ORRIN G. HATCH
UTAH

PATRICIA KNIGHT
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# United States Senate

WASHINGTON, DC 20510-4402

COMMITTEES:

FINANCE

JUDICIARY

HEALTH, EDUCATION, LABOR, AND PENSIONS

INTELLIGENCE

JOINT COMMITTEE ON TAXATION

August 1, 2007

The Honorable Alberto R. Gonzales
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear General Gonzales:

As you are aware, the Department of Justice (DOJ) has issued proposed guidelines for implementation of the Sex Offender Registration and Notification Act. As the comment period for the proposed guidelines ends today, I wanted ensure you received a copy of the comments prepared by the Utah Department of Human Services which will greatly assist you drafting final guidelines.

I have attached a letter from the Utah Department of Human Services which lists its specific concerns relating to the proposed guidelines. I have reviewed its letter, and believe it illustrates valid concerns which warrant careful consideration by DOJ officials.

I ask that the concerns outlined in the attached letter be carefully considered by DOJ prior to the release of the final guidelines and that DOJ officials make every effort to accommodate the concerns so that foster children are not subject to needless delays and states are able to work as effectively and efficiently as possible in implementing the law. Thank you for your attention to this matter, and for your continued service to our country.

Sincerely,

Orrin G. Hatch
United States Senator

OGH/jbbb

Enclosure

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:41 AM
**To:** Rosengarten, Clark
**Subject:** FW: Comments to proposed guidelines on Adam Walsh
**Attachments:** Adam Walsh comments

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**From:** Lisa-Michele Church [mailto:lmchurch@utah.gov]
**Sent:** Wednesday, August 01, 2007 7:03 PM
**To:** GetSMART
**Subject:** Comments to proposed guidelines on Adam Walsh

Enclosed please find our comments on the proposed guidelines for the Adam Walsh Act which were published in the May 30, 2007 Federal Register Vol 72 No 103. Thank you for your consideration.

Lisa-Michele Church
Executive Director
Utah Department of Human Services

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:51 AM
Rosengarten, Clark
**Subject:** FW: Adam Walsh Registry Regulations

**Attachments:** Adam Walsh Registry Regulations

Adam Walsh
legistry Regulation..

-----Original Message-----
From: Wayne Harper [mailto:wharper@utah.gov]
Sent: Tuesday, July 31, 2007 5:51 PM
To: Melanie_Bowen@hatch.senate.gov; GetSMART
Subject: Fwd: Adam Walsh Registry Regulations

I have some concerns with the implementation of the Adam Walsh Act.

Principally, I worry that indavertantly, we may be placing young people on the sex offender registry. I think the rules must be crafted so that when say a 14 and a 15 year old or two high school sophmores have a relationship, that that consenual act or relationship does not place one or both on the registry.

Other that that, I have attached a letter from the Department of Human Services in the State of Utah that outlines our concerns. Please review and address the concerns and ıues appropriately.

ı..ank you,

Representative Wayne Harper
West Jordan, Utah

State of Utah

N M. HUNTSMAN, JR.
*Governor*

GARY R. HERBERT
*Lieutenant Governor*

*Executive Director*

MARK E. WARD
*Deputy Director*

MARIE CHRISTMAN
*Deputy Director*

July 30, 2007

Representative Wayne Harper
6683 S Nottingham Drive
West Jordan, UT 84084

Dear Representative Harper,

In regards to the proposed Federal guidelines for implementation of the sex offender registry, I had staff from DCFS, JJS and DSPD review for potential impact. While the majority of impact affects the mission and operation of the Division of Juvenile Justice Service, this guideline impacts services across my Department in various ways.

As it pertains to the Division of Child and Family Services (DCFS) the guidelines do not address the background screening requirements for prospective foster or adoptive parents. However, there are some areas of the guidelines which will impact DCFS practices, and will impact children who are in the custody of the Division.

Some specific areas of note related to child welfare include:

1. The guidelines indicate that sex offender registration information will be provided to social service entities responsible for protecting minors in the child welfare system. The guidelines do not provide any specifics about how the information will be provided or how it has to be used which creates some ambiguity.

2. As you probably know the law requires juveniles age 14+ with tier 3 offenses (aggravated sexual assault) to update the sex offender registry on a quarterly basis. However, with the guidelines as proposed, updating the registry may have to occur even more frequently, such as if an individual moves or any time the youth is temporarily relocated for at least 7 days, changes schools or changes employers. <u>This update of the registry is mandated within 3-business days.</u> For our business operations, this 3-business day registration creates concerns about how we will manage and track our compliance with the requirement.

3. The guidelines also require notification of multiple jurisdictions, such as if a youth lives in one jurisdiction but goes to work or school in another, or if we place in a jurisdiction other than where the offense occurred. Technically the offender only has to register at one location, but the other jurisdictions have to be notified. Perhaps that would be an internal law enforcement process or perhaps we would have to keep track of all of the jurisdictions a youth is registered in. Obviously, this is an implementation issue not so much a comment on the guidelines. But there certainly will be challenges.

4. The guidelines also give very specific information about what has to be included in the registry, some of which seem very challenging and maybe impractical to obtain especially on a regular basis. For example, if a person is homeless, the individual would have to register where he/she usually frequents, or in the case of a truck driver, the routes that person would follow would be difficult to make registration possible. For our children, the simple act of placement may complicate the place where they register, and if they can be placed in any close proximity to other children.

5. Registered sex offenders are restricted in their movement and location of where they can live. With the inclusion of youth on the registry, DCFS will face additional challenges in placement.

The biggest impact regarding the registry guidelines is on the Division of Juvenile Justice Services and the youth they serve. Adult and juvenile sex offenders differ in a number of ways. Most juvenile sex offenders are not sexual predators and do not exhibit the same deviant arousal patterns as adult offenders. That increases the likelihood for a positive response to treatment interventions for juveniles. Research indicates juvenile offenders are more responsive to treatment and recidivism rates are low when compared to the rates for adult sex offenders.

As with DCFS, JJS will face challenges in placement and living arrangements but on a much larger scale. Placement and treatment currently is based on an individualized basis which includes assessing the need and risk to the public. Again, as a registered sexual offender, the options for placement of the youth will be limited. The guidelines target many of the youth who are all ready safely residing within the community and will unnecessarily have their lives disrupted in order to comply with the requirements. The retroactive requirement to register juvenile offenders, many who all ready have successfully completed treatment and re-entered their communities as productive citizens, will stigmatize and impact their ability to continue as productive citizens. The requirement that a juvenile tier 3 offender registers and remains on the registry for 25 years as long as there are no other applicable offenses, greatly affect a rehabilitated juvenile into adulthood in terms of their ability to work and live.

Lastly, a response we are beginning to see and predict it will increase with the passage of the guidelines, is an increase in pursuing of competency evaluations for juveniles. If determined incompetent by the court, a youth is not adjudicated for their offenses. This eliminates the option of JJS providing treatment and restorative justice and increases the burden on DCFS and DSPD in finding appropriate treatment and living arrangements.

Thank you for the opportunity to share the Department's comments regarding the Adam Walsh registry guidelines.

Sincerely,

Lisa-Michele Church

Lisa-Michele Church
Executive Director

**Rosengarten, Clark**

---

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:52 AM
**To:** Rosengarten, Clark
**Subject:** FW: Comment on SONRA Guidelines
**Attachments:** Adam Walsh Ltr - UBJJ.pdf; UCCJJ Letter on AWA.pdf

---

**From:** Reg Garff [mailto:Rgarff@utah.gov]
**Sent:** Tuesday, July 31, 2007 5:34 PM
**To:** GetSMART
**Cc:** Bob Yeates
**Subject:** Comment on SONRA Guidelines

Attached please find comment from two organizations in Utah regarding the SONRA Guidelines.

# State of Utah

COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

Jon Huntsman Jr
Governor

Robert S. Yeates
Executive Director

Utah State Capitol Complex
East Office Bldg. Suite E330
Salt Lake City, Utah 84114
Tel: (801)538-1031
Fax: (801)538-1024 FAX
http://www.justice.utah.gov


March 28, 2007

David J. Karp
Senior Counsel
Office of Legal Policy
Room 4509
Main Justice Building
950 Pennsylvania Avenue
N.W. Washington, D.C. 20530

Dear Mr. Karp,

Thank you for the opportunity to comment on the interim rule providing for retroactive effect of the Adam Walsh Act on sex offenders. My concerns about retroactivity are focused specifically on juvenile offenders as the Act is clearly sound policy for adult offenders.

Let me share my perspective upfront about juveniles being included under the Act. I recently retired from the bench after serving eleven years as a Third District Juvenile Court Judge for the State of Utah and prior to taking the bench served as a prosecutor for nine years. In my judgment it is poor public policy to impose the requirements of the Act on juvenile offenders because of the treatment implications involved. Most juveniles are responsive to treatment and their recidivism rates are low.

The Act generally ignores differences between adult and juvenile offenders. Nationally, we have historically treated adult and juvenile offenders differently for good reasons. Juvenile offenders generally have diminished culpability relative to adults due to their inherent lack of maturity. Notwithstanding these concerns, the legislation has been enacted. It appears that the best we can do at this juncture is to mitigate the harshness of the provisions of the Act relative to juveniles.

In Utah, we go to great lengths to rehabilitate juvenile sex offenders. We believe that most juveniles can be successfully treated to the extent that they no longer pose a risk of harm to others.

In my judgment, it would be highly detrimental to youthful offenders who have successfully completed sex offender treatment to have to comply with the onerous requirements of the Act. The majority of youthful sexual offenders are malleable and responsive to treatment and upon completion of sex specific

therapy are ready to move on with their lives. The registration requirements would unduly inhibit their ability to successfully proceed with their lives and be a continuing stigma to them for all or a significant part of their lives.

I, therefore, respectfully urge that juvenile offenders be exempted from retroactive applicability. To do otherwise would constitute a great injustice both to the individual juvenile offender as well as the juvenile justice system in Utah which is designed to rehabilitate minors who violate the law.

Thank you for your consideration of my viewpoint on this important issue.

Very truly yours,

Robert S. Yeates
Executive Director

State of Utah
Utah Board of Juvenile Justice

JON M. HUNTSMAN, JR.
*Governor*
GARY HERBERT
*Lieutenant Governor*

REG GARFF
*Juvenile Justice Specialist*

April 25, 2007

David J. Karp
Senior Counsel
Office of Legal Policy
Room 4509
Main Justice Building
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530

**Re: OAG Docket No. 117**
**Comments in Opposition to Interim Rule RIN 1.105--AB22**

Dear Mr. Karp:

Thank you for the opportunity to comment on behalf of the Utah Board of Juvenile Justice (UBJJ) regarding the interim rule requiring retroactive effect of the Adam Walsh Act on sex offenders. As a Board, we believe making the Act retroactive for juveniles would be detrimental to public safety, the juvenile justice system and the juvenile offenders themselves.

The Act makes very little distinction between juveniles and adults. As such, it is the opinion of the UBJJ that it is poor public policy to impose the requirements of the Act, retroactive or otherwise, on juvenile offenders because of the treatment implications involved.

On a national level, we have historically treated adult and juvenile offenders differently for good reasons. Juvenile offenders generally have diminished culpability relative to adults due to their inherent lack of maturity. They also respond well to treatment. For these reasons, our Nation's juvenile justice system has worked vigorously to protect the confidentiality necessary for effective treatment of youthful offenders.

Utah's juvenile justice system goes to great lengths to rehabilitate juvenile sex offenders. Most juveniles are responsive to treatment and their recidivism rates are low. According to the National Center of Sexual Behavior of Youth, a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14%), and substantially lower than rates for other delinquent behavior (5-14% vs. 5-58%). The Center also found that juvenile sex offenders are more responsive to treatment than adults and less likely than adults to re-offend when provided appropriate treatment. We believe most juveniles can be successfully treated to the extent they no longer pose a risk of harm to others.

It would be highly detrimental to youthful offenders who have successfully completed sex offender treatment to have to comply with the onerous requirements of the Act. Leading life as a productive citizen would be next to impossible while listed on the registry. Education, jobs and housing would become problematic at best for youth listed in the registry. Most youthful

sexual offenders are malleable and responsive to treatment and upon completion of sex specific therapy are ready to move on with their lives without the stigma and perpetual collateral consequences that typically accompany criminal convictions.

Requiring youthful sex offenders to participate in a national registry runs contrary to the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children." Personal information, photos, addresses, schools of youthful sex offenders are required to be posted in a national registry, thus making this information available not only to the public at large, but also those looking to target these young people as victims of further criminal activity.

Finally, it would be extremely difficult for states to apply the mandates of the Act retroactively. Identifying, locating, documenting and requiring in-person updates four times each year would be an enormous administrative burden, not only on the state, but also the families of youthful offenders. These youth frequently move and many have little parental support, thus aggravating an already difficult process.

For the above mentioned reasons and on behalf of the Utah Board of Juvenile Justice, I respectfully ask that juvenile offenders be exempted from retroactive applicability. To do otherwise would constitute a great injustice both to the juvenile offender as well as the juvenile justice system in Utah, which is designed to rehabilitate minors who violate the law.

Thank you for your consideration.

Sincerely,

Holly Martak

Holly Martak
Chair, Utah Board of Juvenile Justice



cc: Robert S. Yeates
Executive Director CCJJ

COMMONWEALTH OF PENNSYLVANIA
# JUVENILE COURT JUDGES' COMMISSION

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(717) 783-6266 Fax
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Laura L. Rogers
Director
SMART Office
Office of Justice Programs
US Department of Justice
810 7th Street NW
Washington, DC 20531

July 25, 2007

RE: OAG Docket No. 121
Proposed National Guidelines for
Sex Offender Registration and
Notification

Dear Ms. Rogers,

Thank you very much for your presentation on July 19, 2007 to the Juvenile Court Section of the Pennsylvania Conference of State Trial Judges. Although I was unable to attend, I have heard that your presentation was excellent.

I am writing in my capacity as Chairman of the Pennsylvania Juvenile Court Judges' Commission to provide comments regarding the above captioned proposed Guidelines. The members of our Commission, each of whom regularly presides in juvenile delinquency proceedings, have serious concerns regarding the impact that these proposed Guidelines are already having in our Commonwealth.

As I stressed in my previous comments regarding the interim SORNA rule, the difficulties associated with applying the requirements of SORNA to pre-SORNA convictions generally, are significantly greater in the case of delinquency adjudications. These cases overwhelmingly involve admissions to the offense by the offender, and result in court–ordered treatment at the time of disposition. Moreover, the victims in these cases are frequently members of the offenders' immediate or extended families. Often, the juvenile offenders in these cases are referred to the courts or law enforcement by family members who are seeking help for them as well as their victims. As the provisions of SORNA become better known, there will be a chilling effect on referrals of these cases by family members and relatives.

SORNA is already having a dramatic effect throughout our juvenile justice system as, in an increasing number of jurisdictions, virtually no juvenile sex offense cases involving offenders age 14 and older result in admissions to the charges, especially when the victim is under age 12. An ever increasing number

8/3/07

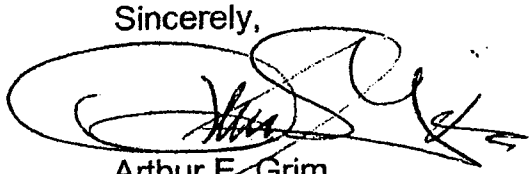
of contested proceedings in cases of this type will inevitably result in fewer juvenile sex offenders receiving the treatment and supervision they require.

A recent study by the National Center for Juvenile Justice calls into question the necessity of including provisions within SORNA that trigger registration for former juvenile sex offenders who are subsequently convicted for non-sex offenses. The National Center analyzed recidivism patterns of all juveniles who were referred to Pennsylvania juvenile courts at age 14 and older and adjudicated delinquent for a projected SORNA-triggering offense between January 1, 1997 and December 31, 2002. Through December 31, 2004, 73% of these 2836 adjudicated delinquents had no further contact of any kind with Pennsylvania's juvenile courts. Furthermore, of these 2,836 adjudicated delinquents, only 151 (5%) had again been referred to a Pennsylvania juvenile court for a sex offense of any kind through December 31, 2004.

Following a detailed analysis of the impact of the retroactivity provisions of the proposed Guidelines, it is the unanimous recommendation of our Commission that the Department of Justice revise these Guidelines to provide that the Sex Offender Registration and Notification Act (SORNA) shall apply to individuals who are subject to its provisions solely on the basis of an adjudication of delinquency in a state, the District of Columbia or a principal territory, only when the SORNA-triggering offense occurs on or after the effective date of SORNA-implementing legislation in the respective jurisdiction. There must be an exception, of course, for individuals who were already subject to registration and notification legislation in any such jurisdiction at the time of the effective date of SORNA.

Thank you very much for your consideration in this matter. Please do not hesitate to contact me or our Executive Director, Jim Anderson, if you require additional information.

Sincerely,



Arthur E. Grim
Chairman

cc: Commission members
James Anderson
Donna Cooper
Greg Rowe

MICHIGAN COUNCIL ON CRIME AND DELINQUENCY
1115 S. Pennsylvania Ave. - Suite 201, Lansing, Michigan 48912
Telephone: (517) 482-4161 Fax: (517) 482-0020 Email: mail@miccd.org

July 23, 2007

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:

As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), the Michigan Council on Crime and Delinquency (MCCD) takes this opportunity to express our general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current Proposed Guidelines. **Appling SORNA to youth is contrary to the research, including research sponsored by the U.S. Department of Justice.**

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior. In addition, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event.

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above leads us to question why youth are being considered for inclusion in public sex offender registries.

SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

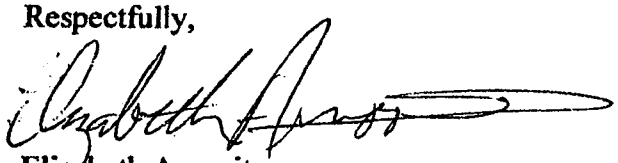
It must be noted that youth adjudicated in juvenile court not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment and will have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. 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.

If the Attorney General insists on applying the SORNA guidelines to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender. In Michigan, the law is very liberal in allowing youth to be transferred to the adult system. Thus, if a youth is being adjudicated within our juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria. It is inappropriate for the Federal government to second guess state authority in these matters.

MCCD supports efforts that hold offenders accountable, protect vulnerable populations and improve the overall public safety for our communities; however, SORNA does not effectively do any of these things. For the previously mentioned reasons we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly reject the application of SORNA to youth or, alternatively, to limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,



Elizabeth Arnovits
Executive Director

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:50 AM
**To:** Rosengarten, Clark
**Subject:** FW: Comments on AWA Guidelines
**Attachments:** AWA_Comments_From_OACCA.doc

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**From:** Bryan Brown [mailto:bbrown@oacca.org]
**Sent:** Tuesday, July 31, 2007 6:19 PM
**To:** GetSMART
**Cc:** Mark Mecum
**Subject:** Comments on AWA Guidelines

Please accept our comments on the AWA guidelines. We look forward to a thoughtful response to the comments you have received.

Sincerely,

ryan S. Brown
Assistant Executive Director
OACCA
614-461-0014
bbrown@oacca.org
www.oacca.org

OACCA
Ohio Association of Child Caring Agencies, Inc.

August 6, 2007

U.S. Department of Justice
Office of Sex Offender Sentencing, Monitoring, Apprehending, Registration, and Tracking (SMART)
Director Laura L. Rogers, Esq.

Dear Ms. Rogers,

As the state association for children, youth, and family serving agencies in Ohio, the Ohio Association of Child Caring Agencies (OACCA) strongly supports the intent of the federal Adam Walsh Act. We are proud that Members of the U.S. Congress and Department of Justice spent considerable time and effort to craft a better and more effective registration and national database system for sexually oriented offenders in our country. In this letter, we identify several areas of concern.

There is nothing more important or challenging than protecting our nation's youth. The Adam Walsh Act's intention is to do just that. However, there is a lot of confusion in states as to how to implement the federal law. In Ohio, when legislators first drafted its Adam Walsh implementation bill, stakeholders from across the state were deeply disturbed by some of the provisions and their offense based consequences for ALL juvenile sexually oriented offenders. The federal guidelines from the U.S. Department of Justice SMART office must be clear and straight-forward about where states have flexibility and where they do not.

We strongly encourage your office to be flexible on the definition of "substantial compliance". It is our view that strict compliance will actually harm youth and families by discouraging reporting of crimes committed by juveniles and thus leaving many offenders and victims without opportunities for treatment, justice, and recovery. As proposed, the federal guidelines will prevent youth from receiving effective treatment. When Ohio's AWA implementing legislation was introduced, the early draft imposed extremely harsh restrictions on first-time juvenile offenders. Many parents described the restrictions as harsh enough to convince them never to report a sexually oriented offense in their family.

**We hope you agree that juvenile sex offenders are a different population than adult sexual offenders. We need different tools to identify juvenile sex offenders, provide treatment to them and their victims, and keep them and our communities safe.**

The draft federal guidelines state that "if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse ... or was an attempt or conspiracy to commit such an offense" the child should be listed as a tier 3 offender. When implemented by states, "aggravated sexual abuse" is not always directly compatible with definitions in the state legal code. In Ohio, legislators used "gross sexual imposition" to equate with "aggravated sexual abuse". This becomes problematic in that "gross sexual imposition" is a broader offense that includes the slapping of someone's buttocks on top of their clothing. The federal guidelines should clearly define how states should incorporate "aggravated sexual abuse" into their state codes.

States like Ohio are struggling to comport their juvenile justice statutes within the tier structure of the AWA. For example, in Ohio, if a youth has been adjudicated for gross sexual imposition for improperly touching a sibling, that youth could end up on tier two or three depending on the nature of the contact RATHER than the risk of re-offending. As a result, communities become no safer than they were before. The adjudicated youth in that scenario needs treatment, which is proven to be up to 96% effective. The victim in that case also should receive treatment. When a criminal penalty (i.e. "public safety" requirement) is required that includes registration on public websites for juveniles adjudicated for gross sexual imposition, what parent would actually take the steps to prosecute their child? Why put parents in the position of choosing whether to report their child's offending behavior so he and the victim are able to receive professional treatment, knowing it will likely involve lifetime pubic registration and notification requirements, versus not reporting at all, leaving the offender and victim without the treatment they need to be healthy individuals.

Youth should not appear on the public SORN website unless they have been tried as adults in adult court and convicted of offenses that make them a real threat to communities. A major reason why youth should not have

their personal information on public websites is because it will weaken their recovery during treatment and will subject them to harassment and abuse. From the perspective of communities, 'sex offenders' listed on the public SORN website are threats, regardless if they are youth or adults. Moreover, there is reason to believe that a public registry of juvenile sexually oriented offenders would be utilized by pedophiles as potential victims. Creating a public list of names, photos, home addresses, schools attended, automobile information, and other identifying information violates the privacy of youth and families and serves no useful purpose. It will hamper the juvenile's ability to pursue work and educational opportunities, and it will block the juvenile's ability to be placed in residential treatment facilities.

Finally, we believe that state law, even under the AWA, should allow for judicial discretion in adjudicating juvenile sex offenders and to determine whether they actually pose a threat to the community. Judges serve an integral role in determining on a case-by-case basis what threat juvenile offenders may pose. If judges are unable to consider the level of threat, too many juveniles will be listed on the public websites that pose a threat to no one, which dilutes the effectiveness of registration and community notification. Judges should be permitted to fulfill their role in these cases and be allowed to retain their discretion.

We hope that the U.S. Department of Justice SMART office carefully considers the comments in this letter to craft clear federal guidelines that provide states the flexibility needed to implement this historic law. Without clear federal guidelines in place, the Ohio legislature had an extraordinarily difficult time implementing the Adam Walsh Act. Several parents of youth that are receiving treatment for offending someone within their family testified, in tears, to give their child a chance in life by not placing them on the public SORN website. Please avoid imposing 'one-strike, you're out' policies on juvenile sex offenders and their families, otherwise these families will be further victimized, state-by-state, as their state implements the Adam Walsh Act.

If you have any questions or need further explanation of information in this letter, do not hesitate to contact our association directly at mmecum@oacca.org and (614) 461-0014. Thank you for your time and have a great day.

Sincerely,

Mark Mecum
Policy Analyst

## Rogers, Laura

**From:** Kaplan, April
**Sent:** Tuesday, July 17, 2007 11:10 AM
**To:** Rogers, Laura
**Subject:** FW: Guidelines

---

**From:** Bob Brackett [mailto:bbrack@dci.wyo.gov]
**Sent:** Monday, July 16, 2007 4:04 PM
**To:** Kaplan, April
**Subject:** Guidelines

Hi April,

I'm with the WY SOR Program... Concerning the new guidelines...

Our state legislators have expressed extreme concern regarding required registration from juveniles. It's one thing if the sex offender was tried as an adult, but quite another if they were adjudicated as a juvenile. The WY Legislature accordingly threw out everything involving juveniles at the last minute during the 2007 legislative session. I am certain other states are dealing with similar issues.

Also our state does not permit posting a driver's license to the publicly accessible web page. We are not even currently permitted to keep a copy of the registrant's DL photograph within the SOR database and would currently never consider posting it to the web. Significant changes must occur within our state before these "privacy issues" can be changed.

We also have huge issues involving Indian tribal governments and some of our registered sex offenders. An individual my be non-compliant and a warrant issued... but the local sheriff's Office better not go on Indian land to arrest the registrant. We have evidently had several instances where officers attempted to execute an arrest warrant only to be threatened by the Tribal Judge of being taken into custody and incarcerated. Does each state's SOR have the responsibility to identify whether an Indian Tribal Government desires to delegate their SOR requirements or is this done through the federal government.

We also need a National definition of "recidivist" and/or "Child Sexual Predator".

Whats the status on the software???

What is the suggested situation regarding use and implementation of ankle bracelets etc???

