

ADAM WALSH REAUTHORIZATION ACT OF 2012

—————  
JULY 31, 2012.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. SMITH of Texas, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3796]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3796) to reauthorize certain programs established by the Adam Walsh Child Protection and Safety Act of 2006, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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## The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Adam Walsh Reauthorization Act of 2012”.

**SEC. 2. SEX OFFENDER MANAGEMENT ASSISTANCE (SOMA) PROGRAM REAUTHORIZATION.**

Section 126(d) of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16926(d)) is amended to read as follows:

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General \$20,000,000 for each of the fiscal years 2013 through 2017, to be available only for—

“(1) the SOMA program; and

“(2) the Jessica Lunsford Address Verification Grant Program established under section 631.”.

**SEC. 3. REAUTHORIZATION OF FEDERAL ASSISTANCE WITH RESPECT TO VIOLATIONS OF REGISTRATION REQUIREMENTS.**

Section 142(b) of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16941(b)) is amended by striking “such sums as may be necessary for fiscal years 2007 through 2009” and inserting “\$46,200,000 for each of the fiscal years 2013 through 2017”.

**SEC. 4. DURATION OF SEX OFFENDER REGISTRATION REQUIREMENTS FOR CERTAIN JUVENILES.**

Subparagraph (B) of section 115(b)(2) of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16915(b)(2)) is amended by striking “25 years” and inserting “15 years”.

**SEC. 5. PUBLIC ACCESS TO JUVENILE SEX OFFENDER INFORMATION.**

Section 118(c) of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16918(c)) is amended—

(1) by striking “and” after the semicolon in paragraph (3);

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

“(4) any information about a sex offender for whom the offense giving rise to the duty to register was an offense for which the offender was adjudicated delinquent (or otherwise convicted) as a juvenile; and”.

**SEC. 6. PROTECTION OF LOCAL GOVERNMENTS FROM STATE NONCOMPLIANCE PENALTY UNDER SORNA.**

Section 125(a) of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16925(a)) is amended by striking “shall not receive” and all that follows and inserting “shall return to the Attorney General (for reallocation in accordance with subsection (c)), from the funds allocated to the jurisdiction for that fiscal year under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), 10 percent of the amount the jurisdiction may retain under paragraph (1) of section 505(c) of such Act (42 U.S.C. 3755(c)).”.

**SEC. 7. COMPREHENSIVE EXAMINATION OF SEX OFFENDER ISSUES.**

Section 634(c) of the Adam Walsh Child Protection and Safety Act of 2006 is amended by adding at the end the following new paragraph:

“(3) ADDITIONAL REPORT.—Not later than one year after the date of enactment of the Adam Walsh Reauthorization Act of 2012, the National Institute of Justice shall submit to Congress a report on the public safety impact, recidivism, and collateral consequences of long-term registration of juvenile sex offenders, based on the information collected for the study under subsection (a) and any other information the National Institute of Justice determines necessary for such report.”.

**SEC. 8. JUVENILE SEX OFFENDER TREATMENT GRANTS REAUTHORIZATION.**

Section 3012(c) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797ee-1(c)) is amended by striking “\$10,000,000 for each of fiscal years 2007 through 2009 to carry out this part” and inserting “\$2,979,000 for each of the fiscal years 2013 through 2017 to carry out this section”.

## Purpose and Summary

H.R. 3796 reauthorizes two key programs of the Adam Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act”), P.L. 109–248, including funding for the U.S. Marshals’ fugitive apprehension program, and grants to help the states and other jurisdictions come into compliance with the national sex offender registry requirements of the Act. The bill also lowers the age after which certain juveniles adjudicated delinquent can apply for removal from the sex offender registry for a clean record from 25 to 15 years.

## Background and Need for the Legislation

The Adam Walsh Act was signed into law on July 27, 2006. The Act is intended to protect children and the public at large from sexual exploitation and other violent crime. The Act also aims to prevent child abuse and child pornography, promote Internet safety, and honor the memory of Adam Walsh and other crime victims.

