] *1999 National Report Series: Children as Victims*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, May 2000, Page 7.
[3] *Child Sexual Molestation: Research Issues*, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, June 1997.

- while most sex offenders are in the community, historically their presence was largely unknown to citizens;
- sex offenders represent the highest risk of reoffense; and
- while community supervision and oversight is widely recognized as essential, the system for providing such supervision is overwhelmed.

Of the estimated 100,000 non-compliant sex offenders, many are literally "missing." They moved and failed to register their new address with law enforcement, or they provided the wrong address or some similar variation. The number of offenders required to register is only going to increase as new cases work their way through the criminal justice system. This problem is not going to go away. These offenders will be in our communities. The question is: what more can we do?

In 1994 Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Predators Act, mandating every state to implement a sex offender registration program. However, by 2006, even though all 50 states, the District of Columbia, and some U.S. territories and Native American tribes had created sex offender registries, there was still a striking lack of consistency and uniformity. In response, Congress passed the Adam Walsh Child Protection and Safety Act in July of 2006 in an effort to enhance and tighten the sex offender registration system. The Adam Walsh Act attempted to correct the serious discrepancies among the jurisdictions, eliminating loopholes in the laws that permitted sex offenders to cross state lines and remain undetected. By encouraging uniformity across jurisdictions, the Adam Walsh Act attempted to prevent sex offenders from "forum-shopping" in order to remain anonymous. However, despite Congress' intent, the goals of the Adam Walsh Act remain unmet today.

Title I of the Adam Walsh Act is commonly referred to as the Sex Offender Registration and Notification Act (SORNA). The Sex offender Monitoring, Apprehension, Registration and Tracking (SMART) Office is authorized to determine whether a jurisdiction has substantially implemented SORNA or to grant an extension of the deadline. A jurisdiction must submit materials about its registration program to the SMART Office. The Adam Walsh Act permits jurisdictions to apply for up to two one-year extensions. The deadline for submitting extension requests is April 27, 2009.

Currently, there are no jurisdictions listed on the SMART Office webpage as having achieved substantial compliance. Seventeen jurisdictions are listed as having been granted a one-year extension to July 26, 2010 (Alaska, Arizona, Arkansas, Florida, Fort McDowell Yavapai Nation, Guam, Iowa, Kansas, Kentucky, Menominee Indian Tribe of Wisconsin, Minnesota, Mississippi, Nevada, New Jersey, Quileute Tribe, Santee Sioux Nation, and South Carolina).[4]

Thirty eight jurisdictions have submitted materials for review.[5] These are:

- Alabama
- Alaska
- American Samoa
- Arizona
- Arkansas
- Cheyenne River Sioux Tribe
- Coeur D'Alene Tribe
- Colorado
- Colorado River Indian Tribes
- Commonwealth of the Northern Mariana Islands
- Confederated Tribes of the Umatilla Indian Reservation
- Connecticut
- Florida
- Fort McDowell Yavapai Nation
- Guam
- Idaho
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maryland
- Menominee Indian Tribe of Wisconsin
- Minnesota
- Mississippi
- Mississippi Band of Choctaw Indians
- Missouri
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- Ohio
- Oklahoma
- Puerto Rico
- Quileute Tribe
- Rhode Island
- Santee Sioux Nation
- South Carolina
- Vermont

A few states have announced that they have implemented SORNA, but only the SMART Office is authorized to make an official determination of substantial implementation.

Cost appears to be the primary hurdle for compliance. It is difficult to determine a particular jurisdiction's required costs to implement SORNA with accuracy. However, some jurisdictions are doing so in an attempt to weigh the costs of implementation against the loss of Byrne Grant funds.

[4] http://www.ojp.usdoj.gov/smart/faqs/faqs_statusofjurisdictions.pdf
[5] Id.

NCMEC is in frequent contact with registering agencies and has learned anecdotally that they are most concerned about:

- personnel (40 states have fewer than 10 staff members);
- lack of law enforcement personnel dedicated solely to sex offender issues;
- database software purchase, installation and maintenance;
- outdated computer hardware and software;
- lack of centralized communication systems between jurisdictions for tracking offenders;
- lack of technology to easily identify fake addresses;
- lack of a national registry of sex offenders covering all tiers;
- in some states, registrants' verification is by mail and not in person;
- increased incarceration of offenders and related expenses;
- additional court proceedings;
- training of law enforcement, court and correctional personnel;
- lack of funding to conduct community notification of sex offenders;
- inability to track homeless registrants;
- lack of notice by jails of offenders' release;
- lack of a comprehensive national jail data system; and
- lack of uniformity in laws and requirements across jurisdictions.

In order to come into compliance with the Adam Walsh Act, many jurisdictions must make fundamental changes to their sex offender registration systems. Yet, these jurisdictions simply do not have the resources to make the necessary changes, leaving us where we were prior to the enactment of the Act with inconsistency across the jurisdictions enabling some sex offenders to game the system.

In order to help protect our nation's children, we must improve our current registration system so that we know where all of the convicted sex offenders are. We must assume that those who represent the greatest threat are those least likely to be compliant. They are the most likely offenders to attempt to disappear.

From the beginning of the discussions that led to the passage of the Adam Walsh Act, it was always understood that the jurisdictions needed help in order to implement the new law. We are

deeply grateful to Chairman Alan Mollohan, Congressman Frank Wolf and the House Commerce, Justice, Science Appropriations Subcommittee, and to Chairwoman Barbara Mikulski, Senator Richard Shelby and the Senate Commerce, Justice, Science Appropriations Subcommittee for their repeated attempts to do just that. On several occasions since the passage of the Adam Walsh Act in 2006, the CJS Subcommittees have passed appropriations measures providing seed funding to begin implementation at the state and federal level. Yet, for reasons unrelated to the merits of the Adam Walsh Act, and having to do with larger funding disputes which resulted in Continuing Resolutions and late session Omnibus Appropriations measures, the funds designated by the CJS Subcommittees were never actually appropriated. Once again this year, Chairman Mollohan, Chairwoman Mikulski and their subcommittees are taking steps toward providing assistance.

In our judgment, providing such funding is the key to being able to finally implement this critical system. However, with the compliance date looming and with essentially no funding having been provided to date, we think it imperative that Congress act to keep the Adam Walsh Act alive by extending the deadline for compliance and reauthorizing the statute.

We understand that resources are scarce and that there are many competing demands. However, it is hard to imagine a greater or more pressing priority. NCMEC urges lawmakers, law enforcement and the public to take a serious look at the dangers threatening our children today, and to move decisively to help states create a seamless, coordinated, uniform system that works. Now is the time to act.

Thank you.



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Mr. SCOTT. Thank you.
Mr. Lunsford.

**TESTIMONY OF MARK LUNSFORD, FATHER OF JESSICA LUNSFORD, THE CHILD VICTIM OF A SEX OFFENSE AND MURDER, HOMASASSA, FL**

Mr. LUNSFORD. My name is Mark Lunsford.

I am Jessica Lunsford's father. I turned in a statement explaining what happened to Jessie, and if you read through it, you will clearly see the failures in notification and registration and how my daughter's death became.

John Couey, convicted sex offender, arrested 23 times or more in his 46 years of life. He took my little girl, raped her and put her in a trash bag, alive, and buried her alive. I am sure that, when she was dying, she was crying for me. I can still hear her cries. As a parent, I will never be able to get over the grief of knowing that she was only 150 yards away from her own bedroom while I prayed for her. Her death was a result of a system that failed her and us, for if we had tougher laws for registration and good programs for notification, this may have prevented her death.

Although John Couey was on probation, his probation officer did not even know he was a convicted sex offender. The Sheriff's Department was advised by the Attorney General's Office 3 months before the kidnapping to round up all the absconded sex offenders. John Couey was on that list but never arrested until the death of my daughter.

Through tougher sexual offender registration and tracking systems, properly funded and enforced, may have protected my daughter and will protect other children. In Florida, the law is so slack that the public is only notified of sex offenders when they move, and that is at the discretion of each Sheriff's Department how they notify you. The public is not notified when a sexual predator moves. So we need better notification for the public. We must know where every John Couey is so we can take the necessary steps to protect our children.

In addition to the strict registration system, Congress must empower law enforcement to go after these guys. If law enforcement is not empowered and funded to go after these predators, the system fails us all again. Additionally, if we are not going to empower law enforcement, as has been the case in failing to fund the Adam Walsh Act, the registration and notification becomes that much more important so that fathers and mothers have the information they need to protect their children.

How can we say that it will not work or does not work until we fund it properly and explore what tweaks we need to make to it?

John Couey, a two-time convicted sex offender, on probation, wore a tracking device. During his time of wearing that tracking device, we always knew where he was at. He registered. He played by the rules. He did everything that he was supposed to do. In November, when they took the tracking device off of him, he had absconded. It is simple. You as legislators and all organizations, regardless of what organization you are with, all believe in one thing, and that is the rights of children. These children have the right to a safe and protected life, and until we implement the right funding and the right programs for notification and registration, our children will continue to pay the price. This is not fair. There is not

anything fair about it at all. Why do the children have to pay the price for our mistakes? Thank you.

[The prepared statement of Mr. Lunsford follows:]

PREPARED STATEMENT OF MARK LUNSFORD

Jessie was a beautiful baby. I can remember when she was about one year old, and she would laugh at me and give me kisses and hugs and pick the raisens out of my cereal as we sat at the kitchen counter.

I remember when she was about 4 and she would run through the house telling on her older sister Elizabeth and her brother Gerald, all the time. They're about 10 years older or more than Jessie. They learned to give her what she wanted. I got more hugs and kisses and I love you's.

I can remember how she missed her brother and sister when they got older and moved out, I got more hugs and kisses, she got nephews and a niece. She was about 7 then.

She could drive the bratz through the house in their bratz car. She can operate a D-9 Dozer and a rubber tire loader from her fathers knee. From bumps to bruises, from bandaids to bicycles, she was a tomboy with her daddy and a very nice young lady for her grandma.

I could go on and on but the best way to describe Jessie is for you to think about the small child in your life. You know the one, the one you would change the world for.

We were more than father and daughter, we were best friends. As a single father i learned alot of things about my children that only a single parent could understand. Me and Jessie would argue about who loved each other the most. (description of how we would show each that we loved one another).

One day we left North Carolina to see her two nephews and one niece in Ohio. That is where my older children moved to. We spent two weeks with them that was the first time the met and the last time they would ever play together. We then ended our trip in Florida where my parents lived.

My mom and dad are good christian people. They sang gospel music all over Ohio. I can remember people like the Rambos and Bill Gaither and throwing rocks on top of the church. I learned to be a good father to my children by being raised by good parents.

Well it was February 2005, we had lived in Florida for a year now with my parents. Now we really had a house full of love.

On February 24 in the early morning hours about 2 or 3 a.m. she was taken from her bed from a stranger. For the first few days detectives told me my father knew where Jessie was, they even said they found her blood on his under clothes. They said he showed no remorse for Jessies disappearance. They asked me to go into the room I was broken hearted, angry and confused and I asked my father what he did with Jessie? My father looked at me and said, Marky honey I dont know where Jessie is and he began to cry.

My father told the detective that he had enough and he was going home. They grabbed him by his arms and put them behind his back and told him he was not going anywhere. A few days later, they told me they thought that my mom and dad gave Jessie to someone else to raise.

Then they said on national T.V. that my mom raised red flags on her polygraph.

Three weeks went by and they found her killer and he confessed and told them where to find her. She was repeatedly raped, tied with stereo wire and kept in a closet for 3 days. She was only 150 yards from her bedroom.

John Couey convicted sex offender arrested 23 times or more in his 46 year life took my little girl, put her in a trash bag and buried her alive at the back door of his home.

I'm sure that when she was dying she was crying for me. I still hear her cries.

As a parent i will never be able to get over the grief of knowing that she was only 150 yards away from me for at least 3 days, while i prayed for her to come home.

Her death was a result of a system that failed her and us. For if we had tougher laws for registration and good programs for notification this may have prevented her death. Although John Couey was on probation his probation officer didnt even know he was a convicted sex offender. The sheriff was advised by the AG office 3 months before the kidnapping to round up the absconded sex offenders, John Couey was on that list.

But there is more, much more. The day Jessie disappeared, the law enforcement went to John Couey's address and asked his housemates if they had seen him and they said no and they never asked to search the trailer.

My heart sank at the trial when another resident of John Couey's trailer admitted that had the police asked to search the trailer, she would have let them.

On the second day of Jessie's disappearance, one of the residents of the home was visibly shaking and openly nervous when the police came to the door. This was actually in the police report. But the never asked to search the trailer. Even worse on February 25, 26 and the 28, police received tips from people who said that John Couey was a sex offender who was living

across the street from Jessica. They even identified his address.

No crime victim, no individual or family, should ever have to go through what my family and I have been through. This has changed everything i ever knew. From the grass being green and the sky being blue.

My job now is to declare war on child sex offenders and predators and to get you to join me. Instead of them stalking our kids, we will stalk them. And instead of them being our worse nightmare we become theirs.

Jessie's law, was past in Florida and is tougher legislation to stop these kinds of crimes. Since the law first passed in Florida, I have been to many states to speak about Jessie's Law and at least 37 states have passed it in their jurisdiction.

I lobbied the halls of congress for the Adam Walsh Child Safety Act which the President signed in 2006. I've lobbied for I.C.A.C and the U.S. Marshalls funding.

You, the Federal Legislator appropriate the money that the Adam Walsh Child Safety Act needs now. Our childrens very lives depend on you to make that decision. I know Jessie did.

And know that these types of crime are just to heavy for mercy. It's more than mercy can do. It is an eye for an eye for a child.

On February 12, 2007 jury selection began for the murder trial of Jessica Marie Lunsford and it was followed by a 3 week trial.

The jury came back with 4 guilty verdicts and recommeded the death penalty. Judge Howard gave John Couey the death penalty.

Sitting through the trial was one of the hardest things I have ever done. I can't tell you how many times I wanted to kill him.

Remember people watch out for our children. The child you save could be your own.

Through sexual offender registration and tracking system, properly funded and enforced may have protected Jessie and will protect other children.

In Florida, the law is so slacked that the public is only notified of sexual offenders, and that is at the discretion of each sheriffs department. The public is not notified when a sexual predator moves, So we need better notification for the public. We must know where every John Couey is so that we can take the necessary steps to protect our children.

In addition to a strict registration system, Congress must empower law enforcement to go after these guys. If law enforcement is not empowered and funded to go after these predators the system fails all of us. Additionally if we are not going to empower law enforcement, as has been the case in failing to fund AWA then registration and notification became that much more important. So fathers and mothers have the information they need to protect their children.

It's simple, you as legislators and all organizations, whether you are surviving parents coalition or NCMEC or ACLU we are all for human rights and it's time we all realize our children need our help to protect their rights for a safe life.

**TESTIMONY OF ROBERT SHILLING, SEATTLE POLICE DEPARTMENT, SEX AND KIDNAPPING OFFENDER DETAIL, SEXUAL ASSAULT AND CHILD ABUSE UNIT, SEATTLE, WA**

Mr. SHILLING. Mr. Chairman, Committee Members, guests, I'm honored to be given the opportunity to testify today. My name is Bob Shilling, and I'm a 29-year veteran of the Seattle Police Department. I've spent the last 19 years as the detective in the Special Victims Unit, Sex and Kidnapping Offender Detail. I've written or coauthored 12 pieces of sex offender legislation that have been passed into law in Washington State, and testified on the Community Protection Act of 1990, which became the first community notification law in the United States. I'm the only municipal law enforcement officer in the United States who is a member of the Interpol Specialists Group on Crimes Against Children. I currently serve as Chair of the Sex Offender Management Theme Group.

My experience protecting the public from sex offenders spans two decades. It is not a job to me, it is a passion. Perhaps my most significant experience related to this work comes from the fact that I'm a survivor of childhood sexual abuse. The abuse spanned a 4-year period and, without question, marks the darkest days of my life. I have dedicated my life to doing whatever I can to stop sexual abuse not only in this country, but also around the world.

Prior to becoming a detective in the Special Victims Unit, I, like many citizens, believed the only way to manage sex offenders was to put them on a distant island where they couldn't victimize anyone else. My feelings were naive, yet a heartfelt response to a complex problem. My focus then and now has always been victim centered. What can we do to ensure that we don't have additional victims? What can we do to stop sexual abuse before it happens? What has research taught us? How do we hold sex offenders accountable by making sure they have the tools to succeed once they are released from incarceration?

Washington State has been in the national forefront of sex offender management and in ensuring public safety from sex crimes. We have an end-of-sentence review committee that looks at the risk each sex offender poses to the community prior to the release from prison. We have a highly regarded sex offender treatment program within the prison system and statewide certification of sex offender treatment providers in private practice. We do actuarial risk assessments on each of our sex offenders in an effort to identify those who are the most likely to reoffend. This helps put precious public safety resources where they are needed the most, monitoring the highest-risk offenders.

We proactively educate our community about sex offenders. We want the public to be able to protect themselves from known sex offenders, as well as those who haven't been caught yet. We also educate the community that it is in the best interest of public safety to be invested in the offender's success when they are released.

I've trained law enforcement officers from all over the world in the art of educating the community about sex offenders. I've stated you cannot do community notification without community education. To do so is like smoking a cigarette while standing in a pool of gasoline. Without education, there is misinformation. Misinformation leads to heightened anxiety, which in some cases leads

to vigilantism. The community deserves to know who the high-risk sex offenders are in the community, about the relatively low sex offender recidivism rates, and what research tells us. Citizens can and will act responsibly if we are honest with them. They are better able to protect themselves and their loved ones when we educate them about sex offenders.

I ask that you consider how the Sex Offender Registration and Notification Act, SORNA, impacts the public safety aims of effectively managing sex offenders in the community. The SORNA does not mandate community education as a component of community notification. This is a recipe for disaster and leaves citizens trying to sort out fact from myth, truth from emotion, and what to do next. This creates public safety concerns and does not have the citizens invested in offenders' success. It has the opposite effect.

The SORNA mandates offense-based tiering, which is a faulty alternative to actuarial-based tiering used in over 20 States. Citizens have grown used to level 1 sex offenders as being low risk, level 2 moderate risk, and level 3 high risk. Under SORNA, most sex offenders will be Tier III. That will cause great confusion and anxiety for the citizens as they believe each of these offenders has a high risk to reoffend.

That is just not true. Sex offenders differ greatly in their level of impulsiveness, persistence, risk to the community, and their desire to change their deviant behavior. The assigning sex offender tiers based on crime and conviction tells us very little about who this sex offender is and what his or her risk for reoffense may be. In Washington State, I have the ability to aggravate someone's risk level if dynamic risk factors indicate an escalation in risky behavior. I won't have that ability under SORNA. It is not an effective way of doing business with the public.

Finally, I ask that you consider the retroactivity aspect of the SORNA. Research tells us that most sex offenders do not reoffend sexually over time. In the 2004 study done by the preeminent researchers Harris and Hanson, with a sample of 4,724 sex offenders over a 15-year follow-up period, 73 percent of sexual offenders had not been charged with or convicted of another sexual offense. Under the SORNA, law enforcement will be responsible for reviewing the criminal history of anyone brought back into the system, even for a nonsexual criminal offense. If they were once convicted of a sex offense, regardless of how long ago that conviction was, the offender will be required to register as a sex offender. This will be very labor-intensive and costly. Our time and efforts and resources are more effectively spent focusing on moderate- to high-risk sex offenders, not sex offenders who committed their crime 25 or 30 years ago and have not reoffended in a sexual way.

Thank you for your time and your thoughtful consideration.

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Schilling follows:]

PREPARED STATEMENT OF BOB SHILLING

Mr. Chairman, Committee Members, Guests, I am honored to be given the opportunity to testify today. My name is Bob Shilling. I am a twenty-nine year veteran of the Seattle Police Department. I have spent the last nineteen years as a detective in the Special Victim's Unit, Sex and Kidnapping Offender Detail. I have written or co-authored 12 pieces of sex offender legislation that have been passed into law

in Washington State, and testified on the Community Protection Act of 1990, which became the first community notification law in the United States. I am the only municipal law enforcement officer in the United States who is a member of the Interpol Specialists Group on Crimes Against Children. I currently serve as Chair of the Sex Offender Management Theme Group.

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Prior to becoming a detective in the Special Victims Unit, I like many citizens, believed the only way to manage sex offenders was to put them on a distant island where they couldn't victimize anyone else. My feelings were naive, yet a heartfelt response to a very complex problem. My focus then and now has always been victim centered. What can we do to ensure we don't have additional victims? What can we do to stop sexual abuse before it happens? What has research taught us? How do we hold sex offenders accountable while making sure they have the tools to succeed once they are released from incarceration?

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I've trained law enforcement officers from all over the world in the art of educating the community about sex offenders. I've stated: *"You can't do community notification without community education. To do so is like smoking a cigarette while standing in a pool of gasoline."* Without education there's misinformation. Misinformation leads to heightened anxiety, which in some cases, leads to vigilantism. The community deserves to know who the high-risk sex offenders are in the community, about the relatively low sex offender recidivism rates, and what research tells us. Citizens can and will act responsibly if we are honest with them. They are better able to protect themselves and their loved ones when we educate them about sex offenders.

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The SORNA mandates offense based tiering, which is a faulty alternative to actuarial risk based tiering used in over 20 states. Citizens have grown used to level one sex offenders being low risk, level 2 moderate risk, and level three high risk. Under SORNA, most sex offenders will be tier 3. That will cause great confusion and anxiety for the citizens, as they believe each of these offenders is a high risk to re-offend. That just is not true. Sex offenders differ greatly in their level of impulsiveness, persistence, risk to the community, and their desire to change their deviant behavior. Assigning sex offender tiers based on crime of conviction tells us very little about who this sex offender is and what his or her risk for re-offense may be. In Washington State, I have the ability to aggravate someone's risk level if dynamic risk factors indicate an escalation in risky behavior. I won't have that ability under SORNA. Their tier is their tier. It is not an effective way of doing business with the public.

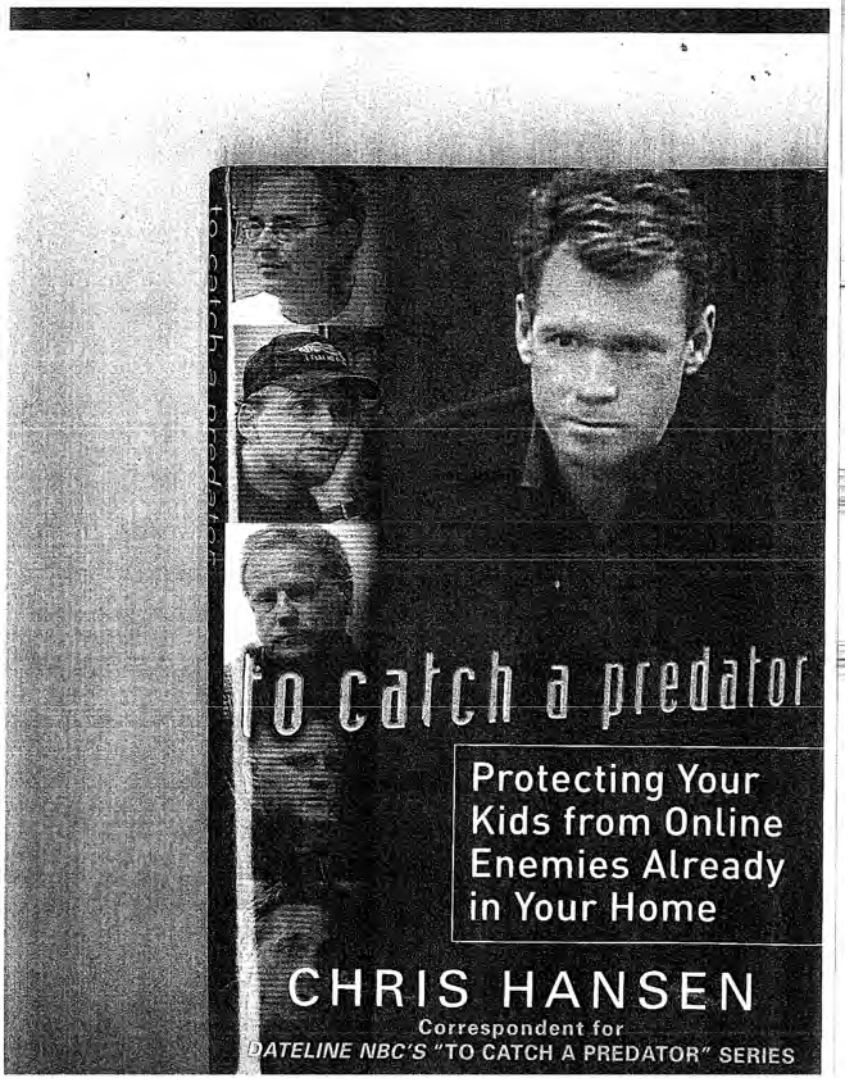
Research tells us that 90% of victims under age 12 knew their abuser. That number is 66% when the victim is between 18 and 29 years old. (Tjaden & Thoennes 2000) Under the SORNA, all sex offenders will be subject to broad based Internet dissemination (community notification) regardless of risk. When we know that most victims of sexual abuse know their abuser, and in a large proportion of cases it's a family member, Internet notification increases the likelihood that the victim will

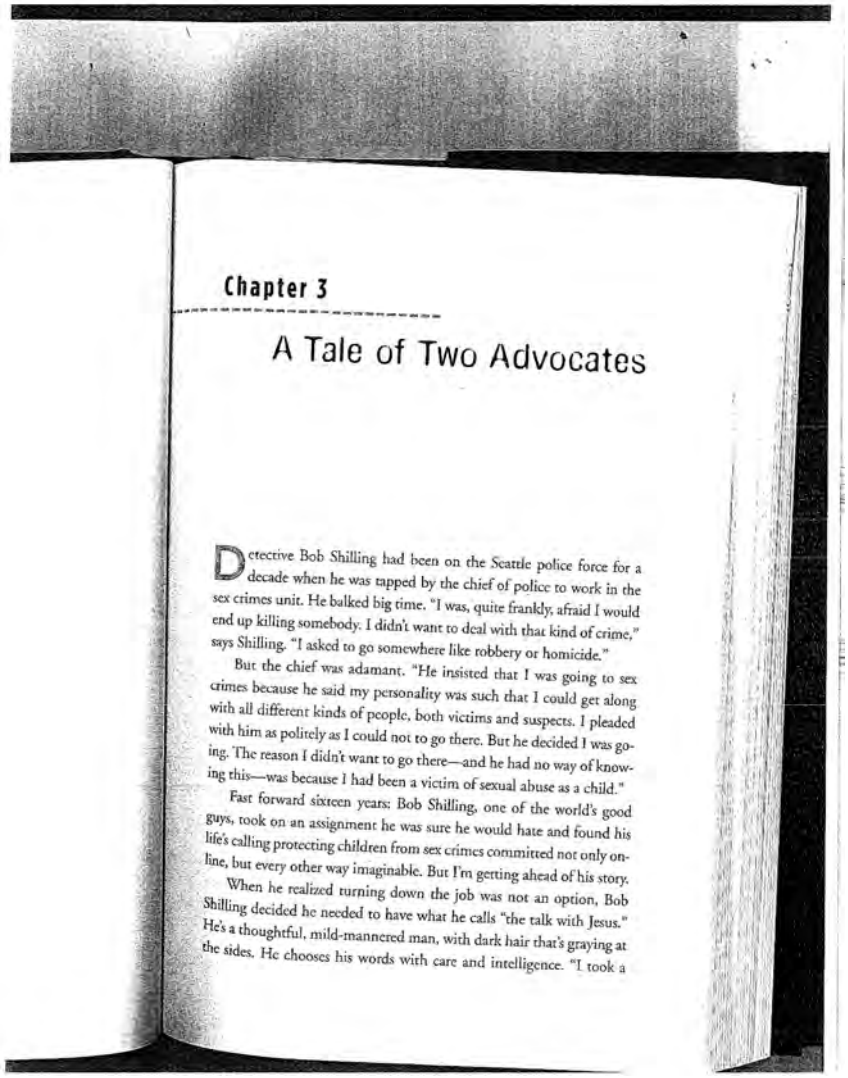
be identified. Victims tell us that their greatest concerns are their family knowing about the assault (71%), and people outside the family knowing about the assault (68%). (Kilpatrick, Edmunds, Seymour (1992) *Rape in America.) The last thing we want to do is create disincentives to victims and their families to report.*

Finally, I ask you to consider the retroactivity aspect of the SORNA. Research tells us that most sex offenders do not re-offend sexually over time. In a 2004 study done by the pre-eminent researchers Harris and Hanson, with a sample of 4,724 sex offenders over a 15-year follow-up period, "73% of sexual offenders had not been charged with or convicted of another sexual offense." Under the SORNA, law enforcement will be responsible for reviewing the criminal history of anyone brought back into the system even for a non-sexual criminal offense. If they were once convicted of a sex offense, regardless of how long ago that conviction was, the offender will be required to register as a sex offender. This will be very labor intensive and costly. Our time, efforts, and resources are more effectively spent focusing on moderate to high-risk sex offenders, not sex offenders who committed their sex crime 25 or 30 years ago have not re-offended in a sexual way.

Thank you for your time and your thoughtful consideration.

ATTACHMENT


to catch a predator
Protecting Your Kids from Online Enemies Already in Your Home
CHRIS HANSEN
Correspondent for
DATELINE NBC'S "TO CATCH A PREDATOR" SERIES



## Chapter 3

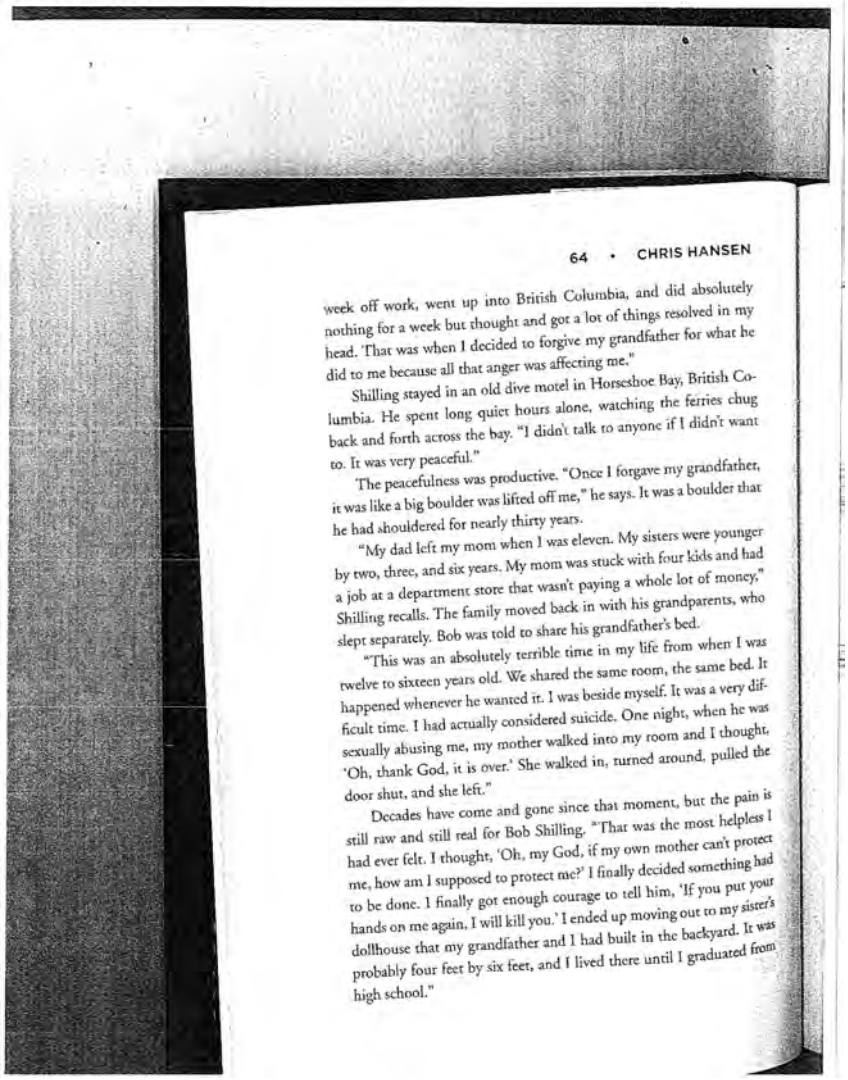
# A Tale of Two Advocates

Detective Bob Shilling had been on the Seattle police force for a decade when he was tapped by the chief of police to work in the sex crimes unit. He balked big time. "I was, quite frankly, afraid I would end up killing somebody. I didn't want to deal with that kind of crime," says Shilling. "I asked to go somewhere like robbery or homicide."

But the chief was adamant. "He insisted that I was going to sex crimes because he said my personality was such that I could get along with all different kinds of people, both victims and suspects. I pleaded with him as politely as I could not to go there. But he decided I was going. The reason I didn't want to go there—and he had no way of knowing this—was because I had been a victim of sexual abuse as a child."

Fast forward sixteen years: Bob Shilling, one of the world's good guys, took on an assignment he was sure he would hate and found his life's calling protecting children from sex crimes committed not only online, but every other way imaginable. But I'm getting ahead of his story.

When he realized turning down the job was not an option, Bob Shilling decided he needed to have what he calls "the talk with Jesus." He's a thoughtful, mild-mannered man, with dark hair that's graying at the sides. He chooses his words with care and intelligence. "I took a





week off work, went up into British Columbia, and did absolutely nothing for a week but thought and got a lot of things resolved in my head. That was when I decided to forgive my grandfather for what he did to me because all that anger was affecting me."

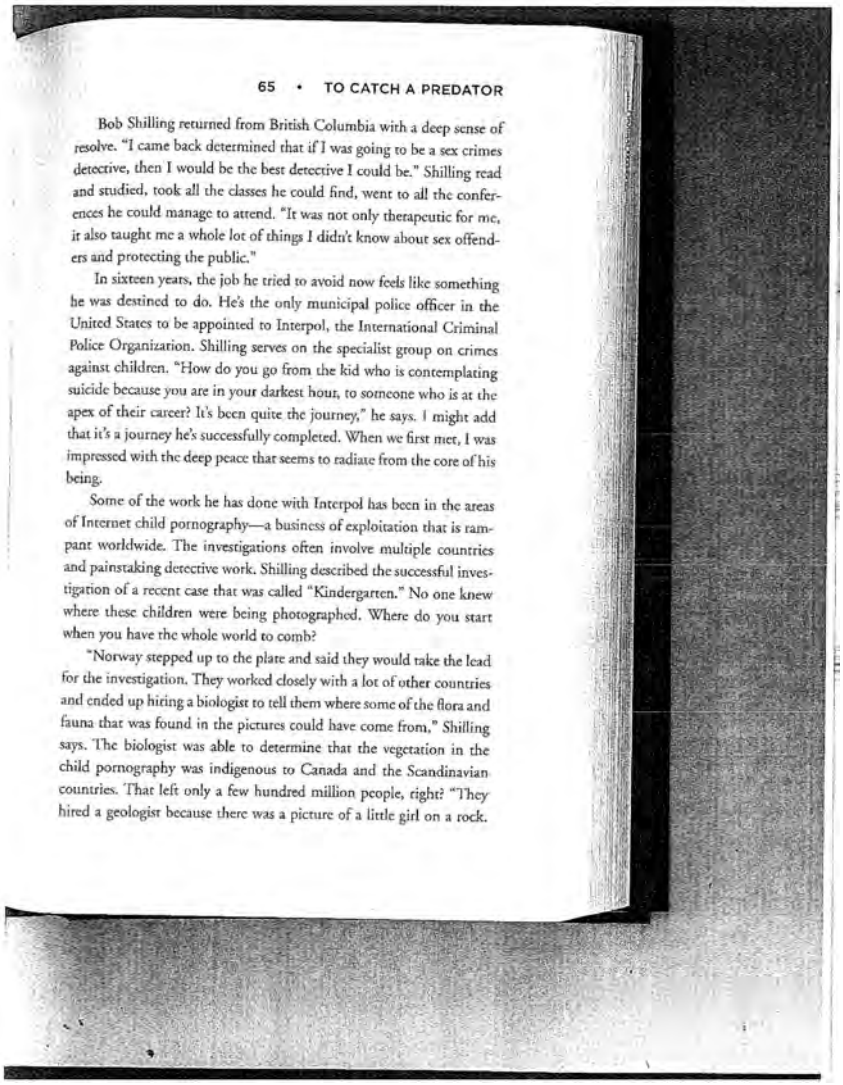
Shilling stayed in an old dive motel in Horseshoe Bay, British Columbia. He spent long quiet hours alone, watching the ferries chug back and forth across the bay. "I didn't talk to anyone if I didn't want to. It was very peaceful."

The peacefulness was productive. "Once I forgave my grandfather, it was like a big boulder was lifted off me," he says. It was a boulder that he had shouldered for nearly thirty years.

"My dad left my mom when I was eleven. My sisters were younger by two, three, and six years. My mom was stuck with four kids and had a job at a department store that wasn't paying a whole lot of money," Shilling recalls. The family moved back in with his grandparents, who slept separately. Bob was told to share his grandfather's bed.

"This was an absolutely terrible time in my life from when I was twelve to sixteen years old. We shared the same room, the same bed. It happened whenever he wanted it. I was beside myself. It was a very difficult time. I had actually considered suicide. One night, when he was sexually abusing me, my mother walked into my room and I thought, 'Oh, thank God, it is over.' She walked in, turned around, pulled the door shut, and she left."

Decades have come and gone since that moment, but the pain is still raw and still real for Bob Shilling. "That was the most helpless I had ever felt. I thought, 'Oh, my God, if my own mother can't protect me, how am I supposed to protect me?' I finally decided something had to be done. I finally got enough courage to tell him, 'If you put your hands on me again, I will kill you.' I ended up moving out to my sister's dollhouse that my grandfather and I had built in the backyard. It was probably four feet by six feet, and I lived there until I graduated from high school."



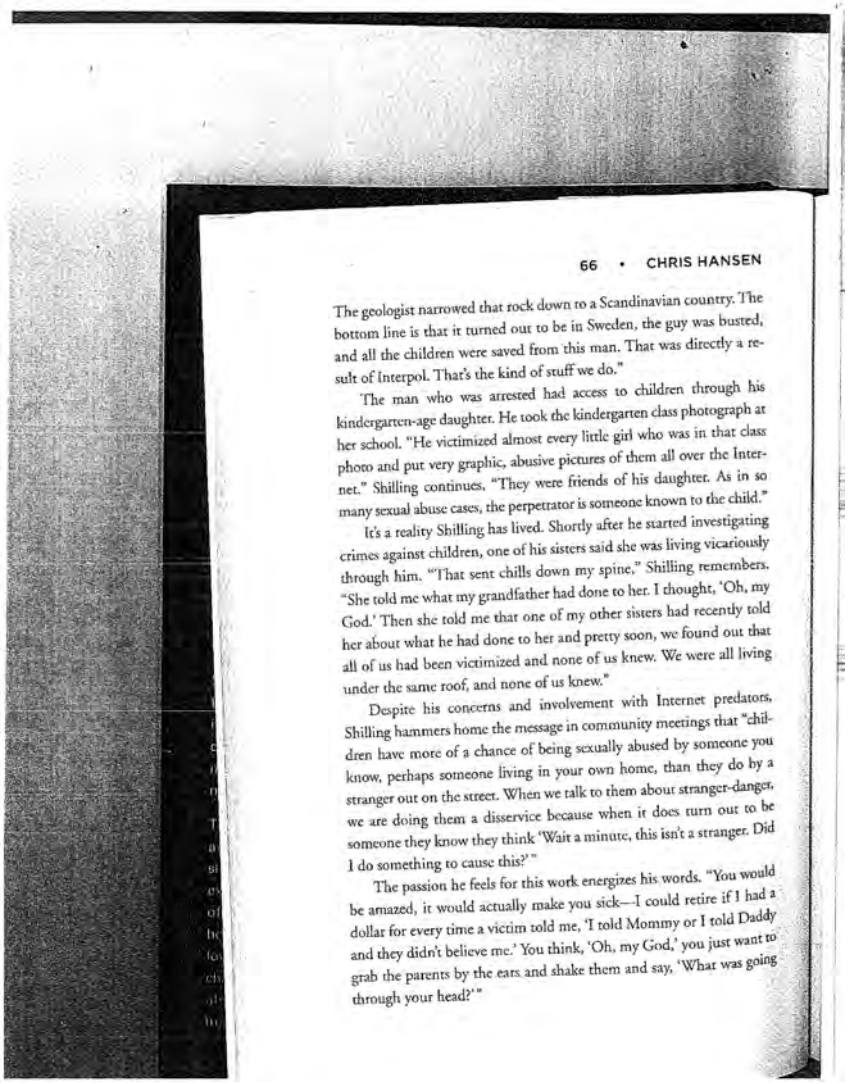


Bob Shilling returned from British Columbia with a deep sense of resolve. "I came back determined that if I was going to be a sex crimes detective, then I would be the best detective I could be." Shilling read and studied, took all the classes he could find, went to all the conferences he could manage to attend. "It was not only therapeutic for me, it also taught me a whole lot of things I didn't know about sex offenders and protecting the public."

In sixteen years, the job he tried to avoid now feels like something he was destined to do. He's the only municipal police officer in the United States to be appointed to Interpol, the International Criminal Police Organization. Shilling serves on the specialist group on crimes against children. "How do you go from the kid who is contemplating suicide because you are in your darkest hour, to someone who is at the apex of their career? It's been quite the journey," he says. I might add that it's a journey he's successfully completed. When we first met, I was impressed with the deep peace that seems to radiate from the core of his being.

Some of the work he has done with Interpol has been in the areas of Internet child pornography—a business of exploitation that is rampant worldwide. The investigations often involve multiple countries and painstaking detective work. Shilling described the successful investigation of a recent case that was called "Kindergarten." No one knew where these children were being photographed. Where do you start when you have the whole world to comb?

"Norway stepped up to the plate and said they would take the lead for the investigation. They worked closely with a lot of other countries and ended up hiring a biologist to tell them where some of the flora and fauna that was found in the pictures could have come from," Shilling says. The biologist was able to determine that the vegetation in the child pornography was indigenous to Canada and the Scandinavian countries. That left only a few hundred million people, right? "They hired a geologist because there was a picture of a little girl on a rock.





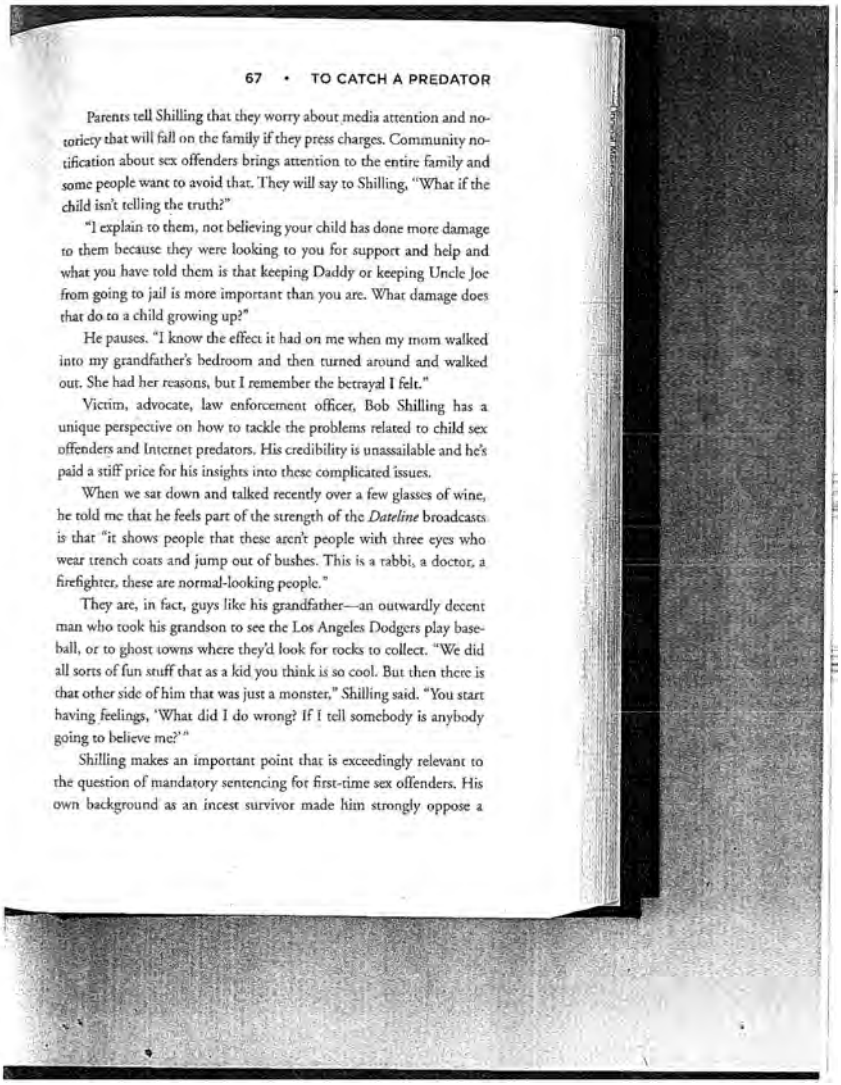
The geologist narrowed that rock down to a Scandinavian country. The bottom line is that it turned out to be in Sweden, the guy was busted, and all the children were saved from this man. That was directly a result of Interpol. That's the kind of stuff we do."

The man who was arrested had access to children through his kindergarten-age daughter. He took the kindergarten class photograph at her school. "He victimized almost every little girl who was in that class photo and put very graphic, abusive pictures of them all over the Internet." Shilling continues. "They were friends of his daughter. As in so many sexual abuse cases, the perpetrator is someone known to the child."

It's a reality Shilling has lived. Shortly after he started investigating crimes against children, one of his sisters said she was living vicariously through him. "That sent chills down my spine," Shilling remembers. "She told me what my grandfather had done to her. I thought, 'Oh, my God.' Then she told me that one of my other sisters had recently told her about what he had done to her and pretty soon, we found out that all of us had been victimized and none of us knew. We were all living under the same roof, and none of us knew."

Despite his concerns and involvement with Internet predators, Shilling hammers home the message in community meetings that "children have more of a chance of being sexually abused by someone you know, perhaps someone living in your own home, than they do by a stranger out on the street. When we talk to them about stranger-danger, we are doing them a disservice because when it does turn out to be someone they know they think 'Wait a minute, this isn't a stranger. Did I do something to cause this?'"

The passion he feels for this work energizes his words. "You would be amazed, it would actually make you sick—I could retire if I had a dollar for every time a victim told me, 'I told Mommy or I told Daddy and they didn't believe me.' You think, 'Oh, my God,' you just want to grab the parents by the ears and shake them and say, 'What was going through your head?'"





Parents tell Shilling that they worry about media attention and notoriety that will fall on the family if they press charges. Community notification about sex offenders brings attention to the entire family and some people want to avoid that. They will say to Shilling, "What if the child isn't telling the truth?"

"I explain to them, not believing your child has done more damage to them because they were looking to you for support and help and what you have told them is that keeping Daddy or keeping Uncle Joe from going to jail is more important than you are. What damage does that do to a child growing up?"