How about a tolling spreadsheet to determine the number of days/years that a registrant is required to register based upon additional periods of incarceration...

How about a national standard that every state will accept the conviction of another state, as well as, the duty to register. Many states must "convert" the conviction information to an equivalent state statute. If the state does not have an equivalent statute the sex offender cannot be registered. In Wyoming, those convicted of Indecent exposure in another state cannot be registered. The same is true for sexual battery.

How about a list of each state's statutes in a comparison matrix.

What constitutes "to substantially implement" this title??? Is it truly limited to 10% (Byrne Justice Assistance Grant funding) or does non-compliance have the possibility of incurring reduced highway or special program funding?

What misdemeanor convictions are recommended to be included and why?

Will registrant e-mail address be required in the future?

Is retro-active application truly non-punitive?

Can the federal government require all states to provide conviction documentation (J&S, Information etc) to the registrant's state of residence WITHOUT the application of any fees?

Can sex offenders be required to register upon ENTRY into incarceration/confinement, as well as, upon release. Can their incarceration be posted upon the publicly available web page and be used to satisfy any requirements of victim notification?

Can a state impose "lifetime" registration of all convicted sex offenders?

Should a national standard be identified which addresses how far back in time convictions are registerable?

Is there a desired format for the "Compliance Submission" which is due by April 27, 2009?

Some of our questions/concerns...

Thanks
Bob.

Bob Brackett
Wyoming Sex Offender Registration Program Manager
Division of Criminal Investigation
(307) 777-7809
(307) 777-7301

1. Our state legislators have expressed extreme concern regarding required registration from juveniles. It's one thing if the sex offender was tried as an adult, but quite another if they were adjudicated as a juvenile. The WY Legislature accordingly threw out everything involving juveniles at the last minute during the 2007 legislative session. I am certain other states are dealing with similar issues.

2. Our state does not permit posting a driver's license to the publicly accessible web page. We are not even currently permitted to keep a copy of the registrant's DL photograph within the SOR database and would currently never consider posting it to the web. Significant changes must occur within our state before these "privacy issues" can be changed.

3. Our state has a issue involving Indian tribal governments and some of our registered sex offenders. An individual may be non-compliant and a warrant issued... but the local sheriff's Office better not go on Indian land to arrest the registrant. We have evidently had several instances where officers attempted to execute an arrest warrant only to be threatened by the Tribal Judge of being taken into custody and incarcerated. Does each state's SOR have the responsibility to identify whether an Indian Tribal Government desires to delegate their SOR requirements or is this done through the federal government?

4. Is their a National definition of "recidivist" and/or "Child Sexual Predator".

5. What's the status on the software?

6. What is the suggested situation regarding use and implementation of ankle bracelets etc?

7. Have you thought about tolling spreadsheet to determine the number of days/years that a registrant is required to register based upon additional periods of incarceration...

8. Have you thought about a national standard that every state will accept the conviction of another state, as well as, the duty to register. Many states must "convert" the conviction information to an equivalent state statute. If the state does not have an equivalent statute the sex offender cannot be registered. In Wyoming, those convicted of Indecent exposure in another state cannot be registered. The same is true for sexual battery.

9. Have you thought about a list of each state's statutes in a comparison matrix.

10. What constitutes "to substantially implement" this title? Is it truly limited to 10% (Byrne Justice Assistance Grant funding) or does non-compliance have the possibility of incurring reduced highway or special program funding?

11. What misdemeanor convictions are recommended to be included and why?

12. Will registrant e-mail address be required in the future?

13. Is retro-active application truly non-punitive?

14 Can the federal government require all states to provide conviction documentation (J&S, Information etc) to the registrant's state of residence WITHOUT the application of any fees?

15 Can sex offenders be required to register upon ENTRY into incarceration/confinement, as well as, upon release. Can their incarceration be posted upon the publicly available web page and be used to satisfy any requirements of victim notification?

16 Can a state impose "lifetime" registration of all convicted sex offenders?

17. Should a national standard be identified which addresses how far back in time convictions are register able?

18. Is there a desired format for the "Compliance Submission" which is due by April 27, 2009?

19. Suggestion: The first line in which talks about TIER classification being based on "substance" and not form or terminology, be reworded so it is more clear that we are basing the tiers on conduct of the offense and not what the count of conviction may ultimately have been.

20. Does a sex offender that works "long haul" have to register in all the states that he will be traveling to or just notify his state jurisdiction of the general routes that he travels?

21. If a sex offender is going to travel to another state for up to 6 days than he does not need to inform anyone? Only seven days or more?

22. In reviewing the guidelines in the context of federal supervised release caseload there is a question that keeps coming up regarding the retroactive nature of the act. Cases that are from the late 70's and early 80's which is before some state registration system and. there is no system to take there registration because the state does not go back that far. Is it the intention of SORNA to have the states alter there existing system to take all of these very old cases?

**From:** Dispenza, Mario [mailto:Mario.Dispenza@mail.house.gov]
**Sent:** Tuesday, July 31, 2007 11:04 AM
**To:** Cassidy, Keith E
**Subject:** FW: Michigan - Holmes Youthful Training Act

**From:** [redacted]
**Sent:** Monday, July 30, 2007 6:28 PM
**To:** Dispenza, Mario
**Subject:** Michigan - Holmes Youthful Training Act

Mario,
Sorry for the delay. I kept getting bumped off my internet acess. Here's the Holmes Youthful Taining Act. This is the version of HYTA that all of the SO registrants in Michigan would have been assigned to by the court.

Also, please don't forget to look at the issue other issues I had documented.
#3 Had to do with the employer info on the internet. The SORNA ,as written, explicitly excludes the employer name. The guidelines include the employer address as being on the internet. It seems to me the intent would have also been to exclude the employer address as well, and that it was implied that this would be excluded when the employer's name was excluded. . What's the point of excluding the employer name if his address is going to be included on the internet?

Also, regarding registration of employment - the guidelines say that this also includes volunteer work. Volunteer work should not be included - or it should at least require a minimum threshold of hours for an organization before this is required, or some sort of regularity of volunteer work. For example, more than 80 hours in a year, or more than 4 times a month, etc.

Thanks so much for looking into these items. I've attached my doc again too.

Sharon Denniston

# Discrepancies Between AWA Guidelines and the AWA Intent or AWA Code

## 1. SORNA Definition of Sex Offender Needs Clearer Differentiation

**Issue:**
The language in the AWA guidelines does not clearly differentiate that the SORNA standards do not apply to those that do not meet the federal definition of "sex offender".

**Implication:**
The guidelines as written may be greatly misleading to states when they attempt to comply. I'm concerned that if a state places a person on their registry that does not meet the federal definition of "sex offender", that the state will assume that they need to apply the SORNA standards to those individuals, when in fact, they do not; those individuals are treated as the state decides. If the states are mislead, or misunderstand, they will then enact laws and new requirements that could be horrific to those that were the youngest, thinking that they needed to do so to these individuals in order for their state to comply with the federal guidelines. Keep in mind that this is of big concern in Michigan because Michigan places juveniles < 14 at the time of the offense on the registry (some are made public at age 18 and some are not). Michigan is one of the few states that places all juveniles on the registry, for any sexually related offense - even public urination.

**Intent:**
I discussed this explicitly with several Judiciary Staff in the House and Senate, including Mike Volkov from Rep. Sensenbrenner's office last July, around the time the bill was passed. I was told that if the State places an individual that does not meet the federal definition of "sex offender" on the registry then they would be placed on the National Registry, but would be handled in accordance with what that state requires of those individuals (public disclosure on website or not, community notification, frequency of registration, duration of registration, data required to be provided, etc.). They are not subject to the requirements of the SORNA. It was explained that the requirements of the act repeatedly refer to "sex offender", and that means only those that meet the definition in the act itself. The state has the power to decide what the requirements are for those individuals that do not meet the definition of "sex offender" per the AWA.

**Resolution:**
The guidelines need to clearly spell out in **Section IV, Part A, Paragraph 4**, that "in juvenile delinquency adjudication cases that do not meet the circumstances specified in SORNA 111(8), jurisdictions would not have to require registration to comply with the SORNA standards." This would clarify the application of SORNA for 1) those juveniles < 14 years of age at the time of the offense, and 2) those juveniles at least 14 that did not commit aggravated sexual abuse. This would be similar to the language found in Section IV, Part C in the last sentence of the last paragraph, which spells this out for the "consensual" exclusion. This should be worded in such a way that it means, 1) states do not have to register individuals with juvenile delinquency adjudications that do not meet the circumstances applied in SORNA 111(8), and 2) when a state does require these individuals to register, compliance with the SORNA does not require states to apply SORNA standards to these individuals. This second point of clarification should also be spelled out in Section IV, Part C, the last paragraph.

The above needs to be reiterated clearly in **Section VII** of the guidelines related to Disclosure. Misapplication of Website and Community Notification requirements to these juveniles would be especially horrific, if the states don't realize these individuals are not subject to the SORNA standards for this and other requirements of the SORNA, even when a state places them on their registry, and are then placed on the National SOR.

**Additional Argument:**
It would be inappropriate to apply the SORNA standards to those that do not meet the federal definition of "sex offender" because the ensuing definitions in the AWA for things such as tiering, and the ramifications/requirements stemming from tiering are relative to the definition of sex offender defined in the AWA. If AWA definitions for tiering were applied to those that do not meet the federal definition of sex offender, than the youngest of the young - the ones least vicious and predatory, would be treated most harshly because their sexual contact likely took place with other young children - their peers. This would be extremely inappropriate. You don't "throw the baby out with the bathwater". Many other requirements of the AWA stem from tier labels; things like community notification, whether it's public on the Internet, duration of registration, frequency of registry etc. Applying requirements defined in the AWA to those not defined in the federal definition of "sex offender" is illogical - especially with regard to juveniles because it's like comparing apples and oranges. It's like applying the standards of a truck to a bicycle, just because we pretend to call a bicycle a "truck". It would be very inappropriate, illogical, and the standards applied would be out of context.

2. **Conviction on Record**

**Issue:**
The language in the AWA defines a "sex offender" as an "individual who was convicted of a sex offense." There are 2 caveats 1) the consensual exclusion, and 2) the 14 – 18 year old aggravated sexual abuse inclusion. The AWA code does not include those without a conviction or adjudication on their record (with the exception of the 14-18 juvenile aggravated sexual abuse inclusion). The guidelines **Section IV – Convictions Generally, paragraph 3**, includes those whose offenses were vacated or set-aside but were required to serve what amounts to a criminal sentence for the offense.

Given that there was explicit discussion of this issue, because the language in the act does not specifically say these individuals should be included, then therefore it appears the intent was that those without a conviction or adjudication NOT be included in the definition of sex offender per the act. This would mean that each State ca make the decision on how these individuals should be handled.

Further support for the exclusion of those without a conviction or adjudication is found when comparing the language in the AWA and the Jacob Wetterling Act. The AWA makes use of the word convicted/conviction, without any explicit reference to including those without a conviction or adjudication. This terminology was also used in the Jacob Wetterling Act. History tells us the Jacob Wetterling Act did not apply to those without a conviction. That was it's intent, and that was how it was implemented.

In addition, each state handles these kinds of programs (programs that keep a conviction off a person's record) differently, so it would be inappropriate for the federal law to make assumptions on that, or apply a law broadly to that. It makes sense that it would be the individual states that need to make that decision on whether these individuals should be placed on their SOR or not. It's wrong to second-guess that program of the state, and it's application, and broadly include them in the AWA. A judicious decision was made at some point, and respect should be given to that. As for my state, we do have such a program to keep a conviction off an older juvenile or young adult's record if they were charged as an adult. It is not always afforded an individual. Our state does still include those persons on the registry - but that's my point; the state should be the one to decide that. And likewise, those individuals should not be subject to the SORNA standards, but should be subject to the requirements of their own state. This gives the states the authority to determine public, non-public, frequency of registration, duration, and whether these individuals can petition for removal. This is only right since a judicious decision was made for some valid reason to allow them to participate in such a program.

**Implication:**
Individuals that were given programs that didn't result in a conviction have had to meet the criteria for such programs. These program are almost always determined by a judge, or with the judges approval. The individuals would be subject to the AWA standards and requirements.

**Intent:**
Please clarify the intent for me.

**Resolution:**
Revise guidelines **Section IV – Convictions Generally, paragraph 3**, to exclude these individuals without a conviction or adjudication on their record.

3. **Volunteer Work is Registerable**

**Issue:**
The language in the AWA code, Section 114, states that the name and address of any place where the sex offender is an employee or will be an employee shall be provided to the registering official. It does not state that volunteer information must be provided. In the guidelines, the paragraph found in **Section IV, Required Registration Information, Employment Information, Employer Name and Address**, states that the SORNA requires an individual to register the name and address of where they volunteer. There is no specification as to how frequently a person volunteers, or that it be a place they volunteer regularly.

**Implication:**
As written, the guidelines will strongly discourage those on the registry from volunteering because of the requirement to go and registry each and every time they volunteer, and again when they stop volunteering at that location. Most registrants have a very difficult time obtaining employment because of their status. In an effort to do something meaningful with their life, they volunteer. With the additional registration requirement for volunteering, many individuals will just stop volunteering. Not only does this loss of volunteer work hurt the registrant, but it hurts society because of the lack of volunteers.

**Intent:**
Please clarify the intent for me.

**Resolution:**
Revise **Section IV, Required Registration Information, Employment Information, Employer Name and Address**, to not require registration for volunteer work, or revise the requirement so it's only required if work is done with regularity.

4. **Employer and School Address on Internet**

**Question/Concern:**
It seems odd to me that the SORNA requires a state to include the employment and school address, when the state has been allowed the decision to exclude the employer and school name. The employer and school name can be determined from the address. The inclusion of name or address of a school or employer will make it exponentially more difficult for that registrant to get an education and/or find a job. If they were fortunate enough to get a job, employers may be reluctant to allow them to continue working because of backlash the employer might feel for hiring someone on the registry.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:43 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121
**Attachments:** JuvJusticeComments OAG Docket121.pdf

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**From:** Nicole I Pittman [mailto:NPittman@philadefender.org]
**Sent:** Wednesday, August 01, 2007 4:27 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

Wednesday, August 1, 2007

ectronic Mail
urt@usdoj.gov

Ms. Laura Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW
Washington, D.C. 20531

Re: Juvenile Justice Advocates' Comments to the Proposed National Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA); OAG Docket No. 121

Dear Ms. Rogers:

**Attached** you will find official comments to the Juvenile Justice Advocates' Comments to the *Proposed National Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)*; OAG Docket No. 121. As indicated by the signatures, these comments are submitted jointly by the following nationally acclaimed juvenile justice advocacy organizations:

***Defender Association of Philadelphia***
***Juvenile Law Center***
***National Center for Youth Law***
***National Juvenile Defender Center***
***Mississippi Youth justice Project***
***Southern Juvenile Defender Center***
***Southern Poverty Law Center***
***Youth Law Center***

We thank you in advance for your close consideration of our carefully crafted comments and vital suggestions. We hope to get the opportunity to discuss these Comments with you. In the meantime, if you have any concerns. Please contact Nicole Pittman via email npittman@philadefender.org or by telephone at (267)765-6766.

Sincerely,

*Nicole Pittman*

Nicole Pittman

NICOLE PITTMAN, ESQ.
JUVENILE JUSTICE POLICY ANALYST ATTORNEY
DEFENDER ASSOCIATION OF PHILADELPHIA
1441 SANSOM STREET, RM 1038
PHILADELPHIA, PA 19102
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Wednesday, August 1, 2007

Via Electronic Mail
getsmart@usdoj.gov

Attn: Ms. Laura Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW
Washington, D.C. 20531

RE: Comments to the Proposed National Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA); OAG Docket No. 121

The undersigned organizations have reviewed the proposed *National Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)* and submit the following comments, representing the combined experience of juvenile justice, child advocates, juvenile defense practitioners and other professionals with extensive experience working on issues related to juvenile sexual offending. Our Comments are divided into **Section I - Statements and Comments** and **Section II** - recommendations (re-submitted from April 30, 2007.)

## I. COMMENTS

*For purposes of our comments we will focus on the inclusion of juvenile delinquency adjudications on the SORNA registry.*

### COVERED SEX OFFENSES AND SEX OFFENDERS & CLASSES OF SEX OFFENDERS

**Statement:** Pursuant to SORNA § 111(1), a "sex offender" is a person who was "convicted" of a sex offense. "Convictions" for purposes of SORNA does not include juvenile delinquency adjudications, except under the circumstances specified in section 111(8). SORNA section 111(8) provides that **delinquency adjudications** count as "convictions" when "the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of Title 18, United States Code), or was an attempt or conspiracy to commit such an offense.[1]"

The definition of the federal "aggravated sexual abuse" offense, as referenced in section 111(8) of SORNA, includes offenses under a jurisdiction's laws that are "comparable to":

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1 Department of Justice, Office of the Attorney General. The National Guidelines for Sex Offender Registration and Notification; Federal Register: May 30, 2007 (Volume 72, Number 103). Docket No. OAG 121; A.G. Order No. 2880-2007. RIN 1105-AB28. pp. 16-17.

- engaging in a sexual act with another by force or threat of serious violence (*see* 18 U.S.C. 2241(a));
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim (*see* 18 U.S.C. 2241(b)); and
- engaging in a sexual act with another with a child under the age of twelve (*see* 18 U.S.C. 2241(c)).

The Guidelines advise that for purposes of SORNA, a "sexual act" should be understood to include any of the following: (i) oral-genital or oral-anal-contact, (ii) any degree of genital or anal penetration, and (iii) direct genital touching of a child under the age of sixteen.[2]

**Comments:** As experienced practitioners, we assert that SORNA's so-called 'juvenile exception' is in fact not an exception at all. Contrary to the interpretation of the Attorney General, the definition of a "sexual act" will extend to children far beyond "a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes or child molestation offenses." The broad definitions used to define registerable juvenile offenses under SORNA will cast an overly wide net that will tragically engulf nearly all adolescent sexual behaviors, including those pubescent-like, exploratory behaviors committed largely out of curiosity. Under SORNA, our nation's children will be forced to register for life and they will be unduly stigmatized for displaying normative adolescent sexual behavior.

The SORNA Guidelines purport to carve out an exception for juvenile delinquency adjudications, reserving registration for only the most "serious sexual assault offenses."[3]

> SORNA does not require registration for juveniles adjudicated delinquent for *all* sex offenses for which an adult sex offender would be required to register, but rather requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes or child molestation offenses.[4]

Realistically, the vague wording of SORNA combined with the common misconceptions about adolescent sexual offending may actually render juveniles sexual offenders more susceptible to registration than adult sexual offenders.

SORNA § 111(7) requires registration for any "specified offense against a minor." SORNA defines a "specified offense against a minor" as *any* offense that involves the "Use of a Minor in a Sexual Performance[5]. In a recent review of studies about juvenile sexual offenders, researchers summarized that juvenile sexual offenders are more likely to have victims that are close in age or younger than

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2 The SORNA definition of "sexual act" follows from the definition of sexual act as defined by 18 U.S.C. 2246(2), which applies to the 18 U.S.C. 2241 "aggravated sexual abuse" offense.

3 Department of Justice, Office of the Attorney General. The National Guidelines for Sex Offender Registration and Notification; Federal Register: May 30, 2007 (Volume 72, Number 103). Docket No. OAG 121; A.G. Order No. 2880-2007. RIN 1105-AB28. pp. 16-17.

4 Department of Justice, Office of the Attorney General. The National Guidelines for Sex Offender Registration and Notification; Federal Register: May 30, 2007 (Volume 72, Number 103). Docket No. OAG 121; A.G. Order No. 2880-2007. RIN 1105-AB28. pp. 16-17.

5 SORNA § 111(7)(E)

themselves as compared to adult sexual offenders[6]. Thus, making it even more likely that, the juvenile sexual offenders will be charged with a "specified offense against a minor" than their adult counterpart. Cursory studies have revealed that sexual offenses committed by adolescents and adults are significantly different in fundamental ways[7]:

- Adults were most likely to have committed indecency with a child (36 percent). Juveniles were most likely to have been convicted of aggravated sexual assault against a child (40 percent).
- Juveniles were significantly more likely to have committed aggravated sexual assault against a child as compared to an adult offender. Adults were more likely to commit sexual assault against an adult or child than juveniles.
- The mean age of the victim was higher for adult offenders (13.6 years) than for juvenile offenders (8.3 years). The age difference between offender and victim was much larger for adult offenders than for juveniles.

Furthermore, studies show that juveniles are more likely to be adjudicated delinquent of aggravated sexual assault against a child, thereby placing them at a higher risk than adults to have to register pursuant to SORNA section 111(8) (related to aggravated sexual abuse as described in section 2241 of Title 18, United States Code.) Why are sexual offenses of juveniles so different than those of adult sexual offense? Is the discrepancy due to the fact that juvenile sexual offenders have different characteristics than adult sexual offenders? Is the difference a result of the fact that juveniles receive far fewer procedural protections than adults (no jury trials)? Until these questions are fully answered, it is negligent and reckless to place juveniles on the same registry as adults.

## INHERENT LIMITATIONS IN APPLYING SORNA TO JUVENILE SEXUAL OFFENDERS

**Statement:** The Adam Walsh Child Protective and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA), was proposed as a comprehensive revision of the national standards for sex offender registration and notification. The Act states that its purpose is to respond to "vicious attacks by violent sexual predators" by reforming, strengthening and increasing the effectiveness of sex offender registration and notification for the protection of the public[8]. Additionally, SORNA requires all individuals convicted of sex offenses to register in relevant jurisdictions, with no exception for sex offenders whose convictions predate the enactment of SORNA. *See* SORNA §§ 111(1), (5)-(8), 113(a).

Over time, more states have increasingly subjected juvenile sexual offenders to differing sex offender registration and notification requirements. This legislative trend was intended to shift the balance of interests in juvenile justice to emphasize public safety and encourage individual responsibility of juvenile offenders for their own actions. Although changes in legislation regarding

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6 Craun, S. Juvenile sex offenders and sex offender registries: Examining the data behind the debate. Federal Probation Journal: December 2006 (Volume 70, number 3) *quoting* Righthand, S., & Welch, C. (2001). Juveniles Who Have Sexually Offended: A Review of the Professional Literature. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

7 Craun, S. Juvenile sex offenders and sex offender registries: Examining the data behind the debate. Federal Probation Journal: December 2006 (Volume 70, number 3).

8 Title I § 102 of the Adam Walsh Act of 2006 (Public Law 109-248).

juvenile offenders have been implemented in more than 90% of the states, the numbers of juvenile sexual offenders in the juvenile justice system has remained relatively constant over time.

**Comments:** Proponents of the Act have stated that the purpose of SORNA is to strengthen sex offender registration by sealing up "the leaky patchwork of state offender registry" laws making it "harder for predators to slip through the cracks.[9]" However, uniformity of laws based on bad public policy will not achieve this desired end. In order to make effective laws, we must look at the facts, examine the science and seek input from qualified treatment providers, researchers and trial attorneys. In this case we know that juvenile sexual offending is uniquely different from adult sexual offending. The legislation proposed by the Adam Walsh Act (SORNA) and its predecessors is based upon the same misconception that "juvenile offenders are simply smaller, younger versions of adult sexual offenders. That is, it is assumed that they are on a singular trajectory to becoming adult sexual offenders.[10]" This assumption not only undermines policies regarding public accessibility to juvenile court records and the entire purpose of the juvenile court, but it impedes the rehabilitation of youth who may be adjudicated for sexual offenses.

***Under the current design, SORNA will fail to achieve its intended purpose***

Data shows that the current design of SORNA, as it applies to juvenile sexual offenders, is an extremely poor method of protecting the public from "vicious attacks by violent sexual predators.[11]" In fact, the poor predictive quality of SORNA may be more harmful to the public than protective, creating a false sense of security and exhausting valuable resources and limited manpower on tracking the wrong offenders:

> If an overly inclusive register, like SORNA, is used to "round up the usual suspects," more than 92% of true offenders will not be on the register. That appears to be bad prediction for police and prosecutors and a prediction made about adult risks that is wrong about 98% of the time[12].

***Stigmatization to the point of annihilation of an entire generation of youth***

Furthermore, mislabeling a juvenile as a "child sexual predator" can have lifelong, irreversible and detrimental effects on a person and his or her family members. Applying SORNA to juvenile sexual offenders has the unique propensity to gravely harm many children in the hope of protecting an unknown few ...

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9 America's Most Wanted Website. "John Walsh: Adam Walsh Act is not doing Enough." www.amw.com/features/feature_story_detail.cfm?id=1603

10 Chaffin, M. & Bonner, B. (1998). Editor's Introduction: "Don't shoot, we're your children": Have we gone too far in our response to adolescent sexual abusers and children with sexual behavior problems?" Child Maltreatment, 3(4), 314-316.

11 Title I § 102 of the Adam Walsh Act of 2006 (Public Law 109-248).

12 Franklin E. Zimring. The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study. [A configuration of a study by Sellin, T. and M. Wolfgang, The Measurement of Delinquency. New York: Wiley. 1964;Sykes, G. The Society of Captives. Princeton, NJ: Princeton University Press. 1958; Tracy, P., M. Wolfgang and R. Figlio. Delinquency in a Birth Cohort II: A Comparison of the 1945 and 1958 Philadelphia Birth Cohorts. Washington, DC: National Institute of Juvenile Justice and Delinquency Prevention. (Final Report 83-JN-AX-0006.) 1984; Wolfgang, M., R. Figlio and T. Sellin. Delinquency in a Birth Cohort. Chicago: University of Chicago Press. 1972]. (December 2006.)