### SORNA

Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (“SORNA”), 42 U.S.C. § 16901 *et seq.*, was enacted to protect the public from convicted sex offenders by establishing a comprehensive national system for the registration and notification to the public and law enforcement officers of those offenders. SORNA sought to create a consistent and uniform system of sex offender registries throughout the country that would enable law enforcement officials and the public to track sex offenders and to prevent offenders from eluding the authorities—particularly when they move out of state. To achieve this goal, SORNA 1) expanded the jurisdictions required to register sex offenders to include Indian tribes, U.S. territories, and the District of Columbia; 2) set forth minimum uniform standards for sex offender registries; 3) required the registration of a broader class of offenders; 4) required sex offenders to register and renew in person their registration in every jurisdiction where they live, work, or attend school; 5) changed the minimum length of registration for sex offenders; and 6) expanded the information made available to the public.

The Department of Justice’s Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (“SMART”) Office, which administers SORNA, issued guidelines for minimum compliance with SORNA in 2008,<sup>1</sup> and more recently issued supplemental guidelines in January 2011 that were intended to address certain concerns among the jurisdictions.<sup>2</sup> The minimum SORNA registry requirements include:

- Classification of offenders based on their crime of conviction, instead of using a risk-assessment system. Under SORNA, jurisdictions are required to put offenders into three different tiers based on convictions. These tiers determine the length of registry and how often an offender must renew registration each year. The jurisdictions, however, are free to

<sup>1</sup>Department of the Justice, Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification, Docket No. OAG 121, AG Order No. 2978–2008.

<sup>2</sup>Department of Justice, Office of the Attorney General, Supplemental Guidelines for Sex Offender Registration and Notification, Docket No. OAG 134, AG Order No. 3241–2011.

use risk assessments to place offenders in higher tiers. This provision was included in the Act to address the wide-range of risk assessment systems among the states, which led to much less uniform enforcement of the registry laws.

- Registration of both newly-convicted sex offenders, as well as past offenders. The states are only required to register sex offenders who are currently in the criminal justice program as prisoners or supervisees, or those who reenter the system through a subsequent criminal conviction. This retroactive application of the law has been upheld as constitutional by several Federal courts.<sup>3</sup> The U.S. Supreme Court has not ruled on the constitutionality of SORNA's retroactivity, but has upheld a similar state law on the basis that the sex offender registration and notification statute was a civil regulatory, rather than a penal, statute.<sup>4</sup>
- Registration of a small subset of juveniles who are adjudicated delinquent for committing violent sex crimes. Under the SORNA guidelines, the only juveniles who must be added to the registries are those who were at least 14 years old at the time of an offense and are adjudicated delinquent for committing (or attempting or conspiring to commit) a sexual act with another by force, by the threat of serious violence, or by rendering unconscious or drugging the victim. In other words, only the most serious juvenile offenders are required to register. The guidelines also exempt publication of these juveniles on the public registry—instead, only law enforcement will see the fact that they are registered sex offenders.
- Periodic in-person registry throughout the year. Depending on which tier an offender falls in, they must register once a year (Tier 1), twice a year (Tier 2), or quarterly (Tier 3). The SMART Office has, however, provided some flexibility regarding how these renewals can take place.

The states were initially given until July 27, 2009, to comply with the SORNA provisions or face a potential 10-percent reduction to the state portion of the Federal Edward Byrne Memorial Justice Assistance Grant (“Byrne JAG”) funding. Any state that demonstrates reasonable progress toward compliance with SORNA, however, can petition the Department of Justice to have the 10-percent reduction credited back, provided that the state agrees to spend the money on SORNA implementation.

The Attorney General exercised his discretion to grant two 1-year extensions to the jurisdictions. Accordingly, the final deadline for the states and territories to comply with SORNA and avoid a penalty was July 27, 2011.<sup>5</sup> To date, 39 jurisdictions have been deemed in

<sup>3</sup>See *United States v. Leach*, 639 F.3d 769 (7th Cir. 2011) (finding that SORNA does not violate the *ex post facto* clause and citing cases with similar outcomes from nine other circuits); but see *United States v. Juvenile Male*, 581 F.3d 977 (9th Cir. 2009) (finding that SORNA violated the *ex post facto* clause) *vacated* 131 S.Ct. 2860 (2011).

<sup>4</sup>See *Smith v. Doe*, 538 U.S. 84 (2003).