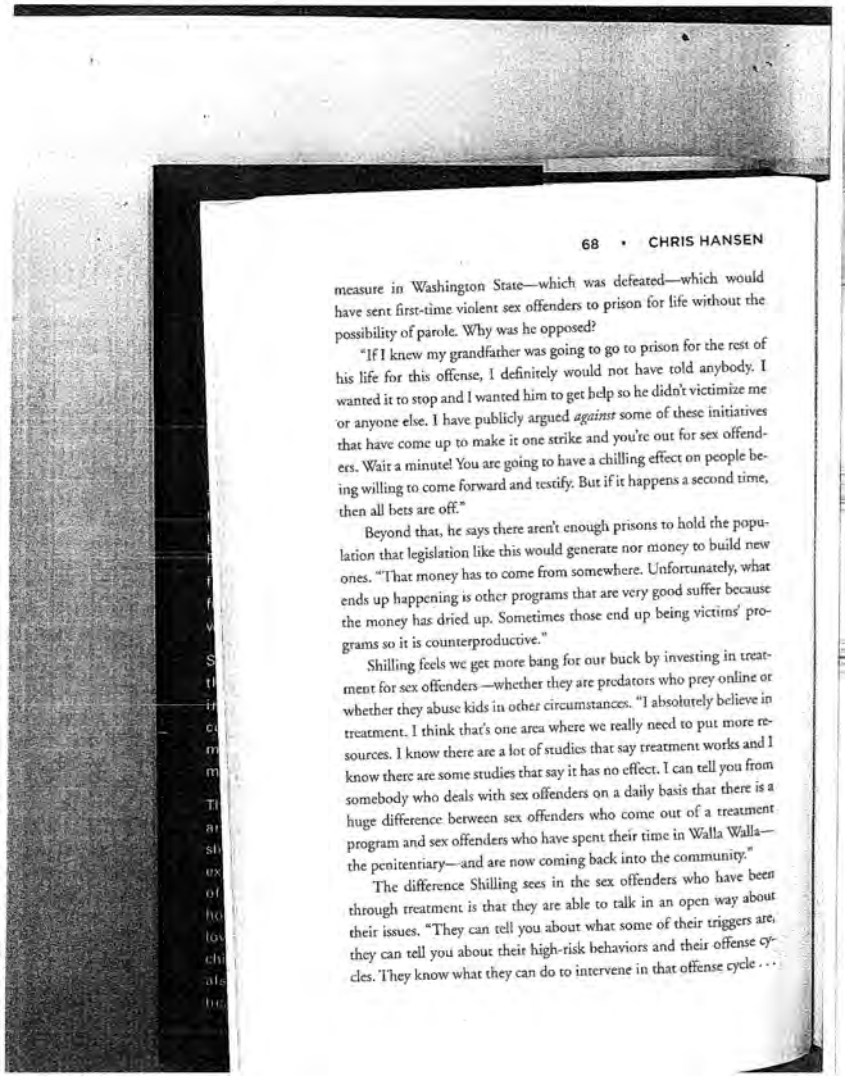
He pauses. "I know the effect it had on me when my mom walked into my grandfather's bedroom and then turned around and walked out. She had her reasons, but I remember the betrayal I felt."

Victim, advocate, law enforcement officer, Bob Shilling has a unique perspective on how to tackle the problems related to child sex offenders and Internet predators. His credibility is unassailable and he's paid a stiff price for his insights into these complicated issues.

When we sat down and talked recently over a few glasses of wine, he told me that he feels part of the strength of the *Dateline* broadcasts is that "it shows people that these aren't people with three eyes who wear trench coats and jump out of bushes. This is a rabbi, a doctor, a firefighter, these are normal-looking people."

They are, in fact, guys like his grandfather—an outwardly decent man who took his grandson to see the Los Angeles Dodgers play baseball, or to ghost towns where they'd look for rocks to collect. "We did all sorts of fun stuff that as a kid you think is so cool. But then there is that other side of him that was just a monster," Shilling said. "You start having feelings, 'What did I do wrong? If I tell somebody is anybody going to believe me?' "

Shilling makes an important point that is exceedingly relevant to the question of mandatory sentencing for first-time sex offenders. His own background as an incest survivor made him strongly oppose a





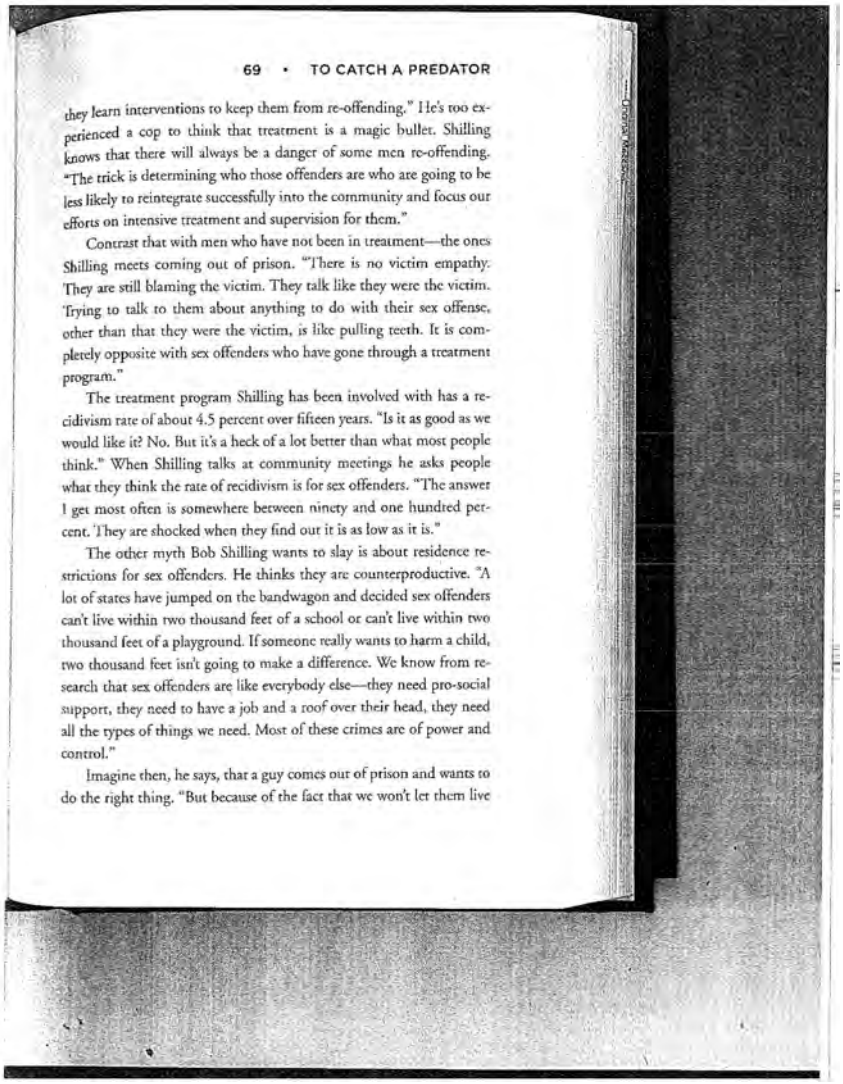
measure in Washington State—which was defeated—which would have sent first-time violent sex offenders to prison for life without the possibility of parole. Why was he opposed?

"If I knew my grandfather was going to go to prison for the rest of his life for this offense, I definitely would not have told anybody. I wanted it to stop and I wanted him to get help so he didn't victimize me or anyone else. I have publicly argued *against* some of these initiatives that have come up to make it one strike and you're out for sex offenders. Wait a minute! You are going to have a chilling effect on people being willing to come forward and testify. But if it happens a second time, then all bets are off."

Beyond that, he says there aren't enough prisons to hold the population that legislation like this would generate nor money to build new ones. "That money has to come from somewhere. Unfortunately, what ends up happening is other programs that are very good suffer because the money has dried up. Sometimes those end up being victims' programs so it is counterproductive."

Shilling feels we get more bang for our buck by investing in treatment for sex offenders —whether they are predators who prey online or whether they abuse kids in other circumstances. "I absolutely believe in treatment. I think that's one area where we really need to put more resources. I know there are a lot of studies that say treatment works and I know there are some studies that say it has no effect. I can tell you from somebody who deals with sex offenders on a daily basis that there is a huge difference between sex offenders who come out of a treatment program and sex offenders who have spent their time in Walla Walla—the penitentiary—and are now coming back into the community."

The difference Shilling sees in the sex offenders who have been through treatment is that they are able to talk in an open way about their issues. "They can tell you about what some of their triggers are, they can tell you about their high-risk behaviors and their offense cycles. They know what they can do to intervene in that offense cycle . . .





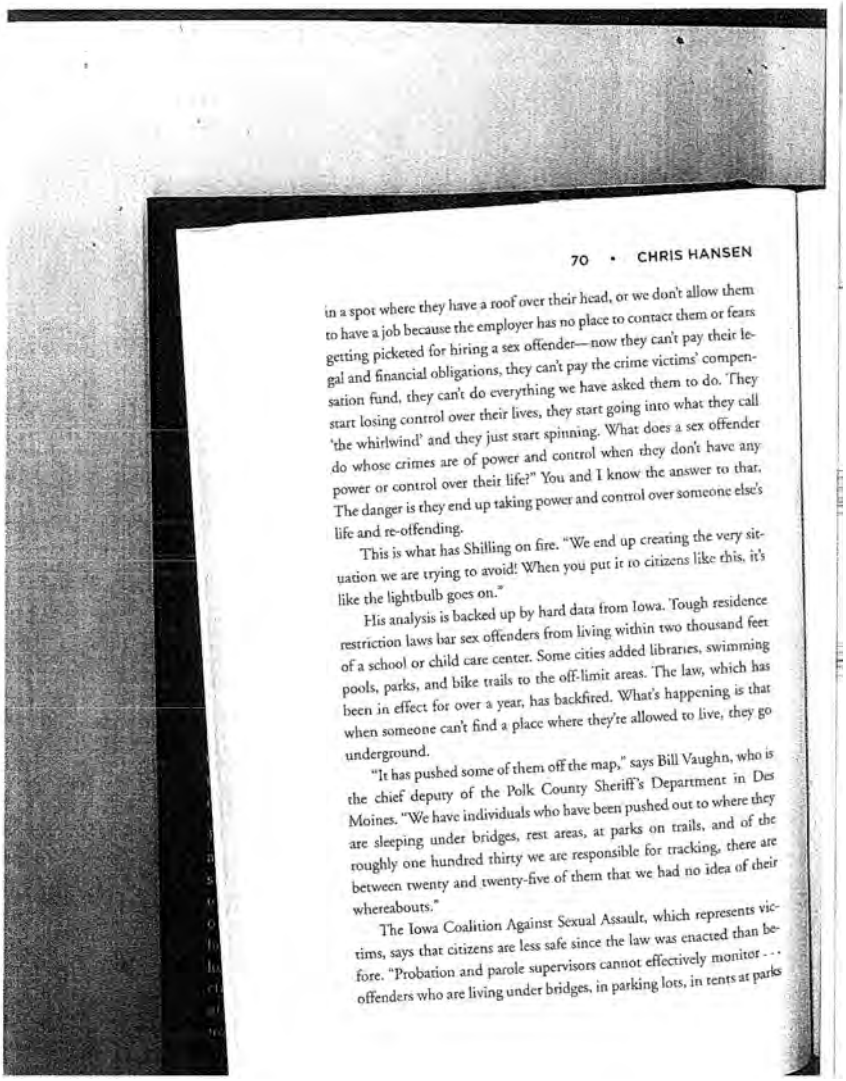
they learn interventions to keep them from re-offending." He's too experienced a cop to think that treatment is a magic bullet. Shilling knows that there will always be a danger of some men re-offending. "The trick is determining who those offenders are who are going to be less likely to reintegrate successfully into the community and focus our efforts on intensive treatment and supervision for them."

Contrast that with men who have not been in treatment—the ones Shilling meets coming out of prison. "There is no victim empathy. They are still blaming the victim. They talk like they were the victim. Trying to talk to them about anything to do with their sex offense, other than that they were the victim, is like pulling teeth. It is completely opposite with sex offenders who have gone through a treatment program."

The treatment program Shilling has been involved with has a recidivism rate of about 4.5 percent over fifteen years. "Is it as good as we would like it? No. But it's a heck of a lot better than what most people think." When Shilling talks at community meetings he asks people what they think the rate of recidivism is for sex offenders. "The answer I get most often is somewhere between ninety and one hundred percent. They are shocked when they find out it is as low as it is."

The other myth Bob Shilling wants to slay is about residence restrictions for sex offenders. He thinks they are counterproductive. "A lot of states have jumped on the bandwagon and decided sex offenders can't live within two thousand feet of a school or can't live within two thousand feet of a playground. If someone really wants to harm a child, two thousand feet isn't going to make a difference. We know from research that sex offenders are like everybody else—they need pro-social support, they need to have a job and a roof over their head, they need all the types of things we need. Most of these crimes are of power and control."

Imagine then, he says, that a guy comes out of prison and wants to do the right thing. "But because of the fact that we won't let them live





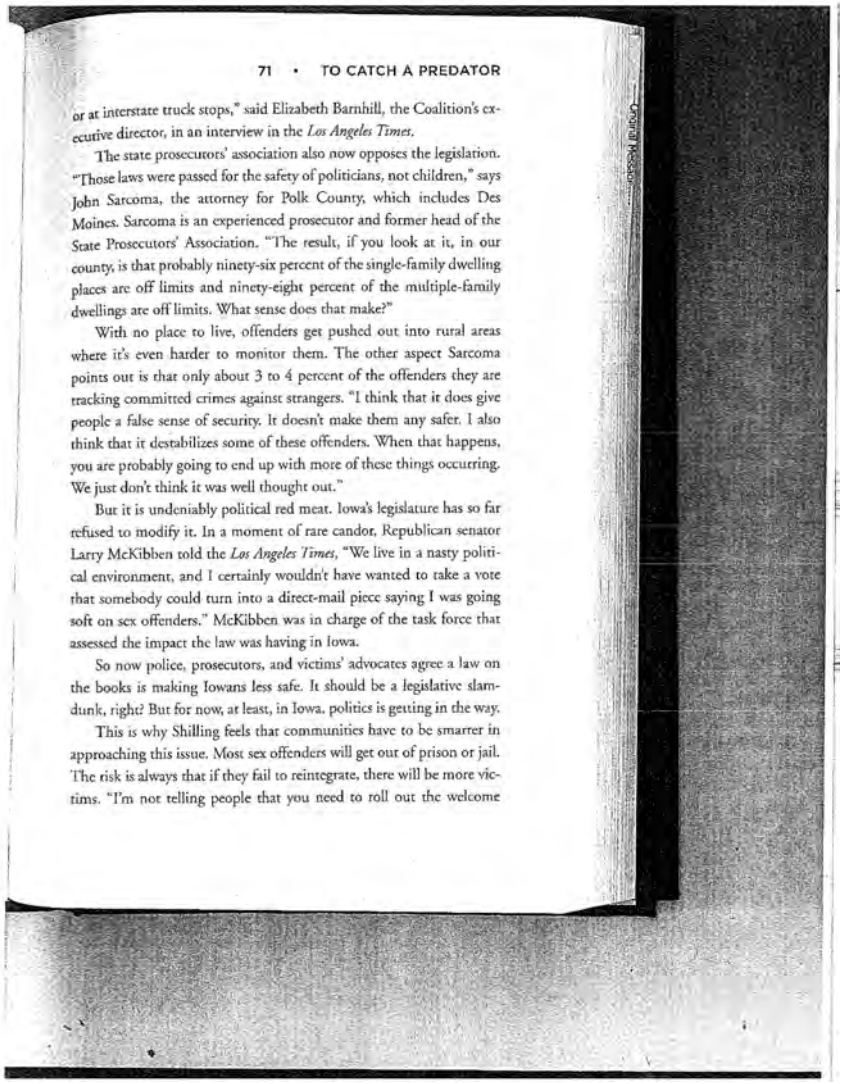
in a spot where they have a roof over their head, or we don't allow them to have a job because the employer has no place to contact them or fears getting picketed for hiring a sex offender—now they can't pay their legal and financial obligations, they can't pay the crime victims' compensation fund, they can't do everything we have asked them to do. They start losing control over their lives, they start going into what they call 'the whirlwind' and they just start spinning. What does a sex offender do whose crimes are of power and control when they don't have any power or control over their life?" You and I know the answer to that. The danger is they end up taking power and control over someone else's life and re-offending.

This is what has Shilling on fire. "We end up creating the very situation we are trying to avoid! When you put it to citizens like this, it's like the lightbulb goes on."

His analysis is backed up by hard data from Iowa. Tough residence restriction laws bar sex offenders from living within two thousand feet of a school or child care center. Some cities added libraries, swimming pools, parks, and bike trails to the off-limit areas. The law, which has been in effect for over a year, has backfired. What's happening is that when someone can't find a place where they're allowed to live, they go underground.

"It has pushed some of them off the map," says Bill Vaughn, who is the chief deputy of the Polk County Sheriff's Department in Des Moines. "We have individuals who have been pushed out to where they are sleeping under bridges, rest areas, at parks on trails, and of the roughly one hundred thirty we are responsible for tracking, there are between twenty and twenty-five of them that we had no idea of their whereabouts."

The Iowa Coalition Against Sexual Assault, which represents victims, says that citizens are less safe since the law was enacted than before. "Probation and parole supervisors cannot effectively monitor . . . offenders who are living under bridges, in parking lots, in tents at parks





or at interstate truck stops," said Elizabeth Barnhill, the Coalition's executive director, in an interview in the *Los Angeles Times*.

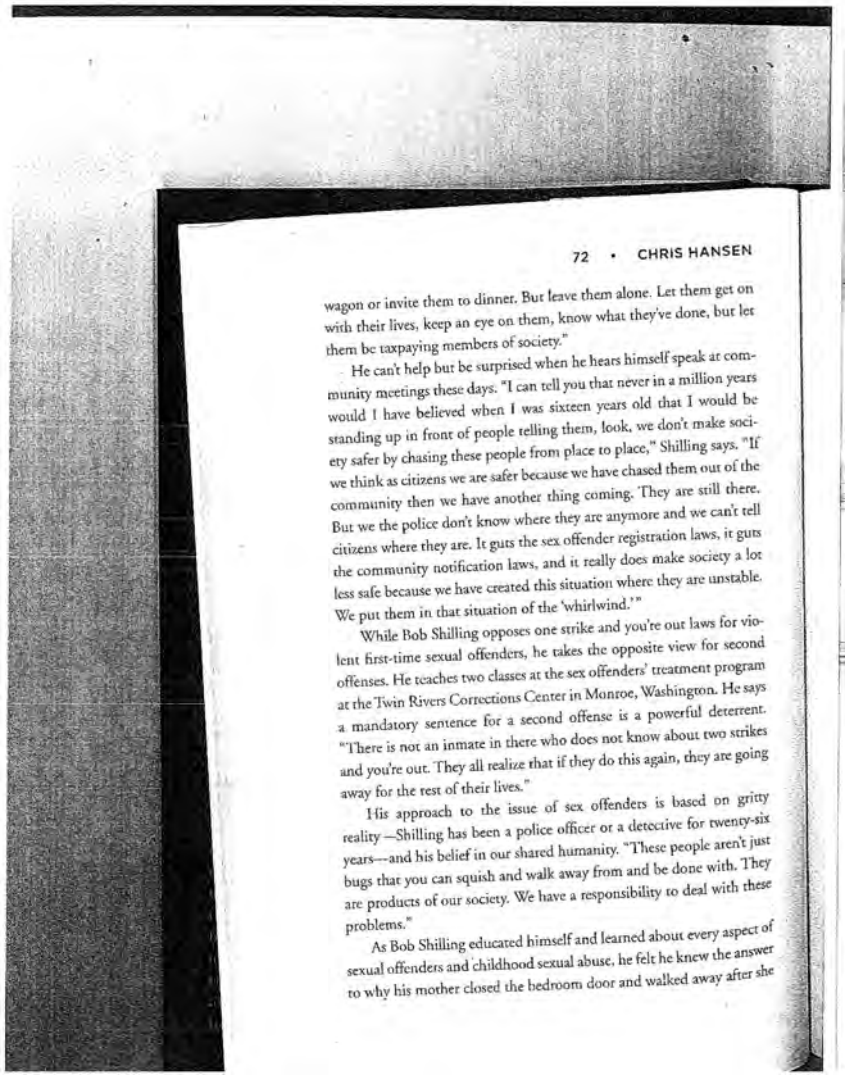
The state prosecutors' association also now opposes the legislation. "Those laws were passed for the safety of politicians, not children," says John Sarcoma, the attorney for Polk County, which includes Des Moines. Sarcoma is an experienced prosecutor and former head of the State Prosecutors' Association. "The result, if you look at it, in our county, is that probably ninety-six percent of the single-family dwelling places are off limits and ninety-eight percent of the multiple-family dwellings are off limits. What sense does that make?"

With no place to live, offenders get pushed out into rural areas where it's even harder to monitor them. The other aspect Sarcoma points out is that only about 3 to 4 percent of the offenders they are tracking committed crimes against strangers. "I think that it does give people a false sense of security. It doesn't make them any safer. I also think that it destabilizes some of these offenders. When that happens, you are probably going to end up with more of these things occurring. We just don't think it was well thought out."

But it is undeniably political red meat. Iowa's legislature has so far refused to modify it. In a moment of rare candor, Republican senator Larry McKibben told the *Los Angeles Times*, "We live in a nasty political environment, and I certainly wouldn't have wanted to take a vote that somebody could turn into a direct-mail piece saying I was going soft on sex offenders." McKibben was in charge of the task force that assessed the impact the law was having in Iowa.

So now police, prosecutors, and victims' advocates agree a law on the books is making Iowans less safe. It should be a legislative slam-dunk, right? But for now, at least, in Iowa, politics is getting in the way.

This is why Shilling feels that communities have to be smarter in approaching this issue. Most sex offenders will get out of prison or jail. The risk is always that if they fail to reintegrate, there will be more victims. "I'm not telling people that you need to roll out the welcome





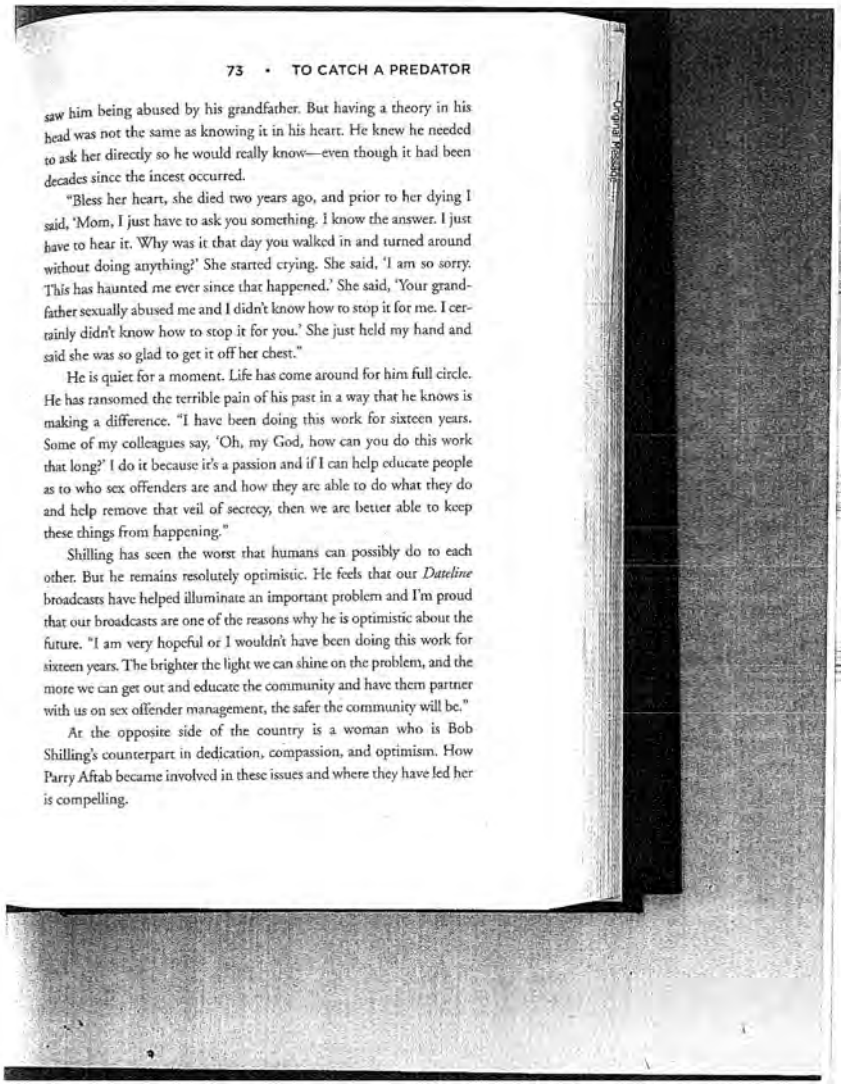
wagon or invite them to dinner. But leave them alone. Let them get on with their lives, keep an eye on them, know what they've done, but let them be taxpaying members of society."

He can't help but be surprised when he hears himself speak at community meetings these days. "I can tell you that never in a million years would I have believed when I was sixteen years old that I would be standing up in front of people telling them, look, we don't make society safer by chasing these people from place to place," Shilling says. "If we think as citizens we are safer because we have chased them out of the community then we have another thing coming. They are still there. But we the police don't know where they are anymore and we can't tell citizens where they are. It guts the sex offender registration laws, it guts the community notification laws, and it really does make society a lot less safe because we have created this situation where they are unstable. We put them in that situation of the 'whirlwind.'"

While Bob Shilling opposes one strike and you're out laws for violent first-time sexual offenders, he takes the opposite view for second offenses. He teaches two classes at the sex offenders' treatment program at the Twin Rivers Corrections Center in Monroe, Washington. He says a mandatory sentence for a second offense is a powerful deterrent. "There is not an inmate in there who does not know about two strikes and you're out. They all realize that if they do this again, they are going away for the rest of their lives."

His approach to the issue of sex offenders is based on gritty reality —Shilling has been a police officer or a detective for twenty-six years—and his belief in our shared humanity. "These people aren't just bugs that you can squish and walk away from and be done with. They are products of our society. We have a responsibility to deal with these problems."

As Bob Shilling educated himself and learned about every aspect of sexual offenders and childhood sexual abuse, he felt he knew the answer to why his mother closed the bedroom door and walked away after she



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saw him being abused by his grandfather. But having a theory in his head was not the same as knowing it in his heart. He knew he needed to ask her directly so he would really know—even though it had been decades since the incest occurred.

"Bless her heart, she died two years ago, and prior to her dying I said, 'Mom, I just have to ask you something. I know the answer. I just have to hear it. Why was it that day you walked in and turned around without doing anything?' She started crying. She said, 'I am so sorry. This has haunted me ever since that happened.' She said, 'Your grandfather sexually abused me and I didn't know how to stop it for me. I certainly didn't know how to stop it for you.' She just held my hand and said she was so glad to get it off her chest."

He is quiet for a moment. Life has come around for him full circle. He has ransomed the terrible pain of his past in a way that he knows is making a difference. "I have been doing this work for sixteen years. Some of my colleagues say, 'Oh, my God, how can you do this work that long?' I do it because it's a passion and if I can help educate people as to who sex offenders are and how they are able to do what they do and help remove that veil of secrecy, then we are better able to keep these things from happening."

Shilling has seen the worst that humans can possibly do to each other. But he remains resolutely optimistic. He feels that our *Dateline* broadcasts have helped illuminate an important problem and I'm proud that our broadcasts are one of the reasons why he is optimistic about the future. "I am very hopeful or I wouldn't have been doing this work for sixteen years. The brighter the light we can shine on the problem, and the more we can get out and educate the community and have them partner with us on sex offender management, the safer the community will be."

At the opposite side of the country is a woman who is Bob Shilling's counterpart in dedication, compassion, and optimism. How Parry Aftab became involved in these issues and where they have led her is compelling.

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Mr. SCOTT. Ms. Borror.

**TESTIMONY OF AMY BORROR, PUBLIC INFORMATION OFFICER, OFFICE OF THE OHIO PUBLIC DEFENDER, COLUMBUS, OH**

Ms. BORROR. Thank you, Mr. Chairman and Members of the Subcommittee. The Office of the Ohio Public Defender is, of course, concerned about the constitutional rights of our clients, but we are also concerned about obstacles that prevent our clients from leading crime-free lives. We work with law enforcement, prosecutors,

victims groups, treatment providers and child advocates on this issue because we are all committed to a common goal: reducing the incidence of sexual abuse in our society. And personally, as someone who has several friends who have been victims of sexual abuse, I am concerned with not just the stated goals of policies aimed at improving public safety, but also with the practical effects those policies have on the safety of my loved ones.

Without a doubt, the Adam Walsh act is well intentioned, but the practical effects of SORNA contravene the act's well-intended goals. In the 15 months since Ohio enacted Senate bill 10, its attempt to implement the Adam Walsh Act, at least 6,352 petitions have been filed challenging the new law. Ohio's courts of appeals have issued decisions in at least 59 cases. The Buckeye State's Sheriffs' Association estimates that the new law has increased sheriffs' workloads by 60 percent.

County courts and prosecutors have interpreted the new law differently, and many courts have stayed enforcement of the law until the Ohio Supreme Court rules on its constitutionality.

The Adam Walsh Act, which is intended to create uniformity in sex offender registration across States, has instead resulted in tremendous variation across Ohio's counties. Prior to adopting Senate bill 10, Ohio had a risk-based classification system. That had resulted in a registry that closely resembled what research tells us about sex offender recidivism. The vast majority of offenders were in the lower two tiers, and only 18 percent were labeled as sexual predators found by a judge to be likely to reoffend. Ohio's registry now includes 54 percent of offenders in Tier III.

Ohio's old registry was potentially a useful public safety tool. The 4,000 offenders labeled as sexual predators would rightly garner the most attention from the public and require the closest supervision by law enforcement. But now Ohio's registry includes more than 12,000 people in Tier III. Their propensity to reoffend is not known, but the public will perceive them as dangerous, and law enforcement must expend tremendous resources to supervise them.

Under Ohio's old law, a person convicted of sexual imposition, a misdemeanor, might have been classified as a sexual predator if a judge found him likely to reoffend. Now, however, the judge is mandated to classify that person in Tier I. Instead of being able to properly label this high-risk offender, the court must instead wait until another offense is committed and another victim is created.

Sex offender registration laws are supposed to be aimed at protecting the public from future crimes, but the Adam Walsh Act looks only at past offenses and labels offenders based on those, without considering what they're likely to do in the future. One of the primary objections to the Adam Walsh Act is the requirement that the States apply the law retroactively, but the act itself was not retroactive. It delegated authority to the Department of Justice to determine its applicability to those convicted prior to the law's enactment.

Retroactive application presents separation of powers issues, as State legislatures, acting on a directive from the executive branch of the Federal Government, reverse decisions made by judges. And plea deals entered into before the act raise additional legal concerns. Applying the act retroactively subjects States to lengthy and

expensive constitutional challenges that could be avoided by applying the act prospectively only.

The act's inclusion of juveniles on the Internet registry is another cause of great concern. Neurological science shows us that children's brains are physically different from adults' brains. Treatment provided during this critical stage of development will impact the way a child's brain develops. As a result, juvenile sex offenders are especially amenable to treatment and significantly less likely to reoffend.

Many juvenile sex offenders are intrafamilial. In these situations, the offender and the victim receive much-needed treatment only if their parents seek help. Undoubtedly, many parents will be unwilling to ask for help if doing so resigns one child to a lifetime of inclusion on an Internet registry. As a result, neither the offender or the victim will receive the treatment they need.

Including children on an Internet registry also puts those children at risk for being targeted for abuse. A pedophile could use the on-line registry to find victims, as the registry provides him with the names, pictures and home addresses for children as young as 14. Many juvenile sex offenders were victims before they committed their offenses and are especially vulnerable to further victimization.

The practical effects of the Adam Walsh Act contravene the act's well-intended goals. An act intended to unify registries across the country has instead placed an incredible burden on courts and law enforcement and created confusion from one jurisdiction to another. A law aimed at protecting children from sexual predators instead places thousands of juveniles on an on-line registry and into harm's way. A system meant to simplify sex offender classification has instead muddled the meaning of offenders' designations and lets the public to only speculate about which prior offenders might pose a future risk.

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to testify today.

[The prepared statement of Ms. Borror follows:]

PREPARED STATEMENT OF AMY BORROR

**U.S. HOUSE OF REPRESENTATIVES**

**COMMITTEE ON THE JUDICIARY**

**SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY**

**HEARING ON THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA)**

**TUESDAY, MARCH 10, 2009**

**WRITTEN TESTIMONY OF:**

**AMY BORROR**
**PUBLIC INFORMATION OFFICER**
**OFFICE OF THE OHIO PUBLIC DEFENDER**

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TIMOTHY YOUNG
State Public Defender

Chairman Scott and Members of the Subcommittee on Crime, thank you for this opportunity to testify about the barriers to states' implementation of the Adam Walsh Act's Sex Offender Registration and Notification Act, the potential legal ramifications of the Act, and Ohio's experience attempting to comply with the Act's requirements.

The Office of the Ohio Public Defender is, of course, concerned about the constitutional rights of our clients who are affected by this Act. But we are also concerned about our clients' futures, and any obstacles that may prevent them from leading crime-free lives. We work with law enforcement, prosecutors, victims groups, treatment providers, and child advocates on this issue because we are all committed to a common goal: reducing the incidence of sexual abuse in our society.

And personally, as someone who has several friends who have been victims of sexual abuse, I am concerned with not just the stated goals of policies aimed at improving public safety, but also with the practical effects those policies have on my safety and the safety of my loved ones. It is for all of these reasons that I am here today.

**Ohio's implementation of the Adam Walsh Act**

On June 30, 2007, Ohio Senate Bill 10 (SB 10), the state's attempt to implement the requirements of the federal Adam Walsh Act, was signed into law. In late November 2007, the Ohio Attorney General's office mailed letters to thousands of registered sex offenders in the state, informing them that their classification status and registration duties were changing under the new law.

In the 15 months since those reclassification letters were mailed, at least 6,352 petitions challenging the new law's retroactive application have been filed in 78 of Ohio's 88 counties. Ohio courts of appeals have issued decisions in at least 59 cases.[1]

The Buckeye State Sheriffs' Association estimates that the new law has increased sheriffs' workloads by 60 percent.[2]

The Adam Walsh Act, which is intended to create uniformity in sex offender classification and registration requirements across states, has instead resulted in tremendous variation in the application of Ohio's sex offender registration laws across Ohio's counties.

The implementation of SB 10 across the state of Ohio has been uneven, at best. County courts, prosecutors, and sheriffs have interpreted the massive new law differently. Many courts have

[1] See http://www.opd.ohio.gov/AWA_Attorney_Forms/AWA__Attorney_Forms.htm
[2] The Cleveland *Plain Dealer*, "Ohio's tougher sex offender law being met with lawsuits, confusion," Jan. 21, 2008.

issued blanket orders staying enforcement of the new law and allowing persons retroactively affected by the law to continue registering under Ohio's prior sex offender classification and registration scheme until the Supreme Court of Ohio issues a ruling on the constitutionality of SB 10.

The impact of the new law on offenders varies greatly, depending on the county in which they reside. An offender may have to file a challenge to his reclassification as a civil motion or as a motion in his original criminal case. A civil filing fee, ranging from $10–$300, may be assessed. If the offender is indigent, counsel may or may not be appointed at state expense. While the challenge petition is pending, the county sheriff may or may not send out community notification. And, the judge considering the offender's challenge petition may consider constitutional challenges to the offender's reclassification, or may simply view the hearing as an opportunity to correct any errors that may have occurred in the reclassification.

The effect of SB 10 on Ohio was stated succinctly by Franklin County Common Pleas Court Judge David E. Cain: "It's a mess created by politicians, and it's going to be a mess for the courts to sort out."

**Changes to Ohio's sex offender registry and classification scheme**

The transition from a risk-based classification system to an offense-based system has turned Ohio's sex offender registry upside down.

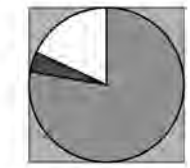
Prior to adopting SB 10, Ohio had a risk-based sex offender classification system. After a conviction of or plea to a sexually oriented offense, a hearing was held to determine whether the offender was likely to commit another sex offense in the future. While these proceedings were deemed to be civil in nature, the Ohio legislature recognized that the offenders needed procedural protections. At the hearing, the offender and the prosecutor could present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses. The offender had the right to be represented by counsel and, if indigent, to be provided counsel at state expense. The state had the burden to prove, by clear and convincing evidence, that the offender was likely to reoffend. And, the offender had the right to appeal an adverse ruling.

Simplifying Ohio's risk-based classification system a bit, offenders could be classified into one of three categories. An offender who had been convicted of or pled to a sexually oriented offense, but who had not been found likely to re-offend, was labeled a sexually oriented offender. An offender who had a prior conviction for a sexually oriented offense, but had not been found likely to re-offend, was labeled a habitual sexual offender. And an offender who had been convicted of or pled to a sexually oriented offense, and had been found likely to commit another sex offense in the future, was labeled a sexual predator. These three categories roughly translate, in duration and requirements of registration, to the Adam Walsh Act's Tier I, Tier II, and Tier III, respectively.

The state's risk-based classification system had resulted in a registry that looked much like what scientific research tells us about the likelihood of sex offender recidivism: 77% of Ohio sex offenders were classified as sexually oriented offenders, 4% were labeled habitual sexual offenders, and 18% were labeled sexual predators. After implementing SB 10, Ohio's registry became top-heavy: only 13% of offenders are classified in Tier I, 33% are in Tier II, and 54% are in Tier III.

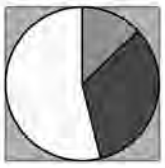
**Ohio's Sex Offender Registry**

**Previous, risk-based system**



SOO Habitual Predator

**Senate Bill 10/Adam Walsh Act**



Tier I Tier II Tier III

The number of people in the highest tier of Ohio's registry has tripled. Nearly 8,000 of Ohio's sex offender registrants were moved from one of the two lower classification levels into Tier III—not because they had committed a new crime or because of new evidence of their future dangerousness, but only because of the crime of which they had been previously convicted.

Ohio's old registry was, potentially, a useful public safety tool. It included more than 22,000 offenders; however, only 4,000 of those offenders were labeled sexual predators. Those 4,000 offenders, found by a judge to be likely to reoffend, would rightly garner the most attention from the public and require the closest supervision by law enforcement. Now, however, Ohio's registry includes more than 12,000 people labeled as Tier III offenders. Their propensity to reoffend is not known, but the public will certainly perceive them as dangerous, and law enforcement must expend tremendous resources to supervise them.

Under Ohio's old law, a person convicted of rape for consensual sex with a person four years and one day his junior might have been classified a sexually oriented offender, if that person had not been found likely to commit another sex crime. Also under Ohio's old law, a person convicted of sexual imposition, a misdemeanor, might have been classified a sexual predator, if a judge found him likely to reoffend. Now, however, Ohio courts are mandated to classify the person convicted of rape as a Tier III offender and the person convicted of sexual imposition as a Tier I offender.

The person convicted of rape could lead a law-abiding life and could even, as happened in at least one Ohio case, marry the "victim" of his offense and have a family, but he would forever be labeled a Tier III offender, the supposed worst of the worst. Even though the person convicted of sexual imposition is likely to commit future sex offenses, a judge would not be able to classify that person into a higher tier until that person committed and was convicted of a subsequent sex offense. Instead of being able to properly label a high-risk offender, the court must instead wait until another offense is committed and another victim is created.

Sex offender registration and notification laws are supposed to be forward-looking, aimed at protecting the public from future crimes. Risk-based systems, like Ohio's prior scheme, do a

much better job of addressing the stated aim of sex offender registries: protecting the public from future criminal acts.

In its position paper on the Adam Walsh Act, the National Alliance to End Sexual Violence (NAESV), a victim advocacy organization that conducts the public policy work of state sexual assault coalitions and rape crisis centers, states that, "over-inclusive public notification can actually be harmful to public safety by diluting the ability to identify the most dangerous offenders and by disrupting the stability of low-risk offenders in ways that may increase their risk of re-offense. Therefore, NAESV believes that internet disclosure and community notification should be limited to those offenders who pose the highest risk of re-offense."[3]

The Adam Walsh Act, however, is not concerned with the likelihood of future crimes. It looks only at past offenses and labels offenders based on those past offenses, without considering what those offenders might do in the future.

**Retroactivity**

One of the primary objections to the Adam Walsh Act concerns the requirement that states apply the law retroactively to persons who offenses predate the enactment of the Act. It is important to remember, however, that the Adam Walsh Act as passed by Congress was not, itself, retroactive. Rather, the Act delegated authority to the Department of Justice to interpret and administer the Act's registration provisions, and to determine the applicability of those provisions to offenders who were convicted prior to the enactment of the Act.[4] The Guidelines for implementation of the Adam Walsh Act, issued by the Department of Justice's SMART Office, require that the Act be applied retroactively to persons with convictions for sex offenses who are incarcerated or under supervision; who are already subject to a pre-existing sex offender registration system; and who re-enter the justice system because of another crime, regardless of whether it is a sex offense.

Congress did not mandate that all sex offenders be reclassified, and certainly did not require that those offenders who have completed their period of registration be re-registered under the new provisions of the Adam Walsh Act. Applying the Adam Walsh Act's classification, registration, and notification requirements retroactively, as required by the Guidelines, unnecessarily subjects states to lengthy and expensive constitutional challenges that could be avoided simply by applying the Act prospectively only.

Retroactive application of the Adam Walsh Act presents separation of powers issues, as state legislatures, acting on a directive handed down by the executive branch of the federal government, will be reversing decisions made by judges. In Ohio, the retroactive application of SB 10 legislatively overturned thousands of legal decisions of trial court judges—to not label offenders as sexual predators—simply because offenses committed many years ago fall into a certain Tier, as defined by the Act.

Plea deals that predate the enactment of the Adam Walsh Act and states' implementation legislation raise additional legal problems. There are thousands of offenders in Ohio who, since the enactment of Ohio's prior sex offender registration system, had pled guilty to sex offenses.

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[3] http://www.naesv.org/Policypapers/Adam_Walsh_SumMarch07.pdf

[4] 42 U.S.C. Sec. 16913(d) provides that "[t]he Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before July 27, 2006...."

Many of them pled guilty to offenses that would, under the Adam Walsh Act, be Tier III offenses. But those offenders were labeled, by a judge, as sexually oriented offenders (similar to Tier I), not as sexual predators (similar to Tier III). In many cases, that label of sexually oriented offender was part of a plea bargain, agreed to by the State of Ohio, through the office of the county prosecutor.

Those plea deals are contracts: the defendant agreed to give up his or her right to trial and agreed to go to prison, and in exchange, the State agreed that the defendant would not be labeled a sexual predator. But now, with SB 10 being applied retroactively, thousands of offenders will be notified that, because of the offense to which they pled guilty, they are being reclassified as Tier III offenders and subjected to lifetime registration and verification duties. The State of Ohio, which years ago entered into these contracts and agreed to less-severe labels, has now unilaterally altered thousands of contracts. And, as a result, has made onerous changes in thousands of people's lives, changes that were neither anticipated nor necessary.

The cost to states and their court systems of the retroactive application of the Adam Walsh Act could take many forms: class action lawsuits; thousands of motions to withdraw pleas; and lawsuits for damages after offenders lose their jobs, are forced to move, or appear on an internet registry after being told they would not. And, perhaps most costly, defendants' unwillingness to enter into future plea agreements, knowing that at any time, any branch of government at any level may choose to breach the State's obligations in that contract.

The retroactive application of the Adam Walsh Act's classification, registration, and notification requirements runs afoul of fundamental fairness. It has, and will continue to, unduly burden court systems and prove costly for the states. Congress, with its one-sentence delegation of authority to the Department of Justice, surely did not intend to levy such a cost on the states and their courts.

**The Act's application to juveniles**

The juvenile court system is based on the fundamental belief that children can be rehabilitated. Indeed, juveniles' inherent amenability to rehabilitation has been recognized by the United States Supreme Court. In its 2005 opinion in *Roper v. Simmons*, which declared the death penalty for juveniles unconstitutional, the Court stated:

> The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.

The emerging field of neurological science tells us that children's brains are physically different from the brains of fully mature adults, and that as a result, they are not only more likely to engage in risk-taking behavior, but also more amenable to treatment. In children and adolescents, the prefrontal cortex is not yet "hardwired" to the rest of brain. It is this part of the brain that plays a critical role in decision making, problem solving, and being able to anticipate the future consequences of today's actions. Until the prefrontal cortex becomes fully connected, children must rely on another part of the brain for decision making: the amygdala, which processes emotional reactions and is the part of the brain known for the "fight or flight" response.

While this period of brain development can lead to children behaving irrationally, making poor decisions, and overreacting to perceived threats, it is also what makes children especially amenable to treatment. Treatment provided during this critical stage of development to a child who is sexually inappropriate or abusive will impact the way that child's brain continues to develop; as a result, juvenile sex offenders are known to be especially amenable to treatment, and thus significantly less likely to reoffend.

According to the Ohio Association of County Behavioral Health Authorities, research shows that "with treatment, supervision and support, the likelihood of a youth committing subsequent sex offenses is about 4–10 percent."[5] And a compilation of 43 follow-up studies of the re-arrest rates of 7,690 juvenile sex offenders found an average sexual recidivism rate of 7.78 percent.[6]

Additionally, the American Psychological Association has noted that because "adolescent sexual offending is different from adult sexual offending in its motivation, nature, extent, and response to intervention … [r]esearch has consistently shown that the majority of children and teenagers adjudicated for sex crimes do not become adult offenders."[7] The National Center on Sexual Behavior of Youth has conducted an extensive review of the available research on juvenile sex offenders, and has concluded that adolescent sex offenders have fewer numbers of victims than do adult offenders, and engage in less serious and aggressive behavior.[8]

The inclusion on a public registry of all children who are adjudicated delinquent of certain sex offenses is fraught with problems that undermine both the history of the juvenile court system and the purpose of the Adam Walsh Act. It ignores the very foundation of this country's juvenile court system: a belief, confirmed by scientific research, that children can and should be rehabilitated. And it dilutes the effectiveness of the public registry as a public safety tool, by flooding it with thousands of juvenile offenders, 90–96 percent of whom will never commit another sex offense.

Juveniles who are amenable to treatment and who are successfully rehabilitated have no place on a public registry of violent adult sex offenders. Those who interact with each child individually—juvenile court personnel working in conjunction with treatment providers—should continue to be allowed to determine whether a child's offense was a youthful indiscretion, a manifestation of a mental illness or other behavioral health problem, or a sign of a child who is not amenable to treatment and who poses an ongoing threat to public safety.

Including children on an internet-based registry also puts those children at risk of being targeted for harassment and abuse. A pedophile could use the online registry to find victims. The registry will provide him with the names, pictures, and home addresses for children as young as 14, as well as the names of the schools they attend, the cars they drive, their license plate numbers, and other identifying information. Many juvenile sex offenders were themselves victims before they committed their offenses, and are especially vulnerable to further victimization.

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[5] https://secure.digital-community.com/english/oacbha.org/includes/downloads/volume3issue1.pdf
[6] Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Reoffense Risk*. Child Maltreatment, Vol. 7, No. 4, Sage Publication, November 2002 (291-302).
[7] http://www.apa.org/ppo/ppan/sexoffenderaa06.html
[8] http://www.ncsby.org/pages/publications/What%20Research%20Shows%20About%20Adolescent%20Sex%20Offenders%20060404.pdf

Additionally, many juvenile sex offenses are intra-familial. During deliberations in the Ohio General Assembly on SB 10, testimony was heard from several parents with a child who sexually offended on a sibling. Those parents testified about the conflicts they face, as parents of both a juvenile sex offender and a victim of sexual abuse. In these situations, the offender and the victim receive much-needed treatment only if their parents are willing to speak up and seek help. Undoubtedly, many parents will be unwilling to ask for help if doing so resigns one child to a lifetime of inclusion on an internet-based registry, with all the restrictions on schooling, employment, and residency it entails, as well as potential threats to that child's safety. As a result, in many instances, neither offender nor victim will receive the treatment they need.

The risk of mandatory, lifetime inclusion on a public registry will also mean that children facing charges for sex offenses will be less likely to plead guilty and more likely to go to trial, thus exposing the victim and others to the trauma of testifying and to other intrusive aspects of the criminal justice system. And children's defense counsel will certainly work to get sex offense charges reduced to non-sex offense charges, such as assault, in order to avoid the severe consequences of lifetime inclusion on the public registry. But a child adjudicated delinquent for assault is unlikely to receive sex offender treatment, which results in tremendous lost opportunities for treatment and the prevention of further harm.

The list of offenses to be included on the public registry may seem to target only the "worst of the worst" of juvenile sex offenders. But in Ohio, the offenses recognized as equating to the federal definition of "aggravated sexual abuse"—rape, sexual battery, and gross sexual imposition—include a wide range of behaviors.

Several years ago, my office represented "Brian," a 16-year-old boy. On the school bus, Brian sat next to a 15-year-old girl whom he had dated previously. He touched his former girlfriend's breasts through her clothes, and attempted, unsuccessfully, to put his hand down her pants. The girl testified at trial that Brian had put his hand down her pants "[a]bout to the knuckle line." Brian was adjudicated delinquent for attempted rape and gross sexual imposition.