> Many child sex offenders are victims of sexual abuse themselves. Many more engage in common sexual behavior, sometimes healthy, sometimes inappropriate, that they will most likely learn to manage. [Harsh registration and notification laws] stigmatize and isolate these children, limiting their opportunities for normal growth and exacerbating the kinds of vulnerabilities that lead to future criminality, both sexual and nonsexual. When lawmakers vociferously declared that children were in more need of protection than convicted sex offenders, they never indicated that some of the sex offenders they were targeting were themselves vulnerable children... By applying such laws to juvenile adjudications, states throw out a century of juvenile justice jurisprudence and scholarship to protect an even older tradition of fear about childhood sexuality. In so doing, lawmakers perpetrate irreparable damage to the very children they claim to protect[13].

Given the fact that juveniles are at a low risk to re-offend; the lack of safeguards to ensure confidentiality, correct errors, or remove individuals from this list; and the damage associated with being 'blacklisted' for life for a youthful offense, public safety and good policy dictate that the national sex offender registry specifically exclude persons who committed an offense prior to having attained the age of 18 years.

This over-inclusive registry will not achieve the stated goal of the government, protecting the community, and it will also be causing unnecessary damage, harm and stigmatization to 98% of the juveniles required to adhere to registration and notification under the Act.

***Our juvenile justice system is incompatible with the purposes and procedures of SORNA***

By making the Act offense based, without affording juveniles a hearing to assess their dangerousness, the Attorney General is subjecting youth to extremely detrimental registration requirements that could never have been envisioned by judges, prosecutors, offenders and defenders in the underlying plea, adjudication and sentencing proceedings.

In a time when we are inundated with enlightening studies on the large number of false confessions of juveniles, and we have revolutionary research on adolescent brain development right at our fingertips, it is unfathomable how the developers of SORNA could find it reasonable and procedurally prudent to place juvenile sexual offenders on the same registry as adult sexual offenders.

Most people can not imagine a scenario, other than torture, in which they would confess to a crime that they did not commit. Yet today false confessions occur with alarming frequency. Juveniles are more vulnerable to police pressure during interrogations and highly susceptible to enter admissions of guilt to avoid going to trial. Juveniles are, of course, less mature than adults and have less life experience on which to draw.[14] Like the mentally retarded, they may also be more compliant, especially when pressured by adult authority figures. They are thus less equipped to cope with stressful police interrogation and less likely to possess the psychological resources to resist the

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13 Garfinkle, E. (2003). Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles. *California Law Review, 91*(1), 163-208.

14 Drizin, S. Tales from the juvenile Confession Front: A guide to How Standard Police Interrogation Tactics can Produce Coerced and False Confessions from Juvenile Suspects in Interrogations, Confessions, and Entrapment, edited by G. Daniel Lassiter. Kluwer Academic/Plenum Publishers, 2004.

pressures of accusatorial police questioning. As a result, juveniles tend to be more ready to confess in response to police interrogation, especially coercive interrogation. In a study by confession experts, Steven Drizin and Richard Leo, juveniles comprised approximately one-third (33%) of the sample. More than half of the juvenile false confessors were aged fifteen and under, suggesting that children of this age group may be especially vulnerable to the pressures of interrogation and the possibility of false confession[15].

For many years, science had assumed that the adolescent brain was fully developed by the age of fourteen. It was thought that developmental changes in the brain occurred in the first few "formative" years of life. However, recent scientific advancements indicate that the adolescent brain undergoes rapid change and does not fully develop adult capacity until the early twenties.[16] The 2005 Supreme Court case, Roper v. Simmons, introduced research regarding the dynamic nature of adolescent development.[17] It is now an accepted principle among professionals that personality traits of juveniles are less fixed than those of adults. One of the nation's leading neurologists, National Institute of Mental Health's Dr. Jay Giedd, says its "unfair to expect [adolescents] to have adult levels of organizational skills or decision-making before their brain is finished being built."[18]

For these reasons, courts around the country have relied upon these facts in support of their discretionary authority to exempt certain youthful offenders from sex offender registration and notification. "It is an accepted norm that teenagers are less mature than older adults ... [and] therefore plausible to conclude that an older teenager will not present a danger in the future as compared to a more mature adult who engages in a longstanding pattern of sexual misconduct." Aguirre v. State, 127 S.W.3d 883, 886 (2004).

While much has been written on sex offender characteristics, issues around recidivism and best practices for clinical and correctional treatment professionals,[19] relatively little attention has been given to the legal processes used in the apprehension, charging, and convicting of individuals accused of committing a sexual offense, especially in light of the fact that juveniles are so susceptible to falsely confessing to offenses.

In 1998, the National District Attorneys Association (NDAA) endorsed the suggestions in a published report on plea negotiation for sex offenders in the wake of sexual predator statutes. The Article entitled, *Structuring Charging Decisions, Plea Negotiation and Sentencing Recommendations for Sex Offenders in the Wake of Sexual Predator Statutes*, takes a look at the current trends in sexual violent predator statutes and compels prosecutors to rethink the way in which they approach charging decisions, plea negotiation, and sentencing strategies during prosecutions of sexual offenders.[20] The author suggests that in general, "perpetrator denial is prevalent in sexual offenses. Absent a compelling reason for a plea agreement . . . good advocacy

15 Drizin, S. and Leo, R. Bringing Reliability Back in: *False Confessions and Legal Safeguards in the Twenty-First Century* in 2006 WISCONSIN LAW REVIEW 479-537 (Co-authored by: Richard A. Leo, Peter J. Neufeld, Bradley R. Hall, and Amy Vatner).

16 Giedd, J., http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain

17 Roper v. Simmons, 125 S.Ct 1183 (2005).

18 Giedd, J., http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain

19 *See* Holmes, S.T. and Holmes, R.M. (2002). Sex Crimes: Patterns and behaviors (2nd Ed.). Thousand Oaks, CA: Sage Publications, Inc.

20 Holmgren, B. "Structuring Charging Decisions, Plea Negotiation and Sentencing Recommendations for Sex Offenders in the Wake of Sexual Predator Statutes." Crime Victims Report Volume 3, No. 2, May/June 1999.

necessitates that prosecutors reserve the benefits of plea offers to offenders who acknowledge responsibility for their conduct" through a plea or an admission of guilt.[21] The alternative is for the defendant to go to trial. When this article was written, in the late 1990's, it was strongly urged that prosecutors resist this practice yet nearly ten years later prosecutors and courts still permit the denying offender to enter admissions, guilty pleas and no-contest pleas.

A recent survey revealed that the desire to obtain a favorable disposition in a case was the driving force for all prosecutors interviewed. One prosecutor candidly stated the sentiment of many prosecutors with the comment[22],

> You're negotiating, you're resolving a case, and to resolve a case with the (defendant) ... That's the way it works. They give you a guilty plea. They acknowledge guilt. They convict themselves. They don't even make you go to trial. They don't make your victim testify, so you've got to give them something in exchange for that.

The very nature of our juvenile justice system is incompatible with the purposes and procedures of SORNA. Until we realign the legal process used in the charging and adjudication of juveniles, the SORNA registry will be filed with innocent youth, who have become victims of the very Act initially intended to protect them.

## II. RECOMMENDATIONS

Much of the impetus for applying SORNA to juveniles was rooted in the mistaken belief that juvenile sex offenders are more likely to recidivate. While law enforcement and the public believe that sexual recidivism rates for juvenile offenders are 70 to 80%,[23] studies reveal that the rates of sexual re-offense at 5-14% are actually substantially lower than the rates of reoffending for other delinquent behavior, which range from 8-58%.[24, 25] The assumption that the majority of juvenile sex offenders will become adult sex offenders is not supported by current literature or scientific studies.[26] In fact, the opposite is true. A recent study reveals that the weighted average sexual recidivism rate for nearly 8,000 juvenile sexual offenders, followed for an average of five (5) years, was a mere 7.78%.[27]

In the alternative, we re-recommend adding a Tier IV classification to SORNA that will be reserved for juvenile sexual offenders only. We offer the following recommendations to the Guidelines of

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21 Supra. pg 2.

22 Rundquist, Lief-Erik. "Prosecutorial Perceptions in Sex Offense Cases." Criminal and Juvenile Justice Consortium (CJJC) A Research Report: Sex Offense Cases and Plea Negotiation. October 2002. pg. 18.

23 Kersting, K., New Hope for Sex Offender Treatment, Monitor on Psychology (American Psychological Association), Vol. 34, No. 7, July-August 2003, pp. 34, 52-53.

24 Worling, J. R., & Curwin, T. (2000). Adolescent sexual offender recidivism: Success of specialized treatment and implication for risk prediction. Child Abuse and Neglect, 24, 965-982.

25 Schram, D. D., Milloy, C. D., & Rowe, W. E. (1991). Juvenile sex offenders: A follow-up study of reoffense behavior. Olympia, WA: Washington State Institute for Public Policy.

26 Association for the Treatment of Sexual Abusers (ATSA). (2000, March 11). The effective legal management of juvenile sex offenders. Retrieved from http://www.atsa.com/ppjuvenile.html

27 Caldwell, Michael F. What We Do Not Know About Juvenile Sexual Reoffense Risk. Child Maltreatment, Vol. 7, No. 4, Sage Publication November 2002 291-302

SORNA as they relate to juvenile sexual offenders, all of which can be supported by recent, validated scientific studies:

1. Adopt a definition for the term "sexual predator" that is consistent with legal and scientific standards by excluding individuals with juvenile adjudications from the Act.

2. In the alternative to recommendation 1, add a Tier IV to SORNA that will be reserved solely for and tailored to the specific needs of juvenile sex offenders, who are completely different from adult sex offenders in both their responses to treatment and their risk of continued re-offending.

3. Add a reasonable process by which all low risk offenders can petition to be removed from state and federal registries.

4. Delete juvenile sexual offenders from the retroactive provision that makes it "indisputably clear that SORNA applies to all sex offenders regardless of when they were convicted." Make it a requirement that all Tier IV juvenile offenders (including youth adjudicated before and after the enactment of SORNA) be afforded a full evidentiary hearing to determine if they are at a high risk to re-offend and in need of monitoring under Tier IV of the SORNA.

**Specific Recommendations with Supporting Evidence**

1. **Recommendation:** Adopt a more accurate definition of the term "sexual predator" by removing juvenile sexual offenders from SORNA.

   **Rationale:** The term "child predator," as defined by SORNA, is categorically too broad. Such fear-laden and provocative labels should only be applied to the most dangerous violent offenders: those who have longstanding patterns of sexually deviant behaviors, who meet criteria for paraphilic disorders and who have been assessed to be at a high-risk to reoffend. Labeling a child as a "child predator" is not only highly inflammatory and stigmatizing, but also is more often than not false.

   - The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) defines a 'Pedophile' as a "child predator."
   - The DSM-IV clearly recognizes the need for caution when applying any diagnosis of pedophilia to a juvenile. It is well accepted in the mental health community that diagnosing a child as a pedophile requires the clinician to fully defend the diagnosis with "clear and convincing" evidence.
   - Under SORNA, a juvenile is a Tier III "child predator" if he engages in sexual misconduct at a time when he is 4 years older than any victim who is at least 13 years old. However, the DSM-IV explicitly states that a youth can ONLY be a diagnosed as a 'pedophile' if the offender is 16 (or older) at the time of the offense AND the child victim is AT LEAST 5 or more years younger. Furthermore, the DSM-IV states that:

- If the youthful offender is 15 years of age, he can NOT be diagnosed as a pedophile.
- If the youthful offender is 16 years of age, the child victim MUST be 11 years old or younger.
- A late adolescent (age 17 or 18) is not a pedophile, when they are involved in an *ongoing* sexual relationship with a 12 or 13 year old.

2. **Recommendation:** Add a Tier IV to the Adam Walsh Child Protective and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA), that will be reserved solely for and tailored to the specific needs and characteristics of juvenile sex offenders. Given that juvenile sexual offenders are completely different from adult sex offenders in both their development and their risk of reoffending, it is bad public policy for juveniles to be included in the same registration and notification system as adults.

   A Tier IV specifically for juvenile sexual offenders would include the following additions, deletions and alterations to the SORNA guidelines:

   Before any children can be classified as a Tier IV Juvenile Offender under SORNA, they must have been (1) adjudicated delinquent of an enumerated sex offense; (2) evaluated by a forensic psychologist who is trained to assess risk in juvenile sexual offenders using scientifically sound methods; and (3) afforded a full evidentiary "sexually violent predator" hearing in which a judge decides that the child is at a high risk to re-offend and in need of supervision under Tier IV of SORNA.

   a. Adopt a scientifically sound approach to identifying "high risk" juvenile sexual offenders using research-based risk factors, validated instruments and afford each juvenile a full evidentiary hearing in which a judge decides whether the offender is a "high risk" sex offender in need of monitoring under the SORNA Tier IV provision.

   b. Tier IV juveniles would be maintained under a separate registry until age 21.

   c. Tier IV youth would be required to register, but notification would be limited to law enforcement agencies only.

   d. When a juvenile is approaching age 21, a hearing should be conducted in juvenile court to determine whether the child poses a safety threat to the community. If so, the juvenile may be transferred to the adult registry under SORNA. If not, the juvenile should be released from the Tier IV juvenile registry and provisions made to permit the expungement of the registration.

**Rationale:** This federal legislation is overbroad and based on misconceptions about juvenile sexual offending. There are critical differences between youth who sexually assault other children and adult offenders who sexually assault children. Childhood and adolescent sexual offending is different from adult sexual offending in its

motivation, nature, extent, and response to intervention. These important distinctions have been reported by panels commissioned by the U.S. Department of Justice, by public information resources, including the Center for Sex Offender Management, the National Center on the Sexual Behavior of Youth, and by professional and research organizations.[28] Despite these widely established differences, SORNA subjects both juvenile and adult sex offenders to the same provisions.[29]

A number of re-compiled youth cohort studies over the last few decades provide us with an opportunity to obtain valid and comprehensive data on patterns of juvenile sexual offenders and these youths' transitions into adulthood[30, 31]. The studies compiled by University of California-Berkeley Professor of Law Franklin E. Zimring explored whether juvenile sexual offenders continue their sexual offending careers into adulthood. In the "Wolfgang Phenomenon" Philadelphia Cohort study, researchers analyzed the offense patterns of 3,655 offenders in a large city as they moved from age 10 to 20. In the Racine, Wisconsin study, researchers analyzed the offense patterns of over 6,000 adolescents in a more rural environment from age 10 to 30. The general patterns discovered by these studies are as follows:

(1) The majority of children and teenagers adjudicated for sex offenses do not become adult sex offenders;

(2) Juveniles with sexually-based police contacts have a high volume of non-sexual contacts, a low-volume of sexual recidivism during their juvenile careers, and an even lower propensity for sexual offending during adulthood.

(3) The best predictor of whether a juvenile will sexually offend as an adult is the length of the juvenile record, rather than whether a boy committed a sexual offense. **These findings indicate that concentrating effort and focus on those who were juvenile sex**

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28 "Ensure that Youth are not treated as Adult Sex Offenders." American Psychological Association: APA Public Interest Policy Office. February 2006. www.apa.org/ppo/ppan/sexoffenderaa06.html.

29 Supra.

30 Franklin E. Zimring. The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study. [A configuration of a study by Sellin, T. and M. Wolfgang, The Measurement of Delinquency. New York: Wiley. 1964;Sykes, G. The Society of Captives. Princeton, NJ: Princeton University Press. 1958; Tracy, P., M. Wolfgang and R. Figlio. Delinquency in a Birth Cohort II: A Comparison of the 1945 and 1958 Philadelphia Birth Cohorts.Washington, DC: National Institute of Juvenile Justice and Delinquency Prevention. (Final Report 83-JN-AX-0006.) 1984; Wolfgang, M., R. Figlio and T. Sellin. Delinquency in a Birth Cohort. Chicago: University of Chicago Press. 1972]. (December 2006.)

31 Franklin E. Zimring. Juvenile and Adult Sexual Offending in Racine, Wisconsin: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood? A configuration of a study by [A configuration of a study by Sellin, T. and M. Wolfgang, The Measurement of Delinquency. New York: Wiley. 1964;Sykes, G. The Society of Captives. Princeton, NJ: Princeton University Press. 1958; Tracy, P., M. Wolfgang and R. Figlio. Delinquency in a Birth Cohort II: A Comparison of the 1945 and 1958 Philadelphia Birth Cohorts.Washington, DC: National Institute of Juvenile Justice and Delinquency Prevention. (Final Report 83-JN-AX-0006.) 1984; Wolfgang, M., R. Figlio and T. Sellin. Delinquency in a Birth Cohort. Chicago: University of Chicago Press. 1972]. (January 2007).

**offenders will ignore more than 90% of the cohort members who commit sexual offenses as adults and will, therefore, misidentify 90% of the juveniles who will become adult sexual offenders**[32].

(4) Age appears to bring about a decline in criminal versatility; offenders tend to develop a "specialization" in a few types of offenses as they get older. Criminal versatility in juvenile sexual offenders may reduce the risk of future sexual offending, though not other types of offending. **Further examination of the data reveals that the high proportion of juvenile sexual offenders may *specialize out* of sexual offending even while persisting in other offenses.**

The cohort data provides a valuable opportunity to estimate the adverse impact that requiring juvenile offenders to participate in the new federal sex offender registration and notification program will have. Using the data reported in these studies, researchers extrapolated and compared a registration and notification system, identical to SORNA, which requires all juvenile sex offenders to register for life. This juvenile registration system proved to be a poor identifier of adult sex offenders; failing to identify 92% of the true adult sexual offenders.

- Between the ages of 14 and 22, this registration system will have identified a total of .02% of the males who would have an adult sex record starting at some time after their 22nd birthday.
- 98% of the subjects added to the registry by juvenile records did not have an adult sex offense by age 27.

In his publication, Professor Zimring begs the question, "might this registry be effective nonetheless by providing the police with a reliable group of potential suspects?" **However, the data reveals that 92% of all the adult male sex offenders were never juvenile sex offenders. Thus, the registry is a very poor predictive tool.** If an overly inclusive register, like SORNA, is used to determine suspects. 2.0% of the individuals will be needlessly predicted as sexually dangerous for every one sexually dangerous person. More than 92% of the adult sexual offenders will not be on the register. **This indicates that an offense-based registry, such as, SORNA, is an ineffective predictor of which juvenile sexual offenders will become adult sexual offenders. Indeed, the registry will be wrong approximately 98% of the time.**

3. **Recommendation:** Delete juvenile sexual offenders from the retroactive provision that makes it "indisputably clear that SORNA applies to all sex offenders regardless of when they were convicted" and add a reasonable process by which all low risk

32 Franklin E. Zimring. The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study and Juvenile and Adult Sexual Offending in Racine, Wisconsin: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood? (January 2007.)

juvenile offenders can petition to be removed from state and federal sex offender registries.

**Rationale:** SORNA requires all sex offenders who were convicted of sex offenses in its registration categories register in relevant jurisdictions, with no exception for sex offenders whose convictions predate the enactment of SORNA, nor for sex offenders who have successfully completed treatment. A number of published, clinical reports on the treatment of juvenile sex offenders empirically support the belief that the majority of juvenile sex offenders are amenable to various methods of interventions and achieve positive treatment outcomes[33]. Furthermore, a plethora of federal and state courts have upheld decisions to exempt certain sex offenders from registration because of preexisting state laws that exempted certain offenders from registration or because some ex-offenders have earned the right to no longer register. For example, the State of California issued Certificates of Rehabilitation to offenders, granting them the right to no longer have to register[34]. By mandating registration of all such sex offenders, SORNA will directly conflict with judicial decisions and laws considered and passed by state legislators, thereby creating confusion and inconsistency at the state level. For example, the proposed retroactive reach of SORNA will create severe conflicts for juvenile offenders who entered admissions to predicate sex offenses before the enactment of SORNA. Our country's historically protective approach to minors only recognizes what almost every adult, and certainly every parent, knows: that minors are particularly vulnerable to poor judgment and often plead guilty to charges that they did not commit. The proposed SORNA regulations do not consider juvenile sexual offenders who were not advised by the Court, his or her counsel or the prosecutor, of the possibility of a sex offender registration and notification. Nor was the youth notified that such registration and notification could be for a lifetime.

Recognizing the vulnerability of adolescence, we urge that procedural processes be added to ensure that low risk or no risk juvenile offenders can petition to be removed from state and federal sex offender registries.

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33 Hunter, J.A. (2000). Understanding juvenile sex offenders: research findings & guidelines for effective management & treatment. *Juvenile Justice Fact Sheet.* Charlottesville, VA: Institute of Law, Psychiatry, & Public Policy, University of Virginia.

34 California Penal Code § 4852.01

4. **Recommendation:** Require that all Tier IV juvenile offenders (this includes youth adjudicated before and after the enactment of SORNA) be afforded a full evidentiary hearing to determine if they are at a high risk to reoffend and in need of monitoring under Tier IV of the SORNA.

**Rationale:** The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), Sex Offender Registration and Notification Act (SORNA), assumes an individual is a dangerous sex offender based on the fact that he or she was convicted or adjudicated delinquent of a certain sex offense.

Under Megan's Law, several states have held that because adult sex offenders receive their due process at the criminal trial, no additional hearing is required to determine dangerousness. *See* Connecticut Department of Safety v. Doe, 538 U.S. 1, 123 S.Ct 1160 (2003) and Doe v. Pryor, 61 F.Supp. 2d 1224 (M.D. Ala. 1999). A criminal trial may indeed be adequate protection for an adult sex offender; however, juvenile adjudications are not adequate forums to preserve the due process rights of youth for purposes of sex offender registration and notification. In most states, when juvenile delinquents are tried in juvenile court, they are not given the full scope of rights adult defendants receive in criminal court, such as a trial by jury[35]. To date, only ten states allow jury trials for juveniles as a right. Knowing that the majority of juveniles will not receive the full scope of procedural rights that adult defendants receive in criminal court, it is unconscionable to label juvenile sexual offenders as "child predators" and place them on the same registry as adult sexual offenders without an additional hearing to determine dangerousness.

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35 Szymanski, L. (2002) Juvenile Delinquent's Right to a Jury Trial. NCJJ Snapshot, 7(9). Pittsburgh, PA: National Center for Juvenile Justice.

If you have any questions, please feel free to contact Nicole Pittman at 267.765.6766 or via email at npittman@philadefender.org.

Sincerely,

Ellen T. Greenlee, Esq.
Defender
**DEFENDER ASSOCIATION OF PHILADELPHIA**

Marsha Levick, Esq.
Legal Director
**JUVENILE LAW CENTER**

Pat Arthur, Esq.
Senior Attorney, Juvenile Justice
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Patricia Puritz, Esq.
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Director of Litigation and Legal Affairs
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Corene T. Kendrick, Esq.

Staff Attorney
**YOUTH LAW CENTER**

**Rosengarten, Clark**

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**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:45 AM
**To:** Rosengarten, Clark
**Subject:** FW: Comments to the Proposed Guidelines for Sex Offender Registration and Notification
**Attachments:** Laura Rogers_Department of Justice_Sex Offender Registration.pdf

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**From:** Wendi Warren [redacted]
**Sent:** Monday, July 30, 2007 10:02 AM
**To:** GetSMART
**Subject:** Comments to the Proposed Guidelines for Sex Offender Registration and Notification

Please deliver the attached letter from James T. Miller of The Village Network to Director Laura Rogers regarding the proposed guidelines for sex offender registration and notification and the implementation of the Adam Walsh Act.

Thank you,

Wendi Warren
[redacted]

# VILLAGE NETWORK™

Creating Positive Change for Responsible Living


James J. Miller, LISW
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July 30, 2007

Director Laura Rogers
U.S. Dept. of Justice, SMART Office
810 7th Street, NW
Washington, DC 20531
Transmitted via email: GetSMART@usdoj.gov

Re: Comments to the Proposed Guidelines for Sex Offender Registration and Notification and the implementation of the Adam Walsh Act

Dear Director Rogers:

Thank you for the opportunity to submit comments to the Proposed National Guidelines for Sex Offender Registration and Notification, which guide Ohio and other states as they work to implement the Adam Walsh Child Protection and Safety Act of 2006.

I am the Executive Director of The Village Network (previously known as Boys' Village). I have 37 years of experience as a social worker including managing a run-away shelter, directing an adolescent outpatient clinic, coordinating a child sexual abuse prevention program, providing a treatment program to sexual abuse victims and serving as the Clinical Director of adolescent sexual offender program. In all of these positions I have been involved with the treatment of sexual abuse victims and offenders.

I want to commend you and your office for the work that you have put into the development of the Proposed Guidelines for Sex Offender Registration and Notification. The Village Network is a strong proponent of Sexual Offender Reporting and Notification Laws. We have long supported the need for both juvenile and adult sexual offenders to be held accountable for their actions and we have based our sexual offender treatment on the principle that community protection must be our central focus.

However, I must urge you, for the sake of protecting children now and for future generations, to revise the Proposed Guidelines for Sex Offender Registration and Notification so that it honors the intention of the Adam Walsh Act by focusing sanctions on juveniles who have been determined by a juvenile judge to be a serious, youthful offender which in turn would require national registration under Adam Walsh. This determination should be at the discretion of the juvenile judge.

The Village Network is a private non-profit multi-service organization working everyday with over 550 troubled children and their families in six different levels in eleven different cities throughout Ohio. We provide Residential Care, Treatment Foster Care, Day Treatment, School-Based Treatment and Outpatient Treatment for infants up to age 19. The vast majority of the children we serve have been sexually abused and suffered severe trauma in their young lives.

Among these programs is a continuum of services we provide to teen sexual offenders, and sexually reactive youth. We have worked with this population since 1986 and treated over 1,200 youthful offenders in Treatment Foster Care, Day Treatment, and Residential Care Programs that provide specialized intensive services to this population. At present we are serving 120 youth in these programs with 66% having been convicted of a sexual crime with a minor. However, I do not intend to focus primarily on these offenders, but on their potential victims now and in future generations. Without a revision of the Guidelines for Sex Offender Registration and Notification, I believe we are putting at risk thousands of children to be sexually abused. Something I am certain is not the intent of these guidelines or of the Adam Walsh Act which these guidelines will be used to implement.