<sup>5</sup>Failure to comply with SORNA does not generate a one-time penalty. Instead, the Justice Department will consider SORNA compliance each year prior to determining Byrne JAG distributions.

substantial compliance with SORNA, including 15 states, 22 Indian tribes, the Northern Mariana Islands, and Guam.

The Indian tribes generally did not face the same deadline as the states, and instead are required to implement SORNA in a “reasonable” time, as determined by the Department of Justice. The Indian tribes also generally do not face the same 10-percent reduction in Byrne JAG funding. However, tribes that are determined unlikely to come into compliance with SORNA face having the responsibility for doing so delegated to the state in which they reside.

The Adam Walsh Act also made it a Federal felony to fail to re-register as a sex offender after moving to another state, and required states to toughen their penalties, now often misdemeanors, for failing to register at all. The U.S. Marshals were tasked under the Act with apprehending both state and Federal fugitive sex offenders, investigating violations of the Act’s sex offender registration requirements, and identifying and locating sex offenders who are relocated as the result of a major disaster.

#### AUTHORIZATIONS

The Adam Walsh Act created or reauthorized more than 20 Federal spending and grant programs devoted to SORNA, sex offender management, and child safety. The majority of these grants are no longer authorized, and the majority of them have never received an appropriation from Congress.

The original Adam Walsh Act was estimated by CBO to cost \$1.5 billion over 5 years. By contrast, this bill reauthorizes just two programs at levels commensurate with the FY 2012 appropriation levels, for a total of approximately \$330 million in spending over 5 years.

#### Hearings

The Committee’s Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on the Adam Walsh Act on February 15, 2011. Testimony was received from: Ms. Dawn Doran, Deputy Director, SMART Office, U.S. Department of Justice; Ms. Stacia Hylton, Director, U.S. Marshals Service, U.S. Department of Justice; Mr. Ernie Allen, President and CEO, the National Center for Missing & Exploited Children; and Representative Patricia Colloton, Chair, Corrections and Juvenile Justice Committee, Kansas House of Representatives.

#### Committee Consideration

On July 18, 2012, the Committee met in open session and ordered the bill H.R.3796 favorably reported with an amendment, by voice vote, a quorum being present.

#### Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee’s consideration of H.R. 3796. The Committee approved by voice vote four amendments offered by Mr. Scott.

### Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

### Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3796, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 30, 2012.*

Hon. LAMAR SMITH, CHAIRMAN,  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3796, the "Adam Walsh Reauthorization Act of 2012."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DOUGLAS W. ELMENDORF,  
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.  
Ranking Member

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#### **H.R. 3796—Adam Walsh Reauthorization Act of 2012.**

As ordered reported by the House Committee on the Judiciary  
on July 18, 2012.

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#### SUMMARY

H.R. 3796 would authorize the appropriation of about \$69 million annually over the 2013–2017 period mostly for Department of Justice programs to assist State and local governments to manage and track sex offenders. The Congress appropriated about \$20 million for fiscal year 2012 for similar activities.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3796 would cost \$298 million over

the 2013–2017 period. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 3796 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3796 is shown in the following table. CBO assumes that the authorized amounts will be appropriated near the start of each fiscal year and that outlays will follow the historical rate of spending for similar activities. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2013	2014	2015	2016	2017	2013– 2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	69	69	69	69	69	345
Estimated Outlays	42	58	63	66	69	298

#### PAY-AS-YOU-GO CONSIDERATIONS:

None.

#### INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3796 contains no intergovernmental or private-sector mandates as defined in UMRA. Assuming appropriation of authorized amounts, State, local, and tribal governments would receive about \$77 million of the \$298 million that would be spent over the 2013–2017 period for the treatment and tracking of sex offenders. Any costs to those governments would be incurred voluntarily as a condition of receiving Federal assistance.

#### ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz  
Impact on State, Local, and Tribal Governments: Melissa Merrell  
Impact on the Private Sector: Marin Randall

#### ESTIMATE APPROVED BY:

Theresa Gullo  
Deputy Assistant Director for Budget Analysis

### Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3796, reauthorizes funding for the U.S. Marshals' fugitive apprehension program and grants to help jurisdictions come into compliance with the Adam Walsh Act's national sex offender registry requirements, and lowers the age after which juveniles adjudicated delinquent can

apply for removal from the sex offender registry for a clean record from 25 to 15 years.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3796 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

### **Section-by-Section Analysis**

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short title.* This section cites the short title of the bill as the “Adam Walsh Reauthorization Act of 2012.”