In another example of a client my office represented, "Zach," a 14-year-old boy, and several other children had been at a friend's house without parental supervision. Zach and some of the boys had stolen bottles of alcohol, and the girls had set up a tent in the yard. At some point in the evening, Zach and a 10-year-old girl, who "had become boyfriend and girlfriend earlier that day," were lying on their sides next to each other in the tent. He put his arm over the girl's midsection and touched her "below her beltline" but "did not put his hand in between her legs." Zach was adjudicated delinquent for gross sexual imposition on a victim under the age of 13.

My office also represented "Michael," whose case highlights many of the problems typically found in juvenile courts. Michael was removed from his mother's custody at the age of 11, after being physically abused, and over the next several years was placed in seven different foster homes. He is very low-functioning and has been diagnosed with attention deficit disorder, extreme mood swings, and reactive attachment disorder. Despite this, Michael was adjudicated delinquent for gross sexual imposition without being represented by counsel. Michael certainly should have been evaluated for his competency to face the GSI complaint, but he had no attorney to raise the issue, and Ohio lacks a competency statute for juveniles.

The Adam Walsh Act purports to protect society from dangerous sexual predators, like the adult pedophiles, unknown to their victims, who kidnapped, sexually assaulted, and murdered Adam Walsh, Jacob Wetterling, Jessica Lunsford, and the other children for whom the legislation is

named. But, with the overly broad requirements of the Adam Walsh Act and Ohio's SB 10, Ohioans instead find themselves "protected" from children like Brian, Zach, and Michael.

The year that Ohio implemented the Adam Walsh Act also marked the 40th anniversary of *In re Gault*, the landmark U.S. Supreme Court decision that granted many basic due process rights to children in juvenile court, including the right to advance notice of the charges, the right to a fair and impartial hearing, and the right to be represented by counsel. But *Gault* did not grant full due process protections to juveniles facing delinquency complaints. Notably absent are a child's right to a grand jury determination of probable cause and the right to an open and speedy trial by jury. And, at least in Ohio, juveniles have yet to fully realize the promises of *Gault*. A recent study found that two-thirds of children facing unruly or delinquency complaints are not represented by counsel when they appear in Ohio's juvenile courts.[9]

The failure to fully protect juveniles' constitutional rights is certainly not limited to Ohio. Last month, two Luzerne County, Pennsylvania judges pled guilty to receiving $2.6 million in kickbacks to send juveniles to certain juvenile detention facilities. A lawsuit filed by the Juvenile Law Center on behalf of 70 families affected by this scandal alleges that the two judges violated the rights of juveniles in ways that went beyond the kickback scheme.[10] The lawsuit asserts that in "a wave of unprecedented lawlessness," the judges failed to advise youth of their right to counsel, accepted their guilty pleas without explaining the charges against them, and garnished the wages of their parents to pay the costs of detention. If Pennsylvania were to adopt the Adam Walsh Act's overly broad offense-based system, some of these youth, forced to enter admissions to sexual offenses in courts that showed complete disregard for their constitutional rights, would automatically be labeled Tier III and subject to lifetime registration and notification.

The Guidelines for implementation, issued by the SMART Office, instruct that "registration need not be required on the basis of a foreign conviction if the conviction 'was not obtained with sufficient safeguards for fundamental fairness and due process....'" The Guidelines fail to acknowledge, however, that only limited due process protections are offered to children in juvenile court. By placing juvenile sex offenders on a public registry, the Adam Walsh Act imposes adult sanctions on juvenile defendants. It treats a select group of children who appear in juvenile court differently than other children who appear in juvenile court; it treats them more like adult sex offenders than like children. And it does so without regard to the limited due process protections offered to children in juvenile court.

Limited due process protections make the retroactive application of the Adam Walsh Act especially inappropriate for juveniles. Children who have already been through the juvenile court system—without full due process protections and perhaps without even being represented by counsel—could never have anticipated that lifetime inclusion on a public registry would someday be a consequence of their juvenile court proceeding.

Recognizing the unique qualities and needs of children, the juvenile court system was established to focus on treatment, supervision, and control, rather than solely on punishment. Inclusion on a public registry, though, will significantly limit treatment and aftercare options for juvenile sex offenders. Many group homes, foster homes, and community placements will not accept children with sex offenses in their histories. Children on a public registry with community notification requirements will be nearly impossible to place for or after treatment. As a result, many juvenile sex offenders will be kept in juvenile correctional facilities far beyond the time it

[9] http://www.aclu.org/pdfs/ohiowaiverpetition20060309.pdf
[10] http://www.jlc.org/news/25/luzernelawsuit/

takes them to complete treatment. Children will be incarcerated not because they need further treatment or pose a risk to public safety, but only because public policy will prevent them from going anywhere else. This is a dramatic, and ill-advised, shift in the focus of the juvenile court system from treatment to punishment.

Subjecting juvenile sex offenders to the same sanctions as adults raises legal and scientific questions about culpability and punishment, and the registration and notification requirements are inconsistent with the purposes of juvenile court: treatment and rehabilitation. Inclusion on an internet-based public registry will subject juveniles to social ostracism, limit access to educational and work opportunities, make it more difficult for juveniles to be placed with family or friends, and limit residential treatment options. And treating juvenile sex offenders in the same manner as adult sex offenders with respect to reporting, notification, and length of classification, even though juveniles have fewer legal rights and protections than adults, presents legal and Constitutional problems.

The plain language of the Adam Walsh Act requires that all children age 14 and older who are adjudicated delinquent for offenses "comparable to or more severe than aggravated sexual abuse" be included on the public, online registry of sex offenders. But the negative consequences of doing so—fewer intra-familial crimes being reported, fewer offenders and victims receiving treatment, and children on the registry being targeted for abuse and exploitation, to name only a few—would actually put states out of compliance with the stated intent of the Adam Walsh Act: protecting children from violent sex offenders.

**Substantial compliance and SORNA as a "floor"**

The Adam Walsh Act requires substantial implementation, and the Guidelines issued by the SMART Office purport to require substantial compliance. But the definition of "substantial" is unclear, and leaves states uncertain about their options to tailor the Act to their systems and needs.

The Guidelines offer that the "substantial" compliance standard "contemplate[s] that there is some latitude to approve a jurisdiction's implementation efforts, even if they do not exactly follow in all respects the specifications of SORNA or these Guidelines." However, the Guidelines also say that the Adam Walsh Act presents a set of "*minimum* national standards," and that the Guidelines "set a floor, not a ceiling," for states' registration systems.

These two statements, taken together, imply that a state's implementation efforts do not have to "follow in all respects" the Adam Walsh Act or the Guidelines, but only if the state chooses to exceed the requirements of the Act or the Guidelines. These two statements seem to define "substantial" compliance as something at or above 100 percent compliance. That, of course, is an illogical and unfounded definition of "substantial," and clearly goes beyond what is required by the Adam Walsh Act. The Guidelines instruct that nothing less than strict compliance will be sufficient, while the Act requires only the substantial implementation of the federal law.

Further, the characterization of the Guidelines as a "floor" is disingenuous. It is akin to Congress declaring that a speed limit of 95 miles per hour is now the floor for speed limits across the nation. States could feel free to exceed that requirement and set the speed limit within their jurisdiction at a higher rate, but 95 miles per hour would be the new national minimum. Ohio and other states, with speed limits ranging from 55 to 75 miles per hour, would be left staring upward at the 95-mile-per-hour floor, wondering how to achieve that level,

whether doing so would be worth the effort and cost of implementation, and most importantly, what impact the implementation of this new federal requirement would have on public safety.

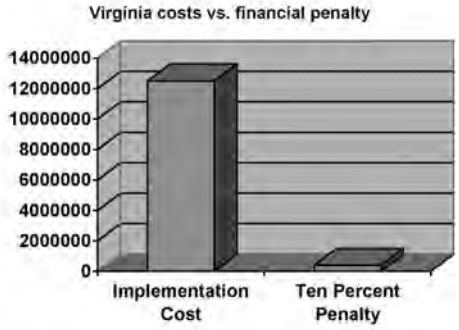
States should be allowed to substantially comply with the Adam Walsh Act not by blindly enacting federal mandates, but by crafting good public policy that both achieves the Act's goals and is tailored to the unique systems and public policy goals of each state.

**Cost to implement**

Especially now, as the country faces the most serious economic downturn in at least three decades, the cost to implement the Adam Walsh Act must be considered.

Virginia's Department of Planning and Budget, which has developed one of the most detailed fiscal analyses to date, estimated that implementing the Adam Walsh Act would cost the Commonwealth nearly $12.5 million the first year and nearly $9 million every year thereafter, to maintain the system. While the Virginia fiscal analysis included cost estimates for law enforcement and the adult prison system, it did not include estimates for expenditures by the juvenile justice system, courts, prosecutors, or defenders.

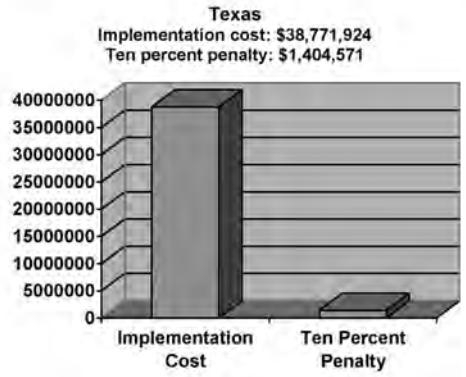
And, compared to the estimated $12.5 million Virginia would have to expend to implement the Adam Walsh Act, it risks losing only $394,304, were it to choose to not comply with the federal Act.




Using the Virginia cost estimates, the Justice Policy Institute estimated the cost of implementation for all 50 states and the District of Columbia, based on population, and

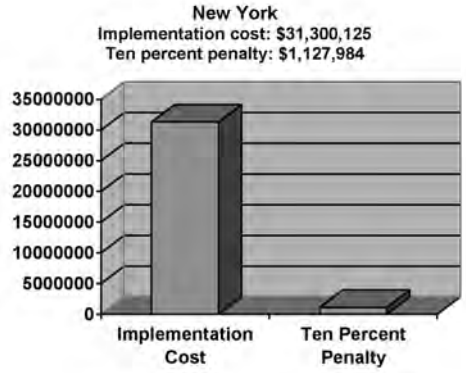
compared those numbers to the amount of money states would lose in Bryne Grant funds[11] if they chose to not comply with the requirements of the federal Adam Walsh Act.[12]

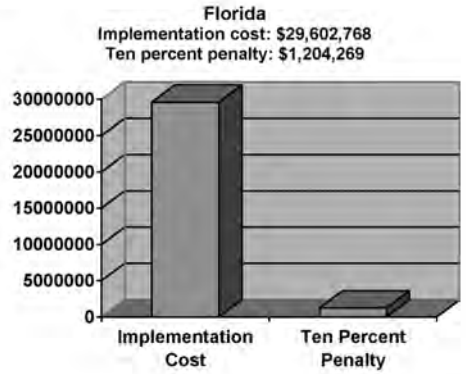
Other states show a similar disparity between costs incurred to implement the Act and the potential financial penalty for non-compliance.

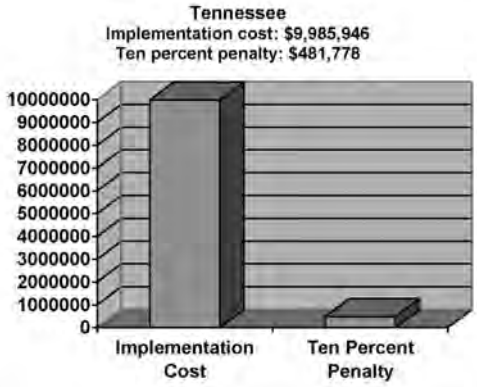




[11] Based upon 2006 allocations for Byrne grants.
[12] http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JJ.pdf


New York
Implementation cost: $31,300,125
Ten percent penalty: $1,127,984
35000000
30000000
25000000
20000000
15000000
10000000
5000000
0
Implementation Cost
Ten Percent Penalty


Florida
Implementation cost: $29,602,768
Ten percent penalty: $1,204,269
30000000
25000000
20000000
15000000
10000000
5000000
0
Implementation Cost
Ten Percent Penalty




While not an exact measurement of the necessary state expenditures, the Justice Policy Institute's calculations provide a picture of the serious fiscal impact on states that choose to implement the Adam Walsh Act. For states to just break even between expenditures and the potential loss of Byrne grants, Virginia's cost estimates must have been overestimated, or allocations to the Byrne grant funds must increase from their 2006 levels, by a factor of 31.

These are significant costs to implement an act, the efficacy of which is being questioned not only by defense attorneys, civil libertarians, child advocates, and treatment providers, but also by social science researchers and a growing number of concerned state attorneys general, prosecutors, law enforcement officers, and victims groups.

**Conclusion**

The effects of the Adam Walsh Act, once implemented, contravene the Act's well-intentioned goals. An act intended to unify registries across the country has instead placed an incredible burden on courts and law enforcement and created confusion from one jurisdiction to another. A law aimed at protecting children from sexual predators instead places thousands of juveniles, many of whom have been sexually abused, on an online registry and into harm's way. A system meant to simplify sex offender classification has instead muddled the meaning of offenders' designations, and left the public to only speculate about which prior offenders might pose a future risk.

Respectfully, I urge the Members of this Subcommittee to consider an extension of the deadline for states to comply with the Act; the establishment of task forces, comprised of experts in the field of sex offender management and representatives of all stakeholders in this complex issue, to examine the practical effects of the Act on public safety; and possible statutory reform.

Chairman Scott, Members of the Subcommittee, thank you for the opportunity to testify today.

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Mr. SCOTT. Thank you. And I want to thank all of our witnesses for their testimony.

We'll now begin questions under the 5-minute rule, and I will recognize myself for 5 minutes.

Ms. Carter, you indicated that we should be using—making decisions based on evidence. What is the evidence and what works and what doesn't work under SORNA?

Ms. CARTER. Excuse me. Did you say under SORNA, or just generally?

Mr. SCOTT. Well, I start with SORNA.

Ms. CARTER. Okay. I will start with SORNA.

Well, unfortunately, there has been very little study of the issue of registration and notification. There have been a handful of studies conducted across the country, and some of them have slightly conflicting results, but overall they have not demonstrated to be effective in terms of reducing recidivism risk among offenders.

Mr. SCOTT. Are there any studies that show that notification or registration reduced the incidence of sexual abuse of children?

Ms. CARTER. Can I defer to one of my colleagues?

Mr. SCOTT. Sure.

Ms. CARTER. Detective, do you want to talk about the Washington study?

Mr. SHILLING. There was a study done by the Washington State Institute for Public Policy that took a look at community notification and whether or not community notification worked. And what they found out is that it was statistically insignificant whether or not notification worked versus those who had reoffended without having been the subject of community notification. And so far that is the only study that I'm aware of that has been done taking a look at the actual aspects of community notification on whether it works or not.

Mr. SCOTT. Thank you.

Ms. Rogers, what does notification—what does notification mean in the regulations?

Ms. ROGERS. Community notification means that jurisdictions are required to make available to their citizens information when a sex offender comes into their community to live, go to school or work.

Mr. SCOTT. And exactly how do you notify the community?

Ms. ROGERS. It is up to the discretion of the community, to the jurisdiction how they want to do that. It can be done through e-mail, registered mail, pamphlets, telephone. It is completely discretionary.

Mr. SCOTT. When somebody moves into an area, how wide an area gets notified?

Ms. ROGERS. Again, that wasn't listed in the act. It is completely discretionary.

Mr. SCOTT. The regulations don't speak to that?

Ms. ROGERS. No, they didn't. What we did was we put together a system where every individual could register up to five addresses that were of interest to them, and they could receive notification up to a 4-mile radius around each of those addresses whenever a sex offender registered within that radius.

Mr. SCOTT. So you could sign up for notification. Would everyone in the 4-mile radius get notified when the person moves into the neighborhood?

Ms. ROGERS. Only the people who had signed up, if the community only had the community notification system that the SMART office set up. Many jurisdictions also have secondary systems of mailings, telephone, pamphlets, et cetera.

Mr. SCOTT. If somebody is registered, do they have a tracking device?

Ms. ROGERS. It is not required under the act.

Mr. SCOTT. Mr. Shilling, you indicated a need to prioritize. What did you mean by that?

Mr. SHILLING. We want to be able to target our resources toward the highest-risk offenders. They are the ones that have the greatest risk of reoffending. So using actuarial risk assessment models, we're able to target those offenders who are at highest risk to reoffend and make more visits on them than what even SORNA requires.

Mr. SCOTT. Are there other things you can do other than notification and registration to reduce the chance that the children in the area and the neighborhood may be victimized?

Mr. SHILLING. Well, one of the things that I am a very firm believer in is in community education. And I believe that is how we have the best chance of preventing some of this, so that when we go out and do community education meeting, citizens see what the red flags are. I have done many, many meetings where people have come up to me afterwards and said, wow, I wish I had this information before.

Mr. SCOTT. Is that just with known sex offenders who may be recidivating, or protecting yourself from sex offenders who might not have been already convicted?

Mr. SHILLING. When we do community education, we do it on sex offenders in general. We want to protect them from all sex offenders, not just the ones that they know about.

Mr. SCOTT. Thank you.

My time is expired. Mr. Gohmert.

Mr. GOHMERT. Thank you, Chairman.

Well, taking some things up in order, Ms. Rogers, why did it take the SMART office 2 years to produce the SORNA guidelines? It doesn't sound very smart.

Ms. ROGERS. The SMART office had no staff besides myself and a detailee from the U.S. Attorney's Office until January of 2008. On my own I was implementing SORNA, providing national training, and sorting technical assistance and, with the help of Office of Legal Policy, writing the proposed guidelines. They went out for public comment for 71 days during the summer of 2007. They were complete and went into review through the Department of Justice for the final guidelines in February of——

Mr. GOHMERT. Why were you so shorthanded all that time?

Ms. ROGERS. I had no staffing FTEs.

Mr. GOHMERT. You were shorthanded because you didn't have staffing. Yeah, I might have guessed that. But why did you have no staffing?

Ms. ROGERS. There were no available slots to hire anyone into. There was no funding.

Mr. GOHMERT. Okay. That's the bottom line.

Ms. Devillier, we had a crime hearing down in New Orleans a couple of years ago, and I was shocked at that time. And I'm glad you're here because I'm curious if it is still going on. But having been a former judge, and we've got another former judge over here, I was shocked that there was a system in place in the Louisiana

criminal system that a defense attorney could contact a judge unilaterally, ex parte, and seek to get a bond lowered for his client. And if the judge lowered it so that the defendant could make it, then the court of the judge that lowered it got a cut of the bond. Is that still in place? I was kind of surprised that existed anywhere. Is that system still in place where the court can get a cut of the bond they lower?

Ms. DEVILLIER. I really can't speak to that. Are you speaking in Orleans Parish?

Mr. GOHMERT. I understood it was a Louisiana law that allowed the ex parte communication and then the judge to get part of the bond. Or not the judge, no. It is the court. It is not the actual judge. But you're not aware?

Ms. DEVILLIER. I'm not aware.

Mr. GOHMERT. Well, with regard to the Louisiana sex offender registry, what would you require in a Louisiana system if you were making the law that would be different from what the SORNA requires?

Ms. DEVILLIER. Thank you for that question.

Louisiana has drafted legislation——

Mr. GOHMERT. But I'm asking you personally. You're the witness here.

Ms. DEVILLIER. Well, I worked—I was one of the lead crafters——

Mr. GOHMERT. So they did exactly what you wanted then?

Ms. DEVILLIER. It is not exactly what I wanted. We tried to abide by some of the things that we didn't necessarily agree with.

Mr. GOHMERT. But I'm asking exactly what you wanted.

Ms. DEVILLIER. We have done in Louisiana the three tiers.

Mr. GOHMERT. But I'm asking exactly what you'd put in the registry if you were doing it.

Ms. DEVILLIER. What I would say to you is that I cannot speak to risk assessment versus offense-based. I certainly agree that risk assessment has——

Mr. GOHMERT. Well, you had mentioned, then—if you can't tell me, then let me ask you. You had said that you must look to the age of the victim, and even if that is not an element of the offense, does Louisiana require presentence investigation reports for a judge to consider in sentencing?

Ms. DEVILLIER. Well, it would depend on if there was a plea agreement. If there was a plea agreement, there would be no investigation.

Mr. GOHMERT. So you don't require them in all cases then?

Ms. DEVILLIER. I'm sorry?

Mr. GOHMERT. They are not required in all cases?

Ms. DEVILLIER. No, sir.

Mr. GOHMERT. In Texas, they were required in all cases. So there is no place that it would be part of the record what the victim's age was?

Ms. DEVILLIER. No, sir. That is not what I meant to say. If that's what you took——

Mr. GOHMERT. Well, you said even when it is not an element of the offense, how is that due process? As I understood, it was a rhe-

torical question. So you're saying that in the record there would be no age even for the victim?

Ms. DEVILLIER. No, sir. There would be—if the—in some cases the crimes in Louisiana don't require the age to be put in the bill of information. What the bill of information would tell you is that the victim has not attained the age of, say, 16 or 15 or whatever the elements of the offense was. But my point there, sir, is that the guidelines require—whether or not it is in the bill of information or whether or not it is in—and I know that you having been a judge; you know the prosecutor will give a factual basis. So the age of the victim might be establishable not just through the bill of information, but through the factual basis.

But my point was if you tie the tier to the actual age of the victim, you are tying my hands as a prosecutor to get a plea in a case when the 25-year registration period or the lifetime registration period is hampering a defendant's willingness to plead guilty in a difficult child sex case.

Mr. GOHMERT. But if you do agree, how is that not due process? You said it wasn't—or you said, how is that due process?

Ms. DEVILLIER. Well, because the age of the victim, if it is not alleged in the bill of information, it is not a fact that has been established in a court of law, because when——

Mr. GOHMERT. That's what I'm saying. It could be established in the court of law.

Ms. DEVILLIER. It could be.

Mr. GOHMERT. I mean, even in a presentence report, the parties—if somebody objects to what is in the presentence report, either side can object. There is due process in that process, right?

Ms. DEVILLIER. Right.

No. I agree. If it is in the record. There are circumstances where due process would be afforded because that fact would be in the record and established on the record. But I will submit to you that there are many instances where that fact is not in the record.

Mr. GOHMERT. Okay. Thank you. I see my time has expired.

Mr. SCOTT. The gentleman from Puerto Rico.

Mr. PIERLUISI. Thank you, Mr. Chairman. I have a couple of questions for Ms. Rogers.

I kind of understood you to say or imply that a lot of States would be in compliance by July of this year. Is that so? Is that what you are——

Ms. ROGERS. No.

Mr. PIERLUISI. Okay. In your judgment or your expectation, how many States will be in compliance, roughly speaking, by July of this year?

Ms. ROGERS. Taking into consideration I left office January 20th, I no longer am privy to the information coming into the office. There may be none. And the reason there may be none is because the guidelines came out in July of '08; there is much to be done; there is little to no funding in some jurisdictions; but also because every jurisdiction, State, territory and tribe knows that they have two 1-year extensions available to them, and they are all taking advantage of that situation. They know they don't need to be in compliance for 2½ more years. As you push that compliance date down the line another year or 2 years, if this body decides to do that,

then you won't see jurisdictions coming into compliance until that future date.

Mr. PIERLUISI. So as of January 20th, your sense is that if we extend this deadline by, let's say, a year, that you would have most of the States in compliance? Is that your sense? Based on what you know as of January 20th, based on what you know about what States were doing to comply, would you expect that States—most of the States, if not all, would be in compliance a year from July 2009?

Ms. ROGERS. I'm confused by your question because they already have two possible 1-year extensions to July of 2011. And I expect the jurisdictions of States and territories will be in compliance by that time based on my experience at the SMART office.

Mr. PIERLUISI. I see. What I was saying was if we extend the bar, the deadline we have, putting aside the fact that you can—the government can in its discretion extend those deadlines, if we just statutorily extend the deadline that we have right now, your expectation is that in about a year most States would be in compliance?

Ms. ROGERS. I think it is more realistic to expect the July 2011 date. I think there is a lot to be done by a majority of jurisdictions.

Mr. PIERLUISI. So it is, like, about 2 years what you expect that we should wait for compliance to happen?

Ms. ROGERS. I do. I believe that the discussion to extend compliance is not ripe yet. As the 2011 date approaches, I think that you should take stock of how the jurisdictions are doing. The more time you provide, the longer people will take to comply. It is human nature. But I do believe that based on the structure that is currently set, jurisdictions are recognizing that they must be in compliance by July of 2011, and that is what they are working to, keeping in mind, many States, territories and tribes don't have legislative sessions annually. So there is a lot of roadblocks in the way that different jurisdictions have to get over in order to come into substantial compliance.

Mr. PIERLUISI. With respect to funding, do you have any ideas of ways in which the Federal Government could be funding at least partial—you know, partially these efforts?

Ms. ROGERS. I think that with the increased Byrne grant through the stimulus package, that will be a great benefit to the jurisdictions who receive Byrne grants. Most tribes do not, so that is problematic. Increased law enforcement will be very necessary. SORNA doesn't require visitations to different tiers of sex offenders. That is a jurisdictionally implemented requirement. And so if jurisdictions want to monitor certain sex offenders more than others, that is their discretion and their choice. But SORNA doesn't require it.

But still more law enforcement to assist in registration procedures, address verification, which is, again, at the discretion of the jurisdiction, will be very helpful. Additional resources to allow for sex offenders to register quarterly, biannually or annually is necessary. Updating of computer systems and software to attach the National Sex Offender Public Website is beneficial. Some equipment will be necessary in order to facilitate the registration procedures.

But many jurisdictions need to assess what they currently do and then modify the programs that are antiquated or no longer working to transfer them into programs that are better and applicable under SORNA, and I think when you have that transfer of resources, that many jurisdictions haven't considered, that you will find that it is not as expensive to implement SORNA as some jurisdictions say it is.

Mr. PIERLUISI. So I take it that this would be through discretionary grant programs, additional or new discretionary grant programs under the Byrne grant umbrella? That's how you would do it?

Ms. ROGERS. I would suspect that that would be how the SMART office would do that at this point in time.

Mr. PIERLUISI. I have no further questions at this point, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman from Texas.

Mr. POE. Thank you, Mr. Chairman. I have a few questions for all of you, but I only have 5 minutes, so make your answers short.

Ms. Rogers, is the bottom line money, or is there something else?

Ms. ROGERS. It is money, and it is also jurisdictions that feel they personally own the registration system they have, and they don't want to modify it. And it is a myopic opinion by jurisdictions that what they have is best, not recognizing that their system is very different than all the other systems, and we don't have a national standard.

And I just need to add that prior to leaving the SMART office, the decision was made that Byrne grants would not be reduced for any jurisdictions as long as an extension was in force. So there is no Byrne grant reductions until July of 2011.

Mr. POE. Ms. Devillier, is that the way you pronounce your last name?

Ms. DEVILLIER. Devillier.

Mr. POE. Okay. I apologize.

Do you actually try sexual assault cases?

Ms. DEVILLIER. Yes, I do.

Mr. POE. How many have you tried?

Ms. DEVILLIER. Oh, good Lord, that is hard to say. But I've been handling sex crimes, been a prosecutor in total, but for the time I was a State representative, about 13 years.

Mr. POE. Have you tried cases where a child sexual assault victim was murdered?

Ms. DEVILLIER. No. I have tried murder cases where children were killed.

Mr. POE. Have you ever tried a sexual assault case where a child was murdered?

Ms. DEVILLIER. No, sir.

Mr. POE. All right. If I counted correctly during your testimony and the questions asked by Judge Gohmert, you made the phrase—or made the comment, this hampers me getting a plea.

Ms. DEVILLIER. Correct.

Mr. POE. I have never understood why people who called themselves trial lawyers, either prosecutors or defense lawyers, spend most of their time trying to plead out cases rather than get justice

from a trial. That is just an observation. But it is an unfortunate phenomenon in our system where the goal is not justice, the goal is to get a plea. And I'm not so sure that those are the same.

Mr. Allen, let me ask you your question, being in the position that you are in to keep up with missing and exploited children. And we've heard and we all know statistics can mean whatever we want them to mean, whether it is child sexual assault, child molesters reoffend at what percentage, whether it is 100 percent or 23 percent. Based on what you know, what is your opinion about a person that commits a sexual assault against a child? No matter what happens to them, whether they go to prison or they are put on some kind of supervision, they are reoffending.

Mr. ALLEN. Well, I think my view is that there is no more heinous act that can be committed. My view is that most of those offenders do it not as a matter of lapse of judgment, but as a lifestyle. And I think it is very important at a minimum that we know where they are and what they are doing.

And the other thing I would want to add to that is it was never anybody's suggestion that the Adam Walsh Act would be a panacea or the only legislation or the only apparatus in place to address these kind of problems. It doesn't preclude treatment. It doesn't preclude community education. What it was intended to do is to address what frankly we felt was a system in which there was a lack of communication, a lack of uniformity; the ability of the most serious offenders to game the system, to move from jurisdiction to jurisdiction out of the reach and touch. And what it was intended to do was to build a system so that at least we know where these offenders are and what they are doing.

Mr. POE. Would you agree there is a big difference in taking a risk on someone reoffending as a thief as opposed to someone that is a child molester?

Mr. ALLEN. Absolutely. And, in fact——

Mr. POE. Do you think 23 percent would be too high even with child molesters?

Mr. ALLEN. No question.

Mr. POE. The last question is to Mark. Thank you for being here, Mark. It is always hard for you to talk about Jessica.

In my office I have the photographs of my four kids and my seven grandkids. And I have two pictures of other children that I think they are mine. One is Kevin Wanstrath, a 14-year-old that was murdered; and your daughter Jessie. I think it is there to remind me of why we are here.

Do you think, Mark, based on these experts that have testified, based on what you have been doing, do you think we need to spend more money and effort to get the law enforced, or should we just back away with it because it is too hard?

Mr. LUNSFORD. Well, I think what is going to happen—all right. If we back up because it is too hard, the children will pay the price. If we move forward and continue to try to figure out how we fix this problem, you might have a few people on the registry that might not belong there. So weigh it out. Do we register a man that might not be as guilty as we think he is, or do we let a child die?

I mean, I think we have to go with going to go with more reg—better registration and notification when we have to. The only per-

son that is going to make a sacrifice is maybe somebody who doesn't belong there. But if we don't get tougher registration and better notification, another child will die.

Mr. POE. Thank you, Mr. Chairman. I yield back.

Mr. SCOTT. The gentlelady from Texas.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, for holding this hearing. And let me, first of all, of course, acknowledge my friend Ernie Allen and the work that we've done together, and to thank Mr. Lunsford, Mr. Smart who is in the audience, and Mr. Walsh, who have become the faces, even though there are many other parents, of what has to be the most heinous, if you will, call that you might have gotten based upon the most heinous act that anyone could do.

I happen to believe in that phrase that where there is a will, there is a way. And frankly, Mr. Lunsford, I know that if someone was 14, you might be open-minded to some different framework, and I can tell that. But we were not in your shoes, but we lived your horrific experience, and let me just be very frank, I couldn't get through the television to help you out. Once they described the individual who I truly believed has the rights—and certainly as sitting on this Committee, I wouldn't want to deny that individual due process. But I couldn't get through the television. Why? Because of their history, because of what they had done, and seemingly the "smirkness" of "I have done it again."

So I really think that we have to find the balance, and I think it is important that the post powerful Nation in the world still today, in spite of all of our challenges, that we are sitting here and could give the answer, that we can't find a way.

Let me quickly ask the State of Louisiana, are you in compliance now?

Ms. DEVILLIER. No, ma'am.

Ms. JACKSON LEE. Are you working to come in compliance?

Ms. DEVILLIER. We've been working since 2006, since the passage of the act, diligently to try to come into compliance.

Ms. JACKSON LEE. What is keeping you from coming into compliance?

Ms. DEVILLIER. What—because we believe that what the guidelines require for compliance is problematic in——

Ms. JACKSON LEE. Such as? Such as?

Ms. DEVILLIER. With regard—such as the requirement that you look at the underlying facts of the offense rather than the elements of the offense in order to decide what tier the person fits into. And the example I give is as a prosecutor, I have tried many child sex cases——

Ms. JACKSON LEE. Can you go quickly, because I have questions. Just give me one underlying factor.

Ms. DEVILLIER. One underlying factor would be that the guidelines say you have to look at the underlying facts of the offense, whether or not it is an element of the offense, the age is the element of the offense, which ties my hands——

Ms. JACKSON LEE. The age of the victim?

Ms. DEVILLIER. The age of the victim is controlling.

Ms. JACKSON LEE. If we gave you a staff person, and that person was funded, or a team of three, would that help you?

Ms. DEVILLIER. No, ma'am.

Ms. JACKSON LEE. That would not help you. What would help you then?

Ms. DEVILLIER. We have issues with the policies or the actual requirements themselves that are in the guidelines.

Ms. JACKSON LEE. All right. Mr. Allen, I think you've been over those bills quite frequently. Is there anything that you think we should sacrifice in these legislative initiatives to help Louisiana? And they are just here being representative of other States that are not in compliance. Anything that you think that we should be looking at?

Mr. ALLEN. A couple of things, Congresswoman. One is the act. As I hear the primary concerns that Ms. Devillier has, they are with the guidelines, not with the law. More with the guidelines than the law.

Ms. JACKSON LEE. Which are the regulatory aspect of how they've been interpreted.

Mr. ALLEN. Regulatory aspects can be addressed.

Secondly, in the consideration of the law, there was a massive amount of compromise that took place. Certainly we are not opposed to modest changes—for example, I remember Senator Kennedy was concerned about provisions in the law that might conflict with State constitutional protections. So there is a provision in the law that where that something in violation of State constitution——

Ms. JACKSON LEE. Tenth amendment.

Mr. ALLEN [continuing]. That the State is able to comply otherwise. So I think there are minor changes that could be made.

Ms. JACKSON LEE. You made a very good point. Let me pose this question to, I think, Amy Borror. And let me say this: I believe—I think the Chairman has presented himself very open-minded. Let me be open-minded, but with this framework. I'm not so sure that I would not be pushing to shorten the compliance time. I think that the longer you let the kid out of the house and don't give him a curfew, they will be staying there even longer. And you can be assured that States are going to stay even longer past 2011.

The assistant attorney general from Louisiana has indicated that I can could give her staff, I could give her everything, and she is not able to do it still. So there may be a reason to go back to the Department of Justice to asses these guidelines, these layers of elements.

And I do think we have to consider the 14-year-old that is caught with a girl and gets listed as a sex offender, and that happens, and both of them get caught up, but the boy obviously usually is the one. And I see Mr. Lunsford understanding what I'm saying. And as a country sophisticated as we are, why can't we handle that?

Let me ask Ms. Borror what your ills are with where we are today at this point.

Ms. BORROR. I think it is important to remember that the discussions we are having today about extending the deadline, just that enough—just that is not enough. The reason we are asking for this extension of the deadline is we believe there are issues underlying that need to be addressed, and we want the extension in order to give us enough time to address those. And to go back——

Ms. JACKSON LEE. Is one of them the whole issue of juveniles, or is it guidelines as well, the way they have written the guidelines?

Ms. BORROR. It is both. Several States, including Ohio, have concerns about the act's application to juveniles. But I think the guidelines are a big part, too. The legislation, the Adam Walsh Act, required substantial compliance, And substantial compliance is generally recognized as somewhere between 51 percent and 99 percent compliance, more compliant than not, but not 100 percent. One hundred percent compliant is generally known as strict compliance. That is what is required by the guidelines, when the Federal legislation required only substantial compliance.

Ms. JACKSON LEE. Well, let me—Mr. Chairman, if I might just finish. I ask unanimous consent for an additional minute.

Mr. SCOTT. We are going to have another round if you wanted to. If it just another minute, we'll give you another minute. If you want another round, we're having another round.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I'll take the additional minute for reasons of having to be in a meeting in my office, but I thank the Chairman very much for his indulgence.

I can't let the State of Louisiana go by without carrying a message by it, and you're very well representing the States. I'm not pointing out, but I couldn't let you go by without saying to you that I am hoping that we have a chance to look at Jena 6 again, because I think that is certainly something that you could certainly fix for me.

But let me just conclude on this point: Ohio has been doing all they could, as I understand, to be in compliance. To the panelists, I'm not necessarily—and I will probably overrun on this—wanting to give an extension. I am willing and I would like to see the guidelines clarified to help States like Ohio who are working every day to try to comply.

The other aspect of it is I would like to give money on the enforcement side, but I would also like to increase the punitive measures, because we give States a lot of money. We give them the Byrne grants, and I don't think there will be any fire under their feet unless they can see a larger amount of monies being lost, Federal funds, because they have not complied.

And I end, Mr. Chairman, on the note of what Mr. Lunsford has said. What we don't do here today and fix this problem, a child will be victimized tomorrow. That is not something that I want on my watch, and I want to thank all of you for being here today.

Mr. Chairman, I thank you for yielding to me, and I look forward to working with you and working with our panelists to get this right.

I yield back.

Mr. SCOTT. Thank you.

We'll have another round of questions. Mr. Allen, you indicated that the State constitutional difficulties—did you say were an exception or could be?

Mr. ALLEN. My understanding is it could be.

Mr. SCOTT. So we would have to change the law to allow that to be an exception if the State couldn't comply with SORNA because their supreme court essentially prevented them from coming into

compliance. That should be an exemption, but it is not now. Is that——

Mr. ALLEN. It is now. It was written into the original act. Specifically it is a request to Senator Kennedy.

Mr. SCOTT. You indicated the recidivism rate. This isn't really a matter of this particular hearing, but when we abolished parole, we had to let everybody out at the same time, ready or not, here they come; whereas under the parole system, you could essentially hold people, the ones you wanted to, about three times longer than average. Some would get out early, some would get out longer. But those who are still—by every calculation still a risk to society have to be sprung out like everybody else. And so long as we have this what I call half truth in sentencing, that is nobody gets out early, you also can't keep them longer either. That is the other half of the truth.

So one of the problems we have with the recidivism rate, particularly those by any calculation still pose a present danger to society, still have to get sprung out like everybody else.

Ms. Rogers, we have had a couple of people indicate that there has been no evidence to show that the registration and notification have had the evidence of reducing crimes. Do you want to respond to that?

Ms. ROGERS. I do. How do you measure how many children have not been abused? How do you conduct a study on that? How do we know how effective the registry is? What we know is that we had over 5 million hits to the registry last year, and over 772 million sex offender pages were accessed. So we know people are interested. We know that people want to protect themselves. We cannot do a study on how many children are now safe and alive.

Mr. SCOTT. I'm hearing that you have no studies that show the reduction. Mr. Shilling suggested that there were studies showing where you had registration compared to where you didn't have registration, and the difference was insignificant.

Ms. ROGERS. There are currently studies at the SMART office funded through NIJ to identify the benefits of registration. Those are not completed. We funded those in 2007.

Mr. SCOTT. Okay. You indicated that consensual sexual activity amongst teenagers was not a matter subject to registration?

Ms. ROGERS. That's correct. It is section 16115(c).

Mr. SCOTT. And if a 19-year-old more than 4 years older than a 15-year-old had consensual sex, that would require a lifetime registration?

Ms. ROGERS. If there were more than 4 years between the two juveniles?

Mr. SCOTT. Right. One 19 and one 15. You add up the months, more than 4 years.

Ms. ROGERS. That would require—that may require registration, yes.

Mr. SCOTT. For how long?

Ms. ROGERS. It would depend on the act.

Mr. SCOTT. Consensual sex.

Ms. ROGERS. Consensual sex between two—with a minor could possibly be a 25-year registration. It may not be a registrable offense, though. It depends.

Mr. SCOTT. Depends on what, more than 4 years older?

Ms. ROGERS. It depends how it is charged in the jurisdiction. It depends on whether it is a misdemeanor or a felony. If it is a misdemeanor, it is not a registrable offense. For 25 years, it would be a 10-year registration.

Mr. SCOTT. But it would require registration?

Ms. ROGERS. Most likely, yes.

Mr. SCOTT. This could be two high school students, consensual sex?

Ms. ROGERS. Probably not, because there wouldn't be more than 4 years between two high school students.

Mr. SCOTT. A 19-year-old and a 15-year-old.

Ms. ROGERS. Then yes.

Mr. SCOTT. Okay. Mr. Devillier, you were asked about plea agreements, and sometimes it occurs to me that all the defendant knows is they did it; they don't know that you don't have a case. Do you have any cases where you are able to extract a guilty plea when, in fact, if you were forced to go to court, you couldn't have gotten a conviction at all?

Ms. DEVILLIER. What I do know, and I am very—I have lots of trials under my belt, and I'm very most happy when I'm in trial. My purpose for bringing out the plea agreement thing, sir, is, yes, there are—not that—I would not bring a case that I could not prove. The problem is you have a child. In child sex cases you will—you could have a 7-year-old child who is telling you—and their counselor is telling you to put this child through a public trial, you will further revictimize this child. It is not that you don't have the evidence. It is that you don't want to——

Mr. SCOTT. Suppose your evidence is that she thinks it is the guy, but she is not sure?

Ms. DEVILLIER. Well, then that would be divulged under Brady to the defense, certainly.

Mr. SCOTT. And could you get a conviction if the defendant—they know they did it? Would you be better off getting a plea and being finished with it than rolling the dice?

Ms. DEVILLIER. Judge, pleas are things that are definitely necessary, as I'm sure the judges know, to continue the criminal justice system to operate. If we had to try every case that we had, we would never get them all done. Sex cases involving minor victims are the most difficult cases to prove. Often your whole case comes down to the word of a child versus the word of an adult. Many of the offenses are not reported until much later. You rarely, if ever—you have sometimes physical evidence, but rarely do you have physical evidence. The child is often reluctant to participate. The family is not supportive.

We cannot mandate sex offender registration until we convict them. So these are the most difficult cases to get a conviction on. So, of course, we are going to want to, as morally I'm going to want to, prevent this trial—I don't want to revictimize this child by forcing them through a trial, And in that circumstance, I'm going to try to get a plea in that case. I'm just morally going to do that. And if I—if the defendant is saying, I'm not pleading to anything that makes me register for 25 years or life, then I've got to find somewhere else to go.

And I would just suggest that if we would just interpret the substantial compliance language in the act to mean substantial compliance, then, you know, Louisiana could leave some of those child sex cases in Tier I that would require 15 and give me some leverage in that process. But when you tie it specifically to the facts of my case, and I can't get around those facts because you're going to be looking at the underlying facts, it ties my hands as a prosecutor to get the plea.

Mr. SCOTT. Mr. Allen, you indicated that resources were scarce. The registration and notification isn't the only thing that you'd like us to be doing. What other initiatives could we be enacting, and what kind of priority would they have in front of or behind spending this money on SORNA?

Mr. ALLEN. Well, first of all, the Adam Walsh Act contains a variety of initiatives that have not been funded and have not been implemented, including enhanced treatment for juvenile sex offenders, community education, and prevention programs and initiatives. SORNA is one title of a large bill. So I think those kinds of initiatives.

One of the things, frankly, that we would like to see happen is to create greater specialization in this area. For example, the Dallas Police Department has what we believe is a model national program called SOAP. It is a Sex Offender Apprehension Program that aggressively and proactively goes after noncompliant offenders who represent the greatest risk. There was a provision authorizing funding for model units, specialized units in police departments around the country, not in the Adam Walsh Act, but in the PROTECT Act of 2003, that has not been funded.

I think the whole area of greater specialization, greater focus on this problem—I want to reiterate what I said earlier: We do not think that the Adam Walsh Act or SORNA are the be-all and the end-all.

And to your point about the lack of evidence that registration has reduced sexual crimes, my response to that would be the intent of this is less prevention than regulatory. I mean, that what the courts have said. The first sex offender registration act was passed in the 1940's in California. So that it is not intended to be the answer to the sex offender problem, it is intended to try to create a system in this country so that we don't send people forth and say, sin no more, commit no additional crimes, and there is no support or follow-up to keep those offenders from reoffending.

The systems of supervision in this country, State probation and parole, by and large are overwhelmed. It is another area where the Congress could provide additional leadership and support. We really need to know where these guys are for their own protection, to keep them away from employment situations where they have easy and legitimate access to children, to keep them out of risky behaviors that increase the likelihood of reoffense.

Mr. SCOTT. What kind of supervision are they under if they have just registered?

Mr. ALLEN. Well, under the Adam Walsh Act, far greater supervision than they get today. In most States, the current level of supervision is by mail. Somebody sends in a document that says, here is where I am, here is what I'm doing. There is no validation or

verification in that there is very little penalty, very little sanction for the failure to be compliant. So these horror stories, like John Couey, happened because there is a significant lack of supervision and oversight. That's what this bill was intended to do, to deal with the system in this country that frankly is smoke and mirrors, in which there is registration without accountability, without meaningful oversight, without follow-up.

Mr. SCOTT. Mr. Shilling, did you want to comment?

Mr. SHILLING. Well, I would just say that in the State of Washington, we actually go out and physically verify the address of every single sex offender when they have registered. And we go out on a regular basis. Sometimes they are the lower risk; sometimes it will be 6 months. If they are the higher risk, it can be anything from 90 days to once a week. But depending on the risk of the offender, we go out and physically verify their address. We don't take their word for the fact that I'm living here, because sometimes that is a parking lot. We want to go see where they are living. We want to see the clothes in the house. We want to see that they are getting mail there. We want to see that that is exactly where they are living.

Mr. SCOTT. Time has expired.

Mr. Gohmert.

Mr. GOHMERT. Thank you.

I guess to follow up on that, it was the Seattle Times that reported that Darrin Sanford, convicted sex offender with a history of failing to register as a sex offender, confessed recently killing a 13-year-old near Walla Walla, Washington. And Washington State does use this risk-assessment approach, and apparently he was under the State's highest level of supervision. Are you familiar—do you know what went wrong in that case? How did he end up with this great supervision to be able to go out and reoffend and kill another child like this?

Mr. SHILLING. Sir, he was listed as one of the highest risks to reoffend. And because of that, the Washington State Department of Corrections put him on electronic monitoring, and he committed his crime while he was under electronic monitoring, which is one of those things that, you know, we are saying, again, if you want to get somebody, if you want to commit a crime, it doesn't make any difference whether you have electronic monitoring, whether you have an Adam Walsh Act or what you have, they are going to do it. So we need to be better at figuring out who these higher-risk guys are and giving them higher supervision.

Mr. GOHMERT. In Texas, as a part of probation, I could lock somebody up no more than 2 years on probation. Is that a possibility under the probation in the high risk you're talking about?

Mr. SHILLING. We have a law that is called a recent overt act. So if they commit an act that appears to be a sex offense, we can have them brought into jail and held for civil commitment as a sexually violent predator. All we need to show is there was a recent overt act.

Mr. GOHMERT. Well, killing a 13-year-old ought to get you down the road for that. But, you know, we do have the risk assessment versus the offense-based. Mr. Allen, you've discussed this to some

extent, but what does your national center endorse when it comes to offense-based versus risk assessment?

Mr. ALLEN. Well, the issue is—I mean, there is an offense-based approach that is written into the Adam Walsh Act. And I think one of the big challenges is what is being done in the name of risk assessment across the country is wildly varying, and the whole question of whether it is based on factual information like offense as opposed to in some cases some States are trying to do clinical approaches where there are personal interviews. There is not a lot of evidence, frankly, that indicates that one is better than the other. And in my judgment, if the Congress is interested in approaching something like this, it should take the same kind of approach to create uniformity, because there aren't enough experts and clinicians to do it in the optimum——

Mr. GOHMERT. We have had people come in and say they are so good at risk assessing, they can tell you basically who would be next to offend almost. And I think about the movie with Tom Cruise, Minority Report, where, you know, supposedly a futuristic society has gotten so good that we just arrest people before they commit the offense.

So I feel like history is a good indicator as to future performance, and especially when it involves something as heinous as a sexual assault of a child.

I am sensitive to things like the ex post facto argument. It seems like that could be a problem where somebody pleads guilty under an agreement that they do not participate, that that does create some ex post facto issues, I would think.

And then I've been made aware of a divorce case where apparently sometimes the parents want to get after each other and do it through the kids and say, this 12-year-old offended with this other 11-year-old, and—so it stirs things up in the divorce.

So I can understand all that and wanting to be careful about that, but if somebody is 12 and is alleged to have fondled an 11-year-old, is that something that would require registration under SORNA?

Ms. ROGERS. No.

Mr. GOHMERT. Okay. Thank you. I appreciate you clarifying that. But there is a lot of misinformation out there.