The Village Network has learned from its own studies that adolescent sexual offenders have high success rates with results of 95% and 91% in two different outcome studies. Success is defined as no sexual abuse conviction or indication of an offense against a child. This is consistent with other findings that adolescent sexual offenders can be successfully treated. For instance Sipe, Jensen and Everett (1998) sited that only 9.7% who committed a sexual crime as an adolescent committed a sex crime as an adult. In our experience they admit to an average of 1 to 3 victims prior to treatment; by the end of treatment a total of five to seven victims tend to be the norm. In other words, most of our offenders identify additional **prior** victims as part of the treatment process. Almost all of these are not known to the authorities.

However, for adults the results are much different. Adult offenders tend to be less successful in treatment. Their success rates vary from 30% - 50% when tracked for 10 years or longer. In several studies the "average" number of victims for an adult-child molester once apprehended is 76 according to Abel, Mittelman and Becker (1983) and 117 children according to the National Institute of Mental Health. Therefore, we can project a conservative estimate of over 70 children will not be molested if an adolescent sexual offender is successfully treated.

The concern that I and others in my field have regarding the Proposed Guidelines for Sex Offender Registration and Notification is that the current version provides such a severe lifetime consequence that many of the youth that would receive treatment will now fight this extreme consequence of a lifetime notification. They will be unlikely to admit to their offenses. Unlike the present circumstance family members and defense attorneys will not encourage admission in exchange for treatment. Over 80% of the

present offenders admit to their offenses prior to admission into The Village Network Program. Again, may of these youth presently being convicted in Juvenile Court will not be willing to admit or be convicted because the Juvenile Judge will no longer have discretion in terms of the type of notification required at conclusion of their treatment.

Secondly, both adjudicated offenders and non-adjudicated sexually reactive youth will not admit to other victims, due to the potential consequences of admitting to any additional offense which is not a problem at present. As an organization we are required to report these disclosures and Children Services are required to investigate. It is important to note that almost all of the adjudicated offenders have victims under the age of 12, even though they may have entered our program without a Tier III offense. Admitting to all prior offenses is an important stage in treatment. Therefore, this barrier would not only lower the likelihood for successful treatment, but there would be countless numbers of victims that would live their life as a child in pain while keeping the traumatic secrets of abuse.

It is therefore imperative that you consider amending the Proposed Guidelines for Sex Offender Registration and Notification to allow Judicial Discretion for the sake of all the potential victims in all the states that implement the Adam Walsh Act into their legislative system. As a professional therapist and administrator who has worked extensively with sexual abuse victims and sexual offenders for over 37 years, I have been witness to tremendous human suffering associated with abuse. I have also come to believe that our greatest hope for turning the tide in preventing child sexual abuse is holding adolescent sexual offenders accountable and providing them with comprehensive effective treatment. It is my hope that with the revision of these guideline, that the youth who can be helped, will be helped and thus saving countless children from unnecessary trauma.

Thank you for your time and consideration as you work to revise the Proposed Guidelines.

Sincerely,

James T. Miller
Executive Director

Cc: Ralph Regula, Congressman

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 5:05 PM
**To:** Rosengarten, Clark
**Subject:** FW: Comments to AWA
**Attachments:** SMART letter.DOC; SMART sign on letters participants.xls

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**From:** Yvonne Hunnicutt [redacted]
**Sent:** Tuesday, July 31, 2007 12:04 PM
**To:** GetSMART
**Subject:** Comments to AWA

Good afternoon Director Rogers:

On behalf of Voices for Ohio's Children Juvenile Justice Initiative and its partners, thank you for the opportunity to submit comments to the Proposed National Guidelines for Sex Offender Registration and Notification, which guide Ohio and other states as they work to implement the Adam Walsh Child Protection and Safety Act of 2006. In cooperation with the public comment period, please find an attached sign-on letter representing more than 40 organizations strongly supporting the stated intent of the Adam Walsh Act: protecting children from violent sex offenders.

'hank you for the opportunity to share our concerns, some provisions and interpretations of the Act will ultimately have the opposite effect on our juveniles and perhaps put them at further risk.

Should you require additional information, please do not hesitate to contact me directly. Again, thank you and have a great week.

*In service,*
Yvonne C. Hunnicutt
Voices for Ohio's Children
[redacted]

**VOICES** FOR
OHIO'S CHILDREN

July 31, 2007

Director Laura Rogers
U.S. Dept. of Justice, SMART Office
810 7th Street, NW
Washington, DC 20531
Transmitted via email: GetSMART@usdoj.gov

**Re: Comments to the Proposed Guidelines for Sex Offender Registration and Notification and the implementation of the Adam Walsh Act**

Dear Director Rogers:

Thank you for the opportunity to submit comments to the Proposed National Guidelines for Sex Offender Registration and Notification, which guide Ohio and other states as they work to implement the Adam Walsh Child Protection and Safety Act of 2006.

As juvenile advocate and child welfare organizations, we strongly support the stated intent of the Adam Walsh Act: protecting children from violent sex offenders. We are gravely concerned, however, that some provisions and interpretations of the Act will ultimately have the opposite effect, and put some of our most vulnerable children at risk.

Specifically, we believe that §111(8) of the Adam Walsh Act—which requires children age 14 and older who are adjudicated delinquent for offenses "comparable to or more severe than aggravated sexual abuse" to be included on the public, online registry of sex offenders—will:

- undermine the history and purpose of the juvenile court system as an individualized intervention that focuses on rehabilitation, while also holding youth accountable in developmentally appropriate ways;
- severely hamper juvenile offenders' access to treatment and appropriate aftercare, as well as their likelihood of success once engaged in treatment;
- significantly limit the number of adoptive and foster families who are willing to accept these children into their homes, resulting in lengthier commitments to juvenile correctional facilities and extended stays in other institutional settings;
- flood the public registry with persons highly unlikely to commit another sex offense, thereby diluting the effectiveness of the registry and ultimately undermining community safety; and
- put these children, many of whom have themselves been victims of sexual and other abuse, at risk of exploitation by predators who would use the online registry to find victims.

**Accordingly, we urge you to adopt guidelines that will allow states to exclude juveniles from the public registry and still be in substantial compliance with the implementation requirements of the Adam Walsh Act.**

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 individualized therapeutic intervention. 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."[1] 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,[2] which is significantly lower than the recidivism rate for adult offenders.

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.**" 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.

We agree with the National Alliance to End Sexual Violence (NAESV), which states in its position paper on the Adam Walsh Act 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]

Knowing that the recidivism rate of juvenile sex offenders is 4–10% means that 90–96% of the children included on the public registry will never commit another sex offense. This will fill the public registry with thousands of juvenile sex offenders who will never again commit a sex offense and who pose no threat to public safety. The public registry will become ineffective as a public safety tool, as users will be overwhelmed by thousands upon thousands of profiles of offenders, only a small percentage of whom might someday reoffend.

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[1] *Juvenile Sex Offenders.* Behavioral Health: Developing a Better Understanding. Vol. Three, Issue I.
[2] 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).
[3] The complete NAESV position paper on the Adam Walsh Act can be found online at http://www.naesv.org/Policypapers/Adam_Walsh_SumMarch07.pdf.

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 vulnerable to further victimization.

Additionally, many juvenile sex offenses are intra-familial. During deliberations in the Ohio General Assembly on legislation to implement the Adam Walsh Act in Ohio, 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 plead down 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, resulting in tremendous lost opportunities for treatment and prevention of further harm.

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 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 we believe ill-advised—shift in the focus of the juvenile court system from treatment to punishment.

Importantly, too, because of the unique mission of the juvenile court system, children are granted only limited due process protections. We believe that mandatory, lifetime inclusion on a public registry is far too severe a sanction to impose on children who are not fully protected by the Constitution. Additionally, limited due process protections make the retroactive application of the Adam Walsh Act especially inappropriate for juveniles. Children who have already gone 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.

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.

Last month, the Ohio General Assembly passed, and Governor Strickland signed into law, Senate Bill 10, which implements the Adam Walsh Act in Ohio. After many hours of testimony and much debate and consideration, the legislature decided to limit the Adam Walsh Act's public registry requirements to only those children who, due to the seriousness of their offenses, are transferred to adult court, and those children who, due to their offenses and their unknown amenability to treatment, are designated "serious youthful offenders," and receive both a juvenile disposition and a suspended adult sentence.

The Ohio General Assembly recognized that juveniles are developmentally immature, especially amenable to treatment, significantly different from adult offenders, vulnerable to abuse and exploitation, and not granted full due process protections. The legislature also recognized that including all juveniles—without consideration of the seriousness of the facts of their crimes, their amenability to treatment, or their likelihood to reoffend—would ultimately have a negative impact on public safety. The Ohio General Assembly decided to place on the public registry only those children whose offenses require them to be tried and treated as adults and who are found to be not amenable to treatment, and importantly, only children who have been provided full Constitutional protections.

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.

Accordingly, we urge you to adopt guidelines that will allow states to exclude juveniles from the public registry and still be in substantial compliance with the implementation requirements of the Adam Walsh Act.

Thank you for your thoughtful consideration of these comments. We will be happy to assist you as you work to revise the Proposed Guidelines for the implementation of the Adam Walsh Act in order to protect ***all*** children.

Sincerely,

Voices for Ohio's Children
Alliance of Child Caring Service Providers
Alternatives for Youth
Appleseed Community Mental Health Center
Beech Brook
Bellflower Center for Prevention of Child Abuse
Benbow Law Offices

Berea Children's Home
Cleveland Rape Crisis Center
Equal Justice Foundation
Family & Children First
First Amendment Lawyers Association
FIRSTLINK
Juvenile Justice Advocacy Alliance
Juvenile Justice Coalition (Ohio)
Katherine Hunt Federle, Professor of Law
LifeLine Counseling & Forensic Center
Lighthouse Youth Services (Paint Creek)
Lucas County Family and Children First Council
Mental Health Advocacy Coalition
Mental Health Services, Inc.
Mid-Ohio Psychological Services
Montgomery County Public Defender's Office
Murtis Taylor Human Services System
NAMI Ohio
National Youth Advocate Program, Inc.
Office of the Ohio Public Defender
Ohio Alliance for Children's Mental Health
Ohio Association of Child Caring Agencies
Ohio Association of Criminal Defense Lawyers
Ohio Council of Behavioral Healthcare Providers
Ohio Psychological Association
Ohio School Social Work Association
Positive Education Program
Public Children Services Association of Ohio
Recovery Resources
The University of Toledo Department of Criminal Justice
The Village Network
West Side Community House
Your Human Resource Center of Wayne and Holmes Counties

cc: Ohio Congressional delegation
Governor Ted Strickland

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**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 5:07 PM
**To:** Rosengarten, Clark
**Subject:** FW: Comments to the Proposed Guidelines to Interpret and Implement SORNA
**Attachments:** Sorna Comments July 31.doc

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**From:** Sarah Bryer [redacted]
**Sent:** Tuesday, July 31, 2007 2:53 PM
**To:** GetSMART
**Subject:** Comments to the Proposed Guidelines to Interpret and Implement SORNA

July 31, 2007

Laura Rogers, Director
SMART Office – Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, DC 20531

**.e: OAG Docket No. 121 – Comments to the Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers,

Thank you for the opportunity to comment on the proposed guidelines to interpret and implement the Sex Offender Registration and Notification Act (SORNA). The National Juvenile Justice Network (NJJN) would like to express its opposition to the application of SORNA to juveniles adjudicated within the juvenile court system.

The National Juvenile Justice Network works to ensure that youth throughout the country who come into conflict with the law are treated fairly and appropriately in a manner that both recognizes their developmental differences from adults and protects public safety. We believe that placing youth on sex offender registries, particularly those that are public, will actually serve to undermine public safety and will cause unnecessary damage to these young people.

Placing youth on public sex offender registries does several things that are contrary to sound public policy.

- It will hamper youth's ability to access developmentally appropriate treatment;
- It will make it exceptionally difficult for these youth, whose likelihood of recidivating is extremely low, to stay connected to society in a healthy manner;
- It will clog the public registry with individuals who are unlikely to recidivate, making the registry less useful and more difficult to manage;
- It will expose these youth to potential exploitation by predators;

- And it will negate their juvenile court adjudication that is designed to guard public safety by holding youth accountable through a confidential process.

For all these reasons we recommend that you adopt guidelines that will allow states to meet the criteria for being in substantial compliance with SORNA when those states have either chosen to exclude adjudicated juveniles from the sex offender registry, or have chosen to exclude youth from the public registry and the requirements for notification.

**Research Supports Treating Youth Sex Offenders Differently From Adults**

New findings in the field of neuroscience that have shown that youth's brains are different from those of adults. Youths' brains during adolescence are still developing in ways that make them more likely to engage in risk-seeking behavior, and have poor problem-solving and decision-making processes. While this makes youth more prone to engage in inappropriate activities, it also makes them more receptive to treatment. In fact, research on youth who commit sex offenses indicates that they are very unlikely to recidivate and are extremely amenable to treatment. According to the National Center of Sexual Behavior of Youth, a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center, the recidivism rate among juvenile sex offenders is substantially lower than that of other delinquent behavior (5-14% vs. 8- 58%). [1] This Center, the Center for Sex Offender Management (an institute created by the Office of Justice Programs, the National Institute of Corrections and the State Justice Institute) and OJJDP have all found that youth sexual offenders are highly responsive to treatment. [2]

Moreover, juveniles are not fixed in their sexual offending behavior. Juvenile offenders who act out sexually do not tend to eroticize aggression, nor are they aroused by child sex stimuli. [3] Mental health professionals regard this juvenile behavior as much less dangerous. When applying the American Psychiatric Association diagnostic criteria for pedophilia (abusive sexual uses of children) to the juvenile arrests included in the National Incident Based Reporting System, only 8% of these incidents would even be considered as evidence of a pedophilia disorder. [4] More than nine out of ten times the arrest of a juvenile for a sex offense is a one-time event, even though the juvenile may be apprehended for non-sex offenses typical of other juvenile delinquents. [5]

**SORNA Will Decrease Youth's Access to Treatment and Hamper their Connection to Society**

By placing juveniles on public registries, parents may be less willing to help their children who exhibit inappropriate sexual behavior. As opposed to holding their child accountable and seeking 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. Thus more children may continue to be harmed as families hide from public eye their "private" family business.

Moreover, 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 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.

Ensuring that youth stay connected to healthy families and positive community supports is critical to reducing recidivism. Yet, placing youth on public registries will actually serve to undermine this basic tenet of

rehabilitation of youth. In some states, youth who are placed on public sex offender registries have found it impossible to carry on their normal lives and be productive citizens. They can be denied fair opportunities for housing, employment and education. They are routinely harassed and assaulted; many have had to be removed [6]

from their school for their own safety. Community notification requirements can complicate the rehabilitation and treatment of these youth. This stigma that arises from community notification serves to "exacerbate" the [7]

"poor social skills" many juvenile offenders possess destroying the social networks necessary for rehabilitation. [8]

Families also may find that in many states their "registered sex offender" child who lives with them makes their residence illegal, as registered sex offenders cannot live within certain distances from schools and parks. Thus SORNA stigmatizes and negatively affects the entire family, including the parents and other children in the home.

**Putting Low-Risk Offenders on the Registry Decreases its Efficacy**

Because children convicted of sex offenses pose an extremely low threat to public safety, the onerous and difficult task of tracking these youth on public registries and publicly notifying relevant agencies for a minimum of 25 years will only serve to waste public dollars and destroy children's lives. NJJN agrees with the National Alliance to End Sexual Violence (NAESV), which 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- [9]

offense." Given that the recidivism rate for juvenile sex offenders is 8-14%, this means that at least 86% of those youth placed on the public registry pose no risk to public safety, and will only serve to overwhelm the registry with useless and distracting data.

**Placing Youth on a Public Registry will Expose them to Predators**

Because youth's home addresses are made public, they and their families become potential targets for vigilante acts of violence. Moreover, because pedophiles can easily access through the registry youth's names, pictures, home addresses, schools, license plate numbers and other identifying information, the registry sets these youth up to be victims of pedophiliac interest. Thus, placing children on public registries might ultimately re-victimize them, many of whom already suffered from childhood sexual abuse.

**Youth Adjudicated within the Juvenile Court Should Receive its Protections of Confidentiality**

Although the National Center on Sexual Behavior of Youth recommends that youth sex offenders remain within the jurisdiction of the juvenile court, SORNA would abrogate the primary juvenile court tenet of confidentiality. The confidentiality of the juvenile court system helps form the basis of effective intervention and treatment for youthful offenders. This stripping away of confidentiality as it applies to children under the age of 18 cannot be taken lightly. It cannot be too strongly emphasized that the children implicated by this provision have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

**Conclusion**

In closing, we urge the SMART Office to adopt guidelines that will allow states to meet the criteria for being in substantial compliance with SORNA when those states have either chosen to exclude adjudicated juveniles from the sex offender registry, or have chosen to exclude youth from the public registry and the requirements for notification.

Sincerely,

Abby Anderson
Co-Chair, National Juvenile Justice Network
Connecticut Juvenile Justice Alliance

Betsy Clarke
Co-Chair, National Juvenile Justice Network
Executive Director, Illinois Juvenile Justice Initiative

Sarah Bryer
Director
National Juvenile Justice Network

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[1] National Center on Sexual Behavior of Youth (NCSBY)

[2] NCSBY, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report; available at* http://www.ojjdp.ncjrs.org/.

[3] NCSBY

[4] Zimring, F.E. (2004). An American Travesty. University of Chicago Press, p. 8.

[5] Ibid, p. 66.

[6] Freeman-Longo, R.E. (2000). *Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem*. American Probation and Parole Association, p. 9.

[7] Earl-Hubbard cited in 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.

[8] Rasmussen, cited in Garfinkle.

[9] The NAESV position paper on the Adam Walsh Act can be found online at: ttp://naesv.org/Policypapers/Adam_Walsh_SumMarch07.pdf

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 10:53 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121

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**From:** [redacted]
**Sent:** Tuesday, July 31, 2007 11:15 AM
**To:** GetSMART
**Subject:** Docket No. OAG 121

To Whom It May Concern:

I am writing to you as an advocate and Expert Consultant from the FAS (Fetal Alcohol Syndrome) Family Resource Institute, the largest family-run organization representing families raising children with Fetal Alcohol Spectrum Disorders (FASD). On behalf of those families whose children have committed some type of act that is considered to be a sexual offense, we implore you to consider the tragic lifetime impact these guidelines will likely have on those with FASD and other individuals developmental disabilities and mental disorders.

In particular, the retroactive part of these guidelines would be a double travesty of justice, especially for hese disabled individuals. Because of their reasoning and judgment deficits, they find it difficult if not impossible to comply with registration requirements if they do not have sufficient support to help them do it and/or if they think they are unreasonable. These guidelines make it nearly impossible for individuals with FASD who commit any type of sexual offense to stay out of incarceration, much less have any semblance of a normal life. It would totally destroy the success of those who have received a lot of treatment and have managed to move beyond their earlier sexual offense(s) but who may still commit some other type of nonviolent crime (like theft) because of their compromised reasoning and judgment. If I understand these guidelines correctly, ***any*** type of new crime would evoke a new registration requirement which has the potential to suck them back into the justice system with the potential of repeating cycles of probation and incarceration, and for some of them (like our son) for the rest of their lives.

I am also the adoptive mother of a now adult son who committed several serious sexual offenses in his teen years, but who has not committed any sexual offenses as an adult (in over 10 years). My adopted son is a case in point. He has FASD and an IQ in the normal range. Although he has a diagnosis of FAS, he is still not understood by the professionals in the justice systems because they do not know enough about his disability. He committed several serious offenses as a juvenile and was adjudicated within the juvenile system. Even though he had extensive treatment within the juvenile system, he was required to register as an adult sex offender. Because of his disability, he did not understand and was unable to comply with registration requirements. (His father and I had moved to another state by this time, so we were unable to give him help him with this.) As a result, he was repeatedly incarcerated for failure to comply and his probation time was extended more each time. He was caught in a revolving door he ·ould not escape. Because of his "failure to comply" with the registration requirements, he was onsidered to be at high risk for reoffending sexually. So extensive efforts and investigations were made to discover any evidence of new sex offenses that he may have committed during this time (about 4

years). There was no evidence to be found. But they continued to incarcerate him and view him as high risk solely on the basis of his juvenile offenses and his inability to comply with registration as an adult, which was due to his disability. He was not a danger to the community but many public dollars were wasted on supervising and incarcerating him due to the fear that he was dangerous and many misunderstandings of his disability (the real reason underlying his "failure to comply" with registration and probation requirements).

After repeated but unsuccessful attempts to advocate for him and educate those involved with him in the criminal justice system, we realized that he had no chance for success. About this time, we found out that the state in which we lived did not require juvenile offenders to register as adults. So we sought and received state-level approval (from both states) for him to move to our state and finish his probationary period under a curtesy supervision. We were then able to provide the supports he needed for him to successfully complete his probation without further "noncompliance."

It has been over ten years now since he was released from the juvenile authorities and there has been no evidence or indication of any sexual offenses during this time. However, three years ago, he was arrested and convicted for theft, after he sold a bunch of rented video games for some quick cash. I'm sure this happened because of his disability and that he had no idea it would be considered a legal crime for which he would be arrested when he did it.

If these guidelines had been in effect at the time of his juvenile arrests and convictions, he would have probably been required to register for life and he would have most likely spent the rest of his life in and out of jail. If the guidelines had been in effect three years ago, the retroactive clause would have falsely re-labeled him an adult sex offender (which he isn't and never has been) and required him to start registering again. This would have destroyed any remaining opportunities for employment and any possibility for a normal life. And there is no guarantee now that, given his disability, he won't come up with some other scheme to get money without realizing it might be illegal.

I would imagine that the fiscal impact of implementing these guidelines could be huge. Court dockets are typically more than full and prisons and jails are already overcrowded; these guidelines could potentially put an even heavier burden on public resources by needlessly pulling many disabled individuals back into the legal system on a long term basis and restricting their freedom even though they have not committed a new sexual offense and without benefit of a trial.

According to one research study (Streissguth), one out of one hundred people could be affected by FASD. But the even sadder issue is that it is estimated that only about 1 - 2% of these disabled individuals are properly diagnosed (Burd). Instead of funding the implementation of these punitive guidelines that unfairly and critically impact mentally ill and disabled populations out of unfounded fear of what they might do, doesn't it make more sense to invest public money to identify and diagnose offenders with mental health disorders and disabilities and provide appropriate treatment and supports to help them be as successful as possible?

If our son can be successful with the challenges and background he had, then others can too with appropriate diagnosis, understanding and support. But they will not be able to do this if these guidelines are implemented as currently written. At the very least, please delay implementation of this Act and the guidelines until these types of issues can be considered and researched, so they can be re-written on the basis of established facts, not just fears.

Thank you for seriously considering these issues.

[redacted] M.Ed.

7/31/2007

[redacted]

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Msg sent via CableONE.net MyMail - http://www.cableone.net

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 12:00 PM
**To:** Rosengarten, Clark
**Subject:** FW: SORNA Proposed Guidelines, OAG Docket No. 121

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**From:** Amanda Moore [redacted]
**Sent:** Thursday, July 26, 2007 9:28 PM
**To:** GetSMART
**Subject:** SORNA Proposed Guidelines, OAG Docket No. 121

July 26, 2007

SMART Office
810 7th Street NW
Washington, DC 20531

Subject: Docket No. OAG 121; A.G. Order No. 2880–2007

As a law enforcement officer, I place a high value on laws that offer more protection for the citizens of our nation and that give those of us in law enforcement better tools with which to accomplish the task of protecting the public. Unfortunately, many of the requirements of SORNA do not accomplish this goal but instead may do the opposite. SORNA guidelines do not focus on those offenders who are most dangerous and from whom the public needs to be protected. States are given the option to place any or all offenders in tier III, thus requiring a lifetime on the registry and increased verification. These requirements increase the burden on law enforcement agencies requiring that we devote just as many resources to lower risk offenders as we do to violent, dangerous predators.

SORNA allows a state to classify a violent rapist, a child molester, and a 19 year old who has consensual sex with his minor girlfriend all on the same tier level requiring a lifetime on the registry. The tier levels are not based on the actual circumstances of a crime but on the statute applied by the state. This is especially a problem in a state such as Texas where the exact same offense is charged for all three of these offenses. SORNA should mandate that crimes such as consensual sex with a minor be a tier I offense allowing these people to be removed from the registry as early as possible so as not to waste more of our valuable resources than needed. The toughest requirements should be reserved exclusively for sex offenders who commit specific kinds of violent or predatory crimes. Blanket laws defeat the purpose for the registry.

It is time for this nation to focus its resources on those offenders who have committed violent, forced acts or acts against young children. These are the only offenders that should be required to register for very long periods of time or for life. It is time for lawmakers to insist that our resources actually protect rather than make laws that draw attention but do little in the way of protection. SORNA in its current state will not accomplish its goal and will not be of benefit to law enforcement.

Thank you for your consideration.

Sincerely,

Amanda Moore

[redacted]

## Rogers, Laura

**From:** Panizari, Robert (MPD) [robert.panizari@dc.gov]
**Sent:** Tuesday, July 31, 2007 11:29 AM
**To:** Rogers, Laura
**Cc:** Adams, Lisa (MPD)
**Subject:** Proposed Guidelines Comments/ Juvenile Offenders
**Attachments:** Juvenile Offenders.doc

PLEASE see attached comments.