*Section 2. Sex Offender Management Assistance (SOMA) Program Reauthorization.* This section reauthorizes the SOMA program at \$20 million a year for 5 years, which reflects the FY 2012 appropriation level. The SOMA program provides funding to the states, tribes and other jurisdictions to offset the costs of implementing and enhancing SORNA. Section 2 also clarifies that SOMA grant funds can be used to verify the addresses of registered sex offenders, as initially authorized under the Adam Walsh Act’s Jessica Lunsford Address Verification Grant Program. SOMA was initially authorized as “such sums as necessary.”

*Section 3. Reauthorization of Federal Assistance with Respect to Violations of Registration Requirements.* This section reauthorizes \$46.2 million a year for 5 years for the U.S. Marshals Service (“USMS”), and other DOJ law enforcement agencies, to assist jurisdictions in locating and apprehending sex offenders who violate registration requirements. The USMS is the primary Federal agency responsible for enforcing the registration requirements of the Adam Walsh Act and apprehending Federal and state fugitive sex offenders. This program was initially authorized as “such sums as necessary.”

*Section 4. Duration of Sex Offender Registration Requirements for Certain Juveniles.* This section changes the period of time after which juveniles adjudicated delinquent can apply to be removed from the sex offender registry for keeping a clean record from 25 years to 15 years

### **Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### **ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006**

\* \* \* \* \*



**TITLE I—SEX OFFENDER  
REGISTRATION AND NOTIFICATION ACT**

\* \* \* \* \*

**Subtitle A—Sex Offender Registration and  
Notification**

\* \* \* \* \*

**SEC. 115. DURATION OF REGISTRATION REQUIREMENT.**

(a) \* \* \*

(b) **REDUCED PERIOD FOR CLEAN RECORD.—**

(1) \* \* \*

(2) **PERIOD.—**In the case of—

(A) \* \* \*

(B) a tier III sex offender adjudicated delinquent for the offense which required registration in a sex registry under this title, the period during which the clean record shall be maintained is **[25 years]** *15 years*.

\* \* \* \* \*

**SEC. 118. PUBLIC ACCESS TO SEX OFFENDER INFORMATION THROUGH THE INTERNET.**

(a) \* \* \*

\* \* \* \* \*

(c) **OPTIONAL EXEMPTIONS.—**A jurisdiction may exempt from disclosure—

(1) \* \* \*

\* \* \* \* \*

(3) the name of an educational institution where the sex offender is a student; **[and]**

*(4) any information about a sex offender for whom the offense giving rise to the duty to register was an offense for which the offender was adjudicated delinquent (or otherwise convicted) as a juvenile; and*

**[(4)]** *(5) any other information exempted from disclosure by the Attorney General.*

\* \* \* \* \*

**SEC. 125. FAILURE OF JURISDICTION TO COMPLY.**

(a) **IN GENERAL.—**For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this title **[shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).]** *shall return to the Attorney General (for reallocation in accordance with subsection (c)), from the funds allocated to the jurisdiction for that fiscal year under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), 10 percent of the amount the jurisdic-*

tion may retain under paragraph (1) of section 505(c) of such Act (42 U.S.C. 3755(c)).

\* \* \* \* \*

**SEC. 126. SEX OFFENDER MANAGEMENT ASSISTANCE (SOMA) PROGRAM.**

(a) \* \* \*

\* \* \* \* \*

[(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts otherwise authorized to be appropriated, there are authorized to be appropriated such sums as may be necessary to the Attorney General, to be available only for the SOMA program, for fiscal years 2007 through 2009.]

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General \$20,000,000 for each of the fiscal years 2013 through 2017, to be available only for—

- (1) the SOMA program; and
- (2) the Jessica Lunsford Address Verification Grant Program established under section 631.

\* \* \* \* \*

**Subtitle B—Improving Federal Criminal Law Enforcement To Ensure Sex Offender Compliance With Registration and Notification Requirements and Protection of Children From Violent Predators**

\* \* \* \* \*

**SEC. 142. FEDERAL ASSISTANCE WITH RESPECT TO VIOLATIONS OF REGISTRATION REQUIREMENTS.**

(a) \* \* \*

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated [such sums as may be necessary for fiscal years 2007 through 2009] \$46,200,000 for each of the fiscal years 2013 through 2017 to implement this section.