I know that the Justice Policy Institute did what they call a study. Problems in there for me, it estimated Florida's cost of implementation be about 29 million, but the State estimated its own costs would be about 3 million. It estimated about $200 million would be coming from the Federal Government when actually it is $2.225 billion. And then there is some extrapolation that doesn't appear to be accurate. So it just seems like there is so much information that is misinformation.

Like we established at the first, we all want the same goal. We don't want another child like Jessica to ever have to suffer again. But we have got to get this right, and I appreciate my friend from Texas's point that I hate to see this delayed too much longer. We may need to fix some things, there may be some things that need dealing with, but we really need to get people who are registered who are potential threats. And if they are not in prison, and they

are at high risk because of the offense they committed, then people need to know about it so they can protect their own children.

Thank you very much, Mr. Chairman.

Mr. SCOTT. I thank the gentleman.

The gentleman from Texas.

Mr. POE. Thank you, Mr. Chairman.

I have a letter here from Susan Russell that outlines what happened to her when she was sexually assaulted after she was kidnapped and beaten with a tire iron, was left to die in the wilderness of Vermont, and was rescued by five teenagers.

I would like to ask unanimous consent to include this into the record.

Mr. SCOTT. Without objection, so ordered.

[The information referred to follows:]

March 8,2009

Dear Congressman Poe,

I am writing in support of SORNA/AWA. I am a survivor of violent crime. In 1992, a man by the name of Richard Laws, kidnapped, raped and beat me with a tire iron and then left me to die in a remote wilderness area in Hancock, VT. Fortunately, I was rescued by 5 teenagers camped a tenth of a mile from where I was left to die. At the hands of this man I suffered what is known in medical terms, a decompressed communicated skull fractured
And I also sustained some broken facial bones. Equally fortunate they caught this man 4 -days later and he plead guilty. He received 20-35 yr sentence, however, he will "max out" and be released back into Vermont with no one to supervise him in approximately 5 years. His only requirement will be to register with the sex offender registry.

According to a recent article in Vermont's newspaper "Times Argus" nationally speaking there is a high number of registered sex offenders who are not living at the address stated in the registry. This non-compliance must be addressed for safety of all United States citizens.

Vermonters last summer were shocked by the kidnapping, rape and murder of 12 yr old Brooke Bennett. Her uncle, Michael Jacques has been charged with this crime. Michael Jacques had an extensive violent criminal past. We know that he was convicted in 1992 for kidnapping and sexually assaulting an 18 yr old. He had several other similar convictions as well. Vermonters were outraged over the state's handling of his prior

cases and his subsequent release as he was able to continue to prey on innocent victims.

For the past few years I have been a member of Vermont's Department of Corrections Automated Victim Notification System Advisory Board. The Vermont VINES Program is set to begin its Automated Notification System April 27th 2009. Speaking both professionally and personally I know how important this type of legislation is and must be passed.

It is important to note that in response the murder of Brooke Bennett on Wednesday March 4th Vermont's Governor Douglas signed into law, S.13 an Act Relating to Improving Vermont's Sexual Abuse Response System. This is much needed legislation and focuses on the prevention, investigation, sentencing of sex offenders and their supervision after release. While I am delighted this bill has passed I am still concerned about the pending release of Richard Laws, as he will not have any supervision as noted above.

Please do not hesitate to contact me if I can be of any further assistance and/or if you have any questions.

Cc. VT Senator Leahy
Senate Judiciary Committee

Senator Richard Sears
Chair of VT Senate Judiciary

Representative Lippert
Chair of VT House Judiciary

Sincerely,
Susan S. Russell
1715 Prickly Mt. Rd.
Warren, VT 05674
russells@madriver.com
802-476-2669 (daytime w)

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Mr. POE. You know, we talk about the criminal justice system and what the purpose is. It would seem to me that it is twofold. One is that justice occurs for society, like victims, and also that justice occurs in the sense that we do not want offenders coming back in the system. Both of those things, I think, are the goal of what

occurs in the courtroom. We have tried everything in this country, and most of the time crime issues are State issues only.

You know, we started out with the stocks, and the public floggings, and the branding, and the hangings, and probation and jail, then suspended sentences, and therapy and counseling, and sending folks to prison. Yet here we are in 2009, in the State of Texas, with a large prison population. We know that, statistically, if you send somebody to the Texas penitentiary, 60 percent of them will reoffend with a felony within 3 years, will get caught and will go back. So we have to figure out a way to keep this cycle from continuing for all of the reasons you all have talked about, both from the offender's point of view and from the victim's point of view as well.

It is too bad that Ms. Jackson Lee has left. We sometimes disagree on things. That is why she sits on the far left and I sit on the far right, but on the issue of we need to get it done now——

Mr. SCOTT. Actually, you are on the left.

Mr. POE. But on the right from them. I have been accused of a lot of things, Mr. Chairman, but never of being on the left.

I think that we do not have the time. People do what is expected of them. States do what is expected of them. If they are given more time, they will wait until the last minute to do it. That is why, when I was a judge and ordered community service, I learned real quick if you gave people 100 hours of community service, in the last week of their 5-year probations, they wanted to do their 100 hours. That cannot get done, so I had to space it out and tell them how much they had to do each week.

The same is true of legislation. I think, if we postpone the implementing of this, we are going to have the same problem.

I will say that I think society has an interest in separating consensual sex among young people versus the kind of case that happened to Mark Lunsford's daughter so that when society pulls up on the Internet registered sex offenders, they know these are not consensual acts by the offender, and that we have to do something to clarify that.

We have picked an arbitrary year of 4. In Texas, it is 3. Maybe we ought to reexamine that whole issue about young people having consensual sex and then making the offender register for life. That is different than a stranger on stranger, an adult and minor child.

I would just ask Mr. Allen: What do you think about that and about tweaking the law so that that is very clear?

Mr. ALLEN. I think we are in complete agreement, the intent of this, and one of the reasons we and others argued for a tier-based approach is that we agreed with Ms. Carter in that all sex offenders are not alike. All sex offenders do not represent the same degree of risk or threat to the community, so the intent was to target the most dangerous, the most serious offenders. As I said earlier, we are not opposed to modifications that make this system work.

Mr. POE. I will ask both the prosecutor and the defense attorney what they think, just your opinions.

Ms. DEVILLIER. Yes, sir. Let me point out that Louisiana has worked very hard at implementing and in trying to do what we thought Congress was asking us to do, and we believed that we

have achieved substantial compliance with what you were asking us to do.

The problem is that the guidelines are now telling us, no, you did not do enough, and you need to do these things. Many States are taking issue with these things. So what you are asking us to do is to go to our legislature. Without extending the deadline, we have issues like the good issue you are bringing up now.

Mr. POE. Do you agree with what I just said?

Ms. DEVILLIER. Yes, absolutely.

What you are asking the States to do is to go forward with legislation when we are not sure that legislation is really what you want us to do. So that is why we are asking for breathing room, for a suspension of the time in order to get these issues ironed out with you guys so that we have a full understanding of exactly what it is you are asking us to do. Thank you.

Mr. POE. I guess my real question is: Do any of you think that that is something that ought to stay in play? What do you think?

Ms. BORROR. No. There definitely needs to be a distinction drawn between consensual acts and the violent, serious acts that we really want the registry to focus on. There are two reasons for that. One, you do not need to have those low-level offenders on the Internet registry. I believe that studies are showing that that actually increases the risk of recidivism and alienates them from their communities.

Two, doing that dilutes the registry, and it dilutes the manpower of the Detective Shilling and of other law enforcement. They cannot focus on just those high-risk offenders. So we need to have just the high-risk folks on there so it is an effective public safety tool, and so that we are not making law enforcement chase all of these red herrings.

Mr. POE. I think Congress needs to evaluate its priorities. Especially money should never get in the way of protecting children. So, if that is our obligation, Mr. Chairman, I think that we need to resolve that.

I yield back the remainder of my time.

Mr. SCOTT. Thank you.

I do not think you are going to have much debate about that. As a matter of fact, the tiered system was offered as a result of an amendment I offered to the original bill that did not have any tiered system. The idea, as we just heard, is you chase over low-level people who get tripped by, as you have suggested, consensual acts amongst teenagers, are getting treated the same as the violent criminals, as the older adults preying on younger children. They need to be separated.

Let me ask the panel: I think there is consensus that we need to get some kind of extension. There is a difference between taking issue with some things and just a simple extension. An extension of time, would that be sufficient? Is the problem then the regulations rather than the statute?

Ms. Rogers, do you want to comment? Obviously, we need some time here. Would just a straight extension of time fix most of the problems?

Ms. ROGERS. Sir, I just need to clarify that the Tier III sex offenders are only for violent, forcible offenses. A consensual sexual

act between a 19-year-old and a 15-year-old would not be found in that tier.

Mr. SCOTT. A 19-year-old, more than 4 years senior?

Ms. ROGERS. It has to be an aggravated sexual assault, a forcible sex crime, to be a Tier III.

Mr. SCOTT. More than 4 years senior, consensual sex between a 19½-year-old and just a 15-year-old would not require registration; is that what you are saying?

Ms. ROGERS. No.

Mr. SCOTT. No, that is not what you are saying, or, yes, that is what you are saying?

Ms. ROGERS. It would not require Tier III registration as a violent sex offender. It may require registration. It may not. If it is charged as a misdemeanor, it may not require registration.

Mr. SCOTT. Once you get on this list, I mean, you are on the list as a sexual offender. What we have heard is that that can be counterproductive because once you are on a publicly accessible registry, your life is pretty much shot.

Ms. ROGERS. But it also may be a charge that is not even included under SORNA and may not require registration. Not every sex offense is a registrable offense under SORNA.

Mr. SCOTT. Right. We said a 19½- and a 15-year-old, consensual sex. Does a 19-year-old have to register in a publicly accessible registry of sex offenders?

Half the people in the audience are nodding their heads "yes."

Ms. ROGERS. There are a lot of issues that would have to be examined. It would depend on how it is charged in that particular jurisdiction, if it is covered under SORNA, how the case is resolved. What I am telling you is there is a discussion that it would be as a violent sexual offender, and I just need to clarify this.

Mr. SCOTT. However you have to register yourself, you are on a sexual offender register for an offense where there is a 19½-year-old high school senior and a 15-year-old. Add up the months. It is more than 4 years. They get caught. Is that something where someone would have to be registered for at least a decade?

Ms. Devillier, do you want to respond?

Ms. DEVILLIER. I would love to, because Louisiana's statute is just that—carnal knowledge. Some States refer to it as "statutory rape." Ours is that we have been told by the SMART office, in our response for substantial compliance, that that carnal knowledge statute, which is exactly what you just described, requires Tier II—25 years of registration without relief.

Mr. SCOTT. Well, I guess there are some of those issue we might have to deal with.

Are you asking for a delay, Mr. Allen? How long do we need to delay?

Mr. ALLEN. I think the answer is dependent on the ability of Congress to provide significant funding to help the States with compliance. I do not know whether that answer is 1 year or 2 years. We have heard from a lot of the States. We do not pretend to be the SMART office or to have the knowledge——

Mr. SCOTT. But listening to people talk about the cost of compliance, about $30 million is for California. California is about 10 per-

cent of the Nation, so you are talking about several hundred million dollars.

Mr. ALLEN. Well, first of all, we do not believe that $30 million number is the right number.

Mr. SCOTT. But we also heard about $12 million for Virginia. I mean, you are talking the same order of magnitude.

Mr. ALLEN. I think there is $1 billion. I mean, the ultimate act basically says such funds as are necessary, but in the original scoring by the CBO, it talked about, as I recall, $1.2 billion over 5 years. That included both building the law enforcement capacity and money to help the States comply. I do not know whether it is $1 billion or $100 million or what the number is, but what we hear from the States—and the issues you have heard today we certainly hear, and these are real issues—but overwhelmingly what we hear from the States is that the number one issue is the cost of compliance. It is simply going to cost more than the loss of the Byrne grant moneys justifies. So I think that is a very significant point.

Mr. SCOTT. Part of that calculation is if they spent that kind of money, would they reduce the incidence of crime. I mean, I do not think there would be much question in the minds of States that they would go ahead and spend the money if they were convinced that it would have a significant impact on crime. If it does not have a significant impact on crime, then the question is whether they are going to lose more money or are going to gain more money. The discussion ought to be whether or not these are reasonable expenditures if your goal is to reduce these kinds of crimes.

Mr. ALLEN. I think the answer is we do not have a choice but to do it. I mean, the reality is what Washington State is doing is what every State ought to be doing. They have been doing it since 1991. They do follow-up. They do visits. A lot of other States are basically determining that the offenders are there because of a piece of mail.

This is a protection initiative, not as much a prevention initiative, but I do think it will help reduce crime. We are not proposing to do this with other categories of criminal offenders. The courts have said this is regulatory, not punitive.

The system in place today in most States—I am not suggesting Washington State or in some of the other States here—but in most States, the system just does not work, and there needs to be a commitment, whether it is with Federal dollars or with State dollars, to do meaningful follow-up and oversight of this category of offenders. Right now it is not being done in most of America.

Mr. SCOTT. Are there other responses?

Ms. DEVILLIER. Mr. Chairman, are you talking about the extension now? Is that your question?

Mr. SCOTT. Yes.

Ms. DEVILLIER. What we would suggest is that the reopening of the guidelines might instruct the Committee as to how long of an extension needed to be had, and we certainly would recommend to the Committee that you have some task forces put together to instruct you on these issues that the States are having.

Again, we are committed with you to having those appropriate sex offenders registered, those who have a risk of reoffending, but there are significant issues in here that need to be addressed

maybe not only with the guidelines, but some with the act, like the Ranking Member commented about the age limits.

As to juveniles in this case, the guidelines say that we have to register juveniles. Someone gave the example of an 11- or a 12-year-old forcibly fondling an 11-year-old who does not have to register, but if it is a 14-year-old who does it to that 11-year-old, interfamilial, they will have to register. These are issues that States are grappling with.

I would suggest to the Committee that we put together task forces and that we delay the implementation until we can get these issues resolved posthaste. We are ready, willing and able to work with the Committee, and we encourage you to get all stakeholders together to help you and us come to something that will lead us to some more uniformity, reasonable uniformity, about our sex offender policy in this Nation. Thank you.

Mr. SCOTT. Thank you.

Ms. ROGERS. Sir, with respect to the implementation by tribal jurisdictions, SORNA allowed for two 1-year extensions for tribes, and then that they comply within a reasonable time period, but there is no definition with respect to what that reasonable time period is. So even the SMART office, during my tenure, we were at a little bit of a disadvantage in knowing what to tell tribes with respect to their deadline for implementation.

Mr. SCOTT. Thank you.

If there are no other comments—last comment.

Mr. SHILLING. Mr. Chairman, as I was sitting in Seattle yesterday pondering my testimony and waiting for a snowstorm to clear, I was watching CNN. I saw President Obama signing the stem cell research Executive Order.

One of the things that he said is: That is why today I am also signing a Presidential memorandum directing the White House Office of Science and Technology Policy to develop a strategy for restoring scientific integrity to government decisionmaking to ensure that in this new Administration we base our public policies on the soundest science; that we appoint scientific advisers based on their credentials and experience, not on their politics or ideology; and that we are open and honest with the American people about the science behind our decisions.

When I saw that, it was like a light bulb went on. I thought: That is the whole reason for this testimony. That is the whole reason I am going to Washington, DC, because we are not saying get rid of the Adam Walsh Act. To the contrary, there are many good things about it, but there are also some things that really need some reworking.

What I am asking you to do is set up a panel of experts to help you fix this so that it is workable and so that we can protect our children in the best way possible.

Thank you.

Mr. SCOTT. A closing comment or closing questions from Judge Gohmert.

Mr. GOHMERT. That is so ironic. You were sitting there, suffering the effects of global cooling in the snowstorm, listening to the discussion about science being so important in the discussion of stem cells, of which there are very varied opinions. So that is one of the

problems we have here. There are very diverse opinions, and it is getting down to what are the facts, because opinions are like noses. All of us have one. We need to get to the real facts.

Thank you very much for your testimony.

Mr. SCOTT. I would like to thank all of the witnesses for their testimony. Members may have additional written questions for our witnesses, which we will forward to you and will ask you to answer as promptly as you can so that the answers may be part of the record.*

Without objection, the hearing record will remain open for 1 week for the submission of additional materials.

Without objection, the Subcommittee stands adjourned. Thank you very much for your testimony.

[Whereupon, at 4:49 p.m., the Subcommittee was adjourned.]

*Note: There were no additional questions submitted to the witnesses.

# APPENDIX

## Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE LOUIE GOHMERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Statement of Crime Subcommittee Ranking Member Louie Gohmert
"Oversight Hearing on Implementation of the Sex Offender Registration and Notification Act"
March 10, 2009

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Thank you, Chairman Scott.

In 2006, Congress passed the Adam Walsh Act to protect the public, particularly children, from sexual predators. The Adam Walsh Act included the Sex Offender Registration and Notification Act or "SORNA", which was enacted to create a consistent and uniform system of sex offender registry throughout the country.

This system would enable law enforcement officials and the public to better track sex offenders. SORNA would also prevent offenders from eluding the authorities, especially when they move out of state.

The deadline for state compliance with SORNA is July 27, 2009. The Act directed the Department of Justice to certify that

states are compliant with SORNA, but it allows the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking or "SMART" Office to give states up to two one-year extensions to comply with SORNA. To date, no state has been certified as SORNA compliant, but a number of states have requested an extension.

If a state does not comply with SORNA, the Department of Justice may penalize the state by eliminating 10% of the award of any Byrne JAG crime prevention grants for which the state may be eligible.

Regarding cost, some states calculate that losing a portion of their Byrne JAG funds would be far less expensive than meeting SORNA's requirements. However, considering that Congress has appropriated $2.225 billion in Byrne JAG funding for this year – compared with last year's amount of $374 million – I would hope that many state officials are rethinking that position.

Clearly this huge increase of funding will do more to offset the cost of state implementation of SORNA.

Some states take issue with SORNA's "offense-based" approach of categorizing sex-offenders by their crimes and requiring individuals who committed similar crimes to have similar registration obligations. These states advocate a "risk-assessment" approach to registration that utilizes actuarial tools to predict recidivism by taking individual criminal history, victim profile, and age of the offender into account. However, there is little consistency to these various programs. They are not uniform in the criteria they apply nor in who performs the assessments. This creates discrepancies over which sex offenders should be tracked nationwide.

Despite these discrepancies, risk assessment states allege their approach is better than SORNA's offense-based approach. Washington State uses the risk-assessment approach, but it

could not properly track Darrin Sanford, a convicted sex offender with a history of failing to register as a sex-offender. Sanford had been identified as a person with a high likelihood to reoffend, so much so that he was forced to wear a GPS tracking device. Although Mr. Sanford was released under Washington's highest level of supervision, this did not stop him from assaulting and killing a 13-year-old girl in Walla Walla last month, a crime to which he later confessed

Until there is some uniformity to these risk assessment programs and they demonstrate a better track record, I believe the most reliable approach is to track offenders by offense and to lock up those who fail to register.

Some states and advocates claim that SORNA should not require that states register juveniles because they are more amenable to treatment and are therefore less likely than adults to become recidivists. However, SORNA does not track all

juveniles, but only those who were tried as adults because of the severity of their offenses or juveniles who were adjudicated delinquent for sex offenses that involved use of force, serious bodily harm, or involved a victim that was drugged or under the age of 12.

A number of lawsuits have challenged the constitutionality of SORNA. At least 18 federal trial courts have upheld SORNA, while three others have found it violated the commerce clause. However, of the 12 federal appellate circuits, three – the 7th, 8th and 10th – have addressed the commerce clause issue, and all have upheld the statute. At this point, the courts have determined that SORNA is clearly constitutional.

I believe that suggestions that Congress "water-down" or gut SORNA are premature at this time. The first deadline has not passed, and all states can still seek extensions of time. Before

we hastily pass judgment over the Adam Walsh Act, we must remain mindful of the need to effectively track sex offenders.

I had hoped that John Walsh could serve as a witness at this hearing, but he was unable to come today. We all know Mr. Walsh for his decades-long career as an advocate for missing children and crime victims. The 27-year-old investigation into the murder of his six-year-old son Adam was closed by Florida police in December of last year. I am sure that this brought some closure to the Walsh family. Mr. Walsh was a tireless supporter of the legislation that bears his son's name. He has submitted a written statement to the Subcommittee in support for SORNA and the other child protection laws in the Adam Walsh Act. I ask unanimous consent that his statement be entered into the record.

Thank you and I yield back the balance of my time.

PREPARED STATEMENT OF THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

Statement of Judiciary Committee Ranking Member Lamar Smith,
Subcommittee on Crime, Terrorism, and Homeland Security
"Oversight Hearing on Implementation of the Sex Offender Registration and Notification Act"
March 10, 2009
(Final)

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**Thank you, Chairman Scott.**

**This past weekend, on Saturday afternoon, 13-year-old Esme (es-MEE) Kenney from Ohio went for a jog in her neighborhood. She took her usual route along a water reservoir near her house. Tragically, Esme (es-MEE) never made it home. Her body was found on Sunday morning.**

**Local police have arrested 40-year-old Anthony Kirkland for her murder. Kirkland was previously convicted of sexually soliciting another 13-year-old girl. And just last week, a warrant was issued for his arrest for failing to update his address as a sex offender.**

**Kirkland also is a suspect in two additional murders: one involving a 14-year-old girl and another involving a 45-year-old woman.**

**While Esme's (es-MEE's) family and friends grieve, there are a lot of questions that need to be answered. Why was a dangerous convict like Kirkland allowed to roam the streets? Would Esme (es-MEE) still be alive if Kirkland had registered his current address? And how can we prevent this from happening again?**

**This sad story is all too real for one of our witnesses today. Following the brutal murder of his own daughter, Mark Lunsford has ~~engaged in~~ begun a nationwide crusade to protect our children. He has fought for legislation to provide more stringent tracking of released sex offenders and has urged legislatures to adopt longer sentences for criminals who sexually abuse children.**

**This type of legislation—often called "Jessica's Law" in remembrance of Mr. Lunsford's daughter—has been introduced or adopted in 42 states, a real credit to him.**

**As we listen to testimony and consider Congressional action, we must remember Esme (es-MEE), Jessica and thousands of other young child-victims. We have a solemn duty to protect the most vulnerable among us. Congress should take additional steps to give law enforcement officials the tools they need to keep our children safe.**

**In 2006, Congress passed the Adam Walsh Act to better protect children from sexual predators. A number of the Adam Walsh Act grant programs that were authorized to help states improve sex-offender registration will expire at the end of this year.**

**These programs were established to enable the Justice Department and state and local law enforcement agencies to track and apprehend absconders from the Sex Offender Registry. Individuals like Anthony Kirkland.**

**That's why I and others introduced legislation to reauthorize these programs for the next five years. I am hopeful that after today's hearing, many of our colleagues on the other side of the aisle will join us as well.**

**One of the six programs reauthorized by this legislation is the Jessica Lunsford Address Verification Grant Program. This program provides grants to states, counties, cities, and Indian Tribes so they can verify the addresses of registered sex offenders.**

**Unfortunately, many of the Adam Walsh Act programs, including the Jessica Lunsford Grant program, have received insufficient or no direct funding from Congress.**

**Congress is willing to tackle the economic crisis and budget issues. But we should not lose sight of other Congressional priorities. Keeping children safe from sexual predators is not about partisan politics, it's about children like Esme (es-MEE), Jessica and the thousands of other child-victims nationwide.**

**Today, we should begin a bipartisan effort that will help protect children tomorrow. It is my hope that as a result of sex offender registration legislation, fewer families will have to face the loss of a child in the future.**

**###**

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman, for your leadership in convening today's very important hearing on the Sex Offender Notification and Registration Act (SORNA): Barriers to Implementation

The Sex Offender Registration and Notification Act (SORNA) became public law on July 27, 2006, as Title I of the Adam Walsh Act. It created a national registry for all sex offenders, and required States to participate in and comply with the requirements of SORNA or lose 10% of Byrne Grant funding. The deadline for compliance by States is July 2009, and to date not a single state has been found in compliance. SORNA authorizes the AG to give two one-year extensions upon request. According to the Department of Justice (DOJ) website, twelve states, four Tribes, and Guam have received a one-year extension. My State of Texas is not one of them.

In fact, a New York Times article recently reported that the DOJ admitted that as of December 2008, only four states, Arizona, Idaho, Louisiana and Ohio, had tried to fully comply with SORNA. In January 2009, the DOJ denied Ohio's application.

Timely compliance by any state is doubtful. The Office of the Inspector General (OIG) concluded last December that the States "will not fulfill their SORNA requirements by July 2009," according to an evaluation by the Office of Inspector General, U.S. Department of Justice.

The purpose of this hearing is to explore and gather information about problems with implementation of SORNA, to consider whether Congress should extend the current deadline of July 2009, as urged by many including John Walsh—the father of the namesake of the Adam Walsh Act, and to seek alternatives to the present barriers.

SORNA established a national sex offender registry with the hope that sex offenders could not evade detection merely by moving from one state to another. It also sought to eliminate discrepancies among state registration and notification systems that might hinder public safety.

Under SORNA, each jurisdiction must change its own State sex offender registration and notification system so that it complies with detailed requirements set forth in SORNA. The information input into each jurisdiction's registry is then merged into a national registry. If a jurisdiction fails to comply with SORNA, the jurisdiction loses 10% of its Byrne Grant funding.

SORNA requires all individuals convicted of a sex offense to register. Sex offense is defined to include all criminal offenses with an element of sexual act or sexual contact with another. It also includes certain specific crimes against minors, which is defined to include offenses against a minor that involve kidnapping; false imprisonment; video voyeurism; solicitation to engage in sexual conduct; solicitation to practice prostitution; possession, production, or distribution of child pornography; and other listed offenses.

There is an exception to the definition of "sex offense" for consensual sexual conduct if the victim was an adult (and not under the custodial authority of the offender at the time of the offense) or the victim was at least 13 years old and the offender was not more than four years older than the victim. A foreign conviction also is not considered a sex offense under SORNA "if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations" established by the Attorney General.

There are certain problems with SORNA that many seek to address. For example, SORNA requires juvenile sex offenders aged 14 and older to register, even when the juvenile was not tried as an adult, if the offense is comparable to or more severe than aggravated sexual abuse. For juveniles who fall within this category, registration and notification requirements are the same as for adults.

Under SORNA, all sex offenders must report in person. The frequency and duration of these reporting requirements vary depending on a three-tier classification based solely on the offense of conviction. The length of the registration periods range from a minimum of 15 years to a maximum of life, and the frequency of reporting varies from every three months to once every year.

Under SORNA, offenders must provide their name, social security number, home address, name and address of employer, name and address of school, license plate number and description of vehicle, and any other information required by the Attorney General. Each jurisdiction must provide a physical description of the offender; the text of the law defining the offender's criminal offense; the criminal history of the offender; registration status and outstanding arrest warrants; a current photograph; a set of fingerprints and palm prints; a DNA sample; a photocopy of a valid

driver's license or identification card issued by the jurisdiction; and any other information required by the Attorney General.

SORNA does endeavor to protect certain information. For example, SORNA prohibits a jurisdiction from publicly revealing the identity of the victim, the social security number of the offender, arrests that did not result in a conviction, and any other information exempted from disclosure by the Attorney General.

Each jurisdiction is given discretion on whether to publicize the name of the employer and school, and any information about a "tier I" sex offender unless convicted of a specified offense against a minor. A "tier 1" sex offender is an offender that does not fall within the definition of the other two tiers. It includes all misdemeanor offenses, as well as any other sex offense not otherwise listed.

All other information *must* be input into the public registry. Each registry also must have search capabilities.

SORNA imposes stringent notification requirements on jurisdictions. After each registration, including both the initial registration and each update, the official must notify: (1) the Attorney General; (2)law enforcement; (3) school and public housing agencies in each area in which the offender lives, works, or attends school, and each jurisdiction from or to which a change in residence, work, or schooling occurs; (4) any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993; (5) social service entities responsible for protecting minors in the child welfare system; (6) volunteer organizations in which contact with minors or other vulnerable individuals might occur; and (7) any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction.

Finally, SORNA regulations state that it took effect on the date of enactment, July 27, 2006, and has retroactive application; it applies to all sex offenders, "including those whose convictions predate SORNA's enactment.

SORNA, with its goal of national uniformity, limits a State's discretion on how to establish and run its own State registry. To comply with SORNA, States must change their own systems to comply with the federal system. The extent of that change depends on each State's existing State registry program. As a result of the national "one-size fits all" approach, however, compliance appears to have become a complicated and costly endeavor, and certain States and State organizations have voiced concerns about SORNA or portions of SORNA.

Existing barriers to and complaints about SORNA focus on five main areas, which often overlap:

- SORNA's use of an offense-based classification system instead of one based on risk assessments;
- SORNA's mandatory inclusion of certain juveniles as young as 14 years old, even when not tried as adults and merely adjudicated of offenses;
- Mandatory retroactive application of SORNA;
- Legal impediments to implementation; and
- The high cost of implementing SORNA as compared to its benefits and the loss of Bryne Grant monies.

Again, thank you Mr. Chairman. I yield the remainder of my time.

# National Association of Criminal Defense Lawyers

John Wesley Hall
President

March 23, 2009

The Honorable Bobby Scott
Chairman
Subcommittee on Crime,
Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Louie Gohmert
Ranking Member
Subcommittee on Crime,
Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

***Re: March 10, 2009 Hearing on "Sex Offender Registration and Notification Act (SORNA): Barriers to Timely Compliance by States"***

Dear Chairman Scott and Representative Gohmert:

We are writing on behalf of the National Association of Criminal Defense Lawyers concerning the Sex Offender Registration and Notification provisions of the Adam Walsh Act and the ability of the States to comply with that act. We appreciate this opportunity to include our views in the record for the recent hearing on state compliance with the Offender Registration and Notification Act (SORNA). We commend recent congressional efforts to encourage a nationwide extension of the July 2009 deadline for state SORNA compliance. Congress should take advantage of this period to reexamine SORNA's mandates, which NACDL believes are deeply flawed.

At the outset, it must be recognized that much of the public understanding about sex offenders is steeped in myths. SORNA perpetuates these myths and undermines public-safety goals.

Myth #1: Sex Offender Recidivism. Despite popular belief that sex offenders have high rates of recidivism, the actual evidence reveals otherwise. Sex offenders actually have lower rates of recidivism than all other categories of convicted persons. Research demonstrates that sex offenders are far less likely to repeat their crimes once caught and punished. A study conducted by the United States Justice Department revealed that only 5.3% of persons convicted of a sex crime will commit will be arrested for another sex crime and that only 3.3% of persons convicted of child molestation crimes will be

arrested for another sex crime against children.[1] These recidivism rates are substantially less than equivalent rates for other offenders.[2] Studies conducted by other jurisdictions corroborate these findings.[3]

Research also reveals that sex offenders who receive treatment, especially in a group setting are even less likely to re-offend than the general cohort of sex offenders.[4] As early as 1991 research indicates recidivism rates amongst sex offenders who engage in sex offender programming and treatment while incarcerated are lower than recidivism rates for the average convicted felon.[5] More recent studies have confirmed these findings.

Myth #2: Prevalence of Stranger Assault. The second sex offender myth is that strangers pose the highest risk for sexual assault to our children. In fact the opposite is true. The vast majority of sexual assaults on children are committed by people known to the child victim and many are committed in the child victim's own home.

These misunderstandings about sex offenders are the basis upon which the Adam Walsh Act and SORNA are based. As a result, SORNA and its regulations require that states base their registration and notification programs entirely in the offense of conviction and penalize states that seek to employ a more rational risk-based approach. Second, SORNA discourages due process of law in the registration context. Finally, SORNA is unfair and unnecessary when it

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[1] Bureau of Justice Statistics, *Recidivism of Sexual Offenders Released From Prison in 1994*, November, 2003.

[2] The overall re-arrest rate generally for all people released from prison was 68%. People convicted of theft offenses were re-arrested the rate of 77% and motor vehicle thieves were re-arrested at the rate of 79%. *Id.*

[3] Hanson R.K. and Morton Bourgon, R.K., *Predictors of Sexual Recidivism: An Updated Meta-Analysis,* Public Safety and Emergency Preparedness Canada (2004); Harris and Hanson, *Sex Offender Recidivism: A Simple Question* (2004); Hanson, R.K. and Bussiere, M., *Predicting Relapse: A Meta-Analysis of Sex Offender Recidivism Studies*, Journal of Consulting and Clinical Psychology (1998); State of Washington Sentencing Guideline Commission, *Special Sex Offender Sentencing Alternative Report (2004)*; State of Ohio, *Ten year recidivism Follow Up of 1989 Sex Offender Releases* (2001).

[4] Losel, F., & Schmucker, M., *The Effectiveness of Treatment for Sexual Offenders: a Comprehensive Meta-analysis.* Journal of Experimental Criminology, 1, 117B146 (2005); Hanson, R. K., Gordon, A., Harris, A. J. R., Marques, J. K., Murphy, W., Quinsey, V. L., & Seto, M. C. *First Report of the Collaborative Outcome Data Project on the Effectiveness of Treatment for Sex Offenders.* Sexual Abuse: A Journal of Research and Treatment, 14(2), 169-194 (2000)

[5] Berlin, Hunt, et al., *A Five Year Plus Follow Up Survey of Criminal Recidivism within a Treated Cohort of 406 Pedophiles, 111 Exhibitionists and 109 Sexual Aggressives: Issues and Outcome* (1991.)

comes to juvenile offenders.

SORNA Should Permit Registration Based upon True Risk Evaluation.

NACDL generally opposes sex offender registration and community notification laws because they are based on the aforementioned misunderstandings surrounding sex offender recidivism and the true nature of child sexual assaults. Research suggests that community notification laws do little to reduce recidivism.[6] At least one study found that "the passage of sex offender registration and notification laws have had no systematic influence on the number of rapes committed" in the jurisdictions which were studied.[7]

If such laws are passed, they should classify offenders based upon true risk, with full due process of law, and community notification provisions should be reserved for offenders who are at a high risk to re-offend. Unfortunately, SORNA does not permit classification based on true risk.

Sound research demonstrates that sex offenders are not a homogeneous group and come from a wide range of offenders including the rare but highly dangerous, treatment resistant offender as well as the more common offender who, once convicted, is unlikely to commit additional offenses. Requiring the same registration and notification provisions for all sex offenders or based solely on the offense of conviction diminishes the ability of the community to ascertain the truly dangerous sex offender. It also undermines the ability of the non-dangerous sex offender to maintain employment, family ties, and treatment programs.[8] NACDL believes that a determination of offender risk must be based upon the individual characteristics of the offender and not solely on the offense for which the offender was convicted. In fact, many states now have registration and notification programs which are tiered upon the basis of individual risk assessment studies performed by competent mental health professionals. SORNA penalizes those states that have chosen to perform a true risk analysis of each sex offender rather than the cookie cutter approach of SORNA.

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[6] *See* Welchans, S., *Megan's Law: Evaluations of Sexual Offender Registries,* 16 Criminal Justice Policy Review, 123-140 (2005)

[7] *See,* Jeffrey T. Walker, et al., *The Influence of Sex Offender Registration and Notification Laws in the United States*, available at: http://www.acic.org/statistics/Research/SO_Report_Final.pdf#search=%22Walker%2C%20J.T.%20AND%20sex%20offender%20registration%22

[8] *See,* Jill S. Levenson and L. Cotter, *The Impact of Megan=s Law on Sex Offender Reintegration*, 21 Journal of Contemporary Criminal Justice 49 (2005); Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 Journal of Contemporary Criminal Justice 67 (2005).

SORNA Discourages Due Process of Law

The SORNA one-size-fits-all registration and notification scheme discourages due process of law. Many offenses that implicate registration under SORNA may be committed by people who do not pose any kind of ongoing sexual threat to the public. Placing a person on a public sex offender list not only impairs successful reintegration, but also demands significant resources on the part of the government and law enforcement. Merely tracking thousands of former sex offenders requires significant law enforcement resources. The fact that thousands of former sex offenders will be unable to find employment and housing will impact the social services system.

For these reasons, only those who pose a risk to the public should be placed on sex offender registries. This determination can only be made if the person is evaluated and all the factors of the offense, the evaluation, and other relevant circumstances are considered and subject to review. Notice and hearing are necessary to allow development of all the relevant facts. These simple due process provisions should not be ignored when the stakes are so high for the offenders, the government and the public. SORNA and its regulations should be amended to allow the States the leeway to provide due process.

Children are Different

The NACDL opposes the application SORNA to any juvenile offender for four basic reasons: 1) juveniles have lower offense rates recidivism rates; 2) registration interferes with effective treatment and rehabilitation; 3) public registration puts kids at risk of exploitation; and, 4) brain development continues until a person is in their early 20's (regardless of whether the person has been legally certified as an "adult").

Juveniles Have Lower Offense Rates. According to the National Center on Sexual Behavior of Youth (based on research sponsored by the US DOJ), juveniles have lower offense rates, commit less serious and less violent sexual offenses, rarely become sexual predators as adults and have lower recidivism rates than adults. They also have lower recidivism rates than juveniles who commit other crimes. In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even though the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.[9]

Juvenile Registration Interferes with Effective Treatment and Rehabilitation. Requiring public registration of juveniles is contrary to the core purposes, functions and objectives of the juvenile justice system in that it strips away the confidentiality and rehabilitative emphasis that form the basis of effective intervention and treatment for youthful offenders. The public shaming of a child will likely have a chilling effect on the identification and proper treatment of youth who

[9] Zimring, F.E. (2004). An American Travesty. University of Chicago Press

exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seeking appropriate treatment, parents will be more inclined to hide their child's problem and not seek help when they learn that their child may be required to register for life as a sex offender. Parents will also fear the stigma that will be placed on the entire family and on the offender's innocent siblings.

In addition, public registration and community notification requirements can complicate the rehabilitation and treatment of these youth. Youth required to register have been known to be harassed at school, forcing them to drop out.[10] The stigma that arises from community notification serves to exacerbate the poor social skills many juvenile offenders possess destroying the social networks necessary for rehabilitation.[11]

Public Registration Puts Kids at Risk of Exploitation. Registering juvenile offenders undermines public safety objective of protecting the public from sex offenders and offenders against children. SORNA registration will expose vulnerable youth who are clearly already struggling with sexual boundary issues to adult offenders who have not sought or benefitted from treatment. Just as members of the public will be able to access the registry via the Internet and identify offenders in any and every community, adults who are inclined to exploit and abuse children and youth will be able to access the registry via the Internet and identify SORNA registered youth in the community.

Brain Development Continues Until a Person Is In Their 20s. Adolescence -- the period of growth between the onset of puberty and maturity -- spans from age 10 to age 25. The brain develops well into a person's early 20s. The prefrontal cortex, which is responsible for decision-making and impulse control, is the last area of the brain to mature. Holding juvenile offenders responsible for actions that take place when they quite literally are not functioning with their whole brain is unjust and poor policy. In 2005, the U.S. Supreme Court outlawed the juvenile death penalty based in part on the research into brain development that has been done in the last 10-15 years. The fact that a juvenile has committed an offense as an adolescent should not condemn him or her to a lifetime of punishment, public ridicule and suspicion. SORNA compliance guarantees that result. The statute and the regulations should be amended to prohibit the public registration of juvenile offenders.

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[10] Freeman-Longo, R.E. (2000). Pg. 9. *Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem.* American Probation and Parole Association. http://www.appa-net.org/revisitingmegan.pdf

[11] Garfinkle, E., Comment, 2003. *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles.* 91 California Law Review 163.

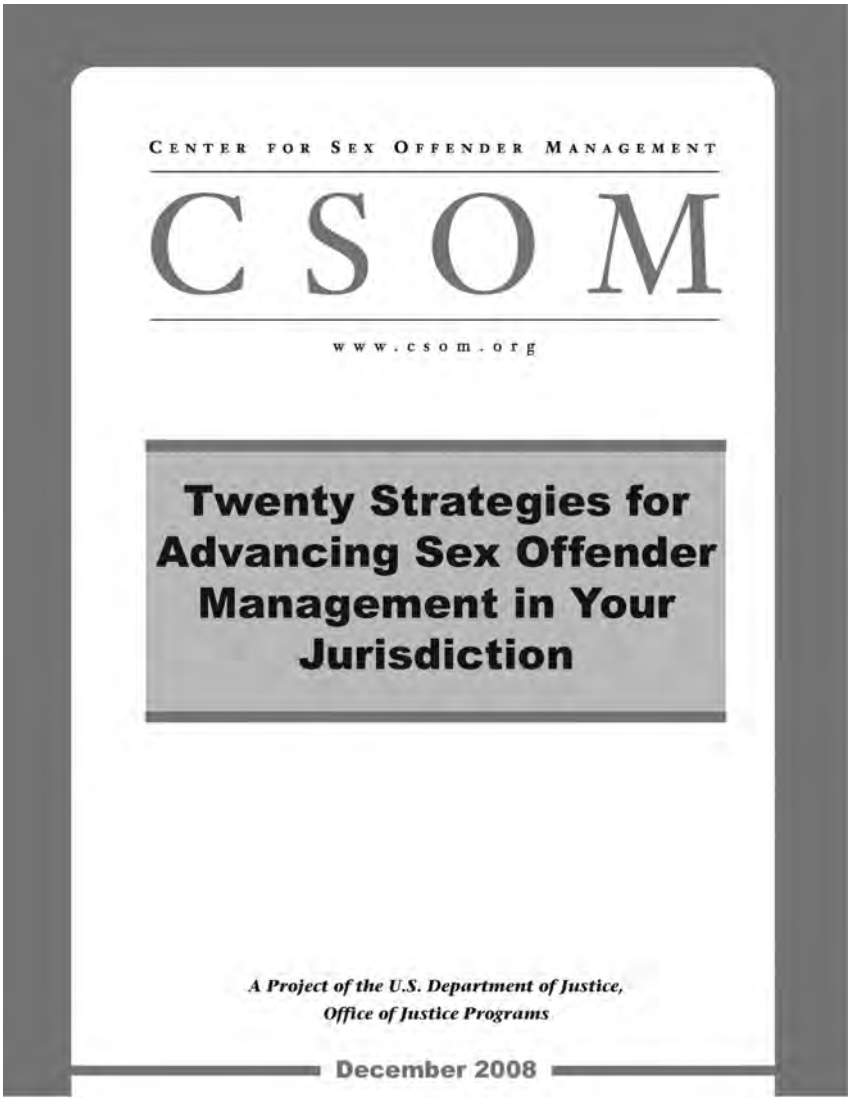
In summary, NACDL believes SORNA should be amended to allow the states to employ rational risk-based evaluation techniques in the registration of sex offenders. Any process that requires public registration should include appropriate procedures to protect due process rights. Finally, SORNA registration should be eliminated for juveniles.

Thank you for considering our views on this matter.

Sincerely,

John Wesley Hall
President
National Association of
Criminal Defense Lawyers

Michael J. Iacopino
Chair
Sex Offender Policy Task Force
National Association of
Criminal Defense Lawyers


CENTER FOR SEX OFFENDER MANAGEMENT
CSOM
www.csom.org
Twenty Strategies for Advancing Sex Offender Management in Your Jurisdiction
A Project of the U.S. Department of Justice, Office of Justice Programs
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We also want to express our sincere gratitude to the jurisdictions that allowed us to represent their work in this document. These brief case studies only provide a small window into their tremendous accomplishments and their tireless commitment to end sexual violence.

## About CSOM

Established in June 1997, CSOM's goal is to enhance public safety by preventing further victimization through improving the management of adult and juvenile sex offenders. A collaborative effort with funding from the U.S. Department of Justice, Office of Justice Programs, among other sources, CSOM is administered by the Center for Effective Public Policy.

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# Table of Contents

# Introduction

The goal of sex offender management is to promote public safety by reducing the risk of recidivism among sex offenders. Significant advancements have been made in the field of sex offender management in recent years. These include a clearer understanding of the adults and juveniles who commit these offenses, of the interventions and strategies that have been demonstrated through research to be effective and that appear to have great potential in reducing risk, and of methods and processes for engaging partners and equipping and supporting staff to manage these cases.

This document was developed for policymakers interested in advancing adult and juvenile sex offender management in their jurisdictions. Based upon both research and practice, we offer 20 strategies that hold promise for reducing risk and promoting safe communities. Each strategy is illustrated by a case study representing one jurisdiction's efforts to thoughtfully advance practice. These policy and practice initiatives, the underlying rationale and available evidence supporting them, and the accompanying jurisdictional case studies together represent the tremendous progress that has been achieved in our nation's continued efforts to prevent further sexual victimization.

# 1 Establish a Comprehensive, Ongoing Assessment Process

Although the label "sex offender" suggests that the individuals who commit sex offenses are essentially the same as one another, in actuality, they are a very diverse population. Sex offenders vary in terms of demographics, range of offending behaviors and patterns, motivations, intervention needs, and levels of risk posed to the community. This diversity means that "one size fits all" strategies will not be effective; rather, individual case management decisions should be based upon what is known about a given offender at a given point in time. A comprehensive, ongoing assessment process provides the mechanism for making informed and effective decisions on a case-by-case basis. Such a process is characterized by:

**The use of empirically based assessment tools developed specifically for sex offenders:**
These instruments (e.g., STATIC-99, RRASOR, VASOR, STABLE- and ACUTE-2007) provide estimates of recidivism and/or help identify specific risk factors that are linked to recidivism. They are useful for informing sentencing and release decisions, intensity of interventions (i.e., more intensive supervision, monitoring, and treatment for higher-risk offenders), targets of intervention, and application of registration and community notification laws. Initial assessments of each offender provide a baseline for guiding early case management decisions; ongoing assessments of each sex offender capture changes in risk over time and ensure that case management strategies can be adjusted accordingly.



**The use of multiple assessment instruments and multiple data sources:**
Although empirically based sex offense-specific assessment tools are fairly reliable, no instrument is 100% accurate nor does any single tool include the full range of risk factors. In addition, individuals who commit sex offenses are not "just" sex offenders, in that some have other issues or difficulties beyond sexual behavior problems that need to be considered (e.g., substance abuse, mental health disorders). For these reasons, it is important to also use empirically based assessment tools that are designed to estimate general and other violent recidivism potential and the presence of more general risk factors. And, finally, to increase the reliability of assessments overall, risk-need assessments should be augmented by data from interviews with offenders and collaterals, official records, clinical assessments, and other sources of information.

**Continuity in assessment instruments:**
Using the same risk-need assessment instruments within and across agencies (e.g., sentencing courts, community supervision, corrections, institutional and community-based treatment) offers a common and consistent language by which stakeholders can communicate about offenders' risk levels and the implications of case management decisions.

**Well-trained staff:**
Sex offender assessment is a highly specialized field. The use of empirically based assessment instruments and other tools – and the appropriate interpretation and application of the results, whether administered by corrections or clinical staff – requires skill-based training (and "booster" training) by credentialed trainers.

**Quality assurance:**
Quality assessments require quality control. Given the critical nature and implications of the information derived from the assessment process, accuracy is critically important. The establishment of methods to assure precision of scoring (e.g., inter-rater reliability), soundness of interviews and other assessment methods, and appropriate reporting and use of this information is essential.

## The State of North Dakota: Using Comprehensive Assessments to Inform Case Management Decisions

Within the state of North Dakota, the Department of Corrections and other key partners recognize the value of comprehensive and specialized assessments to inform sex offender management practices throughout the system. The application of these assessments to decision making is illustrated in the following ways:

- The court is expected to order pre-sentence investigations for all sex offenders and others, as defined within state codes;
- In some instances, judges order pre-sentence investigations for sex offenders charged with Failure to Register, which provides particularly useful information about sex offenders who have relocated to North Dakota from another state and for whom information is often lacking;
- At the time of pre-sentence investigations, officers complete a range of empirically supported risk-need assessment tools, including but not limited to the STATIC-99, STABLE-2007, and LSI-R, as a means of reliably identifying baseline levels of sex offense-specific and "general" risks and needs;
- Depending upon the findings of the initial risk-need assessments, some sex offenders are referred to specially trained clinicians at the Human Service Center for supplemental and more comprehensive psychosexual evaluations, which generally include the following battery: the MMPI-2, MCMI-III, IBS, Shipley, Carich-Adkerson Victim Empathy Scale, MSI-II, and PCL-R (as appropriate);
- For sex offenders under community supervision, the STABLE- and ACUTE-2007 are used to reliably and objectively assess changes in dynamic risk factors;
- The LSI-R and STABLE-2007 are re-administered every six months, and the ACUTE-2007 is re-administered monthly, to identify changes in risk and intervention needs over time; and
- Polygraphs can be used to augment assessment information, either as part of treatment programs' requirements (i.e., to verify sexual history information or assess treatment compliance) or via referral by supervision officers, regardless of whether individuals are in treatment (i.e., to assess supervision compliance or explore a specific issue of concern).