THANKS
Sgt. RP & Det. LW
D.C. Police

**Rosengarten, Clark**

**From:** Rogers, Laura
**Sent:** Wednesday, August 01, 2007 8:46 PM
**To:** Rosengarten, Clark
**Subject:** Fw: Proposed Guidelines Comments/ Juvenile Offenders

**Attachments:** Juvenile Offenders.doc

More comments

----- Original Message -----
From: Panizari, Robert (MPD) <robert.panizari@dc.gov>
To: Rogers, Laura
Cc: Adams, Lisa (MPD) <lisa.adams@dc.gov>
Sent: Tue Jul 31 11:28:56 2007
Subject: Proposed Guidelines Comments/ Juvenile Offenders

Juvenile fenders.doc (27 KB)

PLEASE see attached comments.

THANKS

Det. RP & Det. LW

. Police

I bet it's safe to say that all States have laws on the books that allow for Juveniles to be prosecuted as adults for certain crimes. Here in the District of Columbia we refer to it as TITLE 16 charges (homicide, rapes, etc.), and it covers juveniles 16/17 years of age. The age for homicide was just lowered to allow for juveniles 15 years of age.

Now from what I heard at the Symposium the goal is to get the worst of the worst of juvenile offenders on our registries so the community can be aware of there presents.

Now personally I think 14 is pushing it a little bit, however for the worst of the worst maybe that's not too young. But under the definition (iii) direct genital touching of a child under the age of 16. Let's SAY a 14 year old touches a 15 year old are we going to label this a Tier III offense???

I mean we go from under 12 for engaging in a sexual act, to under 16 for touching????

Just some thoughts.

Sgt. Panizari, R.
Det. Williams, L.
D.C. Police
Sex Offender Registry
(202) 727-4407

**Rogers, Laura**

**From:** [redacted]
**Sent:** Friday, June 22, 2007 10:00 AM
**To:** GetSMART
**Subject:** OAG Docket No 121

The SONRA defines minor as any person under the age of 18 years of age.

The problem with this is that many states define a minor at different ages and in most cases younger than 18 years old. The SONRA has created a problem in that if a state wants to be incompliance with the SONRA they will need to change the age of a minor to anyone under 18. This will cause problems in the courts and other legal issues were an adult may sign documents. The other issue it will cause is that a criminal act as defined by the SONRA may take place, and yet if the state law does not change it will not be a violation of the law. If this is the case will federal prosecution take place? (even if the act was legal by state law.)

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, June 25, 2007 2:04 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SNORA should not include juvenile sex offenders! The laws of this country have always been different for a juvenile offenders then for an adult offenders. The juvenile sex offender is not yet of full mind. This is the same reason we do not feel that a underage female is of mind to consent to any sexual act. Using this reasoning we should give juvenile sex offenders every benefit and every chance to mature out of this behavior, giving them appropriate treatment. If however we place them on the sex offender registry this will be life long consequences for a juvenile who has not come to full maturity and does not understand fully the congruence's of the juvenile offence. If a court however has ruled that the offence committed is one that is so grievous that they want to try the juvenile offender as an adult then the court of record should in that case, be able to have the option of placing the offender on the sex offender registry.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, July 12, 2007 11:04 AM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

SORNA and age issues; the SNORA may have problems with some of the ages it has set. Some states have different ages set as if a person is a minor or adult. And in some states a person can be minor and yet be considered old enough to say yes to sex.

And while we are talking about ages. No state should be authorized to have Juvenile Offenders on any sex offender registry and the SNORA should prohibit states from doing so. Unless the juvenile was placed in Adult court with adult offender status and convicted as an adult. The requirement in some states that when a juvenile is convicted as a Juvenile, but yet when the convicted sex offender juvenile reaches adult age they must then register for the sex offender registry should also be prohibited. Juvenile offenses should never be treated like adult convictions. Children are not of full mind yet, and this status is no different than the age of consent laws. There are enormous differences between the nature of a juvenile offense and those of an adult, predatory sex offender. Research demonstrates that most youth who break the law during their childhood or adolescence can and will mature out of this behavior given appropriate treatment and consequences. Labeling them as sex offender when they are not an adult or after they turn old enough does no public good, and in fact may cause more harm; for example if the sexual assault is a family member victim, families may fear getting help as they do not want the shame of having their family member on a public sex offender registry. It has been a long standing practice in this country to treat juveniles with a different standard then adults. This different standard should be continued in the SNORA.

**Rogers, Laura**

**From:** Tim Poxson[redacted]
**Sent:** Thursday, July 26, 2007 1:39 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SONRA as written now will include many more juveniles and include the requirement that individuals who do not have a conviction on their record be included on sex offender registries. Both of these concepts are going against what this countries criminal justice system has done in the past, when the system understood that those who are juveniles have not grown to a point were they have a full understanding of what they do. Point in case a person under a given age can not consent to having sex. And to lump juveniles with others on the sex offender registry will do more harm than good to both the public and the individual. In the long run when this juvenile grows up and can not get education, employment or a place to live, society will in some form have to support this person. As to making those who do not end up with a conviction, but yet requiring them to be on the sex offender registry; this will hamper the courts and prosecution from using this tool to make the offender in some way understand the wrong they were accused of and getting some mental health help for the problem. The courts and the prosecution are in a better position to judge if a case warrants this type of solution to it, then is the people in Washington DC who have not idea to the particulars of any one case. By making this person after they have completed all the conditions of the court, and the case is ether set aside or the conviction is not affirmed, the accused in such cases will not accept any court resolution to the case, but will instead go to full court trail.

**Rogers, Laura**

JLV

**From:** Tim P [redacted]
**Sent:** Tuesday, July 31, 2007 4:48 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

If you take the time to read this article you will see that this child has sat in jail for over one year rather then plead guilty as an adult. The reason is, he wants to stay off the sex offender registry. So the sex offender registries are not punitive, tell the public that and this child. The other message here is that it is better not to report this type of activity to the police. The wrong message is being sent by the SORNA also. I understand the SORNA addresses the issue of age of victim and accused, but the problem here is that the office of the AG does not get that these types of laws are punitive.

The parents of a teen accused of lascivious acts with a child say they are increasingly frustrated at a legal system that they say has no idea what to do with their son and has provided them with next to no communication.

"We don't want other families to go through what we're going through," said Zach Campton's step-father, Chris Spidell. "What really irks us is here is a 16-year-old kid, 17 now, sitting in jail not represented in an adult facility."

Campton was charged with the crime after having two sexual encounters with his girlfriend. At the time she was 13 and he was 16 years old. He had been charged with more serious felonies, but pleaded down in a deal reached with the prosecutor.

At issue is whether he should be sentenced as an adult or juvenile. While that matter is being resolved, Campton has spent the past year in the Marshall County Jail, even though he likely would be out already if the sentencing had taken place as scheduled - no matter if it was done within him being either an adult or juvenile.

While Campton does have an attorney representing him the appellate system, his parents report he has no legal representation at the district court system.

"They told us until they know whether he's an adult or juvenile, they can't appoint someone to represent him," Chris Spidell said.

When asked to describe what the past 18 months has been like for the Spidells, they both answered in unison, "Hell."

While the victim in the case has said she told him the intimate relationship was OK with her, Iowa law does not give her the right to consent.

"It was in the report that it was consensual and as a matter of fact she snuck into our house when we were asleep," Chris Spidell said.

While both the boy's mother, Karla Spidell, and Chris Spidell say Zach is not completely innocent in the

matter, they do not feel his actions were criminal in nature. Karla Spidell said teens engage in intimate relationships regularly.

"If they locked them all up for that, we wouldn't have any teenagers out," she asserted.

The couple reports they have had a very hard time getting any information about their son's case, which is now under consideration by the Iowa Supreme Court. They also say they have not been very happy with the responsiveness of the jail.

When procedures for visits changed, the couple went a couple of weeks without visiting their son because they were not on the approved visitors list and believe Zack did not know what he had to do to get them on the list.

"He has no clue about how any of this works," Karla Spidell said.

They also report their son has a contentious relationship with those working at the jail, which they understand can just make things harder on him.

The Spidells have had no significant contact with the victim's family since the charges were brought, but say they are angry with the victim's parents.

"I thought there was enough respect that he would come to us first, but no," Chris Spidell said.

Now, they are hoping that the court will have him sentenced as a juvenile. Either way, he will probably get out of jail once a decision is reached. However, the Spidells say if he is sentenced as an adult, he will have to register as a sex offender, a label that will follow him the rest of his life.

They also reject the assertion their son was manipulating the victim and coercing the female victim.

"Read these letters and tell me who was manipulating who," Chris Spidell said, producing a stack of letters the victim had written to Campton. "If anything, they were manipulating each other."

In the meantime, the Spidells are hoping for a resolution to the situation before the end of the summer, but they said a lawyer told them the case could still drag on for as long as a couple of years.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:43 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** [redacted]
**Sent:** Tuesday, July 24, 2007 11:38 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

Laura L. Rogers, Director
Office of Sex Offender Sentencing, Monitory, Apprehending, Registering and Tracking
Justice Department's Office of Justice Programs

Re: OAG Docket No. 121

I am writing with regard to Section IV Covered Sex Offenses and Sex Offenders of the Proposed Guidelines for Adam Walsh Act.

SORNA should eliminate registration for all adjudicated juveniles throughout the United States. The juvenile justice system of this country was established to protect our youth from public knowledge of their youthful mistakes. Juvenile sex-offenders are the only group of youthful offenders who are denied this civil right. These juveniles must live with their mistakes publicly displayed for 25+ years – no other juveniles or criminals are required to suffer this public humiliation for a mistake made as a juvenile.

If SORNA is going to allow or require states to put adjudicated juveniles on the registry, then they should provide those youths with some protection by utilizing a non-public registry that is available only to members of law enforcement, but does not violate their rights to protection of their juvenile records.

Any listing of a juvenile who was adjudicated should include on the registry the register's age at the time of their offence and should note that this was a juvenile adjudication.

The Classes of Sex Offenders (Section V) should also have a provision for a special tier for juvenile adjudications...or place all juvenile adjudications at Tier I only. The alternative would be a special tier for juvenile adjudications, as well as maintaining all juvenile adjudications on a non-public registration for their entire registration period.

As a victim of molestation when I was a child by a non-family member, as well as now being a grandmother, I can look at this from a victim and protective point of view. I believe that while intentions are good, the legal system has gone overboard in its attempts to provide protection by throwing anyone and everyone onto a registry and in doing so they are providing a forum where the true pedophiles are hidden amongst thousands of non-violent and/or adjudicated juveniles who will never commit another sexual crime in their entire lifetime. Please remove these youth from the registry and

give us a registry that is useful – one that lists only the true child pedophiles and horrendously violent sexual offenders.

Sincerely,

[redacted]

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**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:48 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121 - Treatment of Juveniles

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**From:** Grace Grogan [redacted]
**Sent:** Tuesday, July 31, 2007 11:43 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121 - Treatment of Juveniles

Office of Sex Offender Sentancing, Monitoring, Apprehending, Registering and Tracking
Justice Department's Office of Justice Programs

REFERENCE: OAG Docket No. 121

I am writing to address concerns over how Juveniles are treated under the Proposed Guidelines for SORNA.

The juvenile justice system of this country was established to protect youthful offenders from the mistakes of their youth, in recognition that they are more impulsive, lack maturity and are less likely to re-offend than any other group of offenders. For these reasons, SORNA should establish that all juvenile offenders who were adjudicated be removed from sex offender registry requirements, regardless of their age at the time of the offence or the category into which they were grouped by the court system. Many juveniles that fall above the age 14 level established by SORNA are 'Romeo and Juliet' type offences where it involves another individual in their same age range, or within five years or less. Accusing an ex-boyfriend that you are angry with of criminal sexual conduct is fast becoming a popular way of retaliation by young women. Unfortunately the court system is not perfect, and many young men are on the registry because of faults in the system and the desire by the public to convict rather than taking a clear and concise look at the evidence (or lack of evidence).

Many of these adjudicated juveniles also have completed sex-offender treatment programs; if incarcerated, completion is a condition of their release. When a state-mandated treatment program releases a juvenile from incarceration with the belief that that juvenile will not commit another sexual offence, it makes no sense to then have the state pay to maintain that individual on the registry for 25+ years.

If SORNA is going to maintain juveniles on the list, then they should establish additional guidelines for which a juvenile is removed from the list/and or not added to the list. This should include:

1. Juveniles who have completed a sex-offender treatment program
2. Juvenile adjudications in which there was no DNA Evidence to support that a crime was committed
3. Juvenile adjudications where the age difference between the offender and victim is less than 5 years.

These additional guidelines should apply to any and all juveniles, regardless of their age at time of offence or the offences under which they were charged.

Again, the ideal would be to remove all adjudicated juveniles from the registry entirely. This would also provide the most consistency as there are many states where juvenile offenders are never placed on a registry and other states that require all juveniles to register.

The alternative would be that in order to provide these adjudicated juveniles with the same rights of protection from their youthful mistakes that juveniles who commit other offences receive would be to mandate that all juvenile adjudications be maintained on a non-public registry for the duration of their registration period. This would allow the government to track those individuals, yet offer them the protection for which the juvenile justice system was established and allow them to prove themselves as productive adults without the public stigma of sex offender on them before they have a chance to mature into adulthood.

Thank you for your consideration.

A Concerned Citizen, Mother, Grandmother and
Member of the Coalition for a Useful Registry

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**Rogers, Laura**

Ghwrd juv.

**From:** Brent Gunnell [redacted]
**Sent:** Wednesday, July 25, 2007 10:09 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

Dear Sirs,

May I add my comments to the proposal for the national registration of "Sex Offenders".

The Justice? system is labeling every sex offender, by virtue of the term "SEX OFFENDER" as a **dangerous sexual predator,** almost regardless of age. The separation of inappropriate sexual contact by young people and the aggressive multiple sexual predator has been lost in the public's mind!!

As this problem will not be solved anytime soon, to further condemn the young by requiring a lifetime of registration as a sex offender with the lifetime implications and impact on everything from education, housing, marriage and jobs, seems like an over kill of mammoth proportions. To complicate it further, it sounds like you will be going back retroactively to include those whose inappropriate behavior occurred as young as 14. That is going to hurt many lives and ruin some.

Many if not most youthful inappropriate sexual contacts with other young people are not of the predator type, but are often Romeo and Juliet circumstances. The problem for me is: the vast majority of the young are engaged in this type of behavior and are never brought into the criminal system as their behavior is private and never exposed. But those young people who's parents, thinking counseling may be appropriate, or the young themselves who self report are totally unprepared for the devastation the criminal system puts them through.

I am aware of several cases where inappropriate sexual behavior of young men and women resulted in major felony charges (charges only exceeded by murder), reduced only to get a plea offered by the prosecutors of one year in jail, lifetime registration, lifetime probation and lifetime treatment by therapists! All this for touching!! Not intercourse, not rape, not forced, but by mutual consent, usually experimenting with each other! Their lives are now changed forever as there is no redemption from the Justice system for them.

By lumping all "sex offenders" into a category requiring such things as "lifetime registration", rather than concentrating on the **5-6% of sex offenders who are predators** is not only costly, does not protect society, but dumb! Can't someone get it right for once?

Sincerely,

Brent Gunnell
[redacted]

[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, June 11, 2007 12:35 PM
**To:** GetSMART
**Cc:** [redacted]
**Subject:** Juvenile Sex Offender Registration

I object to the mandatory registration of juveniles 14 years of age and older. I believe that registration should be left to the discression of the Judge. There are numerous circumstances with juveniles that I believe should be considered before registration.

I am a Licensed Sex Offender Treatment Provider in the State of Texas with acknowledgement as a Juvenile Specialist. Additionally, I am a Licensed Clinical Social Worker and a Licensed Professional Counselor. I have worked with juvenile offenders for over 30 years. In my experience, Judges take seriously the decision about registration and are best able to consider the circumstances of the offense and the response of the juvenile to supervision and treatment interventions.

Realizing that the Judge has an additional decision to make that affect their future becomes a positive motivator for juveniles in treatment. Making registration mandatory removes that motivation.

Most if not all professionals treating juvenile's with sexual behavior problems recognize that there is a significant difference in dynamics and prognosis with juvenile offenses. This difference is reflected by the State of Texas no longer designating juveniles as sex offenders. They are now called juveniles with sexual behavior problems.

In Texas a girl 12 years of age and under is not legally able to give consent for sexual relations. If her 14 year old boyfriend is having a consensual sexual relationship with her, he would be guilty of Aggravated Sexual Assault of a Child. Under the proposed rules he would be required to register for at least 15 years. Under current Texas law, the Judge has the discression to delay his decision about registration pending outcomes from supervision and treatment. I do not see how society is protected or served by requiring that boy to register.

Thank you for your consideration.

James J. Brown, LSOTP, LCSW, LPC

**Rogers, Laura**

**From:** [redacted]

**Sent:** Saturday, May 19, 2007 11:30 AM

**To:** GetSMART

**Subject:** concerns

To Whom it May Concern:
It seems the new guidelines make lepers of people with sexual problems, instead of trying to treat them. How is this helpful to our nation in the long run? It makes it impossible for them to start a new life. It makes it difficult to find housing or employment.

OF MOST CONCERN is the fact that many so called sex offenders are not really sexual offenders, but get labeled in such a manner by people who do not know about normal sexuality or experimentation by teens. I see this happening more and more in the court and justice system.

I have a book (small) coming out soon that may help people understand sexuality and what is a sexual problem and what is not, but rather is mislabeled.
Please contact me for more information.
S. Margretta Dwyer, Licensed Psychologist & Forensic Board Certified.
[redacted]

**Rogers, Laura**

**From:** Alisa Caldwell [redacted]
**Sent:** Friday, July 27, 2007 9:27 AM
**To:** GetSMART
**Subject:** Docket No. OAG 121

While I agree that we need to keep our children safe from sexual predators, we should not include children (under the age of 17) in SMART. Allow our children the ability to have a normal life and learn from their mistakes, rather than not giving them an opportunity at all.

Most adults who enter the judicial system get more chances than a child that is convicted of a sex crime. Have some mercy. These are children.

Thank you,
Alisa Caldwell
[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, July 26, 2007 7:49 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

Please do not pass this bill!!!!!

There are many, young men and women that are **not predators,** whom have been convicted as sex offenders.
My son was 13 when he "molested", my niece, my sister and brother-in-law, only wanted him to get counseling. Which we did, but I took him in to make a statement, I told him to tell the truth, (He touched her on her vagina) Which was then used as a confession, charged as an adult, and forced to plea. He was given lifetime probation and has to register as a sex offender. Now he is 20 and has been a convicted sex offender for five years. He has been in a residential treatment center. And been through three counseling programs. He has been taken from our home and put in a men's shelter, and made to live among felons. He has not been allowed to be among people his own age, making it very difficult for him to get a decent education. A psychologist has evaluated him twice, once in 2002 and once in 2007, both times they have found that he is not dangerous. **He is not a pedophile!**

He cannot attend school, get a job, or rent a place to live, without telling them he is a convicted felon, a SEX OFFENDER.

He is not the only one in this predicament.

The prosecutors have way too much power; they go this route without thinking of the damage they do to families.

THINK ABOUT WHAT HAPPENS TO FAMILIES, EVERYBODY MAKES MISTAKES.

IN TRYING TO PROTECT CHILDREN OUR SOCIETY HAS GONE OVERBOARD AND IS HURTING OTHER CHILDREN IN THE PROCESS.

[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, July 25, 2007 5:20 PM
**To:** GetSMART

These sex offender laws are killing us!
My son made a one time mistake with a 15 1/2 year old girl. It WAS consensual, yet he was given 10 years for this one act. Never allowed into evidence was the fact that the girl had given in her police statement that her ex-step-brother had gotten her pregnant when she was 14 and he was 18. He has never been arrested for this. Also, the girl was claiming rape against another high school boy up until the time her uncle had my son arrested!
This was no dewy eyed virgin we are talking about but a sexually active young woman.
The worst part of all is that when my son comes home after serving his time he will continue to serve time for the rest of his life as a registered sex offender. No decent job, no decent home, no chance at a decent life. How can you believe this is fair justice?
My son's own lawyer told my son if he had killed the girl he could have gotten him off with less time! After watching the news lately, this is sadly true. And what's more, he could have killed the girl, gotten off with half his sentence served with good time, come home and lived free!
AMERICAN claims justice for all.....sex offenders are the new scape goat.

SS

**Rogers, Laura**

**From:** [redacted]
**nt:** Saturday, June 16, 2007 6:10 PM
**:** GetSMART
**ubject:** oag121

plz consider the sex offender list not to include young people that just made a inmuture mistake. they are not pedifiles. their lives are ruined even before getting started in life. i say this out of experience. they cant get a job at any corporation that does backround checks. most companies now a days do that. this is a horrible injustive to these boys.
if you heard my story you wouldnt hardly believe it. judge mester in oakland county understands the law is not correct also. if, people would educate themselves on the law before jumping to conclusion any normal human being could not punish children the way that sex offender list is doing to young boys. thank you[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Friday, June 01, 2007 12:17 PM
**To:** GetSMART
**Subject:** Guidelines for Sex Offenders

The bashing of sex offenders is disproportionate to the vast numbers of garden-variety types that fill up our prisons and registries: a lower-functioning young man in late teens to early twenties with an underage, teenage girlfriend. Two suggestions: change the name of such a crime from 'Sexual Assault of a Child' to something else to distinguish it from sex crimes against pre-pubescent children. For example: 'Sex with Underage Partner' and lower the penalties for such crimes.

Donald R. Hands, Ph.D., CCHP.
[redacted]

5-31-07

Dear Sir,

Im writing in regards to the Adam Walsh Act 2006. I thank you for allowing me to comment on this. Everyone in the United States knows that a tier III is the worst of the worst of Sex Offenders. In your new rules you'll be going by the age of the victim to determin which tier the offender will be.

I feel you are making a gross mistake by doing it this way. That means a 14 or 15 yr old boy who's hormones are raging messes around with a young child will end up being a Tier III. Please reconsider this.

My son was raped when he was five years old by a 14 yr old now this boy was a bonafied pedafile. He raped other children too. But there are other boys 14 + 15 who definetly for a one time offence should not be so severly pentalized as a tier III.

How will they ever be able to finish school with their mugshot on the internet. Impossible. Won't happen. Lets not get so paranoid about these young guys. Those 18 + 19 yr old who go after girls under 16 now they know what their doing. But at 14 + 15 their still so imature. What if it happened to your son, would you

wont your son to be treated as this?
I hate sex abuse I dont care what age they are. Our society started this. With sex everywhere on TV + magazines. Why cant you put all juvenules on a personal + confidential registry to where the public can not see their info.

Were got 600,000 S.O. who will be out of work, no families, what do they get to lose but to run and hide. I know I would be tempted. I hope you will not be putting the name of their vehicles or licenceplates on there their family drives that car to.

What about the children of these sex offenders how embarassing to them. They'll never know anything but shame.

I pray to God that you would change your mind. Please be merciful to them as God is to us. It could be your son one day.

Thank You

[redacted]

[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, July 25, 2007 8:24 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

Here are my comments on the Attorney General's proposed guidelines for Adam Walsh:

1. This will negatively impart children as young as 14 if it includes retroactive inclusion in the national registry. This is unfair and dragonic. This will ruin many lives.
2. The proposed guidelines tend to lump all sex offenders into one. There is a difference between a 22 or 22 year old who is immature and a predatory man of 40 or 50.
3. The sentencing structure allows for gps monitoring and lifetime probation. This is more punishment than a drunk gets for driving drunk and killing a family. The severity of the punishment is much harsher than for other classifications of crimes.
4. The punishment is always aimed at the older of the relationship; take for example the 19 or 22 year old with a younger girl. It is always "assumed" that she is the victim merely because of her age. Girls nowadays are a lot more sexually active and with older guys- they want older guys because of the status, the job and the vehicle. If it is a crime to have sex under the age of consent, then why are the younger consensually consenting girls not being prosecuted?

I am the mother of a young man who is now a convicted sex offender because he had consensual sex with a teen - his life is ruined but she has moved on to another over 18 guy. Who will stop her?

Sincerely,

[redacted]

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http://newlivehotmail.com

July 25, 2007

SMART Office
810 7th Street NW
Washington, DC 20531

Subject: **SORNA Proposed Guidelines, OAG Docket No. 121**

Thank you for taking the time to consider our concerns regarding SORNA.

SORNA in its current from will not accomplish the goal of protecting our nations children. Too much emphasis is being placed on lower risk offenders thus not allowing very high risk offenders to receive the scrutiny they deserve. SORNA allows, and even encourages, a state to use the exact same resources for both low and high risk offenders by not using circumstances and risk levels to classify tier levels.

The tier levels are based on the crime of conviction or years of incarceration rather than the actual offense and risk for re-offense. This means that the same offense may be placed on different tier levels in different states depending on the state statutes. This is most obvious when an offense involves a young offender having a sexual relationship with a consenting minor. The laws vary so widely from state to state that the exact same offense will be a tier I, tier II, or tier III offense or not even considered an offense at all in some states. For instance, if a 19 year old young man has a consensual romantic sexual relationship with a 14 year old girl in Kentucky it would be Sexual Misconduct ( class A misdemeanor), in Arkansas it would be 4th degree sexual assault (misdemeanor), in Missouri, Hawaii, Illinois, and Maine it would not be a crime at all, and in Texas it would be Sexual Assault (2nd degree felony), the exact same offense as a violent forced rape.

If the intent is to make the registry consistent throughout the nation, SORNA will fall far short of its intent. I am sure you are familiar with the case in Georgia regarding the young man who is serving a ten year prison term for a consensual relationship with a consenting 15 year old girl when he was 17. He will be required to register as a sex offender for life when he is released. Just last week the 18 year old son of Mark Lunsford was given ten days in jail and no time on the registry for his relationship with a 14 year old girl. In Iowa a young man has been in jail for over a year because of a relationship with a 13 year old consenting female while he was 16. This young man has not been sentenced but is being held because the court has not decided if he should be considered a juvenile or not. In Texas a young father of three is required to register for life as a sex offender because of a sexual relationship with his wife before they were married while he was 19 and she was 16. Another young man in Texas has been required to register for life because of a relationship with his girlfriend that began when he was 18 and she was 14 and lasted for almost a year before the parents became angry with their daughter and chose to punish her by filing charges against her boyfriend. These are just a few examples of the thousands of cases all over this country that involve young men who were involved in consensual sexual relationships with willing minors.