\* \* \* \* \*

**TITLE VI—GRANTS, STUDIES, AND PROGRAMS FOR CHILDREN AND COMMUNITY SAFETY**

\* \* \* \* \*

**Subtitle C—Grants, Studies, and Other Provisions**

\* \* \* \* \*

**SEC. 634. COMPREHENSIVE EXAMINATION OF SEX OFFENDER ISSUES.**

(a) \* \* \*

\* \* \* \* \*

(c) REPORTS.—

(1) \* \* \*

\* \* \* \* \*

(3) *ADDITIONAL REPORT.*—*Not later than one year after the date of enactment of the Adam Walsh Reauthorization Act of 2012, the National Institute of Justice shall submit to Congress a report on the public safety impact, recidivism, and collateral consequences of long-term registration of juvenile sex offenders, based on the information collected for the study under subsection (a) and any other information the National Institute of Justice determines necessary for such report.*

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**OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968**

\* \* \* \* \*

**TITLE I—JUSTICE SYSTEM IMPROVEMENT**

\* \* \* \* \*

**PART KK—SEX OFFENDER APPREHENSION GRANTS; JUVENILE SEX OFFENDER TREATMENT GRANTS**

\* \* \* \* \*

**SEC. 3012. JUVENILE SEX OFFENDER TREATMENT GRANTS.**

(a) \* \* \*

\* \* \* \* \*

(c) **AUTHORIZATION OF APPROPRIATIONS.**—*There are authorized to be appropriated **[\$10,000,000 for each of fiscal years 2007 through 2009 to carry out this part]** \$2,979,000 for each of the fiscal years 2013 through 2017 to carry out this section.*

\* \* \* \* \*

## Additional Views

### INTRODUCTION

H.R. 3796, the “Adam Walsh Reauthorization Act of 2012,” reauthorizes programs of the Adam Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act”).<sup>1</sup> Reauthorizing funding for law enforcement operations that are already law is not controversial. The problem with H.R. 3796 is not what is in it, but what is missing. The bill fails to address the many problems that the states and tribes have encountered in implementing the Sex Offender Registration and Notification Act (“SORNA”), which is one of the provisions of the Adam Walsh Act.

### DESCRIPTION AND BACKGROUND

Out of 248 jurisdictions required to comply, only 15 states, 2 territories, and 33 tribes have been found by the Attorney General to be in compliance with SORNA.<sup>2</sup> Last year, the Crime Subcommittee held a hearing on reauthorization of the Adam Walsh Act, during which we learned about numerous problems that states and tribes have encountered in implementing SORNA.<sup>3</sup> H.R. 3796 fails to effectively address many of these problems with SORNA.

### CONCERNS WITH H.R. 3796

Years before SORNA was enacted, many states developed sex offender registries and dedicated substantial resources to identify ways to effectively manage sex offenders. It would be inefficient as well as adversely affect public safety to make states disregard all of these efforts in favor of a prescriptive, “one size fits all” system, which is what SORNA currently is. The states that have been unable to comply with SORNA will soon suffer a 10 percent reduction in their Byrne-JAG awards for not doing so. Particularly during this economic climate, this is a harsh penalty to the states that will undermine not only their ability to manage sex offenders, but also the other public safety goals that the funds are now supporting.

Representative Robert C. “Bobby” Scott (D–VA) offered ten amendments to address these shortcomings in the bill. The amendments sought to give discretion to the states (and to the Attorney General) to make critical decisions about how to most effectively and safely manage sex offenders. Fortunately, four of these amendments passed by voice vote. Those amendments: 1) give states the flexibility to put juveniles on a law enforcement-only registry, not on a public registry; 2) reauthorize funding under the Adam Walsh Act for the treatment of juvenile sex offenders; 3) require the study of the public safety impact of long term or lifetime registration on juvenile registrants, and 4) ensure that portions of the Byrne-JAG grant funding intended for distribution to local governments and entities are not penalized by a state’s non-compliance with SORNA.

The six other amendments offered by Representative Scott, however, failed by voice vote. A summary of these amendments follows.