For quality assurance purposes, credentialed professionals offer all staff working with sex offenders (both correctional and clinical) initial and ongoing "booster" training on administering and interpreting assessment data. In addition, a Department of Corrections employee is specifically tasked with reviewing pre-sentence investigations; the review process includes a review of all records and documents (e.g., police reports, victim impact statements) and rescoring of risk assessments to ensure reliability.

# 2 Monitor Changes in Dynamic Risk

Empirically supported risk assessment instruments that are based on *static* (unchangeable) risk factors assist professionals in estimating the likelihood – low, moderate, or high – that sex offenders will reoffend sexually or non-sexually. These risk estimates are often used to support important decisions at specific points of time in the system, such as placement (e.g., community vs. prison), release from prison, and/or level of registration and notification (i.e., tier designations). In addition, risk scores from static assessment tools are used to guide decisions about efficiently and effectively allocating resources, by ensuring that more intensive supervision and treatment strategies are provided to those who pose a greater risk for reoffending (Andrews & Bonta, 2006; Hanson & Bourgon, 2008).

However, the most comprehensive and contemporary risk assessment approaches extend beyond the use of static tools by also including empirically supported instruments to assess *dynamic* (changeable) risk factors (see Hanson, Harris, Scott, & Helmus, 2007). There are two types of dynamic risk factors:

**Stable dynamic risk factors:**
Stable dynamic risk factors are variables that can be slow to change (e.g., over a period of months) and are a central focus of sex offense-specific treatment. The stable dynamic risk factors most significantly related to recidivism are deviant sexual arousal, preferences, or interests; sexual preoccupations; antisocial attitudes, activities, and peers; intimacy deficits and conflicts in intimate relationships; and attitudes supportive of offending behavior (Hanson & Morton-Bourgon, 2005). Ongoing assessment of stable dynamic factors (typically every six months) assists corrections and treatment professionals in determining whether the treatment interventions being employed are having the desired influence on offenders' likelihood to reoffend.

**Acute dynamic risk factors:**
Acute dynamic risk factors are elements that can change rapidly (within days or even hours) and can signal the need for immediate intervention. For sex offenders, acute dynamic risk factors include victim access, hostility, substance abuse, collapse of social supports, and lack of cooperation with supervision (Hanson & Harris, 2000; Hanson & Morton-Bourgon, 2005).

Historically, supervision officers and treatment professionals relied on professional judgment to determine if significant changes were occurring in offenders' lives or circumstances and the relative importance of these changes with respect to risk. They now have the advantage of empirically supported sex offense-specific tools for assessing these dynamic risk factors (i.e., the STABLE- and ACUTE-2007, previously the STABLE- and ACUTE-2000; Hanson & Harris, 2000; Hanson et al., 2007). The STABLE-2007 is typically administered at six-month intervals as a means of measuring progress toward treatment goals. The ACUTE-2007 is administered monthly or, in some cases, at each contact to rapidly identify "red flag" conditions that signal the need for immediate intervention for sex offenders under supervision.

Empirically based dynamic risk assessment measures provide increased consistency, structure, objectivity, and accuracy of ongoing assessment and monitoring efforts. By using these types of tools, supervision officers and treatment providers alike are better positioned to determine the risk factors that should be monitored most closely, identify any important changes in these risk factors, and recognize the implications for the nature and timing of responses to these changes.

## State of Iowa, Department of Corrections and Judicial Districts' Departments of Correctional Services: Implementing the STABLE- and ACUTE-2007

Recognizing that sex offenders' risk for recidivism can fluctuate over time as a function of changing circumstances and responses to interventions, the Iowa Department of Corrections (IDOC) and their community correctional partners, the Judicial Districts' Departments of Correctional Services (JDDCS), are committed to objectively monitoring these changes as a means of guiding individual case-by-case management decisions. The empirically based STABLE- and ACUTE-2007 are used for these purposes.

Implementation in Iowa first began when the 6th Judicial District's Department of Correctional Services (DCS) served as a test site in the research and data collection for the Dynamic Supervision Project. This highly influential and ongoing study involves the assessment of dynamic risk factors among sex offenders under community supervision using structured tools. In 2004, after community-based supervision officers received intensive training on the scoring and practical application of these tools, their use was expanded to the 1st, 2nd, and 8th Judicial Districts. In the fall of 2008, the STABLE- and ACUTE-2007 were implemented statewide. The STATIC-99 and ISORA-8 (Iowa Sex Offender Risk Assessment) are used to form the baseline actuarial risk of sexual recidivism. Iowa is currently involved in a validation study with both tools to determine the best approach to supervision, treatment, and monitoring strategies.



The STABLE- and ACUTE-2007 assessment tools are used throughout the state with offenders nearing release from prison, as well as those under local or federal supervision. These instruments:

- Augment static and dynamic risk assessments in use throughout Iowa, including the STATIC-99 and the ISORA-8, to assess the likelihood of sexual recidivism; the LSI-R, to assess the likelihood of general recidivism and to identify criminogenic needs; the Jesness Inventory, to assess offender traits and attitudes; and other assessment information (e.g., psychosexual evaluations) that inform case management planning;
- Support the prioritization of prison-based treatment programming and result in the acceleration of programming for low-risk offenders in order to facilitate earlier transition to the community;
- Guide the establishment of community supervision plans and individually tailored treatment plans;
- Provide important feedback regarding the impact of the interventions that supervision and treatment professionals are employing with individual sex offenders; and
- Identify changing conditions that may be signals of elevated risk for offenders under community supervision.

Iowa is also considering using the STABLE- and ACUTE-2007 to inform risk-based determinations about the appropriate use of electronic technologies for monitoring sex offenders, such as the type of monitoring to be conducted (e.g., GPS, electronic bracelets) and the conditions associated with this monitoring.

# 3 Implement a Collaborative Case Management Approach

Maintaining public safety and preventing sexual victimization cannot be accomplished by any single agency, organization, or entity working alone; sex offender management efforts require collaboration among multiple stakeholders (CSOM, 2000a; English, Pullen, & Jones, 1996). These often include, but are not limited to, the following:

**Corrections professionals**, who are responsible for routine case management activities in the institution or community (e.g., unit managers/case counselors, reentry specialists, probation or parole officers);

**Sex offense-specific treatment providers**, who deliver specialized programming (either institutional or community-based) designed to reduce reoffense risk and increase successful outcomes with sex offenders;

**Ancillary program practitioners**, who provide additional, non sex offense-specific services as warranted (e.g., cognitive skills interventions, substance abuse treatment, couples/family therapy);

**Polygraph examiners**, who administer exams for supplementary assessment, accountability, or monitoring purposes;

**Victim advocates**, who establish or maintain contact with victims for purposes of safety planning and service delivery and can provide information to shape offender intervention strategies;

**Law enforcement officers**, who are responsible for collecting and verifying sex offender registration data and can augment corrections professionals' supervision of sex offenders in the community; and

**Other professionals**, who assume important functions on a case-by-case basis (e.g., teams managing juveniles may involve school counselors, child protective services staff, and youth mentors).

By recognizing the value of diverse perspectives and meaningful partnerships, these professionals can create integrated and coordinated sex offender management teams that can maximize existing resources, minimize duplication of efforts, and enhance the effectiveness and efficiency of sex offender management practices. Collaborative case management teams can accomplish this by:

- Developing agreed-upon and complementary goals and benchmarks through a single, overarching case management plan;
- Employing assessment, treatment, supervision, and other strategies that are supported by research;
- Ensuring that all stakeholders have access to complete and comprehensive information for case management decisions on an ongoing basis; and
- Delivering consistent and unified messages about offender accountability, prevention of sexual victimization, and public safety to offenders and the general public.

## Collaborative Case Management in Michigan

In an effort to enhance the management of sex offenders under community supervision, Michigan's Department of Corrections and Kalamazoo County Sheriff's Department developed an approach to collaborative case management. Replication efforts are now underway in other parts of the state.

**The Primary Players**

- **Community supervision:** Specialized officers manage caseloads of 25–30 sex offenders who are placed under the supervision of probation and parole. Because they have primary responsibility for supervising the sex offenders, the officers serve as the case management team conveners.
- **Victim advocates:** Advocates from a local rape crisis center, child advocacy center, and the prosecuting attorney's office participate as core members of the case management team. Victim advocates often know the offender or the offender's family and contribute key information that shapes the management strategies employed in a particular case. Victim advocates also make contact with victims, provide and receive information, and when needed, make service referrals.
- **Treatment providers:** Contracted sex offender treatment providers work closely with supervision officers on the management of individual cases. During case management meetings, the treatment progress of individual offenders is discussed and strategies for enhanced supervision or modified treatment approaches are agreed upon.
- **Polygraph examiners:** A polygraph examiner works closely with other members of the case management team.

**The Key Features of the Case Management Process**

- **Beginning the case management process:** An initial case management plan is developed based upon a comprehensive assessment process. For offenders returning to the community on parole from state incarceration, transition teams composed of supervision officers, treatment providers, victim advocates, and others meet with the offenders prior to release to begin the case planning process. For offenders sentenced by the court to probation, supervision officers develop the initial case plan in consultation with treatment providers and victim advocates.
- **Collaborative case management as a dynamic process:** Case management teams meet monthly to review active cases. Each offender's case is reviewed by the case management team a minimum of every six months, with more frequent reviews occurring as the case requires. The team assesses the progress of individual offenders (community adjustment, treatment progress, etc.) and the results of updated risk assessments, identifies issues since the offender's last review, and adjusts case plans and interventions based upon the assessment of specific behavioral indicators.
- **Facilitating collaborative information exchange:** The free exchange of information about individual offenders is central to the collaborative case management process. A release of information is signed by each offender to allow for the sharing of information, and each team member signs a confidentiality agreement. A structured e-mail exchange occurs prior to monthly case management meetings to identify issues to be discussed at the next meeting. Telephone contact and e-mail exchanges regarding specific cases are common in the interim.

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# 4 Adopt a Victim-Centered Approach

Contemporary sex offender management approaches not only take into account the ways in which laws and agency policies and practices promote public safety and offender accountability, but also support the needs and interests of victims (see, e.g., CSOM, 2000b; D'Amora & Burns-Smith, 1999; English et al., 1996). Victim advocates bring a unique perspective and set of experiences in this regard and are central partners in sex offender management efforts.

Multiple tangible benefits can be derived from a victim-centered approach to sex offender management, including the following:

- The investigations and prosecutions of sex crimes are more streamlined and responsive to victims, thereby reducing the potential for system-induced trauma;
- Victims, their families, and the general public may have greater confidence in practitioners' efforts to address sexual victimization and manage sex offenders, which may in turn increase reporting rates and victims' engagement in the investigation and subsequent court processes;
- Gaps in services for victims and their families are more readily recognized and remedied;
- Supervision officers and treatment providers can gain greater insight into sex offenders' modus operandi on a case-by-case basis;
- Safety plans for victims and their families are more individually tailored, better informed, and more effectively implemented;
- Paroling and other releasing authorities have the added benefit of victims' perspectives when making release decisions and victims have a voice in the process;
- Victim empathy components of sex offense-specific treatment can be enhanced;
- The range of professionals throughout the system better appreciate the ways in which their interactions can either support victims and their families or have a negative impact on them;
- Public education efforts that address ways to prevent sexual victimization can be improved; and
- Laws and policies are informed and supported by a broader set of perspectives.

In addition to ensuring the availability and capacity of risk-reducing programs and services for sex offenders, a victim-centered approach requires policymakers to equally establish and support services and other resources for victims and their families.

## Rhode Island's Victim-Centered Approach

*Our vision is a coordinated system designed to enhance public safety through the effective management of sex offenders. Our mission is to develop a statewide system for sex offender management that promotes community safety through victim advocacy and services, and includes integrated criminal justice interventions, offender treatment and monitoring, as well as system and offender accountability.*

Since 2003, 27 leaders in Rhode Island have teamed to improve public safety by critically examining the manner in which sex offenders are identified, assessed, and managed in the criminal and juvenile justice systems and by strengthening victim services and the role that advocacy plays in promoting victim-centered sex offender policy and service delivery. The commitment of the Rhode Island Sex Offender Management Task Force to a victim-centered approach is represented in many ways, including the following:

- **Key leadership role:** The statewide task force is jointly chaired by the Executive Director of the victim advocacy coalition (Day One), a private defense lawyer, and representatives from both the Division of Children, Youth, and Families and the Department of Corrections. They advance policy at the agency level and practice at the case level, and support legislative changes that promote offender accountability and strategies for reducing recidivism.
- **Sexual Assault Nurse Examiner (SANE) program:** Beginning in 2009, Day One will operate a SANE program in collaboration with the Department of Health, the Attorney General's Office, State Police, the Rhode Island Medical Society, and several hospitals. The program will offer immediate, compassionate, and culturally sensitive forensic examinations for sexual assault victims; ensure that victims are able to make informed decisions regarding medical and legal decisions; and provide victims with referrals to legal advocacy agencies.
- **Victim Advocate position, Rhode Island Department of Corrections (DOC):** Since 2005, a full-time Day One staff person has been assigned to support the victims of sex offenders who are under the supervision of the DOC's Sex Offender Probation Unit. This Victim Advocate works with both treatment providers and supervision officers to monitor offenders' case plans and victims' safety plans and participates in weekly case staffings.
- **Enhanced Victim Service Project:** The Rhode Island Parole Board has established the Enhanced Victim Service Project to provide crime victims with advocacy, referral, and opportunities for restorative justice programs such as Victim-Offender Mediation.
- **Advancing professional development:** Through a combination of grant initiatives, the task force has taken the lead for the state in advancing professional development by designing, coordinating, and delivering training for law enforcement, for prosecution, defense, and the courts, and for supervision and treatment professionals working with both adult and juvenile sex offenders.
- **Promoting sound policies:** The task force has worked in collaboration with their partners to champion legislation that protects victims and holds offenders accountable. By working together, advocates and other professionals are able to educate lawmakers and promote sound policies that advance and support effective practice.

# 5 Deliver Evidence-Based Sex Offender Treatment

The overarching goal of sex offender treatment is to prevent individuals from engaging in further sexual victimization – and research indicates that treatment may be effective in attaining this goal. Adult sex offenders who receive treatment have lower rates of recidivism than offenders who do not receive such treatment (Aos, Miller, & Drake, 2006; Lösel & Schmucker, 2005). This also holds true for juveniles who have committed sex offenses (Reitzel & Carbonell, 2006).

Simply providing treatment does not mean that it will be effective, however. Evidence-based practices in corrections, including research with sex offenders, indicate that sex offense-specific treatment is most likely to be effective when the following conditions are present (see Andrews & Bonta, 2006; Hanson & Bourgon, 2008):

**Programs use a cognitive-behavioral model:**
This research-supported framework teaches individuals to understand the relationship between their thinking patterns and actions, helps them identify specific thoughts that led them to engage in sex offending behaviors, and guides them toward healthy alternatives through the use of modeling, skill-building, practice, and reinforcement.

**Targets of intervention are research-based:**
Researchers have identified specific elements or characteristics that are linked to reoffending for sex offenders and other offender populations (i.e., criminogenic needs). Sex offender treatment programs that emphasize these factors (e.g., deviant sexual interests, sexual preoccupations, pro-offending attitudes, intimacy deficits) over other factors that are not linked to reoffending (e.g., low self-esteem, lack of remorse, denial) have better outcomes.



**Treatment is individualized and guided by reliable and valid assessment instruments:**
Sex offenders are a diverse population and, therefore, treatment must take into account important variations such as levels of risk and intervention needs. Treatment is more effective when research-supported assessment tools are used to determine the appropriate level of service (i.e., dosage and intensity), to identify the specific risk factors that should be targeted in treatment, to assess progress that offenders are making in treatment, and to make ongoing adjustments to treatment plans.

**Treatment providers' styles and techniques align with research:**
Research demonstrates that characteristics of providers (e.g., warm, genuine, empathic), the nature of the interactions between providers and offenders (e.g., firm but fair), the ways in which providers attempt to engage offenders (e.g., through motivational interviewing), and the extent to which providers adjust approaches to match clients' learning needs (e.g., gender-responsive, developmentally appropriate, culturally sensitive) all have an impact on outcomes.

**Providers are well trained and well supervised:**
Specialized education, training, and supervised experience are required to ensure that staff fully understand and can apply treatment models and techniques in the most effective ways and that they remain abreast of advances in the field.

**Programs are monitored and evaluated:**
Providers should be expected to collect performance measurement data to determine the extent to which interventions are reaching their potential. Performance data (i.e., number of clients successfully completing and unsuccessfully terminating) as well as outcome data (e.g., reoffense following treatment) should be collected and analyzed by an objective party, where possible. If outcomes fall short of expectations, adjustments in program services should be made.

## The Vermont Treatment Program for Sexual Abusers: A Model Approach

For the past two decades, Vermont has operated a coordinated, statewide network of specialized sex offender treatment through the Vermont Treatment Program for Sexual Abusers (VTPSA). It is administered by the Department of Corrections and operates under the Vermont Center for the Prevention and Treatment of Sexual Abuse. Its mission is to "enhance community safety by providing quality, victim-sensitive, evidence-based treatment to individuals who have committed sexual offenses." When established, this system-wide strategy was the first of its kind in the United States. Currently, the VTPSA is comprised of 3 prison-based and 13 community-based programs. The key elements outlined below illustrate this model approach.

- **Evidence-based strategies:** The VTPSA employs a research-supported model of sex offender treatment – the cognitive-behavioral approach, which is generally delivered in a group format. Individual, partner/family, and medication therapies are used adjunctively as warranted. Sex offenders with substance abuse, mental health, or other co-occurring difficulties may be referred for additional programs. The VTSPA is framed on evidence-based principles of effective correctional intervention: risk, need, and responsivity (Andrews & Bonta, 2006). Sex offenders are placed into treatment programs based on reoffense risk, with higher-risk sex offenders receiving higher-intensity services; treatment primarily addresses criminogenic needs associated with offending behaviors; and services are adjusted to maximize offenders' responses to treatment by taking into account factors such as motivation, denial, and learning difficulties.
- **Treatment on a continuum:** Three levels of treatment are available in prisons: high, moderate, and low intensity. Sex offenders in the high-intensity program receive approximately 8 hours of treatment weekly over the course of 2–3 years, whereas those in the low-intensity program receive roughly two hours of treatment per week over a 6-month period. In community-based programs, sex offenders generally participate in weekly group sessions for roughly two years and monthly aftercare meetings for another year. Services for special-needs offenders and those with statutory offenses are also available. To enhance sex offender management efforts, community treatment providers work closely with supervision officers.
- **Assessment-driven treatment:** Beginning at the point of sentencing and continuing throughout the system, key decisions about sex offender treatment are informed by specialized, research-supported assessments. Examples of these measures include the STATIC-99, Vermont Assessment of Sex Offender Risk, Level of Service Inventory-Revised, and the Sex Offender Treatment Needs and Progress Scale. Assessments are used not only for program placement decisions, but also for gauging sex offenders' progress in treatment over time.
- **Treatment outcomes:** Research on VTPSA programs indicates that sex offenders who complete either prison- or community-based treatment recidivate sexually at significantly lower rates than those who did not receive or failed to complete such treatment (McGrath, Cumming, Livingston, & Hoke, 2003; McGrath, Hoke, & Vojtisek, 1998).
- **Quality control:** Detailed treatment guidelines for providers have been formalized by the VTPSA, and compliance is monitored routinely through supervision and quality improvement activities (e.g., monthly clinical supervision meetings in the community, weekly treatment team meetings).

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# 6 Enhance Treatment Capacity

Because sex offender treatment is associated with reduced recidivism among sex offenders, the importance of quality and capacity is clear.

Methods to assure the quality of services delivered include:

**Securing the services of skilled providers:**
Practice standards that establish minimum educational and training requirements for providers have been developed by the Association for the Treatment of Sexual Abusers (ATSA, 2005).

**Establishing formal mechanisms to ensure minimum standards for treatment are met and maintained:**
Using national or local guidelines, some states (e.g., Colorado, Illinois, Tennessee) have established statewide standards and/or formal certification processes that must be met for providers to deliver sex offender treatment services.

**Establishing qualification standards and treatment requirements in service agreements and requests for proposals:**
Another method jurisdictions use to ensure the qualifications of providers and the treatment delivered is to outline specific requirements in requests for proposals and other service agreements negotiated between contracting agencies and private providers.



**Disseminating approved provider lists:**
Many jurisdictions establish lists of approved providers based upon national or local criteria. These lists are particularly helpful to justice system professionals who are responsible for referring offenders to appropriate treatment.

Methods to enhance treatment capacity include the following:

**Begin by understanding the current capacity:**
Two organizations maintain lists of providers nationally: ATSA maintains a state-by-state list of all its members and The Safer Society Foundation conducts periodic surveys of programs and maintains a national directory.

**Recruit qualified providers:**
Contracts for service are one way to recruit qualified providers to areas that experience capacity shortages. Another way is to encourage established providers with skills in working with "general" offenders and delivering cognitive-behavioral programming to seek specialized training.

**Provide in-state training:**
Still other jurisdictions use justice system resources to provide in-state training for qualified providers (which may also serve to provide ongoing training for other professional staff). This both increases providers' ability to meet ongoing continuing education requirements and reinforces collaborative partnerships.

**Subsidies, health insurance, and other forms of financial support:**
The use of public monies to subsidize treatment costs can help overcome the financial barriers some treatment professionals encounter, particularly where offenders are solely responsible for costs. Providing access to offices for conducting treatment groups (e.g., probation office conference rooms) can reduce providers' costs. Finally, where possible, state provisions that enable those with insurance to pay for or subsidize treatment with insurance benefits should be established.

## Supporting Enhanced Treatment Capacity: The Tennessee Sex Offender Treatment Board

Since its establishment by the legislature in 1995, Tennessee's Sex Offender Treatment Board (SOTB) has dedicated itself to improving and expanding sex offender treatment throughout the state. The SOTB has worked to build and enhance treatment capacity by:

- **Establishing statewide provider qualifications:** The SOTB has developed statewide standards for sex offender treatment providers. Peer support and guidance is available to providers seeking to comply with approval requirements.
- **Creating a directory of approved providers:** A directory of more than 300 approved providers is maintained and made available by the SOTB.
- **Promoting professional development opportunities:** The SOTB conducts an annual statewide conference that provides continuing education credits for sex offender treatment providers.
- **Establishing a training program for non-sex offender treatment providers:** Providers who are certified by the Tennessee Department of Health, Division of Health Related Boards but who do not have specialized credentials to work with sex offenders can gain SOTB approval by (among other requirements) attending a three-day mandatory training at the SOTB's annual conference, independently receiving a minimum of 50 hours of specialized training, and undergoing 2,000 hours of clinical supervision by an approved provider.
- **Reducing direct costs to providers:** In some rural areas of the state where a full-time sex offender treatment practice is less feasible, probation and parole agencies provide no-cost office space to providers who conduct sex offender treatment groups.
- **Establishing reimbursement mechanisms for sex offender treatment costs:** The Sex Offender Treatment Fund was established to support the costs of treatment for indigent sex offenders and is administered by the SOTB. Payment is made directly to the provider in these cases. In addition, TennCare, the state's health insurer, reimburses treatment costs to approved providers for those offenders who have state health insurance.

Over the past decade, the number of approved providers has nearly doubled – increasing from 147 to 283. To further advance treatment capacity and quality in the state, Tennessee's SOTB is establishing a formal process to ensure providers' compliance with treatment standards and is developing a training program specifically for new providers.

# 7 Establish Seamless Information Exchange Mechanisms

The day-to-day management of sex offenders depends on the accurate recording and exchange of key information among those responsible for case management. Too often, historical information, assessment results, and other key data collected by one agency are not stored or shared with others. This results in information gaps, duplication of effort, and missed opportunities to build upon the efforts of other professionals. Despite concerns about protection and privacy rights, agreements about the exchange of case management information among professionals are possible.

Professionals working with sex offenders should have access to and readily exchange, among other information, the following:

- Arrest reports;
- Victim impact statements;
- Criminal history data;
- Pre-sentence investigations;
- General and sex offense-specific risk and needs assessments;
- Psychosexual evaluations;
- Pertinent medical or mental health concerns;
- Institutional adjustment and disciplinary records;
- Institutional and community treatment records;
- Previous parole and probation reports;
- Transition, reentry, and parole plans;
- Current treatment plans; and
- Current case management (including supervision) plans.

The case management team process provides a forum for the exchange of this information; establishing automated platforms for information exchange adds efficiency.

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## Automated Exchange of Case Management Information in Connecticut

The Center for the Treatment of Problem Sexual Behavior, Connecticut's primary treatment provider for sex offenders, has worked with correctional institutions and community supervision agencies in recent years to build a system that facilitates the exchange of offender information in an efficient and timely manner.

Key features of this process include:

- **Pre-release case management planning and information sharing:** Three staff members of The Center for the Treatment of Problem Sexual Behavior are assigned to the state's correctional institutions. They conduct evaluations of sex offenders who are within four to six months of release and develop initial case management plans based upon a variety of issues, including an assessment of each offender's risk and needs, victim impact, and treatment progress. This information is shared with:
  - The courts and probation (for offenders who are returning to probation supervision as part of a split sentence);
  - The parole board (for release decision-making purposes); and/or
  - Parole (for offenders being released on parole supervision).
- **Post-release case management planning and information sharing:** An initial collaborative case management meeting is conducted just prior to an offender's release and after a probation or parole officer has been assigned to the case. Thereafter, weekly collaborative case management team meetings are held and information is routinely shared by all members of the team. Comprehensive assessment and case management information is routinely updated electronically by treatment staff and is shared with other members of the case management team.
- **Information sharing facilitated by automated systems:** Though each agency involved in the management of the case – institutional corrections, the courts, probation and parole, and victim advocates – maintains independent management information systems and case files, they are all also able to exchange information electronically. This automated information exchange system enhances their ability to communicate and makes the sharing of information more efficient. For example, treatment staff enter case notes into the automated information system within 24 hours of treatment sessions and others enter case plan updates on a weekly basis. These reports and updates are accessible by all case management team partners. To ensure confidentiality, number identifiers are used in place of names and all electronic information is encrypted.

# 8 Promote Successful Post-Release Outcomes through Informed Release Decisions

Most sex offenders will be released from confinement at some point. Discretionary release provides for the early release of offenders before the expiration of their sentences. For a variety of reasons, discretionary release is preferable to offenders "maxing out" their prison sentences.

**Understanding the Importance of Discretionary Release**

- Research demonstrates that discretionary release practices that are well informed (e.g., by assessments of risk and needs, participation in facility-based programs and services, comprehensive release planning) are associated with improved outcomes for offenders (Petersilia, 2003; Seiter & Kadela, 2003).
- When sex offenders engage in offense-specific programming within facilities, motivation to change may increase. This, in turn, can have a positive impact on offenders' willingness to participate in community-based sex offender treatment after release (Barrett, Wilson, & Long, 2003; Spencer, 1999).
- For sex offenders who would otherwise not be motivated to participate in sex offender programming within facilities, discretionary release provides an incentive to engage in treatment.
- For offenders who are already committed to treatment, discretionary release provides an added incentive for treatment participation.
- Treatment participation is particularly important because evidence indicates that sex offenders who receive well-designed and appropriate prison-based treatment recidivate at lower rates than those who do not receive treatment (see, e.g., Aos et al., 2006; Lösel & Schmucker, 2005).



**Using Information to Guide Release Decision Making**

Release decision makers report that they are less likely to grant conditional release to sex offenders than to non-sex offenders. This is not surprising, given the pressures associated with media attention, public criticism, and concerns about reoffense. However, empirically based sex offense-specific (and general offense) risk assessment instruments, in combination with clinical evaluations, treatment progress reports, and well-prepared release plans, may make discretionary release decisions more possible. This is critically important given that discretionary release results in a period of supervision that, if supported by community-based treatment, also promotes more successful outcomes (see, e.g., Petersilia, 2003; McGrath et al., 2003; Wilson, Stewart, Stirpe, Barrett, & Cripps, 2000).

**Building Accountability Measures in the Community to Support Discretionary Release**

To support successful outcomes following release, decision makers should:

- Use empirically based assessment information, augmented by clinical evaluations and treatment progress reports, to tailor the conditions of release to the unique risk factors of offenders; and
- Rely on specialized parole supervision units, staffed by qualified and well-trained staff who, along with qualified treatment providers and other case management team members, provide the structure for community accountability and intervention that will assure the greatest likelihood for success after release.

## Pennsylvania's Approach to Informed Release Decision Making

The Pennsylvania Board of Probation and Parole is committed to an informed release decision-making process. The Board uses actuarial risk assessment tools, treatment progress reports, and stakeholder input to inform their release decisions. Offenders are typically released when there is evidence that risk to reoffend has been reduced. The following data and information informs the release decision:

- **Risk assessment data:** The Board uses the STATIC-99 to assess the level of risk of sexual reoffense. LSI-R data provides an assessment of risk of general reoffense as well as an understanding of an offender's criminogenic needs.
- **Additional assessment information:** Also available for consideration by the Board are results from in-depth sex offense-specific evaluations that are conducted by the Commonwealth's Sex Offender Assessment Board (SOAB). The SOAB conducts evaluations for the court to determine if sex offenders meet the statutory construct of a sexual predator and if they are required to register. The SOAB also conducts risk assessments for the Board and takes into consideration relevant issues related to treatment and management.
- **Treatment progress assessment:** The Board requires all offenders interested in parole release to participate in institutional treatment if they are assessed to need treatment. They receive an evaluation from institutional treatment staff about an offender's level of therapeutic engagement and treatment progress.
- **Community and victim input:** The Board considers information from victims, prosecutors, and judges regarding specific cases when making release decisions; this input provides an additional means of informing release decisions. Should parole be granted, this information is also used to consider specific release conditions.
- **Specialized parole conditions:** The Board differentiates between sub-populations of offenders by imposing different sets of specialized, clinically driven release conditions. A protocol was developed to guide the consistent use of specialized conditions (e.g., computer access restrictions, prohibitions about unsupervised contact with children).
- **Specialized parole supervision:** In all parole districts across the Commonwealth, offenders released to the community will be under the supervision of parole officers who are specially trained in the supervision and management of sex offenders. Caseloads average 50 offenders per agent.
- **Transparency:** The Board endorses a transparent approach to decision making; their decision-making instrument will soon be available to the public on their website.

# 9 Implement a Strategic Sex Offender Reentry Process

The number of offenders released from prison to the community each year and the high rate of technical violations and new crimes committed following their release have brought increased attention to establishing reentry practices that support more successful outcomes among released offenders. Although reentry is challenging for most offender populations, barriers are more pronounced for sex offenders. Because of this, the need for reentry planning is especially important with sex offenders.

Implementing a strategic reentry process for sex offenders involves the following:

**Starting early:**
Planning for release at the point of entry provides time to identify and address offenders' risk factors and stabilization needs well in advance of their release.

**Conducting comprehensive assessments:**
Because sex offenders are a diverse population, comprehensive assessments are critical to understanding the unique risk factors that may contribute to an individual offender's likelihood of reoffending. Record reviews, clinical interviews, research-supported risk-need tools, and other assessment methods should be used to identify the targets of intervention that are most likely to result in risk reduction and successful reintegration.

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**Tailoring institutional case management plans to the individual offender:**
Individually tailored case management strategies should be developed to address the issues that would otherwise be barriers to success. Further, they should identify the optimal timing of service delivery (early in the incarceration period, toward the end of the prison term, during the transition phase, or following release). The institutional case management plan should be updated periodically, based upon reassessments and changing conditions.

**Using an evidence-based approach to service delivery:**
The evidence-based research in corrections indicates that cognitive and cognitive-behavioral models of intervention are effective in reducing recidivism (see Landenberger & Lipsey, 2005). In addition, programs for offenders, including sex offenders, are most effective when they prioritize factors linked to recidivism (see Andrews & Bonta, 2006; Hanson & Bourgon, 2008). Finally, the outcomes of prison-based treatment programming can be maximized when services are delivered based on risk level: higher-risk offenders benefit more from higher-intensity services than do lower-risk offenders (Andrews & Bonta, 2006; Hanson & Bourgon, 2008).

**Seamless transitioning:**
During offenders' incarceration, professionals work with offenders to understand their specific risk factors, strengths, and ongoing intervention needs. A seamless transition to the community builds upon and supports this work by identifying in advance the professionals with whom offenders will be interacting routinely in the community (e.g., supervision officers, treatment providers); providing opportunities for dialogue and the exchange of information; establishing release expectations (including treatment placement, approved housing, supervision conditions, and initial appointment dates); and working with victim advocates to ensure issues of victim notification and safety planning are addressed prior to release. The importance of seamlessness is also evident given that the early months following offenders' release to the community are a period during which higher rates of "failure" occur (Langan, Schmitt, & Durose, 2003; Petersilia, 2003).

## Facilitating Public Safety through Reentry in Texas

The Texas Department of Criminal Justice (TDCJ) has implemented an approach to sex offender reentry that reflects the current research and practice literature. The following are important elements of TDCJ's approach:

- **Proactive reentry planning:** All offenders go through a comprehensive assessment process soon after prison admission. The results are used to classify offenders into security levels, identify appropriate housing options, and triage offenders into programs and services.
- **Evidence-based interventions in the prison setting:** Recognizing the diversity of sex offenders, TDCJ offers two sex offense-specific treatment programs. The Sex Offender Education Program (SOEP) includes a four-month curriculum for lower-risk sex offenders. The Sex Offender Treatment Program (SOTP) is an 18-month intensive specialized program that is conducted in a therapeutic community. It is designed for higher-risk sex offenders and utilizes a cognitive-behavioral approach with a relapse prevention framework. Program entrance decisions are informed by risk level (as determined by the STATIC-99) and anticipated release date. In addition, TDJC provides additional prison-based programs to address other criminogenic needs (e.g., substance abuse).
- **Roles of Institutional Parole Officers (IPOs):** IPOs serve as the link between prison-based services and community management efforts. IPOs provide parole officers with information about returning sex offenders (e.g., treatment summaries, assessment results, official documentation) that guides the development of comprehensive and individualized community case management plans.
- **Continuity of care:** For those sex offenders who receive prison-based sex offender treatment, a seamless transition into community-based programming allows them to build upon the treatment progress they have made in prison. This is made possible by a common, evidence-based treatment model and a commitment to collaboration and information sharing among those involved in the reentry process, including treatment providers in the institutional and community settings.
- **Early involvement of community parole officers:** Prior to release, officers are responsible for approving the sponsors and home plans of sex offenders. Designated sponsors are required to sign a "Collateral Contact Form" which describes the supervision process, outlines relevant risk factors, and details the responsibilities of serving as a sponsor. When approving a home plan, officers identify whether the proposed residence is in a child safety zone, investigate routes of travel that the offender might take, identify the potential presence of vulnerable parties in the home, and confirm the availability of community-based treatment programs.
- **Housing and employment:** Recognizing that stable, gainful employment can enhance successful reentry, Project RIO, a statewide initiative, links offenders to jobs that match their skills, education, and interests prior to release and provides ongoing employment support in the community.
- **Specialized community supervision:** TDCJ has implemented a statewide approach to specialized sex offender supervision. Based upon assessment results, sex offenders are supervised at different levels of intensity by specialized officers. Each level has specific contact standards and requirements.

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# 10 Partner with Law Enforcement

The longstanding role of law enforcement officials in responding to crimes, providing public protection, and leading crime prevention initiatives makes them vital partners in a systemwide response to sexual victimization and sex offender management. The growing use of community policing strategies, in which public education and problem-solving partnerships are common, provides law enforcement with an ideal framework to complement and enhance existing efforts.

Key benefits of collaborative partnerships between law enforcement and other key stakeholders include, but are not limited to, the following (see, e.g., IACP, 2007; Woods, 2008):

**Enhancing the investigation of sex crimes:**
Law enforcement officers are often the first responders to victims of sex crimes, which highlights the value of partnering with rape crisis and other victim services or advocacy representatives to ensure that the needs and interests of victims are effectively addressed at the outset. In addition, the complexities of the investigation process (e.g., collection of forensic evidence, limited corroborating witnesses, interviewing child victims) require specialized experience and expertise that are often best met through the carefully coordinated activities of multiple disciplines, including law enforcement, child protection officials, victim advocates, medical professionals, and prosecutors.

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**Supporting supervision and monitoring of sex offenders:**
Law enforcement officers can support the ongoing case management of sex offenders in the community through their interactions and observations while on routine patrol or other enforcement activities. For example, through the process of conducting in-person address verifications for sex offender registries, they can assist community corrections and supervision officers with tracking and monitoring efforts, particularly if they are equipped with an awareness of specific conditions of supervision, important factors that may signal increased risk, and mechanisms for timely information sharing.

**Increasing public awareness through community notification:**
Statutory requirements for notifying citizens about registered sex offenders in local communities provide an invaluable and proactive public education opportunity, particularly when community meetings are convened with the collaboration of law enforcement, community supervision officers, corrections officials, prosecutors, victim advocates, and treatment providers. This structured team approach facilitates community awareness, involvement, empowerment, and effective problem solving regarding sex offender management and the prevention of sexual victimization. It also offers the opportunity for the public to learn about the various sex offender management strategies that are in place to protect them and to understand the specific roles that different agency officials/representatives play in the system of sex offender management.

**Promoting prevention through outreach:**
Law enforcement agencies assume key leadership roles in educating citizens about crime prevention and safety through partnerships with civic organizations, schools, public and private agencies, victim advocacy groups, community leaders, and the media. Collaborations between these and other entities have resulted in a number of community education and awareness activities geared to the prevention of rape, child sexual abuse, and on-line sexual exploitation.

## Promising Partnerships with Law Enforcement: The City of Mesa Police Department Center Against Family Violence

In 1996, the City of Mesa Police Department, in Maricopa County, Arizona, assumed a leadership role in establishing The Center Against Family Violence (CAFV), a unique, community-oriented, collaborative approach to responding to, investigating, and prosecuting cases involving sexual abuse, domestic violence, and other maltreatment. The CAFV brings together a team of professionals at a common, victim-friendly location to create a "one-stop" approach to addressing these crimes and providing necessary resources, information, and services to victims and families.

The team includes representatives from the City of Mesa Police Department, the City of Mesa Prosecutor's Office, the Maricopa County Attorney's Office, St. Joseph's Hospital and Medical Center, the Sexual Assault Nurse Examiner/Domestic Violence Unit of Scottsdale Health Care, the Arizona Department of Economic Security – Child Protective Services, and other agencies. Key activities of the CAFV include the following:

- Gathering information and evidence from victims and their families in a sensitive manner;
- Providing on-site forensic medical examinations and other medical attention for victims;
- Offering immediate on-scene crisis intervention from trained victim assistance volunteers;
- Conducting single video interviews with victims to avoid re-traumatization; and
- Ensuring a safe and nurturing environment for victims and families.

An initial independent evaluation of the CAFV revealed a number of positive outcomes associated with its establishment:

- Greater compliance with first-responder protocols;
- Higher rate of joint investigations in Child Protective Services investigations;
- Significant improvement in the frequency, quality, and timeliness of forensic medical examinations;
- Reduced rates of multiple interviews of children;
- Higher percentage of cases accepted for prosecution; and
- Increased conviction rates following prosecution.

Participating agencies report that the improved communication, information sharing, and multidisciplinary approaches used in these investigations demonstrates that the quality of work involving these difficult cases can be dramatically improved through collaboration.

# 11 Deliver Quality Supervision Services

Supervision officers play a key role in community safety by developing case management plans that match the needs and risk factors of individual offenders, forming and leading teams of professionals to make collaborative case management decisions, monitoring offenders' behavior, responding proactively when concerns arise, and reinforcing offenders' prosocial efforts. The following are among the promising approaches that can support effective community supervision with sex offenders:

**Specialization:**
The effectiveness of supervision can be enhanced by ensuring that specialized training is provided to officers who will have responsibility for this population; using sex offense-specific assessment tools to guide case management decisions; imposing specialized conditions to address the risk factors that are unique to sex offenders; and assigning sex offense-specific caseloads where practical (see, e.g., Cumming & McGrath, 2005; English et al., 1996).

**A balanced, success-oriented approach:**
Supervision practices that are driven primarily by surveillance and sanctioning philosophies generally do not reduce recidivism; in contrast, approaches that balance surveillance and monitoring with change-promoting strategies are associated with significant recidivism reductions (Aos et al., 2006). This means that in addition to monitoring and enforcement activities, officers should foster internal motivation, promote lasting change through incentives and reinforcement, make referrals to programs and services to address offenders' criminogenic needs, and help them develop the skills and competencies that are necessary for them to be successful. Successful offenders result in safer communities.



**Supervision intensity based on recidivism risk:**
The evidence-based correctional literature consistently demonstrates that when the intensity of interventions is based on assessed level of risk to reoffend (e.g., higher-risk offenders receive higher-intensity supervision or treatment), recidivism reductions are maximized (Andrews & Bonta, 2006; Lowenkamp, Pealer, Smith, & Latessa, 2006). And because risk fluctuates over time with offenders' changing circumstances, the ongoing monitoring of dynamic risk factors provides important guidance regarding the need to adjust the level of supervision, either upward or downward, based on increases or decreases in risk.

**A priority on field contacts:**
Requiring offenders to come to the supervision agency office to meet with the officer delivers an important accountability message to offenders. At the same time, office contacts provide only a small snapshot of offenders' lives, and the ways in which they present themselves at the office and in the community may be very different. Field visits provide officers with the greatest opportunity to determine the degree to which sex offenders are complying with the terms and conditions of supervision and adapting to the community, particularly when officers have the opportunity to engage family, friends, and others about offenders' adjustment (Cumming & McGrath, 2005; English et al., 1996). Allowing officers to have flexible work schedules is vital for implementing this strategy.

**Responding effectively to violations:**
All instances of non-compliance should be addressed in a timely manner. Some violations may require arrest and return to incarceration, but others may be best addressed through other interventions. To promote consistent and proportionate decision making, agencies may establish formal guidelines that use objective means of weighting the offenders' risk and the severity of the violation behavior to determine an appropriate response or range of responses.

## Effective Community Supervision in Ohio

The Ohio Adult Parole Authority uses a specialized approach to supervising sex offenders in the community. The following are key elements of this approach:

- **Specialized units:** In its most urban areas, the state has established specialized supervision units.
- **Specialized training:** Specialized training is often conducted by the agency's Sex Offender Specialists, who are regionally based staff at the supervisory level with extensive experience and knowledge of sex offender management. Opportunities to participate in specialized training at state and national conferences are provided as well.
- **Caseload sizes:** Guidelines are being developed to establish caseloads and caseload size limits based upon the risk levels and identified needs of offenders. These guidelines will result in reduced caseloads for officers who work with higher-risk/higher-need offenders.
- **Individually tailored case management plans:** Individualized plans are developed to guide post-release supervision efforts for each offender. These plans take into account the perspectives of the parole officers and others who have worked with the offenders in the community and are tailored to address the risk levels and unique needs of each offender. The STATIC-99 risk assessment tool is used (along with a general offender risk assessment tool that has been validated on Ohio offenders) at the outset of the community supervision process to help determine the necessary intensity of supervision. Throughout the supervision process, officers can add or remove conditions in response to changes in risk level and criminogenic needs.
- **Collaboration:** Officers work closely with stakeholders who have a role in managing or supporting the offenders, including sex offense-specific treatment providers, other program/service staff, employers, and family members, to ensure that strategies are well informed and that all parties are operating from consistent information. To enable officers to engage in more collaborative efforts in the community and to provide greater opportunities for field contacts with offenders and others during non-traditional business hours, the agency allows officers to use flex time.
- **Success-oriented supervision strategies:** Promoting offender success is emphasized since offender success is directly linked to community safety. Some officers are trained in motivational interviewing and other effective offender interaction techniques that are designed to promote offenders' engagement and internal motivation. The agency is also implementing a case management process that focuses on the nature and quality of officer interactions with offenders and their family members rather than strict contact standards.
- **Responding to violations:** A research-based, progressive sanctioning grid is used to guide responses to non-compliance with supervision expectations and to ensure that these responses are individualized, timely, proportional, and consistent. In addition to violation responses, officers can provide incentives and rewards (e.g., removing certain conditions, reducing supervision intensity or contact expectations) to reinforce compliance and progress.

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# 12 Ensure Appropriate, Sustainable Housing Options

Difficulties securing employment, financial concerns, and disruption to prosocial relationships are but a few of the challenges offenders face when reintegrating into the community, particularly following a period of incarceration. These barriers are especially significant for sex offenders, who also face negative public sentiment and restrictions on housing options.

Laws restricting where sex offenders can reside have swept the country in recent years. These "sex offender-free zones" prohibit offenders from residing anywhere from 1,000 feet or less to 2,000 feet or more from locations where children congregate, including schools, day care centers, parks, and bus stops. [More than half of the states have passed residency restriction laws (Council of State Governments, 2008).] Other communities further limit or prohibit sex offenders' access to homeless shelters or other residential settings (including treatment centers) where more than one sex offender might reside. In some localities, particularly urban areas, these exclusion zones can severely limit sex offenders' access to housing options. Instances of offenders being forced into homelessness or congregating under bridges have been widely reported.

These conditions raise serious community safety concerns:

**Key Concerns**



- Some sex offenders are denied conditional release from confinement as a result of an inability to secure housing. These offenders serve their maximum terms and are released to the community without a period of community supervision or treatment. In these instances, justice system professionals are unable to provide oversight and monitoring to offenders in the critical months following release from confinement when reoffense is most likely to occur
- Others are denied access to residential settings that offer the structure and treatment necessary to decrease the likelihood of reoffense.
- Still others experience organized community efforts to prevent them from moving into specific homes or neighborhoods.
- Aware of community members' concerns, some landlords are reluctant to rent to sex offenders, even in those areas where restrictions do not apply.

These conditions run counter to efforts to reduce the rate of reoffense, in that research demonstrates that stabilization in the community contributes to decreases in reoffense rates among sex offenders (Hanson & Harris, 2000; Hanson et al., 2007).

**The Solution**

Some jurisdictions are proactively establishing mechanisms to identify and secure affordable and sustainable housing for sex offenders. In some instances, state resources are directed to housing options for sex offenders (e.g., rent subsidies). In still others, department of corrections staff work with local landlords to reserve apartments for displaced or releasing sex offenders. These arrangements often have the added benefit of providing for added security measures (such as around-the-clock duty personnel and security cameras). As a means of addressing these problems in a deliberate manner, housing representatives are increasingly joining the memberships of state and local sex offender management policy teams.

## Washington State Department of Corrections – Housing High-Risk Offenders: A Partnership for Community Safety

In 2002, the Washington State Department of Corrections (DOC), with the support of legislators, the Governor and Attorney General, and other state agency partners, initiated an effort to promote access to housing for high-risk populations, including sex offenders. The partnership is composed of 25 members, including the DOC, the Department of Social and Health Services, the Department of Community, Trade and Economic Development (CTED), the Department of Veterans Affairs (DVA), U.S. Housing and Urban Development, Regional Support Networks, local law enforcement, the courts, victims and family advocates, for profit and nonprofit treatment providers, support service providers, and faith-based organizations.

Among the initiatives in Washington that support appropriate, sustainable housing for sex offenders are the following state- and locally based efforts:

- **Community Risk Management Specialists:** Since 2000, the DOC has funded Community Risk Management Specialists throughout the state. These individuals identify needed community supports, including housing options, for high-risk sex offenders returning to the community from state prison. DOC staff work closely with selected landlords, who participate in the early stages of reentry planning. Landlords are trained to serve as mentors and members of the offenders' community support network. Released offenders are managed by a local Risk Management Transition Team. Led by a Community Risk Management Specialist, these teams work with landlords and service providers on the supervision and management of individual cases. The Community Risk Management Specialist is also responsible for educating the community about the need for housing resources for sex offenders.
- **Reentry Housing Pilot Project:** In 2007, the Washington State legislature passed ESSB 6157. The bill's intent is to support evidence-based programming for offenders (including sex offenders) to facilitate their successful reentry into the community. Under ESSB 6157, the CTED is authorized to develop supportive reentry housing pilot programs for offenders who do not have a viable release plan. Key components of the legislation direct that pilot program staff work closely with DOC staff in the management of these cases, and that community-based shared housing arrangements or other non-institutional living arrangements be established.
- **County Sex Offender Management Teams:** Some of Washington's counties have established local sex offender management teams for the purposes of assuring the successful reintegration of reentering sex offenders. The Sex Offender Management Team in King County is one such example. The team addresses a variety of need areas, including identifying housing options for sex offenders.