These young men do not belong on the sex offender registry. At the very least they should be considered low risk, tier I offenders and be given the chance to be removed from the registry

once they have been punished. SORNA does allow for those in consensual relationships with no more than a four year age difference but it is left up to the individual states to be more harsh if so desired. However, does it make sense that a young man 3.9 years older than his girlfriend is not required to register while one 4.1 years older is required to register for life as a tier III offender? Obviously not. The tier level should be based on the circumstances of the offense not the offense of conviction. In Texas, a violent rapist, a 50 year old predator , and a 19 year old with a minor girlfriend are charged with the exact same offense. Therefore, they will all be considered tier III offenders and be on the registry for life. They will all be required to verify registration four times a year. The exact same resources will be used to enact the SORNA guidelines for the child predator as the young man in a consensual relationship. This is a tremendous waste of resources over a lifetime that could be much better spent.

Why would a state want to place these young offenders in the tier III category. Simply put, they receive more federal funds based on having more registered sex offenders. This is clearly a situation where a state is abusing federal funds. It is time for our lawmakers to return to the original intent of the sex offender registry by using it to register those persons who are convicted for violent, forced sexual acts or predatory acts against a child. SORNA must eliminate the registration of others or at the very least place them in tier I. To do otherwise severely hampers and reduces the effectiveness of sex offender registration and notification and waste billions of dollars in resources that could be used to truly offer protection from high risk offenders.

Minnesota resident Patty Wetterling, who lost her young son Jacob18 years ago in a most unimaginable way is a familiar is concerned about these laws. Jacob was approached and abducted by a masked man in a pick up truck while riding his bike with his brother and another friend in his quiet suburban town. To this day, Jacob has not been found. His mother, Patty was one of the very first high profile child victim advocates to successful lobby for legislative change on Capitol Hill. The Jacob Wetterling Act, named after her missing son, was signed into law in 1994. It required states to maintain a registry of convicted sex offenders for law enforcement purposes that was not accessible to the general public. The targets of "The Act" were sexually violent, dangerous, repeat offenders.

It was a good law. However, in the intervening years it has been amended numerous times, most notably by Meagan's Law, which made the information contained in the registry public information and mandated community notification. Most recently it has been amended yet again, by the Adam Walsh Act courtesy of John Walsh of *America's Most Wanted* and disgraced former Republican Congressman Mark Foley of Florida. All of the subsequent amendments to the original act have been named after a child that has been brutally murdered, whether by a registered sex offender or not. Each amendment has consistently expanded the definition of a sex offender and increased penalties to the point of utter ridiculousness, and Patty Wetterling has had enough. Lawmakers and big business have effectively made a mockery of the Jacob Wetterling tragedy and Patty is speaking out for change.

Patty Wetterling says it's an example of sex offender laws that go too far. "Everybody wants to out-tough the next legislator."I'm tough on crime," they'll say, 'No, I'm even more tough.' It's all about ego and boastfulness," says Wetterling. Wetterling says she wants public policy to be

effective. She says broad sweeping laws that treat all offenders the same waste resources and lives. John Walsh was quoted in *USA Today* saying, "We tried so hard to make this just for serious sex offenders." What happened?

Allison Taylor, executive director of the Texas Council on Sex Offender Treatment, which coordinates that state's sex-offender treatment strategies says, "The systems at the state and federal levels need to be fixed." We have 41,000 names on our (sex offender) registry," she says. "If we could take our money and focus it on the 10% or so who are most likely to reoffend, we could make great progress." That's why federal and state agencies need to concentrate their spending on the worst offenders, Taylor says. She says that current laws require the state to keep tabs on everyone on the registry, no matter how likely each is to commit another crime. That drains money from efforts to identify, treat and monitor the most hard-core offenders. "Our thinking needs to be overhauled," Taylor says.

It is our hope that the federal guidelines will be amended so that more emphasis will be placed on high risk offenders and not allow the same valuable resources to be used monitoring lower risk offenders for long periods of time. Spreading our resources over such a wide range does not allow for the close scrutiny of dangerous offenders that is necessary to adequately protect anyone. SORNA tier levels should be amended so that only those from whom we truly need protection receive the focus of our resources.

Thank you for your consideration.

Sincerely,

James and Beverly Elam

[redacted]

**Rogers, Laura**

**From:** Laura Shoda[redacted]
**Sent:** Thursday, July 26, 2007 4:56 PM
**To:** GetSMART
**Subject:** docket number OAG 121

**If I am understanding this correctly, it states that juveniles who have been convicted of a sex offense will be required to register as adults do at this time, and this is retroactive.**

**Has anyone considered the fact that many adolecents who act out sexually have been molested themselves? This is a learned behavior, kids don't just wake up one morning and start molesting other children. Therefore when people state: "Victims are damaged for life." this also includes those children who have been molested themselves and then in turn molested others. This does not excuse them for their behavior toward others, but rather in many cases explains the behavior.**

**The fact still remains that they need the same impathy and consideration for being healed as any other victim. Along with that they have to live with the guilt of knowing that they have inflicted the same kind of hurt onto another human being as was inflicted onto them. They need counseling to help them sort out their feelings and understand what and why they feel as they do to redirect them in a more positive, healthy way of being.**

**Many adolecents are in negative situations which impose the behaviors onto them, they are a victim of circumstances and are simply acting out due to such.**

**Also the idea of treating them as an adult is innapropriate, as adolescents are still developing, unlike adults. Most juveniles who have committed sex offenses are boys around 13 or 14 (puberty is in full force) which the vast majority, 90 percent or more, will not offend as adults. This is especially true for the cases in which there has been intervention through courts with parent involvement in which the child goes through a treatment program successfully. People can change for the better, especially children who are easily influenced through positive behavior modifications.**

**With all of this being said, is it fair to require juvenile sex offenses to be registered, only to be ostracized by peers and neighbors damaging their self esteem and causing negative behaviors in return? After all this type of stress is what triggers re-offending. Does anyone truly think this will fix the problem? It will only cause more offenses, after all if you are repeatedly told or marked as a "bad person" you will become or be a "bad person."**

**And for the adult who offended as a child who has since lived as a perfect role model for all those around them to be shamed for an act which was committed as a child, now to completely shake their entire existence in the community which could possibly cause them to lose their job, be cast out by their friends and neighbors who have otherwise loved and trusted them for the person they have been their entire life?**

**Everyone has done something in the past in which they regret and wish not to be known by the public. We all make mistakes and we learn by them. Therefore becoming a stronger and better person leaving the negative in the past.**

I feel it is in the best interest of victims, perpetrators and the general population to not require adolecents to register as an adult does. It would simply mark them life causing them the inability to learn from their mistakes and live a normal life as they are entitled to. If a child successfully finishes a treatment program the likely hood of them re-offending is very low. Let them live their life as "lesson learned" as all of us have been given the gift of forgiveness in one way or another.

If a child then offends as an adult, or after going through treatment, they should be required to register as an adult. Due to the fact at that point they obviously were not able to be rehabilitated and the chances are that they are one of the 10% who will continue to offend throughout their adult life. But it is not fair to ruin the lives of the 90% who will not re-offend to "possibly" prevent the other 10%. You would be doing more harm than good in requiring adolecents to register.

I have six children of my own, parental supervision is a must for prevention. If people truly want to make the situation better, they should inform school age children of the fact that it is against the law for anyone under the age of 16 to be sexually active in any way, shape or form. Also that if they do engage in sexual behavior and it is reported to authorities (regardless of whether they thought it was consensual) they will face being committed of such crimes, placed on probation, placed in a residential facility, be required to go through a therapeutic treatment program etc..... Rather than telling them their body parts and what to do with them then letting them know it is normal to be interested in exploring and giving them condoms!!!

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, July 25, 2007 9:51 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

July 25, 2007

Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering & Tracking
Of the Justice Department
Office of Justice Programs

Re: OAG Docket No. 121

Dear sirs,

I am concerned that many young men and women are on the registry now that do not really belong. The registry should be a list of people that the public needs to be aware of not a list of kids playing doctor or teens making poor decisions. I appreciate that the Smart Office is trying to put together guidelines for the individual States, but as the past has shown each State treats the same situations differently. Below I have listed my concerns. I have quoted the National Guidelines in black and my comments in blue. I hope my comments will be useful in your endeavors to protect all the people of this country.

Section: A Convictions Generally, Paragraph 5 states "SORNA does not require registration for Juveniles adjudicated delinquent for all sex offenses for which an adult sex offender would be required to register, but rather requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes or child molestation offenses." Many 16 and 17 year old in different states are prosecuted as adults. If an individual is under the age of 18 they two should be included in this non registering group. It is very necessary for the state to be able to take individuals off the list if the person is exempt as per the new legislation without fear of losing federal funding.

Section: C Sex Offenses Generally, Paragraph 7 States "SORNA qualifies the foregoing definition of "sex Offense" To exclude an offense involving consensual conduct. The exclusion for certain cases involving child victims based on victim age and age difference means that a jurisdiction may not have to require registration in some cases based on convictions under provisions that prohibit sexual acts or contact (even if consensual) with underage person. For example, under the laws of some jurisdictions, an 18 year old may be criminally liable for engaging in consensual sex with a 15 year old. The jurisdiction would not have to require registration in such a case to comply with the SORNA standards, since the victim was at least 13 and the offender was not more than four years older. SORNA must allow states to take existing offenders who qualify for this exclusion off the list without threat of loss of funding. Michigan changed its law in 2004 so that so called Romeo and Juliet cases would not be put on the registry but ones already on were not allowed to come off because the state was told they would lose federal funding. Older Romeo and Juliet cases were able to petition for a 10 year registry which reduces their registration by 15 years. These are the cases that no one wants to see on the registry. These teens are not child molesters, they are promiscuous teens. I feel their actions are morally wrong and have no problem with a suitable punishment for both parties of community service but these kids should not be on the registry with child molesters and severely sick people.

Michigan is a state with no tiers. A fifty year old who molests an 8 year old is on the same list the same way as a 17 year old who had consensual sex with his 15 year old girl friend. There is definitely a difference between these two offenders. Also since all states are allowed to decide how they wish to precede these particular individuals (Romeo Juliet Cases) should be allowed in a level one tier. I understand the idea is to get these cases off the registry but you know some state will stay as strict as possible. A teen prosecuted in Michigan who goes to Arkansas will be on the list as a tier 2 because of the new policy for categorizing the tiers and its will be on the list in AR while individuals with similar crimes in AR will not have to register.

Section: D Specified Offenses Against Minors, paragraph 2 states "Solicitation of a Minor to engage in sexual conduct. Any direction, request, enticement, persuasion or encouragement of a minor to engage in sexual conduct." Paragraph 11 states "Criminal Sexual Conduct involving a minor and related internet activities. This clause covers criminal sexual conduct involving a minor or the use of the internet to facilitate or attempt such conduct" Paragraph 14, "Conduct by its nature a sex offense against a minor." These paragraphs should include an exemption of teens within four years of age. Otherwise many teens could become susceptible to these paragraph.

Section V. Classes of Sex Offenders, paragraph 4 defines tier 1. Tier 1 as written can not include Romeo and Juliet cases that involve intercourse because it only includes cases that sentencing would not be more that a year in jail. All case where intercourse is involved would require jail time of more than a year. I know the idea is to get the Romeo and Juliet cases off the registry but you know that will not happen in all states. If you register in one state you must register in all. Some states need a way to assimilate new entries into their system, who normally would not be registered if prosecuted in that state. It would help to include individuals within 4 years of age of each other that have had a consensual encounter to be included in this provision under tier 1. Each state would have to review the individual but at least they would have the option to put the individual in an appropriate level. This would allow states that would not normally prosecute a Romeo and Juliet Case to at least allow a person moving into their community to be evaluated as fairly as possible. For example a 17 year old junior in high school in 2003 had a consensual sex with his sophomore girl friend who is 15. In Michigan where he was prosecuted as an adult he is listed on the internet with no tier. The family moves to a tier state like Arkansas, the offender has be assessed and is assessed as a tier one a low risk to re offend and is registered but not on the public registry. The same is true in Massachusetts. If this bill goes by as it is now this boy would be a level 2 in MI, AR & MA. He would have to be places on the internet in AR & MA where people with similar circumstances might be entirely off the registry, this is unfair. I think it is important to add the Claus for the Romeo and Juliet's in tier one so the states have the ability to decide what best suites their needs. Tier ones can include incidences with a minor when the offender is a minor, person 18 years of age or under or within four years of the victim under specific circumstances. The time is right in Michigan and I hope they will change the law to take the older Romeo Juliet cases off but so many other kids will be trapped because there case does not fit the mold exactly.

It scares me to think of all the Romeo Juliet cases where the offender's life will be destroyed by the submission and publication of all the information required on the registry: Phone #, cell phone, License plate, vehicle description, email address, IM, Employer name and address. I do not know how these people will keep or get a job. I guess they will live on state assistance. Most of this info should be for police but not the public where there is little risk of a re offense. This is another reason for listing these cases as Tier ones, so that incidences with a minor when the offender is a minor, person 18 years of age or under can be taken off the list or at least a non public list so that they are not a burden to the state. Not every Romeo Juliet cases can prove it was consensual so states must be given some room for discretion.

Section XII Duration of Registration
Here is another reason Romeo and Juliet should be allowed under tier 1 because they can be reduced to 10 years if they have a clean record. It should only require a clean sexual record for 10 years. A successful completion of a sex offender treatment program certified by jurisdiction must be completed to qualify for the 10 years only if sentenced to it. Many kids are not sentenced to a treatment play so how can it be required if not sentenced to it.
I think it is unfair to place all Romeo Juliet's under tier 2 requiring registration for 25 year with no hope of early release. Some states will require a Romeo Juliet case where a 17 year olds who had consensual sex with their underage girl friend on the list until they are 42. Not all state will elect to take these cases off the registry, so other states need a way to assimilate new entries into their system, who normally would not be on the state registry if prosecuted in that state. I think you could add a Claus for the Romeo Juliet's here too. Cases where the victim and offender are within 4 years of each other, who hold a clean sexual record for 10 years can apply for reduction of registration to 10 years. In Michigan the 17 year old boy I gave as an example was sentenced to 25 years even though the judge did not want him on the list at all. He said he did not belong there. Michigan changed the law so that the 17 year old could petition for a 10 year registration. The 17 year old had to complete probation, the case had to be specifically because of the age of the victim and he had to prove that he was a low risk to re offend. The seventeen year old was granted the 10 years. If Michigan went by SORNA standards, without changing the law to allow Romeo & Juliet's off, this young man would be a tier 2 and register for 25 years retroactively even though he was sentenced to less. This needs to be changed so that if sentenced to less time on the registry than the new law requires the lesser registry is maintained. Individual states could review the case during the sentenced year of release and decide if the record is clean enough to let the individual off the registry. This could be specifically for offenders within 4 years of age from the victim. Maybe it could be decided by a judge during the year limit of the lesser sentence.

Thank you for your attention and assistance in this matter. I truly appreciate the work you are doing

Sincerely,
Bonnie Kupillas
[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:04 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** Courtney Kupillas[redacted]
**Sent:** Monday, July 30, 2007 2:31 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

To Whom It May Concern,

I read the OAG Docket No. 121 and wanted to voice my concerns. I want every effort made to eliminate registration altogether for youthful indiscretions. I think it is unfair and unjust to punish teens for having engaged in natural human curiosity with the opposite sex. Those who engage in consensual experimentation within a few years of each other should not be labeled on a list, or exploited to the world as "offenders." These people are teenagers, who were tempted by their new bodies and feelings and made a wrong decision by engaging in exploration with a peer. There are to many young people on the sex offender list who have been condemed for years based off stupid decisions or teenage mistakes they made in their past.

Below are a few additional clauses I would ad to your guidelines.
1. It is very necessary for the State to be able to take existing offenders who qualify for exemption as per the new legislation of the registry without fear of losing federal funding.
2. Solicitation of a Minor to engage in sexual conduct, any direction, request, enticement, persuasion or encouragement of a minor should have an exemption for teens within four years of age, otherwise many teens could become susceptible to this offense.
3. In a Tier system, Tier one, as written, can not include Romeo & Juliet cases that involve intercourse because it only includes cases that involve jail sentencing of less than a year. All cases where intercourse or oral sex is involved would require sentencing of more than a year. A clause should be added to allow offenders under the age of 18 or within four years of the age of the victim to be assessed as a level one if the state deems them to be a low risk to re offend. In this way a state has the option to take their residence prosecuted in there state off the registry and they have options on how to treat a offender coming in from a stricter state.
4. The guidelines do allow states to elect to allow a non public registry for level one tier. States should be able to decide if offenders within four years of their victim that committed a felony are eligible for the level one non public registry. Many state today already have this non public registry for youthful felonies that are considered low risk to re offend, the new guidelines as written would take this option away. This option must remain in tack for the states.
5. Tier one can petition for a shorter registration of 10 years if they have a clean record for the ten years. It should only require a clean sexual record.
6. Tier one can petition for a shorter registration of 10 years if they successful complete a sex offender treatment program certified by jurisdiction. This should only be if you

were sentenced by the judge to do so. If it was not required at sentencing then it should not be required for the petition.
7. In a tier system a level two offender is required to register for 25 years. A clause should be added that allows offenders who are within a 4 year age difference of the victim to petition for a reduction in years of registration if their sexual record is clean for 10 years.
8. Some states like Michigan already allow for reduction in years of registration for offenders, convicted of a felony, who were within three years of the victims age, who have completed probation, who have been prosecuted specifically because of the age of the victim and who have proven that they are at low risk to re offend. These offenders have had their registration reduced to 10 years by a judge. The new guidelines would require these same individuals to now register for 25 years. This should be changed to allow the individual to register as per the judges decision.

Make the effort to protect those who need protecting. Teens are to young to be held accountable for laws that we as a society do not tech them. Placing a boy on a list with rapists, when he had consensual sex with a high school peer (a few months over a year apart in age) is obsured. These young men and women should not be condemed because of teenage curiosity and they should not be punished and labeled as "sexual offenders and preditors" when their individual circumstances were not preditorial to begin with.

As a country it is our obligation to teach our children and our teenagers the law and how to obide it. Sagetory rape is not explained to youths as a peer on peer encounter. It is explained as a "sick person," a "bad person," an "older person" with bad thoughts and who is harmful in an attacking way. These teens are not aware that they themselves could be considered "preditors." They are not aware of these extreme laws that could hinder there future. In adulthood, ignorance is no excuse but to condem a high school teenager for ignorance to this law is shameful on us as a society. You need to protect these youths.

Thank you,

Courtney Kupillas

[redacted]

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**Rogers, Laura**

**From:** Christopher J Kupillas [redacted]
**Sent:** Thursday, July 26, 2007 2:24 PM
**To:** GetSMART
**Subject:** Re: OAG Docket No. 121

To Whom It May Concern,

I want every effort made to eliminate registration altogether for youthful indiscretions. Their are many Romeo & Juliet type cases on the registry along with children playing doctor, I want those individuals off the registry.
Below are a few additional clauses I would ad to your guidelines.
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as per the new legislation of the registry without fear of losing federal funding.
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as a level one if the state deems them to be a low risk to re offend. In this way a state has the option to
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a offender coming in from a stricter state.
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able to decide if offenders within four years of their victim that committed a felony are eligible for the level
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felony, who were within three years of the victims age, who have completed probation, have been
prosecuted specifically because of the age of the victim and who have proven that they are at low risk to
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judge. The new guidelines
would require these same individuals to now register for
25 years. This should be changed to allow
the individual to register as per the judges decision.

[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:06 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG DOCKET #121

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**From:** eileenheaney[redacted]
**Sent:** Monday, July 30, 2007 12:38 PM
**To:** GetSMART
**Cc:** Bonnie Kupillas
**Subject:** OAG DOCKET #121

----- Original Message -----
**From:**[redacted]
**To:** getsmart@usdoj.gov
**Sent:** Monday, July 30, 2007 12:24 PM
**Subject:** Youthful Offenders

To Whom It May Concern,

I want every effort made to eliminate registration altogether for youthful indiscretions. Their are many Romeo & Juliet type cases on the registry along with children playing doctor, I want those individuals off the registry. Below are a few additional clauses I would ad to your guidelines.

1. It is very necessary for the State to be able to take existing offenders who qualify for exemption as per the new legislation of the registry without fear of losing federal funding.
2. Solicitation of a Minor to engage in sexual conduct, any direction, request, enticement, persuasion or encouragement of a minor should have an exemption for teens within four years of age, otherwise many teens could become susceptible to this offense.
3. In a Tier system, Tier one, as written, can not include Romeo & Juliet cases that involve intercourse because it only includes cases that involve jail sentencing of less than a year. All cases where intercourse or oral sex is involved would require sentencing of more than a year. A clause should be added to allow offenders under the age of 18 or within four years of the age of the victim to be assessed as a level one if the state deems them to be a low risk to re offend. In this way a state has the option to take their residence prosecuted in there state off the registry and they have options on how to treat a offender coming in from a stricter state.
4. The guidelines do allow states to elect to allow a non public registry for level one tier. States should be able to decide if offenders within four years of their victim that committed a felony are eligible for the level one non public registry. Many state today already have this non public registry for youthful felonies that are considered low risk to re offend, the new guidelines as written would take this option away. This option must remain in tack for the states.
5. Tier one can petition for a shorter registration of 10 years if they have a clean record for the ten years.

It should only require a clean sexual record.

6. Tier one can petition for a shorter registration of 10 years if they successful complete a sex offender treatment program certified by jurisdiction. This should only be if you were sentenced by the judge to do so. If it was not required at sentencing then it should not be required for the petition.
7. In a tier system a level two offender is required to register for 25 years. A clause should be added that allows offenders who are within a 4 year age difference of the victim to petition for a reduction in years of registration if their sexual record is clean for 10 years.
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EILEEN HEANEY
[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 12:01 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** [redacted]
**Sent:** Thursday, July 26, 2007 8:56 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

To Whom It May Concern,

I want every effort made to eliminate registration altogether for youthful indiscretions. Their are many Romeo & Juliet type cases on the registry along with children playing doctor, I want those individuals off the registry. Below are a few additional clauses I would ad to your guidelines.

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Sincerely,

Clifford A. Cid

[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:58 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** Doolan, Joan [redacted]
**Sent:** Thursday, July 26, 2007 8:50 AM
**To:** GetSMART
**Subject:** OAG Docket No. 121

Re: OAG Docket No. 121
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Joan H. Doolan
[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:48 AM
**To:** Rosengarten, Clark
**Subject:** FW: important please read

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**From:** MandS Symancyk[redacted]
**Sent:** Tuesday, July 31, 2007 11:49 PM
**To:** GetSMART
**Subject:** important please read

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Sincerely,
Maryann Symancyk

**Rosengarten, Clark**

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**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:00 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket 121
**Attachments:** Docket 121.doc

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**From:** [redacted]
**Sent:** Monday, July 30, 2007 6:07 PM
**To:** GetSMART
**Subject:** Docket 121

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July 30, 2007

Laura L. Rogers, Director

Smart Office

Office of Justice Programs

United States Department of Justice

810 7th Street NW

Washington, DC 20531

Re: OAG Docket No. 121

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Sincerely yours,

Adeline Bono

[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, July 26, 2007 9:44 AM
**To:** GetSMART
**Subject:** ATTN: LAURA L. ROGER, DIRECTOR SMART OFFICE

Re: OAG Docket No. 121

To Whom It May Concern,

I want every effort made to eliminate registration altogether for youthful indiscretions. Their are many Romeo & Juliet type cases on the registry along with children playing doctor, I want those individuals off the registry. Below are a few additional clauses I would ad to your guidelines.

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would require these same individuals to now register for 25 years. This should be changed to allow
the individual to register as per the judges decision.

Sincerely,
Susan M. Smith
[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**t:** Monday, July 30, 2007 11:52 AM
Rosengarten, Clark
**ject:** FW: SORNA Guideline Comments

**Attachments:** Walsh Guideline Comments 3.doc

Walsh Guideline Comments 3.doc...

-----Original Message-----
From: Richard Smith [redacted]
Sent: Saturday, July 28, 2007 12:47 PM
To: GetSMART
Cc: andrews@juvjustice.org; [redacted]
Bob.Sheil@state.vt.us
Subject: SORNA Guideline Comments

Laura Rodgers, Director
Smart Office-Office of Justice Programs

Attached please find SORNA Guideline comments.

Thank you.

hard A. Smith, Chair
dren and Family Council for Preveniton Programs
[redacted]

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http://liveearth.msn.com

VERMONT

**Department for Children and Families**
*Family Services Division*
Osgood 2
103 South Main Street
Waterbury, VT 05671-2401

*Agency of Human Services*

(phone) 802-241-2953
(fax) 802-241-1219

***CHILDREN AND FAMILY COUNCIL FOR PREVENTION PROGRAMS***
Children's Trust Fund Juvenile Justice Delinquency Prevention

July 27, 2007

**VIA ELECTRONIC AND FIRST-CLASS MAIL**

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:

The Children and Family Council for Prevention Programs (CFCPP) would like to take this opportunity to express our general opposition to the application of SORNA to youth adjudicated within the juvenile court system and our particular concerns with the current proposed guidelines.

CFCPP is Vermont's state advisory group for juvenile justice. Members are appointed by the governor and represent a diverse field of youth and professionals in Vermont whose work touches the lives of children, youth, and families. The primary responsibilities of CFCPP are to advise and inform on issues relating to Juvenile Justice, monitor the state's compliance with federal core protections relating to juvenile detention and contact with the criminal justice system, and oversee a number of grants that fund community based programming aimed at both preventing youth from committing offenses and supporting age appropriate interventions for those who already have.