<sup>1</sup> Pub. L. No. 109–248 (2006).

<sup>2</sup> Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, “Jurisdictions that have substantially implemented SORNA,” available at <http://www.ojp.usdoj.gov/smart/newsroom.htm>.

<sup>3</sup> *The Reauthorization of the Adam Walsh Act: Hearing Before the Subcomm. on Crime, Terrorism and Homeland Security of the H. Comm. on the Judiciary*, 112th Cong. (2011).

One of these amendments would have allowed tribes to elect to either carry out the requirements of SORNA or delegate the requirements to another jurisdiction. By requiring that states take on the responsibility for sex offender registration on tribal lands if a tribe fails to comply, SORNA merges state and tribal law enforcement responsibilities in a manner that threatens tribal sovereignty and shifts the cost of tribal compliance to the states. This amendment would have clarified that tribal sovereignty should be respected and states may not be penalized for lack of tribal cooperation or compliance.

Another amendment offered by Representative Scott would have clarified that tribes in Public Law 83–280 (PL 280) states have the option of becoming registration and notification jurisdictions. As currently written, SORNA strips a subset of tribes that are subject to state criminal jurisdiction under PL 280 of exclusive civil regulatory authority over their members without any justification. This amendment would have given tribes the ability to have their own registries rather than relying upon the state.

Representative Scott also offered an amendment that would have given each jurisdiction the discretion as to whether to apply SORNA retroactively. Applying SORNA retroactively is one of the obstacles preventing jurisdictions from complying with SORNA and is one of the most controversial aspects of the Adam Walsh Act. Several states have had to incur the expense and engagement of trials and appeals challenging their retroactive application of SORNA requirements in which the states lost and other such challenges are pending. This amendment would have clarified that states have the discretion to decide whether and how to retroactively manage the registry regarding individuals whose convictions preceded the enactment of the Act, because they have to bear the expense of challenges.

With respect to the treatment of juveniles under the legislation, Representative Scott offered an amendment to allow states to decide whether to include juveniles who have been adjudicated as juveniles on their sex offender registries. Adolescent sex offenders are considered to be much more responsive to treatment than adult sex offenders and very rarely re-offend, especially when provided with appropriate treatment.<sup>4</sup> This amendment would have provided states the flexibility to decide whether to include juveniles on their sex offender registries.

In addition, Representative Scott offered an amendment to provide states the flexibility to amend registry and notification requirements of offenders, in consultation with law enforcement. This amendment would provide each jurisdiction flexibility with respect to the manner and frequency with which a sex offender must report changes in name, residence, employment, or student status. This approach assists local law enforcement because these agencies are overwhelmed trying to keep up with this aspect of SORNA's requirements with no or limited financial ability to add more staff to do more monitoring. Clearly, not all sex offenders pose the same risk, and just as states now determine how to supervise murderers, malicious wounders, drug kingpins, gang leaders and other dan-

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<sup>4</sup> See Association for the Treatment of Sexual Abusers (ATSA), The effective legal management of juvenile sex offender, Mar. 11, 2000, available at <http://www.atsa.com/ppjuvenile.html>

gerous offenders, it makes sense to let them decide, in consultation with their law enforcement and corrections officials, how often they need to see each sex offender, and essentially, how best to manage each.

Finally, Representative Scott offered an amendment to allow jurisdictions to be found in compliance with SORNA if they have developed a three-tier system of classification that is comparable to SORNA and link it to the national system, or if they use a validated risk assessment system. The manner in which sex offenders are classified is another significant barrier states have faced in implementing SORNA. This amendment would have allowed states greater flexibility in classifying their offenders, as long as they use a system comparable to SORNA and interface with SORNA in a way that would enable information-sharing about offenders, or a validated, risk assessment tool in doing so.

#### CONCLUSION

Unfortunately, the failure to pass amendments that would allow states the flexibility to meet more of SORNA's requirements in a more cost-effective respect means that these jurisdictions will continue to remain non-compliant and to incur losses of Byrne-JAG funds through penalties.

JOHN CONYERS, JR.  
HOWARD L. BERMAN.  
ROBERT C. "BOBBY" SCOTT.  
MELVIN L. WATT.  
HENRY C. "HANK" JOHNSON, JR.  
JUDY CHU.