# 13 Engage the Public

Public opinion shapes legislation, funding, and the political landscape of sex offender management. Without information to the contrary, the public may believe that sex offenders cannot be successfully managed in the community, and therefore only longer sentences and harsher punishment will mitigate what many believe to be high rates of reoffense (Levenson et al., 2007; Mears et al., 2008). These perceptions pose a significant challenge to those working to advance effective sex offender management strategies.

Most policymakers, and certainly all those in the justice system, understand that eventually most sex offenders will be released from confinement and that it is therefore in the best interest of public safety to employ practices that have been demonstrated to reduce recidivism. Those practices, many of which have been discussed throughout this paper, can only be possible with the support, even participation, of the members of the communities to which sex offenders will return.

Gaining the public's acceptance of and participation in sex offender management strategies is not only important for political purposes, but also because community involvement in sex offender management has been demonstrated to further reduce the likelihood of reoffense (Wilson, Picheca, & Prinzo, 2005).

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### Raising Public Awareness

Efforts to educate and engage the community regarding sex offenders and sexual victimization have expanded significantly over the past decade. Increasingly, government agencies are providing information to the public through awareness campaigns, websites, and often through public education meetings that are conducted in the context of sex offender notifications. Primary and secondary prevention efforts continue to grow nationally and internationally. Through these and other methods, citizens are informed about efforts that can reduce harm among known sex offenders and empowered to take action to prevent sexual abuse from occurring in the first place.

### Engaging the Public in Recidivism-Reducing Strategies

A particularly innovative model of public engagement has emerged over the past decade. Circles of Support and Accountability (CoSA) began as a response to the release of a high-risk, repeat child sexual abuser from prison in Ontario, Canada. Like many high-risk offenders, this offender had no prosocial ties to the community. In the face of vehement public reaction to his impending release, contact was made with a Mennonite pastor who agreed to organize a group of congregants to provide the offender with both support and accountability. This and a similar intervention several months later led to an effort between the Mennonite Central Committee of Ontario and Correctional Services of Canada to formally pilot the approach. Since then, CoSA initiatives have been documented throughout Canada and the United Kingdom and are being piloted in several jurisdictions in the United States. The widespread replication of this model can be attributed to consistent empirical findings. Studies indicate that offenders who participate in CoSA have a 70% reduction in sexual recidivism and that when a reoffense does occur, the severity is significantly reduced (Wilson, Cortoni, & Vermani, 2007; Wilson et al., 2005). In addition, 90% of CoSA participants reported that in the absence of CoSA, they would have had difficulties adjusting to the community; two-thirds believed they would have returned to crime without help from CoSA; and, finally, surveys of citizens in CoSA communities indicate that nearly 70% of respondents experience increased feelings of safety as a result of offenders' participation in CoSA.

## Circles of Support and Accountability Canada: A Model for Community Engagement in the United States

The goal of Circles of Support and Accountability (CoSA) is to prevent victimization by providing humane support and accountability to sex offenders. CoSA is a restorative justice approach to the management of high-risk sex offenders using professionally facilitated volunteers. Each Circle involves four to seven trained volunteer community members. These volunteers form a "Circle of Support and Accountability" around a sex offender (referred to as the "Core member").

The Core member's participation is voluntary. The Circle meets regularly and is guided by a written and signed agreement. The Core member commits to openly communicating with the Circle. In addition to Circle meetings, the volunteers meet with the Core member on a daily basis and provide assistance with reintegration challenges.

Other key features of the CoSA model include the following:

- **Sex offense-specific training for CoSA volunteers:** Circles of Support and Accountability volunteers initially receive up to 30 hours of training, which is followed by ongoing instruction. Advanced training focuses on the specific triggers of the individual Core member.
- **Creating an "intentional" community for the Core member:** CoSA staff and volunteers create "intentional" community functions and activities that enhance the Core member's integration into the community through safe and controlled means.
- **Case management involvement:** CoSA staff and volunteers work collaboratively with community agencies, treatment providers, community supervision officers, the police, and the courts to coordinate a case management strategy. CoSA volunteers play an important role on the case management team by serving as the Core member's prosocial community support network.

# 14 Engage a Multidisciplinary Team to Establish and Oversee Statewide Policy and Local Implementation

The nature of the offenses perpetrated by sex offenders, the complexities of their behavior, and the range of approaches that are used to promote public safety necessitate a strategic approach to the management of sex offenders. Creating the opportunity for successful outcomes requires more than any single agency can do on its own. Good police work alone will not reduce recidivism, just as sentencing policies independent of appropriate treatment and supervision will be ineffective in reducing reoffending.

Multidisciplinary collaborative teams – both at the state and local levels – are therefore important, given that sex offender management involves such a broad spectrum of individuals, agencies, and activities (CSOM, 2000a). Those with a critical role to play include:

- Law enforcement;
- Prosecution;
- Defense;
- The judiciary;
- Community and institutional corrections;
- Evaluators and treatment providers;
- Victim advocates;
- Legislators;
- Polygraph examiners;
- School officials;
- Human services and child welfare;
- Community- and faith-based organizations;
- Employers;
- Families; and
- Others who contribute to monitoring, supervising, or providing services to these offenders.

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*Statewide teams* address policies at the state level, such as setting standards for treatment providers, establishing protocols for the conduct of community notification meetings, promoting community education efforts, establishing local practice standards (for example, supervision policies, access to mental health services, and housing, etc.), educating policymakers, and promoting research-supported legislative initiatives.

*Local teams* address policies and practices that guide how the system manages offenders at the community level — beginning with primary prevention education, to the investigation of a sexual assault, to the supervision and treatment of offenders.

Both state and local policy teams assume responsibility for familiarity with the contemporary literature on sex offender management, applying this research into evidence-based practice, critically examining the jurisdiction's sex offender management practices and considering how these can be improved, establishing policies that are uniformly applied across agencies, instituting quality assurance measures, and providing oversight to ensure the attainment of specific performance outcomes.

## The Policy Team Approach to Sex Offender Management — State of Colorado: Sex Offender Management Board

In 1992, the Colorado General Assembly established a statewide policy team, the Sex Offender Management Board (SOMB), to create informed standards to govern adult sex offender management efforts in the state, with the overarching goals of promoting community safety and protecting victims. The SOMB is comprised of appointed representatives from a wide range of agencies, organizations, and entities such as members of the judiciary, district attorney's offices, public and private defense bar, law enforcement, victim advocacy, specialized treatment providers, polygraph examiners, county commissioners, and representatives from human services, child welfare, education, public safety, adult and youth corrections, and community corrections agencies.

In accordance with its initial charge, in 1996 the SOMB published the *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders*. The General Assembly expanded the SOMB's role to juvenile offenders, which led to the development of a comparable but distinct set of standards and guidelines for those responsible for managing juveniles. In 2002, the *Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses* was completed. Because the sex offender management field continues to evolve and advance, the SOMB released a revised set of adult offender standards in 2008.

The roles and responsibilities of the SOMB have expanded over time and include, among others:



- Approving and maintaining current lists of qualified providers who are able to conduct assessments, treatment services, and polygraph examinations;
- Developing specialized protocols that pertain to risk assessment, lifetime supervision, community notification, safety planning, quality assurance for post-conviction polygraphs, and working with sex offenders who have developmental disabilities;
- Creating specialized juvenile-focused materials such as conditions and guidelines for community supervision, safety assessments, cross-agency information sharing, and resources for schools;
- Supporting professionals at the local level by sponsoring multidisciplinary training events, creating and disseminating resource inventories, and offering assistance with implementing the standards and guidelines;
- Establishing a formal mechanism by which complaints regarding violations of the state's established standards and guidelines are submitted to and reviewed by the SOMB; and
- Producing commissioned research reports for, and providing other requested information to, the legislature on key sex offender management issues to assist with the development of informed public policy.

The SOMB, which convenes monthly meetings that are open to the public, is administered by the Office of Domestic Violence and Sex Offender Management in the Division of Criminal Justice, under the Colorado Department of Public Safety.

# 15 Implement a Deliberate Professional Development Strategy

In a field where the stakes are high, the dynamics are complex, the interventions are specialized, and the literature is evolving, it is essential that those who play a role in sex offender management are equipped with the necessary knowledge and skills to promote sound policy and carry out effective practices.

**Different Roles, Similar Professional Development Needs**

Although the many stakeholders involved in sex offender management play different roles and therefore have unique professional development needs, each also has a need for a core base of knowledge. This core knowledge base includes, among other topics:

- Dynamics of sex offending;
- Diversity of sex offenders;
- Needs of victims;
- Similarities and differences between and among adult and juvenile sex offenders;
- Core principles of evidence-based practice;
- Specialized sex offender assessment and treatment;
- Collaboration and case management; and
- Research-supported management and intervention strategies.

**Different Roles, Different Professional Development Needs**



In addition to this core base of knowledge, professionals have specific professional development needs. These include the following:

- Law enforcement agents and other investigators need specialized knowledge to ensure that the investigative process is conducted in a manner that reflects victim sensitivity, promotes the thorough collection of evidence, and facilitates appropriate case outcomes.
- Prosecutors, defense attorneys, and judges need specialized knowledge to make informed decisions relative to the prosecution (particularly plea negotiating), and sentencing/disposition phases in order to understand the impact of sex offenses on victims and to provide support for the interventions necessary for offender accountability and risk reduction.
- Supervision officers, victim advocates, treatment providers, and other professionals need specialized knowledge to conduct/understand comprehensive assessments, identify risk factors, and develop and monitor case management plans.
- Policymakers need specialized knowledge to advance sound laws and policies that will produce the most beneficial outcomes.

Specific, deliberate methods should be established to ensure the competency of professionals working with sex offenders. Jurisdictions should:

- Provide all stakeholders with a core curriculum on sex offender management, as well as the specialized knowledge and skills necessary to fulfill their specific responsibilities;
- Provide all stakeholders with ongoing knowledge and skill development opportunities to keep pace with emerging research; and
- Establish methods to ensure the quality of the trainers and training curricula, as well as stakeholders' competency in the subject matter relevant to their work.

## Creating a Sustainable Infrastructure for Ongoing Professional Development: The Hawai'i Academy for Training on Sex Offender Management

For more than a decade, the Hawai'i Department of Public Safety has coordinated the Sex Offender Management Team (SOMT), a multidisciplinary committee whose mission is to "develop and implement, through a collaborative effort and legislative support, best practice standards statewide for the evaluation, treatment, disposition, ongoing assessment and supervision of adult sex offenders and youth with sexualized misbehavior." As a means of advancing this mission, the agencies and entities represented on the SOMT have made significant investments in professional development, largely by hiring national consultants to conduct trainings on issues such as assessment, treatment, and supervision.

While fruitful, these training events did not reach all personnel because of scheduling, space limitations, costs, staff turnover, and the need to provide supervision and services while these events were being conducted. In addition, new developments in the sex offender management field continue to make ongoing education efforts a necessity. These challenges have been faced by agencies throughout the nation, but are exacerbated in Hawai'i because of its relative isolation from the mainland and the associated high costs of bringing training to the islands. As such, the SOMT formalized a partnership with the University of Hawai'i, through the Department of Psychology and the Public Policy Center at the School of Social Sciences, to establish the Hawai'i Academy for Training on Sex Offender Management. This training academy is designed to create a sustainable infrastructure for ensuring that the initial and ongoing professional development needs of core practitioners will be met in a consistent and cost-effective manner. The objectives of the training academy are to:

- Identify the core professional development needs (e.g., initial and ongoing, theory and skills-based) for the respective agency personnel and contracted providers;
- Establish discipline- and agency-specific professional development requirements;
- Codify a series of contemporary curriculum modules – informed by evidence-based and other promising sex offender management strategies – to address the various professional development requirements;
- Create and maintain a pool of skilled trainers through a "train the trainers" approach; and
- Design and implement quality assurance monitoring of both the curricula and the trainers to ensure that the mission of the academy is met on an ongoing basis.

The Hawai'i Academy for Training on Sex Offender Management is ultimately intended to become a statewide certification program for field professionals.

# 16 Prevent Secondary Trauma

In a 1997 study examining secondary trauma among professionals in the sex offender management field, a majority of respondents identified themselves as experiencing symptoms associated with distress, including flashbacks, nightmares, and intrusive images (Rich, 1997). They were also more likely to report experiences of anxiety, depression, and isolation.

Secondary trauma is the psychological, emotional, and physical effects of exposure to the traumatic experiences of others. As staff become more immersed in sex offender management, the likelihood of experiencing trauma increases (Cumming & McGrath, 2005; Pullen & Pullen, 1996; Thorpe, Righthand, & Kubik, 2001). Staff who are exposed to descriptions of sexual abuse, offenders' attitudes and statements that support sexually abusive behavior, and the impact sex offenses have on victims may experience anxiety, depression, helplessness, and other stress reactions (Dane, 2000; Figley, 1995; Thorpe et al., 2001). The burden of responsibility for community safety, high caseloads, chaotic work environments, and a lack of training and emotional support are compounding factors.

**Mitigating the Effects of Secondary Trauma and Creating Trauma-Resilient Workplaces**

Active steps must be taken to protect the well-being of those working with sex offenders. Community supervision officers; detention, jail, and prison staff; victim advocates; and treatment providers are among the obvious professionals who may experience secondary trauma. But law enforcement officers, prosecutors and defenders, judges, release decision makers, and others report experiencing secondary trauma as well. Furthermore, the effects of secondary trauma can extend beyond the individual to the organization. The following are strategies for supporting staff and building trauma resilient workplaces:

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- Provide sex offender management training that includes a component on secondary trauma to equip those responsible for this work with the specialized knowledge and skills necessary to undertake it successfully.
- Establish clear boundaries and support employees in their efforts to sustain a balance between their personal and professional lives by maintaining reasonable workloads and caseloads, supporting a 40-hour workweek, and encouraging employees to take time off.
- Create a safe forum for processing experiences and reactions to enable staff to discuss the emotional and psychological challenges they experience.
- Make clear that an offender's failure does not reflect an employee's failure.
- Promote collaboration, particularly collaborative case management, to increase staffs' level of knowledge, confidence, and support during and following the decision-making process.
- Support flexible office policies as appropriate, such as non-traditional work schedules and assigning staff to work with sex offenders on a voluntary rather than a mandatory basis.
- Empower staff to contribute to policy development and decision making to ensure their expertise is maximized as well as to foster feelings of empowerment and control over their work environments.
- Promote employee wellness within the workplace and across workplaces by establishing stress reduction programs and opportunities, either through external providers and/or by creating peer support networks.

## Supporting Staff and Mitigating Secondary Trauma: The Oregon Sex Offender Supervision Network

In 1990, three community supervision officers attending a conference in Oregon organized a meeting of fellow officers who had responsibility for supervising sex offenders across the state. The conversation focused primarily on mitigating the effects of secondary trauma and the stressors of working with sex offenders. Exposure to descriptions of acts of violence; denial, minimization, and the deviant thoughts and cognitive distortions of offenders; a sense of professional isolation from colleagues who did not work with sex offenders; and the negative media attention that is sometimes associated with these cases underpin the stress related to this work. Participants immediately recognized the value of increased communication, information sharing, and networking among colleagues. Shortly thereafter, this group founded the Oregon Sex Offender Supervision Network. The Network was established based on a belief that empowerment and networking can provide essential support to those who work with sex offenders and on an assumption that participatory management can result in more effective strategies to manage sex offenders.

Over the years, the Network has grown in size and now includes direct service staff from a variety of disciplines, including the Oregon State Police, prison counselors, sex offender treatment providers, and members of the Board of Parole and Post-Prison Supervision. The Oregon Association of Community Corrections Directors (OACCD) provides support to the Network and a liaison from OACCD attends all Network meetings. The Network is formally endorsed by both the OACCD and the Oregon Department of Corrections to:



- Work together to provide support and share resources and professional expertise;
- Develop standards for the evaluation, treatment, and supervision of sex offenders;
- Provide training to enhance skill development; and
- Provide recommendations to the Department of Corrections, local community leaders, and the state legislature on policy issues related to the management of sex offenders.

In addition to these policy and advisory roles, the Network provides support to staff working directly with sex offenders, with specific efforts to mitigate the effects of secondary trauma, including the following:

- The Network's bimonthly meetings provide an open, nurturing environment for talking with peers about specific cases or the general challenges associated with working with sex offenders;
- Networking and case-specific problem solving occurs within the context of these meetings and between meetings through e-mail exchanges; and
- The Network has partnered with OACCD to provide a one-week course titled Sex Offender Supervision Specialist Training Certification, which includes a module on secondary trauma, to enhance the knowledge and skills of staff.

# 17 Maintain Quality Assurance

The effectiveness of any policy or practice depends upon the evidence that underlies it and the manner in which it is implemented. This paper describes a variety of policy choices with an empirical basis. But implementing evidence-based practices is insufficient if it is not done with fidelity. To realize the full potential of evidence-based practices, a commitment to quality control and assurance is essential.

Quality assurance should be measured at the system, agency, and individual levels:

**The "system" of sex offender management:**
The most fundamental objective of sex offender management is to reduce the rate of reoffense among known sex offenders. While exemplary implementation of all the processes and strategies cumulatively referred to as "sex offender management" – crime investigation, charging and disposition, institutional management, release decision making and processes, community supervision, assessment and treatment, stakeholder involvement, community support, etc. – cannot assure a positive outcome in every case, positive outcomes are most likely to result when all aspects of this system are in alignment (applying evidence-based practices effectively) and when stakeholders work collaboratively and in an integrated fashion. The ongoing analysis and sharing of process and outcome data that provides information about the effectiveness of this system of management strategies offers stakeholders the opportunity to assess and continually advance practices that produce ever-improving results.

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**The role of individual agencies:**
In service of their public safety objective, it is incumbent upon each agency that plays a role in the system of sex offender management to have a comprehensive understanding of, and to implement with fidelity, evidence-based policies and practices that either have been empirically demonstrated or hold promise for risk management or recidivism reduction. Each agency must do its part in order for the system as a whole to maximize the potential of success.

**The importance of individual staff:**
The research regarding the impact professionals can have on behavior change among offenders is compelling (see, e.g., Andrews & Bonta, 2006). For this reason, the importance of each individual involved in the management of a sex offender – whether a prosecutor, judge, treatment provider, or another professional – cannot be overlooked.

**Creating a "Culture of Quality" in Your Agency**

Each agency that plays a role in sex offender management should take steps to assure the quality of services delivered and the competency of those delivering them. Organizations with a "culture of quality" (Howe & Joplin, 2005):

- Define measurable outcomes and performance indicators;
- Establish processes to routinely and systematically collect and analyze data;
- Objectively assess programs, services, and the knowledge, skills, and competencies of staff;
- Provide feedback to the agency as well as to staff;
- Create ongoing opportunities for staff training and coaching; and
- Use data and information to improve individual and agency outcomes, with the goal of improving system outcomes.

## Structuring a Deliberate Agencywide Quality Assurance Effort: The Idaho Department of Corrections

In an effort to ensure consistency and quality of the services and competencies of staff who specialize in sex offender supervision, the Idaho Department of Corrections has established a Program Coordinator position that is dedicated to internal quality assurance. The Program Coordinator monitors 183 supervision officers who are assigned to offices in the agency's 7 districts. Specific areas of responsibility include the following:

- **Emerging research:** Keeping abreast of new developments in the field, such as the release of new or revised empirically based assessment instruments;
- **Agency policy review:** Determining whether departmental policy aligns with current research;
- **Agency performance data:** Collecting and analyzing districtwide and agencywide data to determine performance trends;
- **Reliability of assessment scores:** Conducting an independent review of general offender and sex offense-specific assessment instruments to determine the accuracy of scoring;
- **Validity of assessment scores:** Evaluating whether the assessment instruments are appropriate for the population of interest (e.g., age, gender);
- **Appropriateness of case plans:** Reviewing case files to determine whether the outlined interventions and strategies address the criminogenic needs and dynamic risk factors identified through assessments;
- **Monitoring the timeliness of case data:** Interviewing officers and reading case files to assess the frequency and circumstances under which assessments are rescored and case management plans are updated;
- **Monitoring service delivery levels:** Conducting a variety of monitoring activities at the officer and district level, such as tracking individual officer caseload sizes and identifying district-level resource deficits, and adjusting resources to provide and maintain service delivery at the desired levels; and
- **Policy revision:** Revising agency policy and practice based on these findings.

In addition, the following steps are taken by the Program Coordinator, in conjunction with mid-level supervisors, to assess and advance the competencies of individual staff members:

- Community supervision officers are provided a standardized set of individual performance measures upon hiring, and training is provided on the basis of these measures to ensure clarity around the department's expectations;
- These standards are included as measures for employees' annual reviews;
- At least two case files per officer are reviewed per quarter (monthly for newer officers) until performance measures are consistently high; thereafter, file audits continue but are conducted less frequently; and
- Officers' skills (motivational interviewing, interpretation of assessment information to develop case management plans) are assessed through direct observation on a biannual basis (less frequently for skilled officers).

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# 18 Tailor Strategies for Juveniles

Early approaches to managing juvenile sex offenders were based on assumptions that have since been demonstrated to be inaccurate, such as the beliefs that these youth are likely to continue offending into adulthood, require intensive and long-term interventions, are "specialists" as sex offenders and distinct from other justice-involved youth, and generally mirror adult sex offenders (Chaffin, 2008; Letourneau & Miner, 2005). Contemporary strategies take into account the research about this population of youth and the types of interventions that are most likely to be appropriately responsive.

**Use research-supported assessment tools designed for youth:**
Because juveniles and adults differ in important ways, including the respective risk factors associated with recidivism, risk-need assessments should be validated for use with juveniles (see, e.g., Prescott, 2006; Worling & Langstrom, 2006). Primary examples of juvenile sex offense-specific tools include the Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR; Worling & Curwen, 2001) and the Juvenile Sex Offender Assessment Protocol-II (J-SOAP-II; Righthand et al., 2005). Additional research-supported instruments designed to assess risk and needs among "general" justice-involved youth include the Structured Assessment of Violence Risk for Youth (Borum, Bartel, & Forth, 2005) and the Youth Level of Service/Case Management Inventory (Hoge, 2005).

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**Employ developmentally appropriate, research-based models of treatment:**
Current research suggests that both cognitive-behavioral treatment and Multi-Systemic Therapy (MST) approaches are associated with lower rates of sexual and non-sexual recidivism for juveniles who have committed sex offenses (Reitzel & Carbonell, 2006). Cognitive-behavioral approaches are designed to assist youth with changing unhealthy thinking patterns and practicing prosocial skills and competencies. MST targets multiple interactive factors that are associated with problem behaviors among youth, such as individual, family, peer, and school variables, and is designed to improve family functioning, parenting skills, affiliations with prosocial peers, school performance, and community supports (see, e.g., Saldana et al, 2006).

**Employ balanced supervision strategies that engage caregivers:**
Intensive and punishment-driven approaches to supervision do not reduce recidivism among justice-involved youth (see, e.g., Aos et al., 2001; Lipsey & Wilson, 1998). Supervision of juvenile sex offenders should therefore reflect a collaborative case management approach that complements treatment efforts and includes parents, caregivers, and other sources of community support (Hunter, Gilbertson, Vedros, & Morton, 2004). Specially trained supervision officers should also use research-supported risk-need assessments designed for this population (e.g., J-SOAP-II) to inform the level and focus of community-based strategies.

**Avoid application of adult-oriented laws:**
Juvenile sex offenders generally present a low risk for sexual recidivism and are more like other justice-involved youth than they are similar to adult sex offenders (see Chaffin, 2008; Letourneu & Miner, 2005). In light of this research, lawmakers are encouraged to exercise extreme caution when considering the inclusion of juveniles under the scope of sex offense-specific laws. Indeed, registration of juveniles has not been found to increase public safety, and it comes with potential unintended consequences, such as social and peer rejection, disruption in the development of a healthy identity, and other barriers to adjustment and stability (Chaffin, 2008; Letourneau & Armstrong, 2008; Letourneau & Miner, 2005).

## Wisconsin Department of Corrections, Division of Juvenile Corrections

The Division of Juvenile Corrections (DJC) of the Wisconsin Department of Corrections has designed and implemented a specialized, integrated approach to managing juvenile sex offenders in correctional facilities, during transition, and in the community. The division's approach reflects current research on juvenile sex offenders and includes the following elements:

- **Comprehensive and holistic assessment strategies that guide interventions:** At intake into facilities, juvenile sex offenders participate in a thorough assessment process designed to explore a range of potential intervention needs (e.g., psychiatric, family, peer, substance abuse, education) beyond their sex offending behaviors. Youth determined to be higher risk are assigned to more intensive interventions (which utilize a cognitive-behavioral approach to address risk factors that are associated with offending behavior) than those who are lower risk (who may receive less intensive services). The results of the assessments that occur at intake are also used to identify issues and concerns to be addressed prior to each youth's transition to the community.
- **The use of a common juvenile sex offense-specific assessment tool:** The DJC uses the Juvenile Sex Offender Assessment Protocol-II (J-SOAP-II), a research-supported, specialized assessment tool, in offenders' initial and periodic re-assessments. Prior to release, the J-SOAP-II is re-administered as a means of assessing changes, identifying ongoing needs, informing transition and release efforts, and developing community case management plans. In the community, the tool is re-administered every three months.
- **Continuity of care:** A primary focus of the DJC is a proactive transition planning process to ensure juvenile sex offenders are linked to services in the community that support and build upon the treatment progress made in facilities. At least 90 days prior to release, the designated probation and parole agent organizes a collaborative transition team meeting to identify community treatment and supervision needs of the youth and to begin to develop an individualized, developmentally sensitive plan to address those needs. Providers from the community then "reach into" the facilities, so youth are able to begin to establish positive therapeutic relationships with them.
- **Specialized supervision based on risk level and identified needs:** Specially trained probation and parole agents manage juvenile sex offenders in the community. Prior to the offender's release, the agent uses the J-SOAP-II results and other data to design individualized supervision plans that are responsive to the offender's risk level and identified needs. General and specialized conditions are applied selectively and supervision strategies are adjusted over time. Parents/caregivers are identified specifically by the DJC as critical partners in the community supervision process. Probation and parole agents engage them proactively, refer them to needed services and supports, and work collaboratively with them to promote the success of juvenile sex offenders.
- **Investment in specialized training:** Recently, the DJC has prioritized specialized training for staff who work with juvenile sex offenders in facilities and the community. This training has focused on motivational interviewing, the case planning and management process, and the administration of the J-SOAP-II. Recognizing the evolving nature of the contemporary research and literature related to these youth, staff are afforded specialized, continuing education opportunities.

# 19 Engage Legislators to Promote Informed Policies

With the heightened concerns about sex offenders and sexual victimization and the public's demand for legislative responses, sex offense-specific laws have been passed at unprecedented rates. Most prevalent in recent years have been laws that establish specialized civil commitment, mandatory minimum sentences, expanded requirements for registration and community notification, and residency restrictions. Enactment of these and other well-intentioned laws is typically reactive, in response to high-profile cases that fuel citizens' fears about their safety (Sample & Kadleck, 2008).

The resulting policies, which tend to be costly and far-reaching in applicability, are not necessarily developed with a thorough understanding of the facts pertaining to sex offenders, victims, and effective management strategies (Levenson & D'Amora, 2007; Sample & Kadleck, 2008). As a result, many sex offense-specific legislative initiatives are implemented in the absence of evidence supporting their effectiveness in promoting public safety or preventing sexual victimization.

Just as the field of corrections overall has moved toward implementing evidence-based practices, there has been recent movement toward developing evidence-based policies, whereby current research and data is used to inform correctional policies in order to reduce recidivism and increase public safety in cost-effective ways (see Andrews & Bonta, 2006; Aos et al., 2001, 2006). In addition, there has been a growing emphasis regarding the need for evidence-based sex offender management policies (Levenson & D'Amora, 2007; Sample & Kadleck, 2008). Developing informed sex offender management policies requires dedicated efforts to engage lawmakers in educational opportunities that are designed to increase their understanding of the following:

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- The incidence and prevalence of sexual victimization;
- The nature of the victim-offender relationship, whereby most victims are related to or otherwise known to the offenders;
- The diversity of adult and juvenile sex offenders, including the varied levels of risk they pose to the community;
- The ability of practitioners to differentiate between lower- and higher-risk sex offenders based on empirically based assessment tools and to apply these tools at key decision points;
- Key elements of contemporary sex offender management and the goals underlying these components; and
- Research on the impact and effectiveness of various sex offender management laws and strategies, including the potential for paradoxical, risk-increasing effects.

Criminal justice and correctional policymakers throughout the country are increasingly taking steps to frame laws and other policies upon the evidence-based correctional literature, including current research about sex offenders and effective management strategies. This is occurring by convening legislative briefings, training events, and other educational forums for state lawmakers and other public executives; creating multidisciplinary task force groups, special committees, and advisory boards to provide policy analyses and recommendations; and commissioning research reports focused on specific areas of sex offender management policy. Equipping lawmakers – and the public they represent – with accurate and contemporary information about these issues allows for a more deliberate and informed response to sex offender management policy, more effective and efficient allocation of resources, and, ultimately, increased public safety.

## Promoting Informed Legislation: Kansas Sex Offender Policy Board

In 2006, the Kansas Governor and the Legislature established the Kansas Sex Offender Policy Board to provide guidance and recommendations to state officials regarding a range of sex offender management policies. Per statute, the Sex Offender Policy Board, under the authority of the Kansas Criminal Justice Coordinating Council (KCJCC), included the following members:

- Secretary of Department of Corrections;
- Commissioner of Juvenile Justice Authority;
- Secretary of Social and Rehabilitation Services;
- Director of the Kansas Bureau of Investigation;
- Chief Justice of the Supreme Court or designee; and
- Two persons (i.e., mental health provider, victim advocate) appointed by the KCJCC.

The Board analyzed policies that focused on community notification, residency restrictions, electronic monitoring, juvenile sex offender management, treatment and supervision standards for sex offenders, suitability of lifetime supervision, and public education. The following were among the key policy recommendations:

- Establish a multidisciplinary sex offender management board to address comprehensive, specialized, and victim-sensitive sex offender management standards and guidelines;
- Adopt developmentally appropriate assessment, treatment, and supervision approaches for juveniles who have committed sex offenses, including an emphasis on family interventions;
- Promote collaboration between law enforcement, community corrections and supervision, court services, prosecutors, and others to verify and update sex offender registry data;
- Educate the public about the uses and limitations of the sex offender registry, and ensure that the terminology and offenses on the registry are clearly defined and understandable;
- Establish a formal review process that may allow for waiver of registration for certain offenders under special circumstances;
- Reserve electronic monitoring for sex offenders assessed as a high risk for recidivism, and use this technology in conjunction with other management strategies (e.g., treatment, supervision);
- Forgo lifetime supervision legislation, given the current lack of evidence to support such a strategy;
- Make permanent the moratorium on residency restrictions, in light of the absence of evidence supporting the effectiveness of residency restrictions and the false sense of security that these laws may instill; and
- Allocate resources to develop public education and prevention programs regarding sex offenders, effective management strategies, and the prevention of sexual victimization.

These and other recommendations have resulted in well-informed and measured legislation pertaining to the management of sex offenders in Kansas.

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# 20 Invest in What Works

An extensive body of scientific literature demonstrating "what works" in reducing adult and juvenile recidivism is available to guide policy investments and operational practices. While further study will undoubtedly expand and refine this knowledge base, sufficient information is available to support decisions that will result in positive outcomes for both offenders and communities. Only when these strategies are fully funded, implemented with fidelity, and operated with quality assurance will their *true* potential be realized.

The following are among the multiple evidence-based practices demonstrated to reduce recidivism within the correctional field:

- Use empirically based instruments to determine level of risk for recidivism (Grove, Zald, Lebow, Snitz, & Nelson, 2000);
- Objectively identify the risk to offend sexually and non-sexually (Andrews & Bonta, 2006; Hanson & Morton-Bourgon, 2007);
- Apply empirically based instruments to their intended population (e.g., juvenile, adult) in the appropriate setting (e.g., institutional, community) (Andrews & Bonta, 2006);
- Prioritize institutionally based treatment for higher-risk offenders (Lowenkamp, Latessa, & Holsinger, 2006);
- Provide a combination of treatment and supervision services (Aos, Miller, & Drake, 2006);
- Use empirically based treatment services (e.g., cognitive-behavioral treatment, family- and community-based programming) (Aos et al., 2001, 2006; Landenberger & Lipsey, 2005);
- Tailor treatment to individuals' dynamic risk factors (Andrews & Bonta, 2006; Dowden, 1998);
- Measure treatment progress objectively (Andrews & Bonta, 2006);
- Deliver more intensive supervision services to higher-risk offenders (Lowenkamp, Pealer, Smith, & Latessa, 2006; Pealer & Latessa, 2004);
- Employ success-oriented supervision approaches (Taxman, Yancey, & Bilanin, 2006);
- Adjust interventions based upon changes in dynamic risk factors (Andrews & Bonta, 2006; Hanson et al., 2007);
- Engage offenders in the change process (Dowden & Andrews, 2004; Ginsberg, Mann, Rotgers, & Weekes, 2002);
- Support offenders' success through community stability (e.g., sustainable housing, appropriate employment) (Petersilia, 2003; Taxman et al., 2006);
- Ensure interventions applied are appropriate for subpopulations of offenders served (e.g., juveniles, adults; male, female) (Andrews & Bonta, 2006; Gendreau, 1996);
- Tailor approaches with sensitivity to key offender characteristics (e.g., motivation, culture, functioning level) (e.g., Andrews & Bonta, 2006; Gendreau, 1996);
- Assure the qualifications of professional staff and provide skill-based training (Dowden & Andrews, 2004; Lowenkamp, Latessa, & Smith, 2006);
- Mobilize citizens to provide support and accountability to offenders in the community (Wilson, Cortoni, & Vermani, 2007);
- Maintain fidelity to program models that have been demonstrated effective (Lowenkamp, Latessa, & Smith, 2006); and
- Institute quality assurance measures to determine whether optimal outcomes are achieved (Gendreau & Andrews, 2001; Lowenkamp, Latessa, & Smith, 2006; Pealer & Latessa, 2004).

## 20 Strategies to Advance Sex Offender Management in Your Jurisdiction

1. Establish a comprehensive, ongoing assessment process.
2. Monitor changes in dynamic risk.
3. Implement a collaborative case management approach.
4. Adopt a victim-centered approach.
5. Deliver evidence-based sex offender treatment.
6. Enhance treatment capacity.
7. Establish seamless information exchange mechanisms.
8. Promote successful post-release outcomes through informed decisions.
9. Implement a strategic sex offender reentry process.
10. Partner with law enforcement.
11. Deliver quality supervision services.
12. Ensure appropriate, sustainable housing options.
13. Engage the public.
14. Engage a multidisciplinary team to establish and oversee statewide policy and local implementation.
15. Implement a deliberate professional development strategy.
16. Prevent secondary trauma.
17. Maintain quality assurance.
18. Tailor strategies for juveniles.
19. Engage legislators to promote informed policies.
20. Invest in what works.

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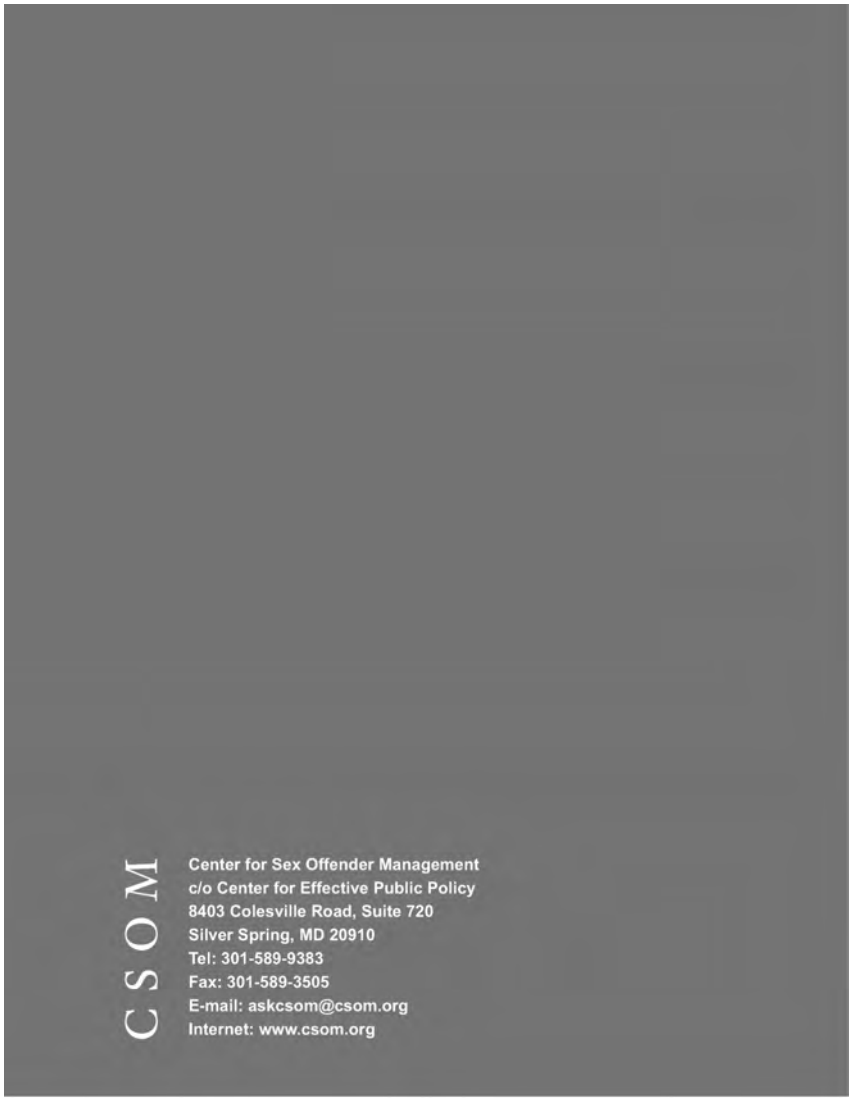
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**StopChildPredators**

March 16, 2009

The Honorable Robert Scott
Subcommittee on Crime, Terrorism, and Homeland Security
B-351 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of Stop Child Predators, I write in follow up to the March 10th hearing that addressed the Adam Walsh Child Protection and Safety Act of 2006, to express our support for the Act.

Stop Child Predators brings together a coalition of law enforcement organizations, community groups and victims' rights advocates to lead targeted public awareness campaigns in all 50 states to prevent crimes against children. We seek to leverage ongoing efforts and resources across the county to put child protection at the forefront of the public and legislative agendas to accomplish four key goals:

1. **Enhance Penalties for Crimes Against Children**. Stop Child Predators was founded just after the tragic loss of Jessica Lunsford, the nine-year old Floridian who was abducted, raped and buried alive in 2005 by a twice-convicted sex offender. Since its inception, our organization has advocated for state-by-state adoption of "Jessica's Law," which requires 25-year mandatory minimum sentences and electronic monitoring for convicted sex offenders. We also support increased penalties for crimes such as sex trafficking of children, child prostitution and child pornography.

2. **Expand the National Sex Offender Registry**. Stop Child Predators promotes an efficient and seamless integrated nationwide sex offender registry, recognizing that law enforcement agencies across the country needs to have access to the same information in order to help prevent sex offenders from evading detection by moving from state to state. We also believe the public needs uniform access to relevant information so that parents can better protect their children from sex offenders.

3. **Protect the Rights of Victims**. Stop Child Predators works closely with victims and their families to tell their stories to lawmakers in an effort to enact tougher penalties for convicted sex offenders. We also work to ensure that

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victims and their families are heard during the sentencing of child predators, and are notified prior to the offender's release into the community.

4. **Promote Online Safety**. Stop Child Predators is committed to making it harder for sexual predators to reach children online. As a result, we launched Stop Internet Predators, an initiative dedicated to increasing awareness of the child safety implications of emerging Internet technologies. Among other aims, this project works to expand the sex offender registry to include electronic identifiers of sex offenders, criminalize the Internet-based luring of a child, and help preserve Internet evidence for law enforcement investigations.

To this end, we support the child safety efforts included in the Adam Walsh Act and believe the bill to be comprehensive in its reach and laudable in its goal of protecting our nation's children.

Sincerely,

Stacie D. Rumenap
Executive Director

CC: The Honorable Louie Gohmert, Ranking Minority Member

**The Research & Evaluation Unit**
**Office of Policy and Planning**
**New Jersey Department of Corrections**

# Megan's Law: Assessing the Practical and Monetary Efficacy

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**EXECUTIVE SUMMARY**

The research that follows concerns the various impacts of community notification and registration laws (Megan's Law) in New Jersey. Although this report includes a variety of interesting findings and many ideas that will be explored upon post grant period, this research was embarked upon, in general, to investigate: 1) the effect of Megan's Law on the overall rate of sexual offending over time; 2) its specific deterrence effect on re-offending, including the level of general and sexual offense recidivism, the nature of sexual re-offenses, and time to first re-arrest for sexual and non-sexual re-offenses (i.e., community tenure), and 3) the costs of implementation and annual expenditures of Megan's Law. These three primary foci were investigated using three different methodologies and samples.

Phase One was a 21-year (10 years prior and 10 years after implementation, and the year of implementation) trend study of sex offenses in each of New Jersey's counties and of the state as a whole. In Phase Two, data on 550 sexual offenders released during the years 1990 to 2000 were collected, and outcomes of interest were analyzed. Finally, Phase Three collected implementation and ongoing costs of administering Megan's Law.

The following points highlight the major findings of the three phases of the study.

- New Jersey, as a whole, has experienced a consistent downward trend of sexual offense rates with a significant change in the trend in 1994.
- In all but two counties, sexual offense rates were highest prior to 1994 and were lowest after 1995.
- County trends exhibit substantial variation and do not reflect the statewide trend, suggesting that the statewide change point in 1994 is an artifact of aggregation.
- In the offender release sample, there is a consistent downward trend in re-arrests, reconvictions and re-incarcerations over time similar to that observed in the trend study, except in 1995 when all measures spiked to a high for that period. This resulted in

significant differences between cohorts (i.e., those released prior to and after Megan's Law was implemented).

- Re-arrests for violent crime (whether sexual or not) also declined steadily over the same period, resulting in a significant difference between cohorts (i.e., those released prior to and after Megan's Law was implemented).
- Megan's Law has no effect on community tenure (i.e., time to first re-arrest).
- Megan's Law showed no demonstrable effect in reducing sexual re-offenses.
- Megan's Law has no effect on the type of sexual re-offense or first time sexual offense (still largely child molestation/incest).
- Megan's Law has no effect on reducing the number of victims involved in sexual offenses.
- Sentences received prior to Megan's Law were nearly twice as long as those received after Megan's Law was passed, but time served was approximately the same.
- Significantly fewer sexual offenders have been paroled after the implementation of Megan's Law than before (this is largely due to changes in sentencing).
- Costs associated with the initial implementation as well as ongoing expenditures continue to grow over time. Start up costs totaled $555,565 and current costs (in 2007) totaled approximately 3.9 million dollars for the responding counties.
- Given the lack of demonstrated effect of Megan's Law on sexual offenses, the growing costs may not be justifiable

**INTRODUCTION**

On July 29, 1994, Jesse Timmendequas, a sex offender who had been released after serving a maximum sentence in a New Jersey correctional facility, raped and murdered seven-year-old Megan Kanka in Hamilton, New Jersey. The intense community reaction that followed extended well beyond the state. One expression of community outrage was the enactment of laws to notify the public of the presence of sex offenders living and working in their community. The premise was, and still is, that with this knowledge, citizens will take protective measures against these nearby sex offenders. As Beck, Clingermayer, Ramsey and Travis (2004) note, "Exactly what action is expected is not clear, but it is hoped that, armed with this critical information, citizens will work on their own or in concert with government to make their neighborhoods safer" (p. 142).

During the following decade, all 50 states and the District of Columbia enacted some version of such community registration and notification laws, collectively referred to as "Megan's Laws" (Presser & Gunnison, 1999; Zevitz & Farkas, 2000). Although a few states, such as Washington, had enacted community notification laws prior to 1994, the federalization of community notification laws in 1996 created strong incentives for other states to follow suit (Presser & Gunnison, 1999).

The legislation known as Megan's Law, includes both registration and notification. Sex offenders must register their addresses with local police jurisdictions within a specified time of release from prison. By way of the registration process, the public is then notified of the offender's presence in the neighborhood. The goal of notification is to inform both the public and past victims so that they can protect themselves accordingly. As with other states, registration

and notification are separate steps in New Jersey, but are often referred to as one process. In New Jersey, offenders are placed into one of three tiers, representing a hierarchy of potential risk of an offender's re-offense. A risk assessment instrument is used to predict the offender's likelihood of re-offense, which ultimately determines placement into the tier. Tier one represents the lowest risk and requires only notification of law enforcement officials and the victims. Offenders are considered low risk and eligible for a tier one placement if they received a low risk assessment score and are on probation/ parole, receiving therapy, employed and free of alcohol and drugs. A tier two classification represents a moderate risk of a re-offense. It requires notification of organizations, educational institutions, day care centers and summer camps. The factors for placement into a tier two category include a moderate to high risk assessment score, failure to comply with supervision, lack of employment, abuse of drugs or alcohol, denial of offenses, lack of remorse, history of loitering or stalking children and making threats (Brooks, 1996; Matson & Lieb, 1997; Witt & Barone, 2004). Tier three offenders are those who are predicted to present the greatest risk to re-offend. This category has generated the most legal resistance because it calls for the broadest level of notification. The entire community is notified through posters and pamphlets. The factors necessary for the placement into a tier three category are a high probability of re-offending evidenced by a particularly heinous instant offense or a high-risk assessment score, repetitive and compulsive behavior, sexual preference for children, failure or refusal of treatment, denial of the offense and lack of remorse (Brooks, 1996; Rudin, 1996; Witt & Barone, 2004).

Despite their existence for over a decade, little work has been done to examine the effectiveness of these laws on sexual offense rates. A few researchers, such as Beck and colleagues (2004), have conducted surveys to determine what protection methods community

members use when given information regarding the presence of sex offenders. Beck and colleagues (2004) approach their research from the viewpoint that community notification laws were enacted more to change the behaviors of potential victims than those of potential sexual recidivists. In this study, Beck and colleagues (2004) differentiated between two types of protective measures: (1) "self-protective measures," or behavioral measures initiated by the potential victims themselves; and (2) "altruistic protective measures," or behavioral measures initiated by family members to protect other household members (e.g., their children) (Beck & Travis, 2002). These studies found that community notification did, in fact, increase altruistic behaviors by community members to protect members of their households, although the findings are inconsistent with regard to whether self-protective behaviors increased after community notification. Because of these results, Beck and colleagues (2004) posit that it is not the enactment of community notification laws themselves that influences protective behaviors, but the community members' perceived risk of victimization (also measured in these surveys) that mediates these behaviors. This mediating factor presents problems for identifying the true effect of these laws on sexual recidivism rates.

A few studies have also surveyed sex offenders to determine the impact that community notification laws have had upon them. Tewksbury (2005) found that social stigmatization, loss of relationships, employment and housing, and both verbal and physical assaults were experienced by a significant minority of registered sex offenders (see also Tewksbury & Lees, 2006). Zevitz and Farkas (2000) also found that a majority of sex offenders reported negative consequences, such as exclusion from residences, threats and harassment, emotional harm to their family members, social exclusion by neighbors, and loss of employment. Furthermore, according to many tier three offenders interviewed, these laws would not deter them from committing future

sex offenses (Zevitz and Farkas, 2000). In fact, Presser and Gunnison (1999) suggest that notification laws may be counterproductive in that public scrutiny causes additional stress to offenders who are transitioning back into the community. The fear of exposure may cause offenders to avoid treatment, and in the case of pedophiles, may encourage offenders to seek out children as a result of adult isolation. If these assumptions are true, the risk of recidivism may be increased (Presser & Gunnison, 1999), or at least such factors would work against any protective measures taken, thus lessening or eliminating any positive effect of the law.