**Application of the Guidelines to Youth is Contrary to the Research, Including Research Sponsored by the U.S. Department of Justice**

The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth.

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[1] In addition, the recidivism rate among juvenile sex offenders is substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). 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 also be apprehended for non-sex offenses typical of other juvenile delinquents.[2]

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior—even when assaultive —do not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

**Application of the Guidelines to Youth Will Interfere with Effective Treatment and Rehabilitation**

SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate children, 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.

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.[3] The stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess,[4] destroying the social networks necessary for rehabilitation.[5]

**Application of the Guidelines to Youth Will Put Youth at Risk of Exploitation**

SORNA as applied to youth is not in accord with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children," in that it will expose these youth to adult offenders who have not sought or benefited 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 adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

**The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles**

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[6]

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the

youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System**

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide will be registered in one or both of the parents' names.

Similarly, the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

When the Vermont Legislature discussed and debated proposed legislation in 1996 that eventually established a sex offender registry in Vermont there was a decision made by the legislature to exclude from required registration those youth who were adjudicated delinquent of a sexual offense in juvenile court as opposed to being convicted in adult (criminal) court. However, any individual, including all children, against whom an allegation of sexual abuse has been substantiated after investigation have their names placed on a child abuse registry even if a delinquency in not filed in juvenile court or criminal charge is not filed in adult court.

This registry is accessible to prosecutors, the attorney general, certain department commissioners and to employers if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment, or supervision of children or vulnerable adults. The employer may submit a request concerning employee, volunteer, or contractor or an individual to whom the employer has given a conditional offer of a contract, volunteer position, or employment. The request shall be accompanied be a release signed by the current or prospective employee, volunteer, or contractor.

In addition, there are another two separate statutory provisions in Vermont law that specifically provide notice regarding delinquent youth who have been adjudicated for any delinquent act that involved any sort of sexual

abuse and provide protection for the public. Under 33 V.S. A. Section 5529g(4) a victim of a sexual offense may request to be notified by the agency having custody of the delinquent child before he or she is discharged from secure or a staff secure residential facility.

There is also an exception to the confidentiality of juvenile court records, found in 33 V.S.A. Section 5536(b) and (c) which mandates the family (juvenile) court to provide written notice within seven days of a delinquency adjudication involving sexual abuse as well as certain other listed crimes, to the superintendent of schools for the public school in which the child is enrolled or, in the event the child is enrolled in an independent school, the school's headmaster. This notice is required to contain a description of the delinquent act found by the court. (33 V.S. A. Section 5536a(d))

The current Child Abuse Registry in Vermont should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**Conclusion**

CFCPP supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Richard A. Smith, Chair,
Children and Family Council for Prevention Programs

C Theresa Lay Sleeper, JJDP Specialist
Tara Andrews, Esq., Deputy Executive Director, CJJ

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[1] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report;* available at http://www.ojjdp.ncjrs.org/.

[2] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[3] 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.

[4] 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.

[5] Ibid.

This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

## Rosengarten, Clark

**From:** Kaplan, April
**Sent:** Thursday, August 02, 2007 10:01 AM
**To:** Rosengarten, Clark
**Subject:** FW: Comments on SORNA Registration Guidelines
**Attachments:** CCA Proposed Guidelines Commments.doc

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**From:** Pat Berg Yapp [redacted]
**Sent:** Wednesday, August 01, 2007 7:43 PM
**To:** Kaplan, April
**Subject:** Comments on SORNA Registration Guidelines

Please find attached the Comments from the Child Care Association of Illinois on the proposed implementation guidelines for SORNA.

Please let us know if we can be of any further assistance.

Thank you,
Pat Berg Yapp
Associate Director
Child Care Association of Illinois
[redacted]

**Rosengarten, Clark**

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**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:41 AM
**To:** Rosengarten, Clark
**Subject:** FW: Child Care Association of Illinois Comments on the Proposed Implementation Guidelines of SORNA
**Attachments:** CCA Proposed Guidelines Commments.doc

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**From:** Patricia Berg [redacted]
**Sent:** Wednesday, August 01, 2007 7:46 PM
**To:** GetSMART
**Subject:** Child Care Association of Illinois Comments on the Proposed Implementation Guidelines of SORNA

Attached please find comments submitted from The Child Care Association of Illinois in response to the Guidelines for Implementation for SORNA.

Please let us know if we may be of any further assistance.

Thank you,

Patricia Berg Yapp
Associate Director
Child Care Association of Illinois
413 West Monroe Street
Springfield, Illinois 62704
1-217-446-6066

August 1, 2007

VIA ELECTRONIC MAIL

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:

The U.S. Department of Justice has invited public comment on the proposed National Guidelines for the Sex Offender Registration and Notification of Act of 2006 (SORNA). In response to that invitation, The Child Care Association of Illinois has reviewed the interim Guidelines and submits the following comments and recommendations for your consideration.

The Child Care Association of Illinois (CCAI) is a not-for-profit membership organization dedicated to improving the delivery of social services to the abused, neglected, troubled and traumatized children, youth and families of Illinois. The CCAI is comprised of more than 70 nonprofit agencies that provide child welfare, youth and juvenile justice services, and children's mental health and prevention services throughout Illinois. Member agencies are the backbone of the child welfare and juvenile justice systems in Illinois and annually provide services to approximately 400,000 clients.

As treatment professionals and child advocates, we have dedicated our professional lives to preventing and eliminating child abuse. Any time a child is harmed or killed by an adult sex offender, we and the public become very alarmed. We laud your attention to this vital issue.

**CCAI agencies provide a unique perspective about the impact of SORNA <u>on all children and youth</u> because they provide specialized treatment services to both victims and youthful offenders.** They possess expertise as child advocates and as treatment professionals with extensive experience working children and youth who have been abused and neglected and those who have been victims of trauma, including sexual offending. At the same time, many have created specialized programs for treating juvenile sexual offenders in residential and group home settings, within foster care and independent living arrangements as well as in out-patient venues. As a result of our service delivery concentration and expertise, along with our overriding concern about the safety of all children and youth, *CCAI agencies fear that the impact of SORNA on youthful offenders and their victims, as presently constituted, will undercut the very purpose of the Act – which is to protect children from sexual abuse and violent crime.*

What follows are the specific objections we have identified with the Proposed Guidelines.

**CCAI objects to the application of SORNA to sexually offending youth adjudicated within the juvenile court system because...**

**Application Of The Guidelines To Youthful Offenders Is Contrary To Current Research**

The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth.

Decades of research emphasize that there are **huge differences between youth who sexually abuse younger children and adult sex offenders**. When children and teenagers engage in sexually abusive behaviors, it is typically different from adult sexual offending in its nature, extent, and response to intervention. Juveniles have significantly lower frequency of the more extreme forms of sexual aggression, fantasy, and compulsivity. A deviant sexual interest in young children, which is a major motivating factor among adult sex offenders, does not appear to play a role in the behavior of most children and teens. With rare exceptions, these youth are not pedophiles. Rather, these behaviors are opportunistic, driven by curiosity and poor judgment, and are more impulsive than compulsive. These differences have been reported by panels commissioned by the U.S. Department of Justice, by public information resources, and by professional and research organizations. Despite this, SORNA subjects both juvenile and adult sex offenders to the same registration and classification provisions.

According to a Fact Sheet developed by the National Center of Sexual Behavior of Youth (NCSBY), at the Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center based on reports from the Center for Sex Offender Management at the U.S. Department of Justice, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[1] In addition, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). [2] 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 either before or subsequent to their arrest for a sexual offense.[3] The Center also found that adolescent sex offenders are more responsive to treatment than adult sex offenders and do not appear to continue re-offending into adulthood, especially when provided with appropriate treatment.[4]

Research indicates that most juveniles who commit sex offenses are boys around 13 or 14. That may be their only similarity because they differ widely on other characteristics. A small percentage (no one knows how many) will become adult rapists or pedophiles; 90 percent or more, will not. Most have not committed violent assaults or abused multiple children repeatedly. Usually they have had sexual contact with a child who is at least two years younger than they are. Some are overly impulsive or immature adolescents who are unable to approach girls or boys their own age; instead, they engage in inappropriate sexual acts with younger children. Others are delinquent juveniles for whom sexual abuse is just one of the many ways they break the law. According to studies, these youth are much more likely to commit a property crime than they are to commit a second sex offense. Still others are otherwise well-functioning youth with limited behavioral or psychological problems. Some come from well-functioning families while others come from chaotic or abusive backgrounds. There are a number of children who are adjudicated for "playing doctor". Likewise, there are the so-called "Romeo and Juliet" cases, where there has been consensual sex between two teenagers.

In addition, recent findings from neuroscience indicate that brain maturation is a process that continues into early adulthood. There is good evidence that the brain systems that govern impulse control, sense of future consequences, planning, and thinking ahead are still developing well beyond age 18. This lack of maturity and impulsivity play a significant role in the sexualized manifestations of what is truly an impulse control problem for many youth who sexually offend. By placing juvenile offenders on the registry, for as long as life in some cases, both avenues of research are contradicted.

**Application Of The Guidelines To Youthful Offenders Violates Longstanding Tenets Of Juvenile Justice**

In 1899, the first Juvenile Court in the country was created out of a belief that it was unfair to try adolescents as adults. Since that time, the philosophy of the Juvenile Court has been that children ought to be afforded special consideration, guidance, protection and treatment because most youth who break the law in childhood or early adolescence will grow out of this behavior with the right support and direction. As a result, juvenile courts have protected the identity of youth coming before it while dispensing individualized justice. These practices are rooted in the belief that youth should not be stigmatized for life on the basis of their childhood behavior. Court decisions about culpability and subsequent sanctions, if any, have historically been based upon the best interests of the child and form the basis for adjudicating youth in juvenile court rather than convicting them in adult criminal court.

Thus, the basic premise of the juvenile justice system is that adolescents who commit crimes are different from adults in ways that make them potentially less blameworthy than adults who commit similar acts. In the 2005 landmark U.S. Supreme Court decision, the Court outlawed the death penalty for offenders who were younger than 18 when they committed their crimes. The heart of the ruling was the issue of culpability, or criminal blameworthiness.

The legal system has long held that criminal punishment should be based not only on the harm caused, but also on the blameworthiness of the offender. How blameworthy a person is rests on the circumstances of the crime and of the person committing it. Traditionally, the courts have considered several categories of mitigating factors when determining culpability. These include:

- Impaired decision-making capacity, usually due to mental illness or disability,
- The circumstances of the crime—for example, whether it was committed under duress,
- The individual's personal character, which may suggest a low risk of continuing crime.

Such factors don't exempt a person from punishment but do indicate that the punishment should be less than it would be for others committing similar crimes, who are different or who do so under different circumstances. Including juveniles in the SORNA registration requirements not only violate our tradition of American juvenile justice but also calls into question the very foundation of the entire juvenile justice system. At the same time, it creates a special class of juveniles who are explicitly required to suffer public identification and stigma, possibly for the rest of their lives.

**Application Of The Guidelines To Youthful Offenders Will Be Harmful Rather Than Rehabilitative To Juveniles Who Offend**

Labeling a juvenile as a "child sexual predator" can have lifelong, irreversible and detrimental effects on a person and his or her family members. When a young person is so labeled, we are sending a very strong message: "This is how you are going to be identified. This is who you are". With such an act, we remove the rehabilitative element that is the philosophical foundation of our juvenile justice system and at the same time cement an identity that is contrary to what we actually desire, which is a normal and healthy young person.

Many child sex offenders are victims of sexual abuse themselves. Many more engage in common sexual behavior, sometimes healthy, sometimes inappropriate, that, as they mature, they will learn to manage. The stigmatization of registration will isolate these youth from normal and healthy opportunities for growth and development. Their access to school may be threatened. Their ability to join youth clubs and associations may be restricted or forbidden. Their opportunities to develop positive peer relationships may be denied because other parents will be afraid to let them associate with their children. The consequence of registration to

youthful offenders will only exacerbate any problems they may already have, destroy social networks critical for rehabilitation [5] and increase the chances that they will engage in future criminal behavior, both sexual and nonsexual.[6]

Nearly 1/3 of sexually abused children will exhibit some sort of sexual behavior problem in response to their abuse. In some cases, this behavior may involve other children or younger children and result in a delinquent adjudication. It would be a travesty of justice for these victims to be tarnished with the public label of offender at the very moment they require specialized services as victims which, in all likelihood, would be denied to them were they so labeled.

SORNA as applied to youth will also have a negative and disruptive impact on their families. Already under stress from the offender's situation, the families too may become isolated from normal community supports and assistance just at the time when they need aid and comfort the most. They may have to move or change jobs because of restrictions on residency, e.g., prohibitions on living within so many feet of a park or school or within a structure. In the majority of cases, the family's address and phone number will be published because that is where the youth lives and what he must report. The community may initially wonder who the real sex offender is, not knowing whether child or adult. Siblings will become identified as part of the family and harassed by their peers. Their school may be the same one attended by the offender.

SORNA as applied to youth will also have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. Faced with the prospect that their child may be required to register, possibly for life, parents will be more inclined to hide their child's problem and not seek help rather than holding their child accountable and seeking appropriate treatment. As treatment professionals, we know that early intervention is critical to successful therapeutic outcomes. In addition, prosecutors and judges may be more eager to enter into a plea agreement and reduce charges because the youth before them will be required to register. In jurisdictions where adjudication is required for treatment access, those youth who need rehabilitative treatment and who would likely benefit the most, are those who would become inadmissible.

SORNA as applied to juveniles will be a poor identifier of potential violent predators and lessen the predictive value of the registry as a weapon for use by law enforcement. SORNA was proposed as a comprehensive revision of the national standards for sex offender registration and notification. The Act's stated purpose is to respond to "vicious attacks by violent sexual predators" by reforming, strengthening and increasing the effectiveness of sex offender registration and notification for the protection of the public. The idea is to make identification of suspects readily available across police jurisdictions to help them locate perpetrators based upon the premise that those who offended in the past will be most likely to offend in the future. But a number of re-compiled youth cohort studies over the last few decades have discovered that the majority of children and teenagers adjudicated for sex offenses do not become adult sex offenders. [7] Indeed, studies have found that 92% of all adult sex offenders were never juvenile offenders. [8] Lumping low risk youthful offenders in with high-risk adult offenders dilutes the usefulness of the information and places an unnecessarily heavy administrative burden on law enforcement as they search the ever expanding data base.

**Application Of The Guidelines To Youthful Offenders Who Are Developmentally Delayed Will Be Exceptionally Atrocious**

Youth who are developmentally delayed and who commit sexual offenses pose a unique problem in the juvenile justice system from an adjudicatory as well as a treatment perspective.

One of the hallmarks of mental retardation is the impulsivity with which these youth react to a variety of situations. As puberty evolves and they experience sexual feelings, they simply act on the impulse. From research, it appears that developmentally delayed juvenile sex offenders are more likely to engage in hands-off sexually problematic behaviors (e.g., public masturbation, exhibition, voyeurism) and are much less covertly predatory than average IQ offenders. At the same time, they are more likely to be caught due to their lack of social skills and inept behavior. Youth who are classified as developmentally delayed and who commit sexual offenses differ from average IQ juvenile sex offenders in that their life is characterized by greater degrees of impulsivity, poorer social cue interpretation, and fewer coping skills which subsequently leads to increased frustration and even more impulsivity. What's more these youth are more likely to have been sexually abused themselves.

While these youth may know that what they did was "bad or wrong", they most certainly do not fully comprehend the ramifications of their actions because they are functioning intellectually, at best, at the level of a 6th grader and at worst, at that of a kindergartener or 1st grader. As a result, juvenile court jurisdictions have been loathe to place these youth in detention, opting instead for placement in highly structured behavior modification programs that teach them impulse control. Unfortunately, as DD youth age chronologically they remain child like intellectually so that offenses committed as "adults" will likely land the DD person in prison with the general population, where they are overrepresented, subject to longer periods of incarceration and more frequent stays in solitary confinement (often for their own protection) and have less access to alternative sentencing arrangements than non-disabled inmates.

The burden of registration is particularly heavy on this population. One registration requirement is that offenders, in writing, acknowledge that they understand the registration requirements. How will the implementation of the Guidelines affect developmentally disabled youth and children who may chronologically fall under SORNA's purview but who intellectually cannot understand the import of their actions? Can they be held responsible for agreeing to something that they do not truly understand? What if they do not have another responsible party to look after them and make sure they report on time and in accordance with the Act? Given their intellectual capabilities, that situation would be the same as expecting a 2nd grader to report in person to a law enforcement official on a regularly scheduled basis. Were they not to report would we send the 2nd grader to prison? Will we send these people?

**Application Of The Guidelines To Youthful Offenders Will Violate Victim Protections In Many Cases**

Conventional wisdom among those who provide treatment to adolescent sexual offenders is that many youthful offenders commit acts against other family members. Various research attempts into this particular aspect of adolescent sexual offending have found that anywhere between 18 – 43% of those who sexually offend do so within their own family. SORNA registration requirements dictate that public registration includes not only the name and address of the offender, but also the offense and offense history. What that will mean for interfamily victims, is that their identities will be easily inferred from the information posted on the register.

The emotional consequences of child sexual abuse can range from low self-esteem to serious mental health problems. Many of these youth suffer from having been manipulated rather than explicitly coerced into these activities. As a result, they may feel responsible for, or at least complicit in, the sexual behaviors. The unintended consequence of their public exposure will only serve to further heighten the sense of shame and embarrassment many of them feel and impede their own progress towards healing. They may be taunted at school or, worse, shunned

by their peers and their families reinforcing the belief that "it was their fault". Stigmatization will be a blanket they too will wear.

**Application Of The Guidelines To Youth Is Inconsistent With Other Portions Of The Act**
Section 111(5)(B) of SORNA indicates 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" for the accused under guidelines or regulations established by the Attorney General. Later on in this section, "sufficient safeguards for fundamental fairness and due process" are deemed to have been obtained if the US State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary enforced the right to a fair trial. Further, the conviction does not constitute a reliable indication of guilt if there is the lack of an impartial tribunal, the denial of the right to respond to the evidence against the person, or to present exculpatory evidence or of denial of the right to the assistance of counsel.

Because of the nature of juvenile courts, these proceedings are not adequate forums to preserve the due process rights of youth for purposes of sex offender registration and notification. When juveniles are tried in juvenile courts in most states, they are not given the full scope of rights adult defendants receive in criminal courts, such as a trial by jury. Knowing that the majority of juveniles will not receive the full scope of procedural rights that adult defendants receive which provide sufficient safeguards for fundamental fairness and due process, juveniles adjudicated in juvenile court should be given the same consideration as their foreign counterparts and not be placed on the register.

**Application Of The Guidelines To Youth Will Place Those Identified At Risk Of Exploitation**
The public notification elements of SORNA as applied to youth will expose them more easily to adult predators.

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 also be able to access the registry via the Internet and identify adjudicated youth within their own community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, registered youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually offending behavior.

**Recommendations:**

**The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System**
The Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the identified authorities but not by the general public. The law should also specify a designated agency, to determine whether community notification is required and in what form, whether in writing or posting on the Internet. These allowances will serve the public safety purposes of the Adam Walsh Act while maintaining the privacy provisions so fundamental to our juvenile court system, furthering the ability of youth to take full advantage of treatment and allowing innocent family members to maintain some measure of privacy.

**The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles**

If SORNA must be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how long a youth must register as a sex offender. Judicial guidelines should be promulgated that identify factors judges must consider when exercising that discretion so that the application becomes consistent throughout the States. This would take into account both community safety and the critical differences between adult and juvenile offenders and maintain the individualized dispensation of justice so central to the juvenile court system.

The Child Care Association of Illinois supports safety for children and families throughout the nation, efforts to hold offenders accountable and the protection of youth and children. However, we believe that the Proposed Guidelines will have a negative impact on our efforts to reclaim youth adjudicated as sexual offenders within the juvenile court system and provide the protection for our children we all long for.

Thank you for the opportunity to comment on the Proposed Guidelines. We trust that our comments will be given serious and thoughtful consideration.

Sincerely,

Associate Director
Child Care Association of Illinois
413 West Monroe Street
Springfield, Illinois 62704
1-217-446-6066

References:

1. Miranda, A. O., & Corcoran, C. L. (2000). Comparison of perpetration characteristics between male juvenile and adult sexual offenders: Preliminary results. *Sexual Abuse: A Journal of Research and Treatment 12,* 179-188.
2. Worling, J. R., & Curwin, T. (2000). Adolescent sexual offender recidivism: Success of specialized treatment and implications for risk prediction. *Child Abuse and Neglect, 24,* 965-982.
3. Zimring, F.E. (2004). An American Travesty. University of Chicago Press
4. Association for the Treatment of Sexual Abusers (ATSA). (2000, March 11). *The effective legal management of juvenile sex offender.* Retrieved from http://www.atsa.com/ppjuvenile.html
5. 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
6. Ibid.
7. Franklin E. Zimring. Juvenile and Adult Sexual Offending in Racine, Wisconsin: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood? A configuration of a study by (A configuration of a study by Sellin, T. and M. Wolfgang, The Measurement of Delinquency. New York: Wiley. 1964; Sykes, G. The Society of Captives. Princeton, NJ: Princeton University Press. 1958; Tracy, P., M. Wolfgang and

R. Figlio. Delinquency in a Birth Cohort II: A Comparison of the 1945 and 1958 Philadelphia Birth Cohort. Washington, DC: National Institute of Juvenile Justice and Delinquency Prevention. (Final Report 83-JN-AX-0006.) 1984; Wolfgang, M., R. Figlio and T. Sellin. Delinquency in a Birth Cohort. Chicago: University of Chicago Press. 1972). (January 2007).

8. Franklin E. Zimring. The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study and Juvenile and Adult Sexual Offending in Racine, Wisconsin: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood? (January 2007.)

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:44 AM
**To:** Rosengarten, Clark
**Subject:** FW: Alaska Division of Juvenile Justice Comments on SORNA (Adam Walsh Act) Guidelines

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**From:** Newman, Anthony (HSS) [mailto:tony_newman@health.state.ak.us]
**Sent:** Wednesday, August 01, 2007 1:18 PM
**To:** GetSMART
**Cc:** Wood, Leonard R (HSS)
**Subject:** Alaska Division of Juvenile Justice Comments on SORNA (Adam Walsh Act) Guidelines

August 1, 2007

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:

It was good to meet you in Indianapolis last week at the National Symposium on Sex Offender Management and Accountability. You did a wonderful job of bringing together a huge crowd of people, addressing their concerns, and providing them with important food for thought. Thanks for all your hard work.

I am writing now to provide you with comments, on behalf of the Alaska Division of Juvenile Justice, on the current proposed guidelines to the Sex Offender Registration and Notification Act of 2006 (SORNA).

The mission of Alaska's Division of Juvenile Justice is to hold juvenile offenders accountable for their behavior, promote the safety and restoration of victims and communities, and assist offenders and their families in developing skills to prevent crime. Our agency operates eight juvenile detention and treatment facilities around the state, provides intake, diversion, and probation supervision services for approximately 3,900 juveniles a year, and works closely with a variety of community partners to prevent and intervene in delinquent behavior. As such, we have a keen interest in regulations and laws related to juvenile sex offenders.

**We believe that application of the guidelines to youth is contrary to research--including research sponsored by the U.S. Department of Justice.**

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior. In addition, the recidivism rate among juvenile sex offenders is substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even thought the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

These results competently argue against the inclusion of youth in public sex offender registries for 25 years to life.

**Application of the guidelines to youth will interfere with effective treatment and rehabilitation.**

SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate children, 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.

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. 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.

**pplication of the guidelines to youth will put youth at risk of exploitation.**

ORNA as applied to youth is not in accord with the Act's public safety objective of "protect [ing] the public from sex offenders and offenders against children," in that it will expose these youth to adult offenders who have not sought or benefited 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 adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

**The Guidelines should allow for judicial discretion in cases of youth adjudicated as juveniles.**

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**The Guidelines should waive public registration and community notification requirements for youth adjudicated within the juvenile court system.**

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but

not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide to be registered in one or both of the parents' names.

Similarly, the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Similarly, the mandates and restrictions associated with the Guidelines will impact not only the youth, but the entire family, particularly in terms of where the family is permitted to live, e.g., prohibitions against living within so many feet of a school or a park.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

States that create and maintain juvenile registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**Conclusion.**

As noted, the Alaska Division of Juvenile Justice supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Tony Newman
Social Services Program Officer
Division of Juvenile Justice
Department of Health and Social Services
State of Alaska
P.O. Box 110635
Juneau, AK 99811-0635
(907)465-1382 (phone)
(907)465-2333 (fax)
(907)321-3989 (cell)
Tony.Newman@alaska.gov

**Rosengarten, Clark**

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**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 5:11 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121--Comments on Proposed Guidelines
**Attachments:** Comments on Proposed SORNA Guidelines OAG 121 Final Lttrhd.doc

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**From:** Tara Andrews [mailto:andrews@juvjustice.org]
**Sent:** Tuesday, July 31, 2007 4:51 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121--Comments on Proposed Guidelines

July 31, 2007

**VIA ELECTRONIC MAIL (Pasted Below and Attached)**

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:
The Coalition for Juvenile Justice (CJJ) is a representative national nonprofit organization based in Washington, D.C. Created in 1984, CJJ comprises Governor-appointed State Advisory Groups (SAGs) charged to fulfill the mandates as well as the spirit of the federal Juvenile Justice and Delinquency Prevention Act. Working together with allied individuals and organizations, SAGs seek to improve the circumstances of vulnerable and troubled children, youth and families involved with the courts, and to build safe communities. Today, more than 1,500 CJJ members span the U.S. states and territories, providing a forum for sharing best practices, innovations, policy recommendations and peer support.
As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), the Coalition for Juvenile Justice takes this opportunity to express our strong opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current Proposed Guidelines.
In doing so, we incorporate by reference the complete Comments we submitted to David Karp on April 30, 2007, voicing our Opposition to Interim Rule RIN 1.105--AB22, OAG Docket No. 117.
**Application of the Guidelines to Youth is Contrary to the Research, Including Research Sponsored by the U.S. Department of Justice**
The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth.
According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive

[i]

sexual behavior. In addition, the recidivism rate among juvenile sex offenders is substantially lower, than rates for other delinquent behavior (5-14% vs. 8-58%). 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 [ii]

non-sex offenses typical of other juvenile delinquents.