None of the aforementioned research, however, addresses the critical question of whether community notification and registration laws actually reduce sex offense rates (primary offenses or re-offenses) in the communities in which the laws are applied, or what patterns of sexual offense rates appear. Despite Megan's Laws being in effect in all 50 states, only one study was found that examines pre- and post-Megan's Law sex offense rates. That study, conducted in the state of Washington, compared sexual recidivism rates between two groups of sexual offenders: one released three years prior to the implementation of community notification laws in that state, and one released three years after the implementation. The pre- and post- target groups were those most likely to be affected by the law (i.e., those who would qualify for tier three classification). To account for population differences, offenders in both groups were matched on the number of sex convictions and the type of victim (i.e., adult or child) (Schramm & Milloy, 1995). Their analysis of potential group differences revealed that at the end of 54 months (four- and one- half years "at risk"), there was no statistically significant difference in the arrest rates for sex offenses between the two groups (19 percent versus 22 percent). However, the study did find that notification had an effect on the time of the next arrest for any type of offense.

Offenders subject to notification were arrested for new crimes much more quickly than were offenders not subject to notification. (Schramm & Milloy, 1995).

These results suggest that Megan's Laws may not be effective in reducing recidivism rates. One can make a case, in fact, that Megan's Law, at least as implemented in Washington, had no effect on the rate of sex offense recidivism, although it may result in more rapid detection of new sex offenses (see discussion in Pawson, 2002).

This lack of outcome studies means that Megan's Laws constitute an untested mandate in the domain of empirical research. Despite widespread community support for these laws, there is virtually no evidence to support their effectiveness in reducing either new first-time sex offenses (through protective measures or general deterrence) or sex re-offenses (through protective measures and specific deterrence).

The study described below investigates various impacts of community notification and registration laws (Megan's Law) in New Jersey. The primary areas of study are: 1) the effect of Megan's Law on the overall rate of sexual offending over time; 2) its specific deterrence effect on re-offending, including the level of general and sexual offense recidivism, the nature of sexual re-offenses, and time to first re-arrest for sexual and non-sexual re-offenses (i.e. community tenure); and 3) the costs of implementing and maintaining Megan's Law. These three primary foci were investigated using three different methodologies and samples.

Phase One was a 21-year (10 years prior and 10 years after implementation, and the year of implementation) trend study of sex offenses in each of New Jersey's counties and the state as a whole. In Phase Two, data on 550 sexual offenders released during the years 1990 to 2000 were collected, and outcomes of interest were analyzed. Finally, Phase Three collected implementation and ongoing costs of administering Megan's Law.

**PHASE ONE: THE TREND STUDY**

This study attempts to remedy one aspect of the gap between the lack of research and the legislation, by examining the trend of sexual offense rates between and within the 21 counties of New Jersey from 1985 through 2005. The study was conducted in New Jersey, the state in which Megan Kanka was a victim and the subsequent origin of Megan's Law. Phase One is a trend study, which will provide information on whether statistical differences exist in sex offending arrests before and after the implementation of Megan's Law.

The trend analysis focuses on the pattern of sexual offense rates in New Jersey over a 21-year timeframe while comparing them to drug offense rates and non-sexually based offending rates. The data represent crime rates for the state as a whole and for each of the 21 counties for the ten years prior to the legislation and the ten years after the enactment of the legislation and includes the first full year in which Megan's Law was implemented (i.e., 1995).

**Methods**

The purpose of this study is to determine whether Megan's Law had an effect on the rate of sexual offending in New Jersey. Several different analyses were conducted to answer this primary question. First, a trend analysis of New Jersey sex offense rates pre- and post-Megan's Law implementation provides both a visual and statistical test of effectiveness. Second, aggregation sometimes masks important differences at a lower level. Therefore, the same trend analyses were conducted on each of the 21 counties in New Jersey. Third, historical effects broader than that solely for sex offenses may be responsible for observed changes (i.e., an observed effect of Megan's Law may be spurious). Two comparative analyses at the state level

were conducted to contrast changes in rates of sex offenses to other offenses (i.e., drug and other non-sex/non-drug) over the same period of time. These additional analyses were made in an effort to place sex crimes in the context of overall crime and a specific crime (drugs) that has been subjected to several types of legislation.

***Sample and Data Collection***

This study is based upon a simple pre-post research design to determine whether any significant changes in the rates of sexually based offenses reported by law enforcement agencies occurred after the implementation of New Jersey's Megan's Law in late 1994. Rates for sexually based offenses, non-sexually based offenses, and drug offenses were collected for the years 1985 through 2005 in order to construct a comparative trend analysis. Data for the three types of crime were collected for all 21 counties of New Jersey, using Uniform Crime Report (UCR) numbers for years 1985 through 2005. Prevalence rates for the three offense categories were established using population estimates from the Department of Labor's Bureau of Labor Statistics. The Department of Labor's population estimates for New Jersey were cross-referenced with the Sourcebook of Criminal Justice Statistics, a yearly federal government publication. Because no significant differences in population estimates were found between these two sources, UCR numbers were used for trend analyses conducted in this study. In order to compare state and county trends in sexually based offenses, non-sexually based offenses, and drug abuse violations, UCR aggregate numbers and prevalence rates for years 1985-2005 were entered into an Excel spreadsheet and SPSS.

***Definitions and Measures***

Uniform Crime Report statistics are based upon number of arrests, and as such, use of the term "offenses" in this study refers to number of reported arrests. Three crime categories were

used for trend analysis comparisons: 1) sexually-based offenses, 2) drug offenses, and 3) other offenses (non-sex/non-drug). Analyzing the single set of sex offense rates for the 21-year time span provides an initial test of rate change. Across the US, crime rates in general have been dropping since the late 1990's. The inclusion of all New Jersey non-sex/non-drug crime rate trends presents a visual contrast: (1) to confirm/disconfirm the national trends, and (2) to contextualize the sex offense rate trend within the general trends. Other offenses allow a control for New Jersey specific historical factors that might influence rates across crime categories, such as increased or decreased enforcement or prosecutorial budgets, the number of police or probation officers, or aggressiveness of prosecutors' and the State Attorney General's offices.

Drug offenses, like sex offenses, have been the target of law enforcement policies. Although drug offense rates may change over time based upon what drugs are most common, drug arrests rates are also particularly vulnerable to changes in federal and local policies and law enforcement efforts. Furthermore, although the contrast between drug and sex crimes may not be immediately obvious, the inclusion of drug offense rate trends provides an opportunity: (1) to demonstrate the variations in rates over time, and (2) to evaluate whether these variations have similar patterns to those of sex offense rates.[1]

These crime categories were based on the state's Uniform Crime Report (UCR), a yearly statistical report based upon crimes reported to law enforcement agencies throughout the State of New Jersey. Definitions of certain sexually-based crimes, such as rape, were clarified via phone interviews with the New Jersey State Police in December 2006. In addition, legal definitions of specific crimes (e.g. endangering the welfare of a child) were verified by reviewing Title 2C of the New Jersey Code of Criminal Justice in LexisNexis Academic. Because "Rape" is designated

[1] No formal statistical tests were performed contrasting drug and non-sexual offense rates to sex offense rates. The visual displays are used to provide general contrasts, only.

as a separate category by the UCR, the UCR categories "Rape" and "Sex Offenses" were combined under the category "Sexually-Based Offenses" for the purposes of this study. The category "Non-Sexually Based Offenses" is comprised of all UCR categories except "Rape", "Sex Offenses" and "Drug Offenses". Furthermore, "Drug Offenses" included various types of drug crimes, such as the manufacturing and distribution of controlled substances, possession with the intent to sell and distribution of a controlled substance within a school zone.

***Analytic Strategy***

In studies of this type, typically a simple pre-post test of rates is conducted to determine whether an intervention is successful. Given that these data are points in time, namely crime rates by year, time based strategies are commonly used, including time-series/ARIMA models and regression discontinuity designs that allow for temporal autocorrelation. These analyses are constructed based upon a known change point. Although it is known that Megan's Law was passed in late 1994, it is not known when the agencies charged with implementing the law were fully prepared to do so. Further, Megan's Law may not have been uniformly implemented across the state at a standardized point. The earliest change point that might be attributed to the legislation, therefore, is between 1994 and 1995. Given delayed implementation, the true effect of the legislation may occur during a subsequent year. For this study, a method is required that will allow for the detection of such delayed effects.

Several authors have considered the problem of change-points (see Pettitt, 1979 for a brief review). Some make assumptions regarding the nature of the pre- and post-change sample distributions. Most assume that the change-point is known. Pettitt (1979) offers a solution to the crime trend problem by suggesting a method of determining the most probable point of change

and using a non-parametric procedure to test for significance. The logic of Pettitt's argument is summarized below.

Assume a sequence of random variables, X1, X2, … , $X_T$ and a change-point at $\tau$, where $X_t$ for $t = 1, \ldots, \tau$ have a distribution function of $F_1(x)$ and $X_t$ for $t = \tau+1, \ldots, T$ have a distribution function of $F_2(x)$ and $F_1(x) \neq F_2(x)$. Since the change-point is unknown, $T$-1 two sample comparisons are necessary. In the complete sample of $T$,

$$U_{t,T} = 2W_t - t(T+1)$$

where $W_t$ is the sum of the ***ranks*** of all observations from 1 to $t$. This produces a U statistic for each point in the time series comparing the mean of the series prior to $t$ with the mean of the series after $t$. A version of the Mann-Whitney U statistic, used to test that the two samples, X1, … , $X_t$ and $X_{t+1}, \ldots, X_T$, come from the same population, is applied to the maximum U value.

$$K_T = \max_{1 \le t < T} |U_{t,T}|$$

The approximation of significance probabilities that is associated with $K_T$ is:

$$P \cong 2 \exp(-6K^2 / (T^2 + T^3))$$

where the approximation holds accurate to two decimal places for $p < .5$ (Pettitt, 1979).

This analysis employs this technique used to determine significant differences when the change point is unknown. This technique was selected specifically because we did not want to make any assumptions regarding the implementation phase. In most cases, where a law requires changes to procedure, the effect is likely to be delayed by some unknown period.

Data from the 21 New Jersey counties were entered separately, the New Jersey total was aggregated from the counties' summary numbers and the resulting rates were adjusted for year-to-year population changes at the state level. For each county and for the state as a whole, the

yearly rates were rank ordered and a Mann-Whitney U test was performed to test for a change in trend. Thus, for the state and for each county, every year is tested as a potential change point.

**Results**

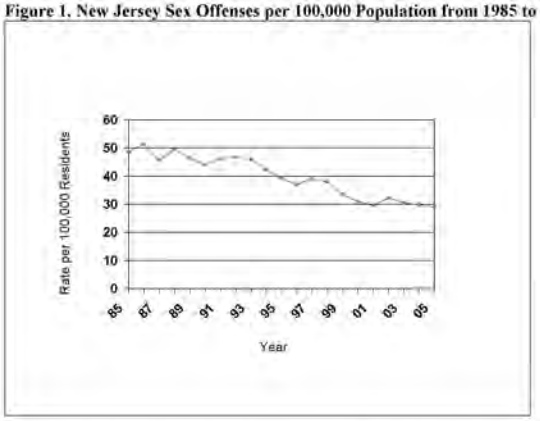
The results are organized into two major sections. The first section presents the trend analysis for both the state and for the individual counties. The second section contrasts the sex offense trend rates to trends in other offenses (i.e., drug and other non-sex/non-drug) over the same period of time.

***County and Statewide Sex Offense Rates***

Figure 1 displays the rates of sex offenses for New Jersey as a whole from 1985 to 2005. The rates varied from 51 offenses in 1986 to a low of 29 offenses per 100,000 population in 2005. In general, there is a consistent downward trend.

Individual counties varied substantially both between counties and within counties over time. Table 1 presents summary statistics of each county and the state as a whole. Counties varied in population size from under 100,000 population in the smallest counties of Cape May, Salem, and Warren, to over three quarters of a million residents in the largest counties of Bergen and Essex. The population size of the county is not consistently related to the rate of sex offenses. For example, one of the largest counties, Essex County (Newark), has a relatively high rate of offenses (68), whereas the largest county, Bergen, has a relatively low rate (32). In contrast, the highest rate of offenses is in one of the smaller population counties, Cumberland. In the smallest counties, Cape May has a rate of 72 offenses per 100,000, whereas Warren has a rate of 36.

**Figure 1. New Jersey Sex Offenses per 100,000 Population from 1985 to 2005**




In 19 of the 21 counties, the year with the highest rate of sex offenses occurred before 1994, Passaic and Sussex Counties were the exceptions. In 19 of the 21 counties, the year with the lowest rate of sex offenses occurred after 1995; Morris and Passaic Counties were the exceptions in this case. The rank trend tests (Mann-Whitney U tests) revealed that (1) six counties had no statistically significant change point (Bergen, Hunterdon, Mercer, Morris, Passaic and Sussex), and (2) an additional six counties had a change point that preceded Megan's Law (Burlington, Camden, Monmouth, Salem, Somerset, and Union). This means that only nine counties have a change point after Megan's Law was passed with the years of change falling between 1994 and 1998. One final observation of county contrast should be noted. In several cases, counties had substantial drops in sex offenses after Megan's Law was enacted. However,

in the last several years these counties have had substantial increases in sex offense rates (analyses not shown). This is true, for example, of Ocean, Hudson, and Warren Counties.

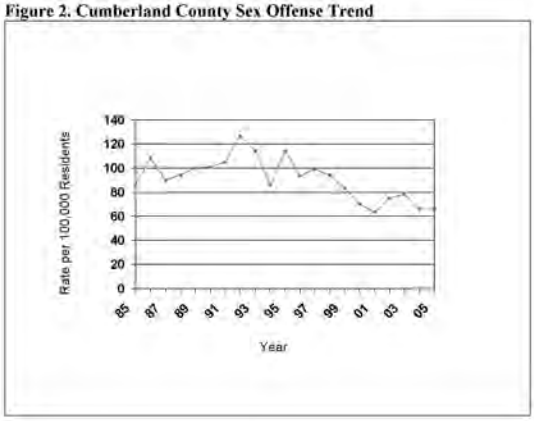
**Table 1. County and State Summary Statistics for Sex Offenses**

| County | Population in 1994 | Average Rate | Highest (Year) | Lowest (Year) | Change Year |
|---|---|---|---|---|---|
| Atlantic | 236,589 | 71.0 | 128 (1991) | 31 (2005) | 1994 |
| Bergen | 848,392 | 32.0 | 71 (1988) | 24 (2002) | n.s. |
| Burlington | 407,060 | 30.4 | 51 (1985) | 16 (2002) | 1993 ** |
| Camden | 508,479 | 42.9 | 97 (1986) | 29 (2005) | 1989 ** |
| Cape May | 99,561 | 72.2 | 111 (1992) | 38 (2003) | 1995 |
| Cumberland | 144,544 | 91.1 | 127 (1992) | 63 (2001) | 1998 |
| Essex | 784,460 | 67.6 | 95 (1990) | 35 (2004) | 1994 |
| Gloucester | 242,161 | 35.6 | 53 (1993) | 22 (2005) | 1997 |
| Hudson | 572,720 | 44.0 | 56 (1993) | 33 (2001) | 1998 |
| Hunterdon | 113,522 | 18.3 | 32 (1985) | 9 (2004) | n.s. |
| Mercer | 335,229 | 46.4 | 67 (1986) | 35 (2005) | n.s. |
| Middlesex | 701,090 | 27.1 | 38 (1985) | 19 (2004) | 1998 |
| Monmouth | 577,069 | 37.6 | 56 (1988) | 25 (2002) | 1992 ** |
| Morris | 439,533 | 23.1 | 33 (1986) | 15 (1993) | n.s. |
| Ocean | 461,152 | 24.7 | 38 (1993) | 15 (2001) | 1996 |
| Passaic | 478,164 | 50.8 | 82 (1997) | 36 (1988) | n.s. |
| Salem | 64,691 | 50.8 | 78 (1991) | 27 (2005) | 1992 ** |
| Somerset | 262,243 | 18.9 | 27 (1988) | 10 (1998) | 1991 ** |
| Sussex | 137,021 | 21.8 | 32 (1999) | 12 (2005) | n.s. |
| Union | 504,864 | 30.0 | 53 (1986) | 13 (2004) | 1993 ** |
| Warren | 95,762 | 36.4 | 63 (1987) | 14 (2001) | 1996 |
| NEW JERSEY | | 39.8 | 51 (1986) | 29 (2005) | 1994 |

** Change point precedes implementation point

Also, many counties demonstrated a predictable "jump" after Megan's Law was implemented. After a large initial drop in rates, there was a large rebound in sexual offenses (but not as high as pre-Megan's Law levels), followed by a continued decline. One example of this phenomenon is Cumberland County. As can be seen in Figure 2, the large dip at year 10 (1994) is followed by a spike the following year and then returns to a downward trend. This spike in sexual offenses most likely reflects increased surveillance and arrests, rather than increased offending.

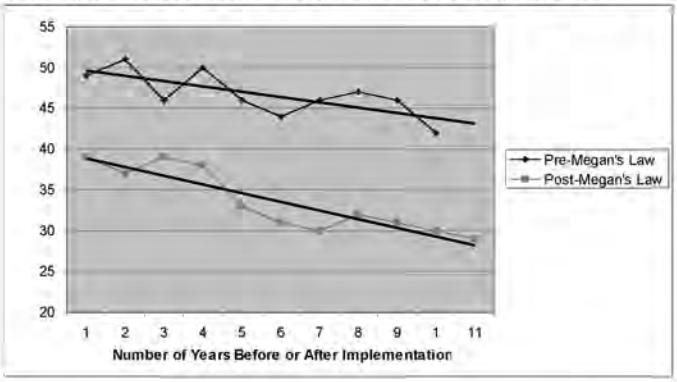
**Figure 2. Cumberland County Sex Offense Trend**




Although individual counties vary, the aggregate state statistics indicate a significant change in trend in the year 1994 (MW-U=110.0, $p<.001$). Figure 3 displays the rates before and after the implementation of Megan's Law. The upper line represents sex offenses for the years 1985-1994, and the lower line represents sex offenses for the years 1995-2005. Superimposed on the yearly rates is a linear trend line. There are two important differences between these trend lines. First, beginning in 1995 the rate of sex offenses never again approaches the pre-1994 levels (i.e., the intercept and average are different). Second, the slope is steeper in the post-Megan's law period. This is particularly notable, since sex offenses are low base rate crime. The fact that the decrease accelerates as the number of crimes decreases is unexpected. In fact, one

might expect that an effective intervention would exhibit diminishing returns over time. This is not the case in this instance.

Figure 3. Comparison of Sex Offense Rates per 100,000 Before and After Megan's Law



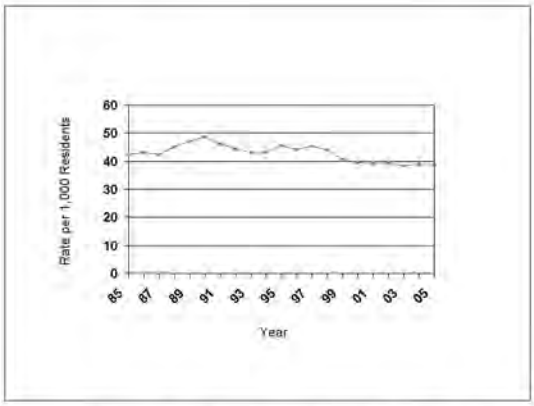

***Statewide Sex Offense Rates Compared to Non-sex/non-drug and Drug Offenses***

The aggressiveness with which arrest, prosecution and surveillance of specific crimes is pursued changes over time. After Megan Kanka's death at the hands of a convicted sex offender, public sentiment demanded an immediate and aggressive response by law enforcement, the courts and corrections. However, sex offenses are not the only crimes to receive this type of attention. The federal War on Drugs was experienced at the state and local level as well. Special task forces and interdiction programs resulted in vast numbers of arrests. At the same time, the crack epidemic hooked thousands of individuals. It is difficult to disentangle the effects of law enforcement and prosecution efforts from addiction trends. In the case of sex offenses, the trend in reduced rates of offending preceded Megan's Law. The challenge of this analysis is to

separate the effects of intervention from the existing rate reduction momentum. The first set of analyses addressed this point. The second concern is to control for historical effects. Drug offenses, like sex offenses, should reveal rate patterns consistent with intervention efforts. Other crimes should be more resistant to these specialized influences, but sensitive to larger social and political influences. The following analyses contrast the statewide sex offense trends with drug and other non-sex/non-drug offense trends.

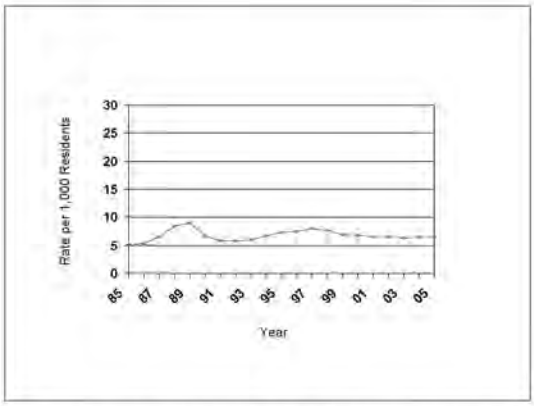
Figure 4 displays the rates of non-sex (non-drug) offenses. The average number of crimes per 1,000 population is 50.0 with the highest rate of offending at 56 in 1989 and the lowest at 45 in 2003. As illustrated, there is a consistent increase in crime rates in the late 1980's, followed by a five- year decline. Over the next several years the rates increased again, only to drop to their lowest levels in recent decades. For the last five years the rate has remained stable at about 45 crimes per 1,000. In these data, there is a significant change point in 1998 (MW-U=98.00, p=.005), indicating that the levels of crime prior to 1998 were significantly higher than those after 1998.

**Figure 4. New Jersey Non-sex /Non-drug Offenses per 1,000 Population from 1985 to 2005**




Unlike general crime, drug-related crimes showed very different rates by year. On average, there are 68 drug crimes per 10,000 population. This varied from a high of 89 in 1989 to a low of 52 in 1985. As can be seen in Figure 5, drug crimes spiked in 1989, then dropped precipitously. Although the rates increased again following 1993, this never again approached the 1989 rate. The most recent decline appears be to be stable at around 65 crimes per 10,000 and has not achieved the 1985-86 rates. There is no significant change point.

**Figure 5. New Jersey Drug Offenses per 1,000 Population from 1985 to 2005**




The general decline in sex offenses in NJ is similar to that of non-sex/non-drug crimes. However, the statewide change point for sex offenses occurred during the Megan's Law implementation year (i.e., 1994), whereas the change in trend for non-sex crimes occurred later, in 1998. The wide year-to-year fluctuations in drug crimes in fact may reflect specific policy and practice efforts, although those efforts were not sustained. In the case of sex offenses, the statewide change occurred when it was predicted to change and has maintained its impact over time.

## PHASE TWO: SEX OFFENDER OUTCOME STUDY

### Methodology

Phase Two of the National Institute of Justice grant used a sample of sex offenders released from New Jersey Department of Corrections facilities (either the Adult Diagnostic and Treatment Center [ADTC] or one of the general population facilities) before and after the

implementation of Megan's Law. Fifty sex offenders per year (25 from the ADTC and 25 from the general population) were randomly selected for the period covering 1990 through 2000, 11 years in total. This yielded a sample of 550 cases.

For each of these cases, extensive demographic, clinical, institutional and service use, criminal history, and crime offense characteristics information was collected. This provides an opportunity to contrast outcomes (i.e., recidivism, time to failure, and harm variables) of offenders arrested and released prior to the passing of Megan's Law with offenders arrested and released after the legislation passed.

This component analyzed pre-post group differences on three outcomes:

- Reduced recidivism- including re-arrests, re-convictions, and re-incarceration;
- Increased community tenure- including days to first arrest and days to first arrest for a sexual offense; and/or
- Reduced harm- including fewer sex offenses, less violent offenses, and fewer child victims.

The following sections present offender characteristics, bivariate differences in characteristics, and pre-post group outcomes.

**Results**

***Demographic Characteristics***

Table 2 displays the demographic characteristics of the sample. The sample is comprised only of males. Half of the sample is white with black and Hispanic offenders accounting for 35% and 15%, respectively. Only 0.2% of offenders classified themselves as "Other." At release, offenders were 34 years of age (sd=12.2). Nearly half (49%) were married

at one time and 66 percent had at least one child (including stepchildren). On average, each individual had 1.9 children (sd=2.1).

**Table 2. Demographic Characteristics of Sex Offenders (n=550)**

| Variable | % | Mean (sd) |
|---|---|---|
| Race | | |
| % white | 50.5 | |
| % black | 34.8 | |
| % hispanic | 14.6 | |
| % other | 0.2 | |
| Average Age | | 34.1 (12.2) |
| % Ever Married | 49.0 | |
| % With Children | 65.9 | |
| Average Number of Children | | 1.9 (2.1) |
| Education Level | | |
| % less than high school | 50.3 | |
| % high school diploma/GED | 33.6 | |
| % some college or more | 16.1 | |
| % Ever Employed | 62.8 | |
| Employment Type | | |
| % white collar/professional | 7.8 | |
| % blue collar/skilled trade | 75.4 | |
| % service industry | 13.2 | |
| % other | 3.6 | |

Half of the sample never completed high school. Specifically, 14 percent only achieved an eighth grade education, whereas 36 percent attended high school, but did not graduate. Twenty-five percent completed high school and 8 percent obtained a GED. Sixteen percent had some college education with 4 percent completing an Associate Degree or higher. Sixty-three percent had an employment history of a year or greater prior to committing the offense. Although most offenders reported some variety of employment history, the median years of employment was considerably low, at less than three years of past employment. Of those who had been employed, most had held unskilled or trade jobs (75%) or jobs in the service industry (13%). A notable 8 percent held white-collar or professional jobs. Offenders' prior employment income was unable to be determined for 29% of the sample. Of those offenders reporting employment

income, 25% reported an income of $20,000 or less, 5% reported an income of $21,000 to $30,000, 3% reported an income of $31,000 to $40,000, 1% reported an income of $41,000 to $50,000, and 0.5% reported an annual income of $50,000 or higher.

***Clinical Characteristics***

This section includes measures commonly associated with risk (e.g., history of abuse, familial criminal justice involvement), behavioral health problems, and past treatment experiences. Table 3 displays these measures obtained from an offender's folder.

**Table 3. Clinical Characteristics of Sex Offenders (n=550)**

| Variable | % |
|---|---|
| % With History of Child Abuse | 39.0 |
| % Raised in Two Parent Home Up to Age 13 | 65.7 |
| % With Family Member Involvement in CJ System | 8.6 |
| % With History of Mental Health Problems | 23.1 |
| % With History of Drug Use/Abuse | 44.8 |
| % With History of Alcohol Abuse | 47.1 |
| % Received Mental Health Treatment | 34.7 |
| % Received Mandated Sex Offender Treatment in Prison | 94.0 |
| % Received Other Treatment Services in Prison | 88.4 |

Most offenders were raised in either a traditional two-parent home (66%) or in a mother-only headed household (23%), and the majority of offenders did not report any history of child abuse (61%). Twenty-six percent, however, reported having experienced sexual abuse as a child. A large majority of offenders (91%) did not have any family members involved in the criminal justice system.

Only 23 percent of offenders reported some type of past mental health problem. These mental health issues included problems diagnosed in childhood (e.g., emotionally disturbed, developmental disorder) as well as more common diagnoses problems such as depression. In addition, a sizeable proportion of offenders had a drug or alcohol abuse history, with 45% reporting a prior drug abuse problem and 47% reporting a prior alcohol abuse problem.

Thirty-five percent reported having received mental health treatment in the past. Most offenders (94%) were reported as receiving some type of sex offender treatment while incarcerated. A majority of offenders (88%) also received treatment in addition to the standard, mandated treatment groups. Types of adjunct treatment offered to inmates included adult basic education classes, life/social skills groups (e.g. anger management), and drug and alcohol counseling.

***Offender Criminal History***

Offender criminal history includes information on prior arrests. These data are presented in Table 4. In general, the men incarcerated for a sex crime were more likely to have been engaged in previous non-sex crimes than in sex crimes per se. Sixty-five percent had a previous arrest for a non-sex crime. On average, they had been arrested 3.4 times (sd=5.77) and were arrested for the first time when they were 21.5 years old (sd=8.21). Only 27 percent had been previously arrested for a violent crime with an average of .5 prior arrests (sd=1.07). Even fewer (24%) had been arrested for a sex crime in the past, with an average number of .4 prior arrests (sd=1.02). On average, these offenders were 24.8 years old (sd=9.01) at the time of their first arrest for a sex crime. Only 6 percent had been arrested as a juvenile for a sex crime.

**Table 4. Offender Criminal History**

| Variable | % | Mean (sd) |
|---|---|---|
| % with Any Prior Arrests | 64.9 | |
| Average Number of Arrests | | 3.64 (5.77) |
| Average Age at First Arrest | | 21.5 (8.21) |
| % with Prior Arrests for a Violent Crime | 27.3 | |
| Average Number of Arrests for Violent Crime | | .50 (1.07) |
| % with Prior Arrests for a Sex Crime | 23.5 | |
| Average Number of Arrests for a Sex Crime | | .43 (1.02) |
| Average Age at First Arrest for a Sex Crime | | 24.8 (9.01) |
| % with a Juvenile Arrest for a Sex Crime | 5.7 | |

***Target Offense Characteristics***

Table 5 displays information regarding the sex crime(s) for which the men in the sample were serving sentences. Eighty percent of offenders were serving time for child molestation (incest=21% vs. non-incest=59%). Cases of rape and general exhibitionism accounted for 20% and 0.4% of all cases, respectively.

Sixty-two percent of offenders denied committing certain acts of the instant crime, or denied the sexual offense in its entirety. Most often, offenders in this latter group denied the more egregious acts of the offense (i.e. penetration) or instances of multiple acts. According to police reports, however, a majority of offenders (55%) engaged in multiple acts over a period of time, and in 26 percent of the cases the offender had multiple victims.

The 550 offenders in the sample victimized a total of 796 individuals. That is an average of 1.45 victims (sd=1.07) per offender for the current offense alone. However, this number is skewed. In 74 percent of the cases, there was only one victim identified. Of the cases involving two or more victims, the average number of victims was 2.7 (sd=1.49). Of the victims, 79 percent were female and 30 percent were male. These percentages include the cases where both males and females were victims (8%). The mean age of victim in the index offense was 12.3 years old (sd = 9.74). Ages of victims spanned from 1 year to 87 years old; 65 percent of the victims were 12 or younger, 24 percent were between 13 years old and 18, and the remaining 11 percent were 19 or older.

**Table 5. Characteristics of Target Crime**

| Variable | % | Mean (Sd) |
|---|---|---|
| Offense Type | | |
| % child molestation | 79.5 | |
| % rape | 20.2 | |
| % exhibitionism/voyeurism | 0.4 | |
| % Offender Denied Some or All Aspects of Crime | 62.2 | |
| % Cases Occuring Over Multiple Dates | 55.2 | |

| | | |
|---|---|---|
| % Cases Involving Multiple Victims | 26.0 | |
| Victim Gender | | |
| % male | 21.1 | |
| % female | 70.5 | |
| % both | 8.4 | |
| Mean Age of Victim | | 12.3 (9.74) |
| Age Group of Victims | 1.4 (1.1) | |
| % 12 and under | 65.4 | |
| % 13 through 18 | 23.7 | |
| % 19 or older | 10.9 | |
| Relationship of Offender to Victim | | |
| % stranger | 16.1 | |
| % family | 48.2 | |
| % acquaintance | 33.6 | |
| % significant other | 2.2 | |
| % Lived With Victim | 42.6 | |
| % Crime Occurred in Victim or Offender Home | 77.2 | |
| % Cases Involving Weapon Use | 13.2 | |
| Type of Weapon | | |
| % gun | 27.3 | |
| % knife | 51.5 | |
| % rope/tape/bondage | 7.6 | |
| % other | 13.6 | |
| % Drugs Involved in Crime | 13.4 | |
| % Alcohol Involved in Crime | 26.0 | |

Most offenders had an established prior relationship with their victims, with only 16 percent of cases where the perpetrator was a stranger. In fact, nearly half (48%) of the perpetrators were family members, with the remaining crimes committed by either acquaintances of victims (34%) or victims' significant others (2%). Further, 43 percent of offenders lived with their victim(s) and in 77 percent of the cases the offense(s) were committed in the victim's or offender's home (including shared residence).

In 13 percent of the cases a weapon was used. Of those cases, the most common weapon used was a knife (52%), followed by a gun (27%), other weapon (14%) or the use of some form

of restraint (8%). In 13 percent of the cases drugs were involved and alcohol was involved in 26 percent of the offenses.

***Criminal Justice Factors***

On average, offenders were sentenced to nearly nine years of incarceration (104 months, sd= 63.8), with the most frequently imposed sentence being five years. The minimum and maximum imposed sentences for the sample were one year and 36 years, respectively. In actuality, offenders served approximately five years on average (56 months, sd=40.4), with time served ranging from three months to 21.5 years. Only 32 percent of offenders were paroled whereas 68 percent maxed out, leaving the prison with no post-incarceration supervision requirements other than those imposed by Megan's Law.

**Table 6. Criminal Justice Factors**

| Variable | % | Mean (sd) |
|---|---|---|
| Mean Length of Sentence (in months) | | 104.4 (63.8) |
| Mean Time Served (in months) | | 56.2 (40.4) |
| % Paroled | 32.4 | |

**Sample Equivalences**

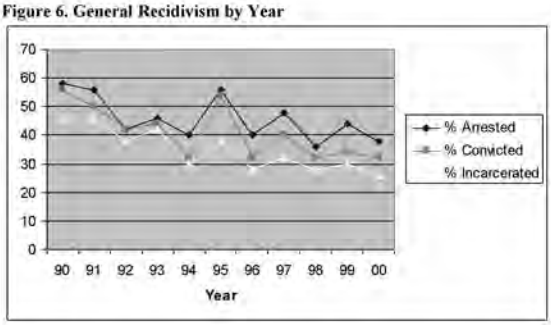
In studies that use random sampling it is assumed that the samples will be equivalent in all relevant factors. This is, however, an assumption, and statistical theory suggests that although rare, samples may be found to differ. In this case, it is known that samples differ temporally. The differences in cohorts may be reflected in institutional responses (e.g., changes in court procedures. In this case "Truth in Sentencing" legislation came into effect during this period), social or community behavior (e.g., increases or drops in specific drugs of choice or type of crime), or other historical sociopolitical changes. Bivariate analyses were conducted to confirm offender similarity in: demographics, risk factors, and prior criminality; all known to associated with the likelihood of recidivism.

No statistically significant differences were found in demographic characteristics. Among the risk factors, only receipt of other treatment services was significant (with the earlier cohort more likely to have received services [95% vs. 83%; $\chi^2$ = 14.6, df=1, p<.001]). In terms of criminal history, no variable was found to be significant except for the average number of prior sex offenses (with the earlier cohort averaging a higher number [.56, sd=1.16 vs. .32, sd=.87; F=7.21, df=1, 546, p=.007]). Among the target offense variables, only alcohol use was significant (with the earlier cohort more likely to have used alcohol during the commission of the crime [31% vs. 22%; $\chi^2$ = 6.09, df=1, p=.014]). Thus of the over fifty variables analyzed, only three were significantly different between groups. Again appealing to statistical theory, with multiple tests there is an increased likelihood of detecting significant relationships. No correction was made in these analyses to account for this threat. However, given the vast number of equivalencies, these groups are assumed equal for purposes of the outcome analyses.

**Offender Outcomes Pre- and Post-implementation of Megan's Law**

Before presenting pre-post contrasts that are controlled by time at risk, year-by-year graphs demonstrate several important points that must be kept in mind when interpreting the remainder of the analyses. The outcome measure of recidivism was collected through June 15, 2007. The remaining measures were adjusted to assure that all offenders had an equal time at risk, specifically 2,358 days or approximately six and a half years. Figure 6 presents the percent of offenders released in each year who generally recidivate within the follow-up period (i.e., 6 ½ years). In this case, this figure presents the percent of persons who are re-arrested, the percent of the sample re-convicted and the percent re-incarcerated. Clearly, these are three closely linked outcome measures (e.g., conviction cannot occur in the absence of a chargeable offense).

**Figure 6. General Recidivism by Year**




Overall, 46 percent of offenders were re-arrested (9 percent were re-arrested for a sex crime), 41 percent were convicted, and 35 percent were re-incarcerated. Although the figure shows substantial movement up and down over time, there are no significant differences by year (this is largely a power problem). Further, excluding the year 1995, all measures of recidivism are declining over time from highs in the 50 to 60 percent range in the 1990 release cohort to the 25 to 40 percent range in the 2000 release cohort. What is interesting about this figure, however, is the rates relative to each other within year. In most years, a stable percentage of persons who are arrested are convicted. In this sample, over the 11 years, 88 percent who are arrested are convicted. Of those convicted, 86 percent are incarcerated as a result. However, these rates vary from year to year. For example, of the 1993 release cohort 46 percent were re-arrested, of those, 96 percent were convicted; and of those convicted 96 percent went back to prison. In comparison, of the 1995 release cohort, 56 percent were re-arrested and nearly all were convicted (96%), but only 70 percent of those convicted were re-incarcerated. It is not clear from these data whether the year-to-year differences are a result of procedural and administrative changes or a reflection of a system response to public pressure.

***Recidivism***

Table 7 presents the comparisons of the pre- and post-implementation groups on all outcome measures, including recidivism, community tenure and harm (sexual re-offending). In the first "recidivism" section, all measures (i.e., arrest, conviction and incarceration) are significant. In all three variables, the post-implementation group has a lower percentage of cases that have experienced the outcome. This is for general recidivism. Forty-one percent of the post-implementation group was re-arrested compared to 50 percent of the pre-implementation group ($\chi^2$= 3.94, 1 df, p=.047). Similarly, 34 percent of the post-implementation group was convicted compared to 46 percent of the pre-implementation group ($\chi^2$= 8.59, 1 df, p=.003). And 29 percent of the post-implementation group was re-incarcerated compared to 40 percent of the pre-implementation group ($\chi^2$= 7.53, 1 df, p=.006).

**Table 7. Offender Outcomes Pre and Post Megan's Law Implementation (n=550)**

| Variable | Pre | Post | Total | $X^2$/F (df) | sig. |
|---|---|---|---|---|---|
| **Recidivism** | | | | | |
| % re-arrested any crime | 49.7 | 41.2 | 45.8 | 3.94 (1) | .047 |
| % re-convicted at least once | 46.3 | 34.0 | 40.7 | 8.59 (1) | .003 |
| % re-incarcerated at least once | 40.0 | 28.8 | 34.9 | 7.53 (1) | .006 |
| **Community Tenure** | | | | | |
| Days to arrest any crime (sd) | 772.2(636.9) | 726.0(616.5) | 753.3(627.8) | .329(1,250) | n.s. |
| Days to arrest sex crime (sd) | 813.7(690.5) | 765.3(706.0) | 794.9(689.6) | .056(1,47) | n.s. |
| **Harm** | | | | | |
| % re-arrested sex crime | 10.0 | 7.6 | 8.9 | .97 (1) | n.s. |
| Sex crime type (n=48) | | | | 1.76 (2) | n.s. |
| % child molestation | 54.5 | 66.7 | 59.5 | | |
| % rape | 13.6 | 20.0 | 16.2 | | |
| % other (voyeurism, exhibitionism) | 31.8 | 13.3 | 24.3 | | |
| % violent | 31.9 | 20.5 | 26.7 | 9.01 (1) | .003 |

***Community Tenure***

Time to failure is an important outcome measure. Situations may exist where equal percentages of experimental and comparison groups demonstrate an outcome, in this case, re-arrest, but the average length of time to the arrest differs. Even in the case where equal percentages of pre- and post-implementation subjects are re-arrested, more days in the

community without committing a crime[2] reflects improved outcomes in community and personal harm, as well as cost savings.

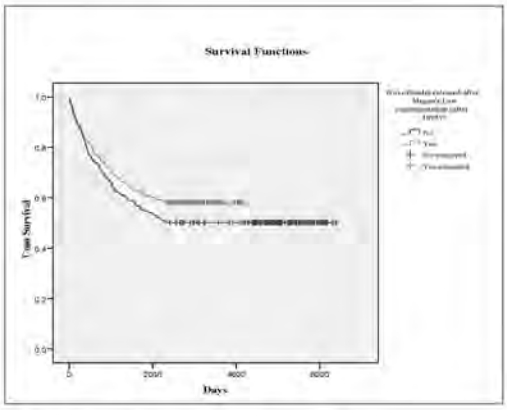
The average time to an arrest for any type of crime was 753 days (sd=628) or about two years, one month (see Table 6). There was no significant difference by implementation cohort. The average time to an arrest for a sex offense was 795 days (sd=690) or about two years, two months. There was no significant difference by implementation cohort for this variable.

A survival analysis was also conducted on these data to determine whether the rate of failure by time at risk varies significantly by implementation cohort. Figure 7 displays the survival curves for the two groups. Cases that experienced an arrest are designated by their inclusion in the continuous curve (i.e., continuous line), cases that were not arrested are censored and are represented as pluses. The strength of this analysis is the inclusion of censored cases. They are included with the time value computed as the time from release until the last day of data collection (i.e., June 15, 2007).

The curves reflect several facts. (1) all cases are censored if their time at risk exceeds 2358 days regardless of whether they were arrested or not, (2) 60 percent of post-implementation cases compared to 50 percent of pre-implementation cases survive (i.e., have not been arrested)[3], and therefore visually demonstrating the cohort difference in overall re-offending, and (3) the curves, while diverging a small amount, are proportionally similar across time at risk, thus reflecting no significant difference in the failure rate (confirmed by statistical tests, including the log-rank test).

**Figure 7. Survival (days to re-arrest) of Pre and Post Implementation Groups**

[2] Assuming that supervision and surveillance practices are equivalent and that the individual does not indeed commit any crimes.
[3] These are the same percentages in reverse (100%-%arrested) as those displayed in Table 1



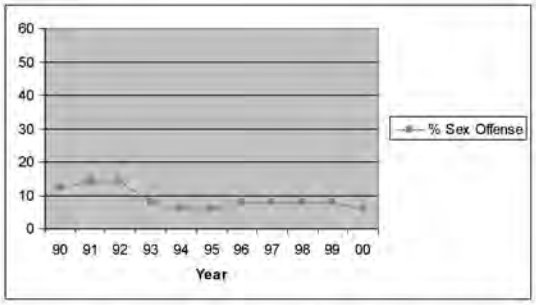

***Reduced Harm by Deterring Sexual Re-offending***

Re-arrests for sexual offenses do not significantly differ year to year (see Figure 8). Holding time at risk constant, 9 percent of the sample has been re-arrested for a sex crime, representing about 19 percent of the arrest charges. This varies from a high of 14 percent in 1991 and 1992 to a low of 6 percent in 1994, 1995, and 2000.

Pre- and post-implementation groups do not differ in the percent of persons re-arrested for a sex crime (10% vs. 7.6%). Of the 48[4] cases represented in the sexual re-offense type analysis, 60 percent were charged with child molestation or incest, 16 percent with rape and 24 percent with another type of sex offense, including voyeurism and exhibitionism. The pre- and post-implementation groups also did not differ significantly on sex offense type.

**Figure 8. Re-arrest for Sex Offense by Year**

[4] Allowing time at risk to include the full period of time from release, only 62 individuals were re-arrested on a sex charge: 13.2% of the pre-implementation group with between 4,565 and 6,386 days at risk and 9.7% of the post-implementation group with between 2,374 and 4,561 days at risk.




As a side note, the percentage of violent crimes, excluding sex crimes, was also investigated. Overall, 28 percent of the sample was re-arrested for at least one violent crime. Importantly, only 21 percent of persons released after Megan's Law was implemented were re-arrested for a violent crime compared to 32 percent of the pre-implementation cohort.

**PHASE THREE: COST STUDY**

**Methodology**

The final stage of this research grant proved to be the most challenging, as delineating costs associated with community registration and notification were difficult to disentangle from other state and county level spending. The research team mailed a cost assessment questionnaire to the Megan's Law Units housed within each of the 21 county prosecutor's office. Megan's Law Units are responsible for the enforcement and administration of community notification and registration statutes in New Jersey (i.e., Megan's Law). Examples of functions performed by Megan's Law Unit personnel include risk assessment (i.e., tier classification), door to door/community notifications, trainings (e.g., law enforcement, day care center employees), prosecution/litigation, internet registry maintenance, etc.

Prior to mailing the cost assessment questionnaires, the research team met with Assistant Prosecutors in order to review questions contained in the survey and to address any questions prosecutors may have had in completing the survey. Survey questions were subsumed under two general categories: start up costs and ongoing yearly implementation costs.

Specifically, startup costs include those initial costs associated with the establishment of each county's Megan's Law Unit. Three variables were included under startup costs: establishment of the internet sex offender registry, equipment costs, and other/miscellaneous costs (e.g. computer software). Ongoing costs consist of expenses such as staff salaries, internet registry maintenance, equipment maintenance/supplies, and other/miscellaneous expenses (e.g. mailings, printings, software updates, etc.). Survey questions concerning on-going expenses pertained to costs accumulated during the calendar year ending 2006.

In addition, a section concerning percentage of time allotted to job tasks (i.e. itemized according to staff title) was included and was to be completed for all staff working within each county's Megan's Law unit. For example, if an investigator was included under personnel, a percentage breakdown of time allotted to specific job functions such as risk assessment, door to door notifications, training, etc. was required.

Of the 21 counties that were surveyed, 15 surveys were completed and received by the research unit, for a total response rate of 71.4 percent. Upon receipt, researchers scanned survey responses for possible misreading/interpretation issues related to specific survey items. For additional clarification, researchers called county prosecutor offices to confirm questionable survey item responses and made any changes accordingly. After survey responses were finalized, an Excel database of cost assessment variables was created for analysis.

Along with the cost assessment survey, prior New Jersey state budgets were reviewed for costs associated with the incarceration, rehabilitation, and tracking of sex offenders. Specifically, the budgets were searched for any allocation to Megan's Law. Moreover, original grant documentation and archived folders were also reviewed for costs not included or found in the other sources. Sources were challenging to locate, as was the origin of much of the funding.

**Results**

The results that follow include statistics based on the 15 counties that responded to the research unit's Megan's Law Cost Assessment Survey. For the 15 responding counties, the initial aggregate implementation cost of Megan's Law totaled $555,565. Of this total startup cost, establishment of the internet sex offender registry accounted for $186,190, an average of $31,032 (sd=$24,140) per county, equipment accounted for $232,407 ($19,367 average per county, sd=$14,212), and other/miscellaneous costs accounted for $136,968 ($12,452 average per county, sd= $17,702). In addition, total aggregate expenses for all 15 counties attributable to the ongoing implementation of Megan's Law were estimated to be $3,973,932 per annum (i.e., according to the fifteen participating counties). Of total per annum costs, staffing costs accounts for $3,605,972 ($257,569 average per county, sd= $160,180), internet sex offender registry maintenance accounts for $146,300 ($20,900 average per county, sd=$20,178), equipment/supplies accounts for $130,483 ($10,037 average per county, sd= $8,196), and other/miscellaneous expenses accounts for $91,177 ($6,513 average per county, sd= $6,002).

Additional information gathered from the prosecutor's surveys includes counts of staff within each county's Megan's Law Unit, number of cases handled per year, and number of door to door notifications per year. According to completed surveys, the number of employees dedicated to Megan's Law Unit operations totals 78 (5.2 average per county, sd= 3.2), and an

estimated 5,873 Megan's Law specific cases were processed (391.5 average per county, sd= 303.4). Moreover, counties reported that law enforcement officers performed a total of 31 door–to-door notification events (3.9 average per county, sd= 2.7) throughout the year (e.g. 1 event equals 300 households) for tier three sex offenders.

A question concerning ongoing costs for the calendar year ending 2006 was also included in the survey to measure yearly cost increases/decreases. The cost for Megan's Law implementation during calendar year 2006 was estimated to be $1,557,978, whereas implementation costs during calendar year 2007 totaled $3,973,932 for responding counties[5]. This change represents a 155% increase in ongoing expenses from calendar year 2006 to calendar year 2007. These increases were obtained from raw figures provided by the Megan's Law Units and did not reflect specific costs. However, with the inception of the Global Positioning Satellites used for Tier 3 sex offenders, it can be surmised that a portion of the increases can be attributed to increased surveillance. Finally, research of prior state budgets documented a $200,000 expenditure on Megan's Law DNA Testing for fiscal years since 2000. There are no other distinguishable appropriations. Most costs are combined with salaries or another type of operating expenses.

**PROJECT SUMMARY**

[5] As noted, fifteen out of a possible twenty one counties in New Jersey responded to the cost assessment survey, which translates to an approximate response rate of 71.4%. In order to provide a more accurate assessment of initial and on going costs statewide, said costs were interpolated by adding 28.6% (i.e. 100% - 71.4%) to the implementation and ongoing grand totals of the fifteen responding counties. In effect, using this general interpolation method, implementation costs were estimated to be $714,457 and ongoing costs were estimated to be $5,110,477 statewide. Again, because these figures are interpolated, these costs do not take varying county demographics into account and should be interpreted with this caveat.

The three phases of this study were designed to test the effectiveness and cost of Megan's Law using multiple methods and strategies. In none of the analyses was Megan's Law definitively found to be effective. Since sex crime rates have been down prior to Megan's Law and pre and post samples do not indicate statistically lower rates of sexual offending, the high costs associated with Megan's Law are called into question

**Summary of Results**

As a preliminary step in assessing the effect of community registration and notification laws on sexual arrest rates in New Jersey, the goal of the trend study was to explore crime trends and to identify possible changes over a 21-year period. Specifically, the main research areas concerned the patterns of sexual offense rates both prior and subsequent to the implementation of Megan's Law, as well as comparisons in crime rates between sexual, drug, and non-sex/non-drug based offenses during the same time period. The results presented in this report support findings by other researchers exploring relevant topics. Most notably, Finkelhor and Jones (2004) found that there has been a consistent downward trend in child sexual abuses cases since the early 1990s.

This trend analysis did indeed find a significant change in the statewide decreasing sex offense rate in the year Megan's Law was implemented, which may lead some readers to believe that the legislation is solely responsible for the decline. Because sex offense rates began to decline well before the passage of Megan's Law, the legislation itself cannot be the cause of the drop in general. It may, in fact, be the case that continuing reductions in sex offending in New Jersey, as well as across the nation, are a reflection of greater societal changes. Having said this, it is nevertheless hard to explain the steeper decline in rates after the implementation of Megan's Law. Given that sex offenses are low base rate events, the finding that these rates continue to

decline at an accelerated rate after 1994 suggests that something other than a natural decline may be responsible. Although the initial decline cannot be attributed to Megan's Law, the continued decline may, in fact, be related in some way to registration and notification activities. However, there may well be additional factors causing this steeper rate of decline after 1994, perhaps some attributable to other public policies. For example, in 1998, New Jersey began civilly committing those sex offenders found to present the highest risk to the community, termed sexually violent predators. Assuming the accuracy of the risk assessment that underlies the civil commitment of these sexually violent predators, then those at highest risk to reoffend have been removed from the community, thereby potentially lowering the sex offense rate. Although, the number of civilly committed sexual predators only includes approximately 350 sex offenders.

Moreover, this statewide finding of a declining sex offense rate should be taken with considerable caution. The variation in the pre-post-implementation rate trends at the county level suggests that the statewide effect may be an artifact of the aggregation process. Although many counties (9 of 21) follow the state trend, many others show no differences in rates over time or have experienced reductions followed by increases to near pre-Megan's Law levels. Even so, with only two exceptions, the rates of sex offending were highest prior to 1994 and lowest after 1995, with the most recent years having the lowest rates. Differences in population, socio-political status, policing and prosecutorial resources may be related to differences in the effectiveness in notification and surveillance activities in specific counties.

Although impossible to distinguish the nature of the effects, the reductions of sex offenses is related to some historical process: either (1) registry/notification, surveillance and/or aggressive prosecution under a more mature Megan's Law is responsible for the continued

reductions or (2) general public awareness, publicity, and/or exclusion and intolerance feed the continued decline. Most likely, it is a combination of these factors.

In the offender release sample, there is a consistent downward trend in re-arrests, reconvictions and re-incarcerations over time similar to that observed in the trend study, except in 1995, when all measures spiked to a high for that period. This resulted in significant differences between cohorts (i.e., those released prior to and after Megan's Law was implemented). Similarly, re-arrests for violent crime (whether sexual or not) also declined steadily over the same period resulting in a significant difference between cohorts (i.e., those released prior to and after Megan's Law was implemented). However, because these trends began before Megan's Law was passed, this decline cannot be attributed solely to Megan's Law activities.

In all other pre-post measures, including other measures of recidivism, community tenure and harm reduction (decreased sexual offending), no significant differences between cohorts were found. As such, Megan's Law does not illustrate effectiveness in:

- increasing community tenure (the time spent in the community prior to re-arrest),
- reducing sexual re-offenses,
- changing the type of sexual re-offense or first time sexual offense (for example, from hands-on to hands-off offenses), or
- reducing the number of victims involved in sexual offenses.

Costs associated with the initial implementation of Megan's Law, as well as ongoing expenditures, continue to grow over time. Start up costs totaled $555,565 in 1994 and now current costs (in 2007) total approximately 3.9 million dollars. Given the lack of demonstrated effect of Megan's Law, the researchers are hard-pressed to determine that the escalating costs are justifiable.

**Limitations**

Conducting a study of this type with sensitive sexual arrest data introduces a number of limitations. The most noted problem plaguing sexual offense research, the low base rate of reported sexual offenses, is tied to the under-representation of official data. Because sexual offenses are under-reported, most measures of recidivism under-represent the true offending rates (American Psychiatric Association [APA], 1999; Belknap, 2000; Furby et al., 1989; Hall, 1995; Hanson & Bussiere, 1998). It has been suggested that the present statistics on sexual abuse represent approximately one-third of the number of actual victimizations, leaving researchers and practitioners concerned about the "dark figure" of sexual abuse (APA, 1999; Belknap, 2000; Chesney- Lind, 1997). Legal definitions, fear and shame, and a desire for privacy are the main contributors to the unwillingness of many victims to report their abuse. Conversely, it has been noted that some types of sexual abuse may be over-represented to the police, such as stranger rapes (Belknap, 2000). For example, victims of stranger rape, as opposed to incest victims, may be more inclined to report their sexual victimization because their perpetrator is unknown. This disparity may lead many to believe that stranger victimizations occur more frequently than other types of sexual victimizations because the reports may appear disproportionately higher (Zgoba & Simon, 2004). Although most individuals know that acquaintance or familial crimes are more frequent, these factors may make it difficult to achieve a clear picture of sexual offense rates (Belknap, 2000; Chesney- Lind, 1997). Given this low base rate of reporting, it is notable that sex offenses decrease rapidly in the post-Megan's law period, the fact that the decrease accelerates as the number of crimes decreases is unexpected.

Another issue that has been difficult to fully address in the format of this study is whether the noted decreases in the post-Megan's law period can be attributed to specific deterrence or a more general deterrent effect. The intent of Megan's law was to reduce repeat arrests among

known sex offenders. That is, Megan's law was designed as a specific deterrent. However, the idea of notification and increased surveillance may have a general deterrent effect. Further, increased attention and public contempt of sex offenses and offenders may also contribute to general deterrence. This study illustrated downward trends in sexual arrest rates, but cannot differentiate whether the reduction is due to decreases in new first-time sex offenses (general deterrence) or to decreases in sexual re-offenses (specific deterrence).

One of the largest challenges, and a subsequent limitation, associated with this grant was obtaining the financial costs regarding Megan's Law. County Prosecutor Offices, as well as the offices dealing with Treasury and Budget, had the same difficulties the researchers experienced when attempting to isolate and identify the costs listed in the State of New Jersey Budgets. Furthermore, initial start-up costs were sometimes funded through grants that providing few specifics regarding disbursement patterns. In an effort to provide close estimates, the researchers developed proxy measures that should be read with some caution.

**Conclusion**

Despite wide community support for these laws, there is little evidence to date, including this study, to support a claim that Megan's Law is effective in reducing either new first-time sex offenses or sexual re-offenses. Continuing research should focus on matching samples of sex offenders before and after the implementation of Megan's Law and also examining levels of supervision associated with Megan's Law. Further research will be conducted utilizing the data accumulated here, specifically exploring low base rate offending and potential predictors of sexual recidivism. Should future studies establish that Megan's Law has no demonstrable effect on the rates of sexual offending, policy makers and legislative leaders should investigate other

options for lowering sex offense rates, such as mandated treatment of all sex offenders, potential use of polygraph testing and intensive probation and parole supervision.

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**Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders**

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# Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders

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The primary purpose of this study is to examine the effects of South Carolina's comprehensive registration policy on recidivism of juveniles who sexually offend. Registered and nonregistered male youth are matched on year of index offense, age at index offense, race, prior person offenses, prior nonperson offenses, and type of index sexual offense, for a total of 111 matched pairs. Recidivism is assessed across a mean 4.3-year follow-up ($SD = 2.5$). The sexual offense reconviction rate is too low (2 events) to support between-group analyses. Cox regression results indicate no significant between-group differences with respect to new nonsexual person offense convictions but significant between-group differences with respect to new nonperson offense convictions. Specifically, registered youth are more likely than nonregistered youth to have new nonperson offense convictions across follow-up. Public policy implications of these findings are discussed.

***Keywords:*** juvenile sexual offender; registration; recidivism

During the past decade, many state and federal policies originally developed primarily for repeat adult sexual offenders were extended to juveniles who sexually offend (Chaffin, 2008) in an attempt to address the problem of juvenile sexual recidivism. Recently, the Sex Offender Registration and Notification Act (SORNA; Title

**Author's Note:** The data for the study were kindly supplied by the South Carolina Law Enforcement Division and the Department of Juvenile Justice, via collaboration with the South Carolina Budget and Control Board Office of Research and Statistics and the South Carolina Office of Justice Programs Statistical Analysis Center. Ongoing consultation with Mr. Charles Bradberry and Ms. Diana Tester (ORS) and Mr. Rob McManus (SAC) and support from Ms. Trudy Trotti and Mr. Erroll Campbell (DJJ) made obtaining and interpreting the data possible. This study was supported by grants made to the first author by the Centers for Disease Control and Prevention (R49 CE00567) and the National Science Foundation (SES 0455124). The findings and opinions expressed in this article reflect solely the views of the authors and are in no way endorsed by the South Carolina departments named above or the granting agencies and do not represent government policy or views. Please address correspondence to Elizabeth J. Letourneau, Family Services Research Center, Medical University of South Carolina, McClennan Banks 4th Floor, 326 Calhoun St., Charleston, SC 29401, letourej@musc.edu.

1 of the Adam Walsh Child Protection and Safety Act of 2006) updated and expanded elements of previous sexual offender registration acts and specifically mandated long-term public registration for some juvenile offenders. SORNA and the earlier registration acts on which it is based aim to reduce sexual recidivism rates by identified offenders (Terry & Furlong, 2004). This aim was based on an underlying concern that sexual offenders are at very high risk to reoffend and, therefore, require a higher degree of surveillance than other offenders (Terry & Furlong, 2004). Although widespread (Levenson, Brannon, Fortney, & Baker, 2007), this belief of high recidivism risk is not supported by the available evidence, especially with respect to juveniles who sexually offend. In a recent review, for example, Fortune and Lambie (2006) reported that sexual recidivism rates for treated youth ranged between 0% and 40% but tended to fall below 10%. Previous reviews have reached similar conclusions (e.g., Caldwell, 2002), and even youth subjected to registration (who presumably would be considered high risk) have low sexual recidivism rates (e.g., Vandiver, 2006). Nevertheless, it has been hypothesized that the increased surveillance afforded by public registration is necessary to deter sexual offenders from committing new sexual offenses and to increase the likelihood of quickly capturing offenders who will reoffend (LaFond, 2005; Terry & Furlong, 2004). Alternatively, some have argued that public registration might increase recidivism rates (although not necessarily sexual recidivism; see Letourneau & Miner, 2005) by creating barriers to the successful societal reintegration of offenders (Jones, 2007; Michels, 2007; Oliver, 2007).

Despite more than a decade of registration policy enactment, no published research has specifically examined whether the public registration of juveniles alters their recidivism rates relative to the recidivism rates of nonregistered juvenile offenders. Three studies examined the effects of various registration policies by comparing adult offenders subjected to these policies with offenders not so subjected (Adkins, Huff, & Stageberg, 2000; Schram & Milloy, 1995; Zevits, 2006). None of these studies supported the hypothesis that public registration effectively reduces sexual recidivism, and only one (Schram & Milloy, 1995) supported the hypothesis that increased surveillance would hasten the speed with which recidivists were apprehended. On the other hand, results also did not suggest that public registration contributed to increased recidivism rates.

The present study seeks to extend research on the effects of public registration to juveniles who sexually offend. South Carolina was selected to model the effects of public registration on juvenile recidivism risk for two primary reasons. First, South Carolina was one of the first states to respond to federal registration requirements, thereby permitting longer follow-up of youth than in states with more recent policies. Second, South Carolina's registration policies are similar to the recently enacted SORNA policy in that both require long-term public registration of some minors. In South Carolina, information on registered youth is made public either via

the online South Carolina sex offender registry or through notification of offenders' victims, schools, and other child-oriented organizations deemed to have a special interest in remaining apprised of youths' registration status. Thus, results from the present study might provide insight regarding the potential effects of SORNA-based policies being enacted across the United States.

Given the absence of juvenile-focused research in this area, no specific hypotheses are postulated. Rather, analyses were designed to provide a preliminary examination of the effects of registration by comparing the sexual and nonsexual recidivism rates of registered and nonregistered juvenile sexual offenders. Matching was used to control nuisance variables, the risk of which is greater with nonrandom group assignment (Breaugh & Arnold, 2007). Matching variables were selected based on known or hypothesized relationships to recidivism risk and availability in the data sets. These variables included (a) year of index offense, to control for cohort effects (Rice & Harris, 2003); (b) age at index offense, to control for effects on general (Heilbrun et al., 2000) and sexual (Vandiver, 2006) recidivism risk; (c) race, to control for effects on general recidivism risk (Howell, 2003); (d) prior person offenses, including sexual offenses, to control for effects on sexual recidivism risk (Långström & Grann, 2000); (e) prior nonperson offenses, to control for effects on general recidivism risk (Howell, 2003); and (f) index sexual offense, to control for potential effects of crime type on sexual recidivism (e.g., as has been found in adult male offenders; cf. Hanson & Bussière, 1998). Matching on index offense also partly controlled for victim age, which might influence sexual recidivism (Vandiver, 2006; Worling & Långström, 2003). Victim age was not otherwise captured in the available data, nor were other variables that might be related to sexual recidivism risk (e.g., victim gender, relationship of victim to offender; see Prescott, 2006), or general recidivism risk (e.g., youth substance use; see Quinsey, Skilling, LaLumière, & Craig, 2004).

## Method

### Participants

The sample consisted of 222 boys found guilty of committing a registry (index) offense between January 1, 1995, and December 31, 2005 (see Table 1 for types of offenses). These boys were all minors (17 years of age or younger) at the time of their index offense arrest. One hundred and eleven youth were required to register on the South Carolina sex offender registry. The remaining 111 boys were matched, one to one, with boys in the registered group on date of index sexual offense (within 1 year), age at arrest (within 1 year), race (White or minority), a dichotomized indicator of prior convictions for person offenses (0 = *none*, 1 = *any*), a dichotomized indicator of prior convictions for nonperson offenses (0 = *none*, 1 = *any*), and type

**Table 1**
**Index Sexual Offenses and Recidivism Events**

| | Total, *n* | Registered, *n* (%) | Nonregistered, *n* (%) |
|---|---|---|---|
| Index sexual offenses | | | |
| Sex with a minor, first degree | 71 | 37 (33.3) | 34 (30.6) |
| Sex with a minor, second degree | 11 | 4 (3.6) | 7 (6.2) |
| CSC, first degree | 27 | 9 (8.1) | 18 (16.2) |
| CSC, second degree | 15 | 12 (10.8) | 3 (2.7) |
| CSC, third degree | 19 | 9 (8.1) | 10 (9.0) |
| Lewd act with a minor | 40 | 21 (18.9) | 19 (17.1) |
| CSC with a minor, second degree | 6 | 2 (1.8) | 4 (3.6) |
| Assault with intent to commit CSC, first degree | 15 | 6 (5.4) | 9 (8.1) |
| Assault with intent to commit CSC, second degree | 3 | 2 (1.8) | 1 (0.9) |
| Assault with intent to commit CSC, third degree | 2 | 2 (1.8) | 0 |
| Attempted CSC first degree | 1 | 1 (0.9) | 0 |
| Indecent exposure | 6 | 1 (0.9) | 5 (4.5) |
| Peeping | 6 | 5 (4.5) | 1 (0.9) |
| Recidivism events | | | |
| Sexual offense | 2 | 2 (100) | 0 |
| Nonsexual person | 21 | 11 (52.4) | 10 (47.6) |
| Nonperson | 66 | 41 (62.1) | 25 (37.9) |

Note: CSC refers to criminal sexual conduct.

of index sexual offense. Prior convictions for sexual offenses were rare, and matches could only be found for registered youth with no such priors. Demographic information is presented in Table 2. As can be seen, the matching procedures produced equivalence on each of these variables. Juvenile justice records (dating from January 1, 1990, through June 21, 2006) and adult criminal records (dating from January 1, 1990, through December 31, 2006) were examined for information on prior offenses, index offenses, and postindex (recidivism) offenses. The average length of follow-up for all youth was 4.32 years ($SD$ = 2.46, range 0.63-10.76 years). Just three youth were followed for less than 1 year, and there was no significant between-group difference in length of follow-up (see Table 2). De-identified archival data were used, and this study was approved by the university institutional review board, which exempted consent/assent requirements.

## Data

Data for this study were extracted from three South Carolina sources: sex offender registry records, juvenile justice records, and adult criminal history records. Unique identifiers were assigned to each offender by a consultant in the South Carolina State Budget and Control Board Office of Research and Statistics (ORS) to

**Table 2**
**Demographic Characteristics of Registered and Nonregistered Juvenile Offenders**

| | Total | Registered ($n = 111$) | Nonregistered ($n = 111$)[a] |
|---|---|---|---|
| Mean age at index sexual offense, years (*SD*) | 14.71 (1.19) | 14.72 (1.17) | 14.71 (1.22) |
| Race, % | | | |
| White | 43.2 | 43.2 | 43.2 |
| Minority | 56.8 | 56.8 | 56.8 |
| Any prior sexual offenses, % | 0 | 0 | 0 |
| Any prior nonsexual person offenses, % | 6.4 | 6.4 | 6.4 |
| Any prior nonperson offenses, % | 14.2 | 13.5 | 14.4 |
| Mean follow-up, years (*SD*) | 4.37 (2.46) | 4.34 (2.49) | 4.41 (2.45) |

a. No between-group differences were significant at $p < .05$ or marginally significant at $p < .10$.

ensure that individuals could be tracked across files and across time without the investigators determining any individual's identity.

*Sex offender registry.* South Carolina sex offender registry data were obtained from the South Carolina Law Enforcement Division (SLED) in collaboration with the South Carolina Office of Justice Programs Statistical Analysis Center. The SLED data files included all offenders registered from inception (January 1, 1995) through December 31, 2005. Registry files included offenders' unique identifier, literal description of the registry offenses, and initial date of registration.

*Juvenile justice.* Juvenile justice data were obtained from the South Carolina Department of Juvenile Justice (DJJ), in collaboration with ORS. The DJJ data files included information on all cases whose charges were forwarded to solicitors (e.g., literal description of charge, charge date, solicitor decision) and final disposition outcomes. This data set did not capture arrests that were never forwarded to solicitors.

*Adult criminal justice.* Computerized criminal history records (CCHR) were obtained from SLED, in collaboration with ORS. The CCHR database included information on all initial arrests (e.g., literal description of arrest offense, date of arrests) and final disposition outcomes. This data set did not capture prosecutor-level decisions (e.g., regarding whether to prosecute specific charges).

The data used in this study are characterized by several strengths. The entire population of South Carolina registered offenders who were minors at the time of their offenses was available, and DJJ and CCHR data spanned 15 and 16 years, respectively. The sample was not restricted to specific types of offenses, permitting evaluation of multiple types of recidivism. Limitations include no measure of data entry reliability or error and the fact that neither the juvenile nor adult criminal records database provided

a full picture of the adjudication process from initial charge through final disposition. De-identification of the data eliminated the possibility of tracking recidivism in other states. Other limitations are ubiquitous to official crime records, including the fact that self-report data consistently indicate higher rates of offending than official records (Elliott, Huizinga, & Menard, 1989) and that crimes are sometimes recorded incorrectly (Elliott, 1995). Despite these limitations, the registry and the DDJ and CCHR databases provide the only comprehensive state-level sources of officially documented juvenile delinquency and criminal offending for registered sexual offenders.

## Design and Procedure

Of 9,241 offenders identified on the South Carolina sex offender registry, 336 (4%) registered prior to January 1, 2005 (permitting at least minimal follow-up), and were less than 18 years of age when charged with their registration (index) offenses. Information pertaining to the index offense was located for 258 (77%) of these offenders in DJJ records (cases that could not be reconciled with DJJ data often stemmed from youth with out-of-state convictions who moved to South Carolina). Of these 258 youths, 5 were female offenders who were eliminated from consideration (the very small sample made it unlikely that matches could be located for female offenders), resulting in a final pool of 253 registered youth for whom we attempted to identify nonregistered matches within the DJJ database. Matches for all six variables were identified for 111 registered youth. For 27 of these youth, an exact match on type of offense was not identified; rather, a match was based on severity of the sexual offense (severity ratings are provided for all DJJ offenses; Barrett, Katsiyannis, & Zhang, 2006) and on presence of a minor victim as indicated in the offense description.[1]

Given that South Carolina registration requirements are triggered solely by conviction offense, an important point of clarification concerns how we identified nonregistered offenders who had the same or similar index offenses. As indicated, 111 nonregistered youth were identified, all of whom had registry-level offense convictions. Staff at the South Carolina registration office stated that at disposition, judges occasionally will instruct youth to *not* register (and will include this instruction in their court reports), even though the law does not permit such discretion. Thus, judicial decision makers exerted discretion even when the law does not appear to permit discretion, as has been found in response to other legal policies (e.g., Zimring, Hawkins, & Kamin, 2001) and as we have identified in other research involving South Carolina juvenile justice samples (Letourneau, Bandyopadhyay, Sinha, & Armstrong, 2008).

## Scoring

*Follow-up.* The time at risk for registered youth began on the date of initial registration. The length of time between the registered youth's index offense and

date of initial registration was also applied to the youth's matched control (e.g., if a registered youth had a 3-month delay between index offense and registration, his matched control's follow-up would begin 3 months after the matched control's index offense). The time at risk for registered youth and matched controls began on the date of initial registration for 99 of the 111 pairs. It was the case for 1 of the remaining 12 pairs that the registered youth was required to register while still incarcerated. In this case, the date of release for the registered youth was used as the start of follow-up for both the registered youth and matched control. For the remaining 11 pairs, the matched control was incarcerated at the time that the registered youth initially registered. For these cases, the date of release for the matched control was used as the start of follow-up for both the registered youth and matched control.[2] The full follow-up extended from March 1996 (i.e., the earliest registration date for a youth) through December 2006.

*Recidivism.* Recidivism was operationally defined as new guilty dispositions (whether in juvenile or adult court) for sexual, nonsexual person or nonperson offenses that occurred during follow-up. Any type of sexual offense conviction (whether or not the offense was a "registry" offense) was counted as a sexual recidivism event. The majority of nonsexual person offenses were assault (e.g., assault and battery, simple assault) but also included domestic violence, robbery, and lynching. Nonperson offenses were broadly categorized as property offenses (e.g., theft), drug offenses (e.g., possession of controlled substance), and public order violations (e.g., violation of a restraining order). Status offenses (e.g., curfew violations) were not considered recidivism events.

### Data Analytic Strategy

Cox proportional hazard models (CPH) were computed using the SAS PHREG procedure. CPH models make no assumptions concerning the shape of the underlying survival distributions but rather assume that individual hazard rates are a function of covariate and parameter vectors (Bowles & Florackis, 2007). The flexibility of the PHREG procedure allowed for the removal of intervals when the offender was incarcerated and thus not at risk of reoffending in the community. Results of CPH models are presented in Table 3.

## Results

### Sexual Offense Recidivism

Juvenile and adult criminal justice records were carefully reviewed for new sexual offense convictions. Initially, 13 adjudication events were identified, which would suggest a 5.9% recidivism rate. On closer examination, just 2 of these events

**Table 3**
**Cox Proportional Hazard Regressions Predicting the Risk of Recidivism**

| | Nonsexual Person Recidivism[a] | | | | Nonperson Recidivism[b] | | | |
|---|---|---|---|---|---|---|---|---|
| Predictor | *b* | SE(*b*) | Odds Ratio | 95% CI | *b* | SE(*b*) | Odds Ratio | 95% CI |
| Registered (vs. nonregistered) | .01 | .44 | 1.01 | 0.43, 2.40 | .62 | .26 | 1.85* | 1.11, 3.08 |
| Has person priors (vs. none) | −.29 | .61 | 0.75 | 0.23, 2.49 | −.41 | .31 | 0.66 | 0.36, 1.22 |
| Has nonperson priors (vs. none) | .30 | .18 | 1.35 | 0.96, 1.91 | .37 | .10 | 1.45*** | 1.20, 1.76 |
| Age at index offense | −.19 | .18 | 0.83 | 0.58, 1.18 | .16 | .12 | 1.17 | 0.93, 1.47 |
| White (vs. minority) | −.99 | .57 | 0.37 | 0.12, 1.12 | −.83 | .29 | 0.44** | 0.25, 0.77 |

Note: CI, confidence interval.
a. Model fit, Wald $\chi^2 = 8.43$ (5), $p > .10$.
b. Model fit, Wald $\chi^2 = 46.94$ (5), $p < .0001$
*$p < .05$. **$p < .01$. ***$p < .001$.

met study criteria for sexual recidivism events (i.e., guilty dispositions for offenses that occurred during follow-up). Of the remaining 11 events, 2 resulted in not guilty dispositions, 1 was associated with an unknown disposition, 4 occurred after the index offense but prior to the start of follow-up (e.g., while a youth was still incarcerated for an index offense) and none of these was associated with guilty dispositions, and 4 were follow-up events associated with youth's index sexual offenses (e.g., change in probation status). The final recidivism rate of 2 of 222 (0.9%) was too low to support between-group analyses (i.e., any attempt at prediction would lack sufficient power and precision to produce valid and interpretable results). Both recidivism events occurred to registered youth (see Table 1).

## Nonsexual Person Offense Recidivism

There were 21 guilty dispositions for nonsexual person offenses (see Table 1). The Cox model was not significant, and none of the covariates significantly predicted recidivism. Given the limited number of sexual and nonsexual person recidivism events, these offenses were combined (for a total of 23 sexual/nonsexual person events) and analyses were rerun. The results indicated a nonsignificant model, $\chi^2(5) = 8.27$, $p = .14$.

## Nonperson Offense Recidivism

There were 66 guilty dispositions for nonperson offenses identified in the sample (see Table 1). Table 3 presents the point and 95% interval estimates of the odds ratios

by predictor. Three covariates significantly predicted nonperson recidivism events. These included indicators for nonperson prior offenses, race, and registration status. The odds of conviction are 45% higher for youth with a single prior offense compared with youth with no prior nonperson offenses and 111% higher for youth with two prior offenses compared with youth with no prior nonperson offenses. In comparison with White youth, minority youth had 130% higher odds of recidivism. In comparison with nonregistered youth, registered youth had 85% higher odds of recidivism. The wide confidence interval on the odds ratio for registration status (1.11, 3.08) indicates that the estimated relationship between registration status and recidivism is not precise and suggests the possibility of unidentified latent class variables that influence this relationship.

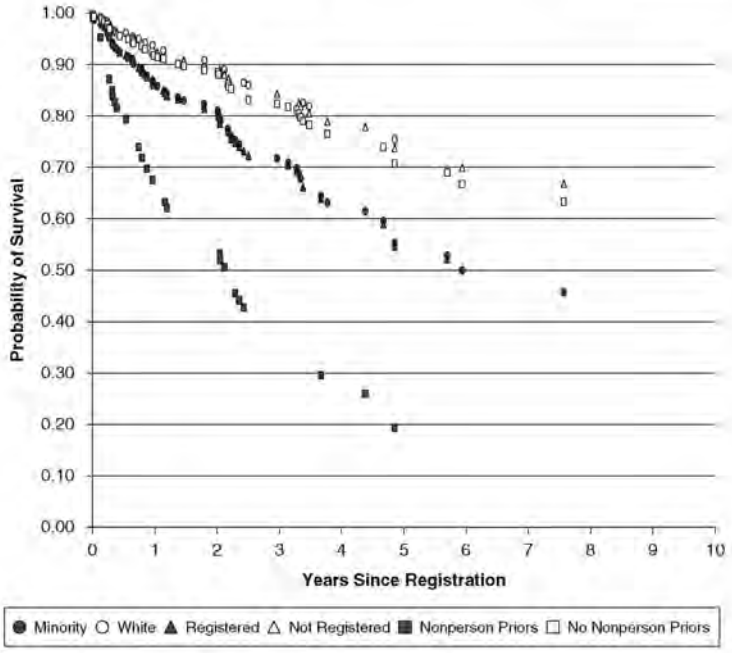
Survival estimates for the three statistically significant covariates were generated (at the mean of all remaining covariates) and plotted against time with the resulting curves superimposed (see Figure 1). As can be seen, most registered youth who failed did so within the first 2.5 years of follow-up. The effect of prior nonperson offenses is to cause youth to fail more quickly and at a higher frequency, relative to the effects of other covariates. The estimated survival curves for minority race and registration overlap almost completely (although again, this estimation is less precise for the registration status variable vs. the race variable).

To more fully explore the association between registration status and nonperson recidivism, we conducted post hoc chi-square analyses to examine whether groups differed with respect to type of nonperson offense convictions. As seen in Table 1, 25 nonregistered and 41 registered youth had nonperson convictions. A higher percentage of nonregistered (60%) than registered (37%) youth had property offense convictions, $\chi^2(1) = 3.43$, $p = .08$. The severity level of property offense convictions was split between misdemeanors (55%, e.g., shoplifting) and felonies (45%, e.g., second-degree burglary). A smaller difference was seen in the proportion of nonregistered (20%) and registered (37%) youth who had drug offense convictions, $\chi^2(1) = 2.02$, $p > .10$. Three quarters of drug offense convictions were for misdemeanors (primarily simple possession). Likewise, there was a small difference in the proportion of nonregistered (32%) and registered (44%) youth who had public order offense convictions, $\chi^2(1) = 0.92$, $p > .10$. Most (83%) public order offenses were misdemeanors (primarily driving violations). Thus, where groups varied most was in the category of property offenses, which had the highest percentage of felony-level offenses.

## Generalizability of the Sample

Matching samples on key variables can be an effective means of controlling for nuisance variables, particularly in cases where random assignment is impractical, as is the case when examining the effects of legislative interventions such as registration. This methodology has limitations, however, the most problematic of which is the unintentional selection of a nonrepresentative sample from the population of interest

**Figure 1**
**Nonperson Recidivism by Covariate**




(Breaugh & Arnold, 2007), an outcome that reduces generalizability of results. To investigate the representativeness of the matched registration sample, we compared two groups: registered male youth who could possibly have been matched but were not (unmatched, $n = 142$) and registered male youth for whom matches with nonregistered youth were identified (matched, $n = 111$). Results indicated no significant difference in mean age at registry (index) offense ($M = 14.72$ years for both groups), race (45% and 43% White for unmatched and matched groups, respectively), or severity ratings for registry offenses. Relative to the matched group, youth in the unmatched group were marginally more likely to have had a prior sexual offense (3.5% vs. 0%), $\chi^2(1) = 3.99$, $p < .10$; significantly more likely to have had one or more prior person offenses (20% vs. 15%), $\chi^2(1) = 9.40$, $p < .01$; and significantly more likely to have

had one or more prior nonperson offenses (28% vs. 14%), $\chi^2(1) = 7.22$, $p < .01$. These results reflect the fact that it was more difficult to locate matches for youth who had prior sexual and nonsexual person offenses because such offenses were relatively rare. Thus, youth in the unmatched sample appeared to have more serious criminal histories than youth in the matched sample. Importantly, groups did not differ with respect to sexual recidivism. Specifically, 1.4% (2 of 142) unmatched and 1.8% (2 of 111) matched youth had postregistration sexual offense guilty dispositions.

## Discussion

This study is the first to examine the effects of a U.S. registration policy on juvenile sexual offenders matched with nonregistered controls. Results generally failed to support the effectiveness of this policy, operationalized as reduced recidivism by juvenile sexual offenders. Indeed, there were just two sexual recidivism events for the entire sample. Although this low recidivism rate precluded between-group comparisons, it does suggest that South Carolina's registration policy targets a primarily low-risk group of juvenile offenders, most of whom might not warrant or benefit from the additional surveillance provided by registration. At first blush, this low rate of sexual recidivism appears to be at odds with other outcome studies, many of which reported juvenile sexual recidivism rates between 5% and 10% (e.g., Caldwell, 2002; Parks & Bard, 2006; Reitzel & Carbonell, 2006; Worling & Långström, 2003). Between-study differences in recidivism rates might be attributable to differences in sampled groups (e.g., clinical vs. juvenile justice samples), length of follow-up, and operational definition of recidivism (Worling & Långström, 2003). The present study identified youth based solely on juvenile justice records, included a modest follow-up, and relied on a conservative definition of recidivism, all of which likely reduced the recidivism rate, particularly in comparison to studies that draw samples from clinical treatment groups (which might select for more serious offenders), have longer follow-up, and use less conservative measures of recidivism such as arrest. Another study that examined youth based on juvenile justice records reported a 0% sexual recidivism rate across an average 3-year follow-up (Milloy, 1994). Consistent with the present study, a recent South Carolina report indicated that previously incarcerated adult sex offenders ($N = 300$) who had, on average, five prior (typically nonsexual) convictions had a 2.0% sexual reconviction rate during a 3-year follow-up (McManus, 2007). Likewise, several studies have reported 5-year recidivism rates for adult felony probationers at or below 5% (see Donaldson & Wollert, 2008; Meloy, 2005). Thus, the low recidivism rate identified for youth in the present study appears consistent with recidivism rates of juvenile and adult offenders identified by criminal justice (vs. treatment) records. Future research examining the impact of registration policies should endeavor to include larger samples of youth and extend the follow-up. We hesitate to suggest, however,

that a relaxed definition of recidivism should be used, given recent findings that suggest registration status might differentially influence arrest versus conviction rates (see Letourneau et al., 2008).

In addition to examining sexual recidivism, this study examined nonsexual person and nonperson recidivism rates. There was no statistically significant between-group difference with respect to nonsexual person offenses, a finding that is consistent with several adult study results (Adkins et al., 2000; Schram & Milloy, 1995; Zevits, 2006). Nearly the same number of registered ($n = 11$) and nonregistered ($n = 10$) youth had new convictions for nonsexual person offenses. Power to detect differences was limited by the small number of these events, tempering confidence in this result. Again, replication of results with larger samples is needed to determine whether this finding generalizes across studies.

After we accounted for the effects of other covariates, analyses indicated that three covariates were associated with statistically significantly increased risk for new nonperson recidivism events. Presence of prior nonperson offense convictions, minority race, and being registered all increased the risk of failure. The influence of prior convictions on future recidivism is well documented (Howell, 2003) and, relative to the other two predictors, was quite strong in the present analysis. The influence of minority race on juvenile conviction also is a well-documented phenomenon (Howell, 2003). Registered youth also were at increased odds of conviction, although confidence in this statistically significant finding is tempered by the wide confidence interval, which suggests an imprecise measure of the relationship between these variables. Interestingly, the estimated effect for race was nearly identical to the estimated effect of registration status, as depicted in Figure 1. Perhaps, like skin color (in this study, nearly all minority youth were Black), registration status marks a youth as putatively higher risk in the eyes of judicial decision makers (e.g., arresting police officers, judges). If so, it might be the case that registered and nonregistered groups differed not on rates of offending but rather on detection of offending, attributable to the increased surveillance of and concern about registered sex offenders. This view is partly supported by the post hoc analyses of types of nonperson offenses for which youth were convicted. Specifically, nonregistered offenders were marginally more likely to be convicted of property offenses than were registered offenders. Property offenses included a higher portion of felony (vs. misdemeanor) convictions than did drug or public order offenses. One interpretation of this pattern of findings is that less serious offenses triggered new convictions for registered but not nonregistered youth. Alternatively, South Carolina's registration requirements might select for youth more likely to commit nonperson offenses. It was reported that judges use discretion when requiring registration, even though such discretion is not sanctioned by South Carolina's registration policy. Perhaps judges were able to identify youth at greater risk of committing nonperson (but not sexual or nonsexual person) offenses, although this possibility seems remote given research demonstrating the poor predictive accuracy of unstructured risk appraisals

(e.g., Hanson, Morton, & Harris, 2003). A third hypothesis is that registration exerts a labeling effect (e.g., Chiricos, Barrick, Bales, & Bontrager, 2007) which, alone or in combination with other barriers to successful reintegration of offenders into society (e.g., prohibiting registered youth from attending public schools), increases the risk of criminal behavior (Letourneau & Miner, 2005; Zimring, 2004). Future research should examine the specific circumstances under which youth commit and/or are prosecuted for new offenses and should include surveys of police officers, prosecutors, and judges (e.g., to examine beliefs about the level of recidivism risk posed by juvenile offenders) and the youth themselves (e.g., to examine labeling effects). Such research could help determine which, if any of these post hoc hypotheses best explain present results.

The results of this study should be judged in light of study strengths and weaknesses. As noted, this is the first study to specifically test whether registration was associated with changes in juvenile sexual and nonsexual recidivism rates. Such research is timely, given that SORNA requirements to publicly register youth must be enacted by July 2009. Additionally, matching youth on six variables hypothesized to influence general and/or sexual recidivism, including one variable (i.e., year of index offense) that ensured contemporaneous samples, is a strength of this study. Limitations include the inability to randomly assign youth to groups. We attempted to address this significant concern by matching youth on relevant variables that were available in the data sets. It was difficult to locate matches for registered youth with prior offenses (attributable to low base rates) and, therefore, (a) matches could not be identified for more than half of registered offenders and (b) the 111 registered youth who were included in the final sample tended to have less serious criminal histories than was true for the 142 registered youth for whom matches could not be located. Results might not generalize to juvenile sex offenders with more serious criminal histories. Importantly, however, the matched and unmatched registered offenders did not differ significantly with respect to sexual recidivism rates, a primary consideration for registration policies (i.e., even putatively higher risk youth with more prior criminal offenses did not have significantly higher rates of sexual recidivism). A second limitation of this study is the low base rate of sexual and nonsexual person recidivism events. A different pattern of results might emerge if offenders with more serious criminal histories were included. Based on our review of the literature, we believe that the low observed recidivism rate is consistent with studies using samples of criminal justice–involved offenders. Nevertheless, studies with larger samples of youth or youth selected based on indicators of higher recidivism risk are needed to test whether results are replicable. Generalizability of results is limited to states that broadly target youth with their registration policies and might not extend to states with registration policies that take a more nuanced approach toward registering juvenile sexual offenders (e.g., based on risk assessment vs. criminal offense).

Despite these limitations, this study represents an initial test of one broad registration policy and fails to support this policy with respect to reducing juvenile

recidivism. There was some support for the concern that registration can be associated with increased risk of offending, although whether this is a result of increased offending per se or increased surveillance is unknown. Until replicated, results from this study should be interpreted cautiously. Of note, three previous controlled studies failed to find significant between-group differences in recidivism rates of registered versus nonregistered adult offenders (Adkins et al., 2000; Schram & Milloy, 1995; Zevits, 2006), and the present study indicated significant between-group differences only with respect to relatively less serious nonperson offenses. In combination, the results of the present and prior studies indicate that some registration policies fail to deliver on the promise of improved community safety. Strong support for public registration of sex offenders (e.g., Levenson et al., 2007) and recent enactment of the federal SORNA legislation suggest that some version of these policies will remain in effect for the foreseeable future. Whether such laws might ultimately improve community safety remains to be seen, although the wisdom and possible benefits of requiring long-term registration for youth whose recidivism rates tend to fall between 0% and 10% are questionable. Wide variation between existing state registration policies provides an opportunity for multistate studies to identify specific registration policy components associated with reduced recidivism (if such exist).

## Notes

1. Most youth (84 pairs) were matched on exact index sexual offense (e.g., both youth had criminal sexual conduct offenses). The remaining youth (27 pairs) were matched on broader categories of offenses. Specifically, 17 individual index sexual offenses were collapsed to 5 categories: (1) sex with a minor, (2) other sexual conduct with a minor, (3) intent to commit criminal sexual conduct with a minor, (4) criminal sexual conduct or attempted criminal sexual conduct, and (5) "hands off" sexual offenses (e.g., indecent exposure, peeping). The first three of these five categories only collapsed across offenses of the same type but were distinguished by degree (i.e., first degree, second degree, or third degree).

2. As noted in the text, follow-up for 12 pairs of youth was adjusted for incarceration periods. Offenses that occurred prior to the start of adjusted follow-up periods were not counted as recidivism events. There were two such nonsexual offenses. In one case, a registered youth committed a person offense while his nonregistered match was incarcerated. In the second case, a nonregistered youth committed two nonperson offenses while his registered match was incarcerated.

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PREPARED STATEMENT OF EVELYN FORTIER, VICE PRESIDENT FOR POLICY, RAINN (RAPE, ABUSE & INCEST NATIONAL NETWORK)

Chairman Scott, Ranking Member Gohmert, and members of the subcommittee, thank you for inviting me to submit this brief statement for the record of today's hearing. RAINN welcomes the opportunity to discuss Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109–248), also known as SORNA.

Founded in 1994, RAINN is a non-profit organization. Its mission is to end sexual assault in the United States by improving services to victims, educating the public and leading national initiatives to prevent sexual assault, and ensure that rapists are brought to justice. We carry out this mission in three main ways:

- First, we offer free and confidential crisis intervention services to victims of sexual violence through two national hotlines, in partnership with affiliated rape crisis centers and thousands of hotline volunteers and rape crisis personnel. RAINN created in 1994, and continues to operate—in partnership with over 1,100 rape crisis centers located in every state and the District of Columbia—the National Sexual Assault Hotline, which is accessible to victims as well as their friends and family members around the clock at at 800-656-HOPE. Several years ago we also launched the award-winning National Sexual Assault Online Hotline, which is now accessible online 24/7 at www.rainn.org. RAINN's hotline programs are federally authorized under Section 628 of the Adam Walsh Act.
- Second, RAINN engages in public education and outreach by which we reach millions of Americans every year. An example of one such activity is "RAINN Day," our annual college outreach program, which operates on over a thousand of the nation's college campuses each September. RAINN's education/outreach and technical assistance activities also are authorized under Section 628 of the Adam Walsh Act.
- Third and finally, we advocate for national policies and services that will benefit victims of sexual violence, for funding to support such services, and for legislation to ensure that sexual assailants are brought to justice.

In recent years, the nation's attention has been gripped by a series of wrenching, high-profile cases involving innocent young children and youths who were targeted by sexual predators in disturbing acts of violence. The cases of Adam Walsh, Jacob Wetterling, Jessica Lunford, Amie Zyla, and others immediately come to mind—stirring our emotions and provoking our outrage. Yet it is important to remember that, in addition to these gripping cases, there are hundreds of thousands more children, youths, and adults who also will suffer the life-shattering effects of a sexual assault.

*According to the U.S. Department of Justice, 1 in 6 women and 1 in 33 men can expect to become victims of sexual violence during their lifetime. In 2007, there were some 248,300 victims of sexual assault. Every two minutes, someone in the United States is sexually assaulted.*

With this in mind, we offer the following comments about SORNA:

**A Public Registry Offers Valuable Information to the Public.** The primary purpose of a public registry is not to reduce recidivism among sex offenders, but to inform. (While a public registry such as SORNA may have the additional benefit of deterring additional crimes by sex offenders [who know they are being tracked by law enforcement], it is not solely on this basis that SORNA should be evaluated.) A public registry exists for the community (so that parents can check it and take reasonable precautions to safeguard their children), and it also aids police in their efforts to identify and track convicted offenders on their beats. No public registry can offer 100% accurate information about sex offenders living in one's community—because many sex crimes go unreported and the perpetrators will, therefore, evade detection—but having access to the information that a public registry provides is still of value. This is especially true today, with the proliferation of two-career families, who have less time to spend on activities outside of work or home (such as neighborhood block parties) which could lead to close personal relationships with other community members.

**SORNA's Emphasis on Uniformity is Positive.** Title I of the Adam Walsh Act creates a comprehensive national system for the registration of sex offenders, defining three tiers of sex offenders (depending on the severity of their crimes). A uniform sex offender registration system, if implemented successfully by all jurisdictions, promises to eliminate inconsistencies in the various states' laws. Before the passage of the Adam Walsh Act, Congress heard about legal loopholes that enabled sex offenders to "forum shop," i.e., find jurisdictions with less stringent laws to evade sex offender registration and notification requirements. Prior to the enactment of the Adam Walsh Act, Congress also heard that as many as one in five sex-

ual offenders who were required to register would eventually go "missing" from the system. By encouraging uniformity across jurisdictions, the Adam Walsh Act should help prevent sex offenders from evading detection. The Adam Walsh Act also provides an avenue for states to share data about sex offenders, which is a positive feature of the Act.

**An Objective Offender Classification System Promotes Fairness.** SORNA classifies offenders into three categories (tier I, tier II, or tier III), depending upon the severity of their crimes. For example, the tier III offender, considered the most serious of the three categories, will have committed an offense that is punishable by more than one year in jail and is at least as severe as certain listed offenses, and involves kidnapping a minor or occurs after the offender becomes a tier II offender. The tier III offender is subject to lifetime registration under SORNA.

Some have argued that classifying offenders using an actuarial risk assessment system would be preferable to SORNA's offense-based classification system. We note, however, that an offense-based classification system is far more objective than a risk-based assessment scheme. An objective system may be the best way to achieve fairness for all. Also, an objective system may also be far less costly to administer than a subjective, risk-based assessment system because the objective system does not obligate police departments across the nation to hire psychologists or other professionals to individually assess every offender's risk after they have already been tried and convicted.

**More Research Is Needed Concerning SORNA and Juveniles.** SORNA requires certain juvenile offenders aged 14 years and above to be on state and national registries with adult offenders. Some have argued that juveniles tend to have fewer victims and on average commit less serious offenses than adults and therefore need not appear on such registries. We would urge Congress to tread carefully before amending the Adam Walsh Act in this area.

In revisiting the Adam Walsh Act's treatment of juvenile offenders, Congress should consult with experts in child development and seasoned child sex crime prosecutors. It would be helpful to know, for example, whether juveniles who were tried as adults, or juveniles who have committed especially heinous violent offenses, are less likely than adults to re-offend? Moreover, is the risk of re-offending the same for the fourteen-year-old juvenile offender as it is for juvenile who is sixteen or above?

In considering these and related questions, it also is important to remember that the risks of any miscalculation in this area will be borne by future victims, as well as their friends and family members.

**Congress Should Make Adequate Funding Available For the Walsh Act's Implementation.** The goals of the Adam Walsh Act have not been realized, and this is due in no small part due to the high financial costs of compliance with the Act. In order to achieve substantial compliance with the Adam Walsh Act, many jurisdictions must revisit their existing sex offender registration and notification systems and make significant changes to their existing systems. It is only fair that Congress provide the resources authorized under the Act to ensure its successful implementation. Providing adequate funding is vitally important to the successful implementation of the Adam Walsh Act.

**Congress Should Enact A Short-Term Extension of The Adam Walsh Act.** Congress set July 27, 2009 as an initial deadline for SORNA compliance, but final guidelines for SORNA compliance were not published until July 1, 2008. Numerous jurisdictions have complained of hurdles—such as a lack of funding—that will impede their meeting the July 27, 2009 deadline. It is our understanding that no jurisdiction has achieved substantial compliance with SORNA to date. With this in mind, RAINN would not object if Congress were to institute a one-year extension of the Adam Walsh Act.

In closing, thank you for the opportunity to present this testimony. We applaud the members of the subcommittee for taking the time to examine issues relating to SORNA's implementation.