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

**Application of the Guidelines to Youth Will Interfere with Effective Treatment and Rehabilitation**

SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will also have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate treatment, parents may be 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.

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, [iii]

forcing them to drop out. The stigma that arises from community notification serves to "exacerbate" [iv]

the "poor social skills" many juvenile offenders possess, destroying the social networks necessary for [v]

rehabilitation.

**Application of the Guidelines to Youth Will Put Youth at Risk of Exploitation**

SORNA as applied to youth is not in accord with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children," in that it will expose these youth to adult offenders who have not sought or benefited 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 adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

**The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles**

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the

juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or [vi]

17-year-olds to adult courts.

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System**

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide will be registered in one or both of the parents' names.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

States that create and maintain juvenile registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**Conclusion**

The Coalition for Juvenile Justice supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Nancy Gannon Hornberger
Executive Director

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[i]

National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report;* available at http://www.ojjdp.ncjrs.org/.

[ii]

Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[iii]

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.

[iv]

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.

[v]

Ibid.

[vi]

This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:44 PM
**To:** Rosengarten, Clark
**Subject:** FW: SORNA comments
**Attachments:** SORNA comments.doc

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**From:** Goemann, Melissa [redacted]
**Sent:** Wednesday, July 25, 2007 12:35 PM
**To:** GetSMART
**Subject:** SORNA comments

Dear Ms. Rogers,

Attached please find our written comments regarding the SORNA guidelines. Thank you.

Melissa Coretz Goemann
Director
Mid-Atlantic Juvenile Defender Center
Juvenile Law and Policy Clinic
University of Richmond School of Law
(804) 287-6468 (phone); (804) 287-6489 (fax)
[redacted]

# 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*


July 25, 2007

**VIA ELECTRONIC AND FIRST-CLASS MAIL**

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:

As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), the Mid-Atlantic Juvenile Defender Center takes this opportunity to express our general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current Proposed Guidelines.

The Mid-Atlantic Juvenile Defender Center (MAJDC) is a multi-faceted juvenile defense resource center serving the District of Columbia, Maryland, Virginia, 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. Part of our work includes training juvenile defenders and we have held trainings on the issue of handling juvenile sex offense cases.

**Application of the Guidelines to Youth is Contrary to the Research, Including Research Sponsored by the U.S. Department of Justice**

The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth.

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[i] In addition, the recidivism rate among juvenile sex offenders is substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even thought the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.[ii]


*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*

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

**Application of the Guidelines to Youth Will Interfere with Effective Treatment and Rehabilitation**

SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate children, 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.

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.[iii] The stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess,[iv] destroying the social networks necessary for rehabilitation.[v]

**Application of the Guidelines to Youth Will Put Youth at Risk of Exploitation**

SORNA as applied to youth is not in accord with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children," in that it will expose these youth to adult offenders who have not sought or benefited 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 adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and

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*(804) 287-6468 (phone); (804) 287-6489 (fax); mgoemann@richmond.edu*

making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

**The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles**

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[vi]

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, of the states within the Mid-Atlantic region, Virginia currently allow for judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender. If a juvenile adjudicated delinquent is 13 years of age or older, the court may require the juvenile to register if, in the courts discretion and on motion of the Commonwealth's Attorney, the court finds that the circumstances of the offense require offender registration.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System**

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated

agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide to be registered in one or both of the parents' names.

Similarly, the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Similarly, the mandates and restrictions associated with the Guidelines will impact not only the youth, but the entire family, particularly in terms of where the family is permitted to live, e.g., prohibitions against living within so many feet of a school or a park.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

States that create and maintain juvenile registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**Conclusion**

The Mid-Atlantic Juvenile Defender Center supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

*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*

Melissa Coretz Goemann

Director, Mid-Atlantic Juvenile Defender Center

[i] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report;* available at http://www.ojjdp.ncjrs.org/.

[ii] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[iii] 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.

[iv] 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.

[v] Ibid.

[vi] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

*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*

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:05 AM
**To:** Rosengarten, Clark; Kaplan, April
**Subject:** FW: OAG Docket No. 121

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**From:** Donya Adkerson [redacted]
**Sent:** Monday, July 30, 2007 12:48 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

July 30, 2007

VIA ELECTRONIC AND FIRST-CLASS MAIL

Laura L. Rogers, Director
SMART OfficeOffice of Justice Programs
U.S. Department of Justice
310 7th Street NW
Washington, D.C. 20531
Email: getsmart@usdoj.gov

Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)

Dear Ms. Rogers:

As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), as the Director of Alternatives Counseling, Inc., I would likle to take this opportunity to express our general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current Proposed Guidelines.

Alterantives Counseling has provided treatment to both victims and perptrators of sexual offending since 1991. We serve children and youth from intact homes and those in the child welfare system, as well as adults. I have also worked directly for the Illinois Sex Offender Management Board. In our mission of healing those affecting by sexual abuse, we come to know first hand the variability of both youth and adults who have developed sexual behavior robelms. While we are grateful that governmental authorities are focusing needed attention on this public health issue, we are deeply concerned that policies are now being implemented whihc are based on public fears rather than evdence of what owrks arising from research in the field. We beleive that proposed policies as applied to youth may actually harm, rather than help, public safety.

*Application of the Guidelines to Youth is Contrary to the Research, Including Research Sponsored by the U.S. Department of Justice.*

The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth. According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health
Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[1] In addition, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other
delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even thought the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.[2]

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior even when assaultive do not pose the ame threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life. Application of the Guidelines to youth will interfere with effective treatment and rehabilitation
SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and
deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

*SORNA as Applied to Youth will Stop Most Familes From Reporting and Seeking Proper Treatment of Youth who Exhibit Problem Sexual Behavior.*

As opposed to helping to hold their child accountable and seek appropriate children, 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.

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.[3] The stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess,[4] destroying the social networks necessary for rehabilitation.[5]

*Application of the Guidelines to Youth Will Put Youth at Risk of Exploitation.*

SORNA as applied to youth is not in accord with the Act's public safety objective of "protect [ing] the public from sex offenders and offenders against children," in that it will expose these youth to adult offenders who have not sought or benefited 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 adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

*The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles.*

Youth are not all the same, not even if they have engaged in similar behavior. If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[6]

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead

supports a policy of judicial discretion on a case-by-case basis subject to certain criteria. For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender. We beleive that public safety is best served when each case is responded to based on the individual risks, strenghts, and needs presented.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

*The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth*
*Adjudicated within the Juvenile Court System.*

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide to be registered in one or both of the parents' names.

Similarly, the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment. Similarly, the mandates and restrictions associated with the Guidelines will impact not only the youth, but the entire family, particularly in terms of where the family is permitted to live, e.g., prohibitions against living within so many feet of a school or a park. Many adult offenders aleady face hoemlessness due to restrictiond on resdiency. Do we really want to start adding youth to the homeless population?

Alternatively, the Guidelines could allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system. States that create and maintain juvenile non-public registries should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

*Conclusion*

Alternatives Counseling supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we professionally and personally believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways articulated above. Our laws should not harm public safety, even inadvertently.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Donya L. Adkerson, MA, LCPC
Director
Alternatives Counseling, Inc.
88 S. Main, PO Box 639
Glen Carbon, IL 62034
tel. 618-288-8085
fax 618-288-8959
Donya@ACHelps.org

[1] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report; available at <http://www.ojjdp.ncjrs.org/>http://www.ojjdp.ncjrs.org/.

[2] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[3] 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>http://www.appa-net.org/revisitingmegan.pdf.

[4] 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.

[5] Ibid.

[6] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

Laura L. Rogers, Director
SMART Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

July 20, 2007

Dear Ms. Rogers:

As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), Hillsborough County Sexual Abuse Intervention Network (SAIN) would like to take this opportunity to express our general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current proposed guidelines. SAIN is a collaboration of volunteer professionals working to reduce the incidence of sexual abuse in Hillsborough County, Florida through identifying, referring and supervising youth with sexual behavior problems.

Application of the guidelines to youth is contrary to the research, including research sponsored by the U.S. Department of Justice. The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth. According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[1] In addition, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). 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.[2]

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior even when assaultive not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

Application of the guidelines to youth will interfere with effective treatment and rehabilitation. SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate children, 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.

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.[3] The stigma that arises from community notification serves to exacerbate the poor social skills many juvenile offenders possess,[4] destroying the social networks necessary for rehabilitation.[5]

SORNA as applied to youth is not in accord with the Act's public safety objective of protect[ing] the public from sex offenders and offenders against children, in that it will expose these youth to adult offenders who have not sought or benefited 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 adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

The guidelines should allow for judicial discretion in cases of youth adjudicated as juveniles. If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[6]

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender. States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act

while helping youth in treatment and innocent family members maintain someprivacy.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide to be registered in one or both of the parents' names.

Similarly, the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment. Similarly, the mandates and restrictions associated with the Guidelines will impact not only the youth, but the entire family, particularly in terms of where the family is permitted to live, e.g., prohibitions against living within so many feet of a school or a park.

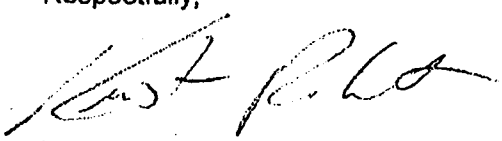
Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

States that create and maintain juvenile registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

In conclusion, your entity supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,



Kristina Roberts, M.S.

SAIN Coordinator of Hillsborough County

[1] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report; available at <http://www.ojjdp.ncjrs.org/>http://www.ojjdp.ncjrs.org/.

[2] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[3] Freeman-Longo, R.E. (2000). Pg. 9. Revisiting Megan=92s Law and Sex Offender Registration: Prevention or Problem. American Probation and Parole Association. <http://www.appa-net.org/revisitingmegan.pdf>http://www.appa-net.org/revisitingmegan.pdf.

[4] 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.

[5] Ibid.

[6] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

**Rogers, Laura**

**From:** [redacted]

**Sent:** Friday, July 20, 2007 9:33 AM

**To:** GetSMART

**Subject:** Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement

July 31, 2007

VIA ELECTRONIC AND FIRST-CLASS MAIL

Laura L. Rogers, Director
SMART Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

Dear Ms. Rogers:
As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), the Your Entity takes this opportunity to express our general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current Proposed Guidelines. Give a brief description of your entity; its purpose, function and make-up; the reasons underlying your interest in youth and how SORNA applies to youth.

Application of the Guidelines to Youth is Contrary to the Research, Including Research Sponsored by the U.S. Department of Justice
The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth.
According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[1] In addition, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even thought the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.[2]

The Center also found that youth are more

responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior even when assaultive not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

Application of the Guidelines to Youth Will Interfere with Effective Treatment and Rehabilitation
SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate children, 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.

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.[3] The stigma that arises from community notification serves to exacerbate the poor social skills many juvenile offenders possess,[4] destroying the social networks necessary for rehabilitation.[5]

Application of the Guidelines to Youth Will Put Youth at Risk of Exploitation

SORNA as applied to youth is not in accord with the Act's public safety objective of protect[ing] the public from sex offenders and offenders against children, in that it will

expose these youth to adult offenders who have not sought or benefited 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 adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[6]

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and

instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender. If your state allows for judicial discretion, talk about it: what criteria does the judge use; can the judge reverse him or herself at a later point; are their any cases in which the judge does not have discretion; etc.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide to be registered in one or both of the parents' names.

Similarly, the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

In its efforts to support families as the fabric of strong communities, the federal government

must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on= children and families who need and can benefit from appropriate treatment. Similarly, the mandates and restrictions associated with the Guidelines will impact not only the youth, but the entire family, particularly in terms of where the family is permitted to live, e.g., prohibitions against living within so many feet of a school or a park.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

If your state has a Juvenile Registry that is less punitive and supports both rehabilitative and public safety concerns, talk about it: who has to register; who decides who has to register; what information do registrants have to provide; how often to they have to update the registry; how is this information used; who has access to the information and for what purpose; how long is the registration period; etc.

States that create and maintain juvenile registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

Conclusion

Your entity supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,
Deborah Laskowski, LCSW

Tampa, Florida

[1] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report; available at <http://www.ojjdp.ncjrs.org/>http://www.ojjdp.ncjrs.org/.

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[4] 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.

[5] Ibid.

[6] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, July 19, 2007 10:36 PM
**To:** GetSMART
**Subject:** SORNA

Bay Area Sex Abuse Treatment Center

July 19, 2007

VIA ELECTRONIC AND FIRST-CLASS MAIL

Laura L. Rogers, Director
SMART Office, Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531
Email: getsmart@usdoj.gov

Re: OAG Docket No. 121--Comments on Proposed
to Interpret and Implement the
Sex Offender Registration and Notification Act (SORNA)

Dear Ms. Rogers:
As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), I want to take this opportunity to express my general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current Proposed Guidelines. I run a program that is designed to evaluate and treat both juvenile and adult sex offenders. Many of the juveniles that I work with are young and most have been sexually abused themselves.

**Application of the Guidelines to Youth is Contrary to the Research, Including Research Sponsored by the U.S. Department of Justice**

The research, including research sponsored by the U.S. Department of Justice, does not upport the application of SORNA to youth. According to the National Center of Sexual Behavior of Youth (NCSBY), [a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center], juvenile sex offenders

engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[1] In addition, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even thought the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.[2]

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior even when assaultive, do not pose the same threat in terms of duration or severity to public safety as do adults. All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

**Application of the Guidelines to Youth Will Interfere with Effective Treatment and Rehabilitation**

SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

Youth implicated by the Act have not been convicted of a criminal offense by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent. By virtue of that adjudication, they have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a devastating effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate children, parents will most likely 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.

Public registration and community notification requirements will 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.[3] The stigma that arises from

community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess,[4] destroying the social networks necessary for rehabilitation.[5]

**Application of the Guidelines to Youth Will Put Youth at Risk of Exploitation**

SORNA as applied to youth is not in accord with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children," in that it will
expose these youth to adult offenders who have not sought or benefited 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 adjudicated youth in any community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others who still engaging in sexually inappropriate and abusive behavior.

**The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles**

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

All 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[6]

If a youth is being adjudicated within the juvenile court system, the state legislature,

the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis, subject to certain criteria.

For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System**

If the Attorney General persists that youth adjudicated within the juvenile court system

register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number of the youth will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide to be registered in one or both of the parents' names.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that

unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment. Similarly, the mandates and restrictions associated with the Guidelines will impact not only the youth, but the entire family, particularly in terms of where the family is permitted to live, e.g., prohibitions against living within so many feet of a school or a park.

States that create and maintain juvenile registries such as the one described above should
be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**Conclusion**

I support efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, I believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short-and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways outlined above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and I trust that my comments will be given serious and thoughtful consideration. If I can answer any further questions, please contact me at 410-879-2470.

With regards,

Carol A. Deel, MS, LCPC, LCMFT
Director

[1] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency

Prevention, (2001). Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report; available at <http://www.ojjdp.ncjrs.org/>http://www.ojjdp.ncjrs.org/.

[2] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[3] 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

[4] 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.

[5] Ibid.

[6] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:52 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG docket # 121

**Attachments:** SORNA.doc

SORNA.doc (36 KB)

-----Original Message-----
From: Gary Hook [redacted]
Sent: Tuesday, July 31, 2007 5:15 PM
To: GetSMART
Subject: Re: OAG docket # 121

To: Laura Rogers

See attached letter regarding comments on proposal to implement SORNA.

Gary Hook
[redacted]

July 31, 2007

Laura L. Rogers, Director
SMART Office-Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)

Dear Ms. Rogers:

As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), I would like to express my general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and my particular concerns with the current Proposed Guidelines.

Application of the Guidelines to Youth is contrary to current research, including research sponsored by the U.S. Department of Justice, which does not support the application of SORNA to youth. According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior. In addition, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). 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.

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior-even when assaultive-do not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

It cannot too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment. It would make more sense to ensure that appropriate treatment was available regardless of where the child or juvenile lives.

SORNA as applied to youth will have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate children, 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. This clearly is counter intuitive to promoting community safety.

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. 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. Clearly this is not in the best interest of community safety.

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 adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide to be registered in one or both of the parents' names.

Similarly, the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

I support efforts to hold offenders accountable, protect vulnerable populations, promote victim's rights and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, I believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the

short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways articulated above. Research has shown that over supervision of lower risk abusers only makes the situation worse not better. We become part of the problem not part of the solution.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Gary Hook
[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:01 AM
Rosengarten, Clark
**ect:** FW: OAG Docket No. 121 Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification ACT (SORNA) regarding juveniles

-----Original Message-----
From: Richard B. Krueger, M.D. [redacted]
Sent: Monday, July 30, 2007 4:28 PM
To: GetSMART
Cc: Alisa Klein; Meg Kaplan; Richard Krueger
Subject: Re: OAG Docket No. 121 Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification ACT (SORNA) regarding juveniles

Dear Ms. Rogers:

As the United States Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA) we would like to take this opportunity to express our general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current proposed guidelines.

We have worked with juvenile offenders for over 20 and 15 years, respectively, conducting research, evaluations, and treatment.

Research does not support the application of SORNA to youth. The recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%) and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event.

Application of the guidelines to youth will interfere with effective treatment and rehabilitation, as it removes confidentiality and a rehabilitative emphasis.

Youth implicated by this act have not been convicted of a criminal offense. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment.

The guidelines should allow for judicial discretion in cases of youth adjudicated as juveniles.

If the Attorney General insists that SORNA be applied to youth adjudicated within the juvenile court system, the department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

The guidelines should waive public registration and community notification requirements for youth adjudicated within the juvenile court system.

Alternatively, the guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma, and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

We support efforts to hold offenders accountable, protect vulnerable populations, and improve the overall public safety for communities access the nation.

However, we believe that the guidelines as currently written negatively impact the short- long-term rehabilitation of youth adjudicated within the juvenile court system. We the Attorney General to limit the application of these guidelines to juveniles, as set forth above.

Sincerely,

Reg S. Kaplan, Ph.D.

Director

Associate Clinical Professor of Psychology in Psychiatry Columbia University, Department of Psychiatry College of Physicians and Surgeons

[redacted]

Richard B. Krueger, M.D.

Medical Director
Sexual Behavior Clinic
New York State Psychiatric Institute
Columbia University Department of Psychiatry
1051 Riverside Drive, Unit #45
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Associate Clinical Professor of Psychiatry Columbia University, Department of Psychiatry
College of Physicians and Surgeons

Associate Attending Psychiatrist
Department of Psychiatry
New York-Presbyterian Hospital

[redacted]

E DO NOT EVEN IN THE LEAST KNOW THE FINAL CAUSE OF SEXUALITY. THE WHOLE SUBJECT IS IDDEN IN DARKNESS--CHARLES DARWIN 1862.

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:53 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121 - SORNA Comments
**Attachments:** SORNA comments.doc

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**From:** Deaett, Mary [mailto:Mary.Deaett@state.vt.us]
**Sent:** Thursday, July 26, 2007 7:38 AM
**To:** GetSMART
**Subject:** OAG Docket No. 121 - SORNA Comments

Comments also send by First Class Mail.

Robert Sheil, Esq.
Juvenile Defender
Office of the Defender General
6 Baldwin Street, 4th Floor
Montpelier, VT 05633-3301
(802) 828-3168
(802) 828-3163 (fax)
Bob.Sheil@state.vt.us

July 26, 2007

**VIA ELECTRONIC AND FIRST-CLASS MAIL**

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:

My name is Robert Sheil and I am the supervising attorney in the Vermont Office of the Juvenile Defender. Our office would like to take this opportunity to comment on the Proposed Guidelines that the U.S. Department of Justice is considering with regard to how best interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA). Our office, for the policy reasons set forth below, is opposed in general to the application of SORNA to youth who are under the jurisdiction of the juvenile court system. We are also particularly concerned with certain aspects of the Proposed Guidelines as noted below.

The Vermont Office of the Juvenile Defender is an office within the Office of the Defender General. The Office of the Defender General is the entity in Vermont that provides public defender representation. The Office of the Juvenile Defender provides ongoing post-dispositional legal representation to children and youth who were the subject of petitions filed in juvenile court alleging that they were delinquent, abused, neglected, abandoned, or unmanageable and who were placed in the custody of the Commissioner of the Department for Families and Children as a result of those proceedings. Our office also provides representation to children who are placed in Vermont's sole detention center, provides training to Guardians ad Litem, and offers testimony before the Legislature on proposed legislation relating to juvenile justice and child welfare issues. I, personally, sit on a number of standing committees that address juvenile justice issues.

**Research , Including that Sponsored by the U. S. Department of Justice, Indicates that Inclusion of Youth in the Application of the Proposed Guidelines is Contrary to the Basic Tenets of the American Juvenile Justice System**

The application of SORNA to youth is contraindicated by a large body of research, including research sponsored by the U.S. Department of Justice.

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[1] In addition, the recidivism rate among juvenile sex offenders is substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact over 90% of youth arrested for a sex offense are never rearrested for another

sex offense, even though the youth may be arrested for other non-sex offenses typically related to juvenile delinquency.[2]

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

For these reasons it is not good public policy to include in public sex offender registries for periods of 25 years to life youth adjudicated in juvenile court.

**The Effective Treatment and Rehabilitation of Youth will be Compromised by the Application of the Proposed Guidelines to Them**

The application of SORNA to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It is imperative to keep in mind that youth implicated by the Act have not been convicted of any criminal offense. States' legislatures and prosecuting authorities have affirmatively acted to distinguish juveniles committing delinquent acts from adults committing criminal acts. These children have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior without being subjected to both the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification, adjudication and proper treatment of youth who exhibit inappropriate sexual behavior. Parents, rather than recognizing the value to their child of holding him or her accountable, 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.

In addition, public registration and community notification requirements can complicate the treatment and rehabilitation of these youth. Youth required to register have been known to be harassed at school, forcing them to drop out.[3] The stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess[4] destroying the social networks necessary for rehabilitation.[5]

**The Guidelines, if Applied to Youth, Will Place Youth in Harm's Way and Pose a Much Greater Risk of Exploitation**

If SORNA is applied to youth it will expose those youth to adult predators who are untreated or have not been rehabilitated by treatment. This is in direct conflict with the Act's

public safety objective of "protect[ing] the public from sex offenders and offenders against children."

Pedophiles and other adult sex offenders, who exploit and abuse youth will be much more likely than the general public, to access the registry via the Internet and identify adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

**At a Bare Minimum the Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles**

If the Attorney General persists in his belief that SORNA be applied to youth adjudicated solely within the juvenile court system, the Department should allow judges to exercise discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[6]

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has taken or retained jurisdiction argues against mandated and indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender.

Those states that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**Public Registration and Community Notification Requirements Should not be Required for Youth Adjudicated within the Juvenile Court System**

In the event that the Attorney General continues to insist that youth adjudicated within the juvenile court system be required to register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry. Access to such a registry by the relevant authorities but not by the general public would be sufficient to protect the public safety and victims. This type of registry would allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA if applied to delinquent youth will disrupt families and communities across the nation because SORNA stigmatizes not only the youth, but the youth's entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth will be required to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth will be required to provide will be the registration information for any vehicle owned by one or both of the youth's parents.

For like reasons the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

It is essential that the federal government must be vigilant in its efforts not to promulgate public policy that unnecessarily creates or exacerbates tensions within the family home. This is critical in supporting families and their importance in creating strong communities. It is counterproductive to formulate public policy that foments tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

When the Vermont Legislature discussed and debated proposed legislation in 1996 that eventually established a sex offender registry in Vermont there was a decision made by the legislature to exclude from required registration those youth who were adjudicated delinquent of a sexual offense in juvenile court as opposed to convicted in adult (criminal) court. However, any individual, including all children, against whom an allegation of sexual abuse has been substantiated after investigation have their names placed on a child abuse registry even if a delinquency is not filed in juvenile court or a criminal charge is not filed in adult court.

This registry is accessible to prosecutors, the attorney general, certain department commissioners and to employers if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment, or supervision of children or vulnerable adults. The employer may submit a request concerning a current employee, volunteer, or contractor or an individual to whom the employer has given a conditional offer of a contract,

volunteer position, or employment. The request shall be accompanied by a release signed by the current or prospective employee, volunteer, or contractor.

In addition, there are another two separate statutory provisions in Vermont law that specifically provide notice regarding delinquent youth who have been adjudicated for any delinquent act that involved any sort of sexual abuse, and these, provide protection for the public. Under 33 V.S.A. §5529g(4) a victim of a sexual offense may request to be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility.

There is also an exception to the confidentiality of juvenile court records, found in 33 V.S.A.§ 5536(b) and (c) which mandates the family (juvenile) court to provide written notice within seven days of a delinquency adjudication involving sexual abuse as well as certain other listed crimes, to the superintendent of schools for the public school in which the child is enrolled or, in the event the child is enrolled in an independent school, the school's headmaster. This notice is required to contain a description of the delinquent act found by the court. 33 V.S.A. § 5536a(d).

Both of these statutory schemes provide the type of public safety protections that are the focus of SORNA and comply with the essence of the act.

States that create and maintain child abuse registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**Conclusion**

The Vermont Office of the Juvenile Defender has always supported and will continue to support efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for all communities and their citizens. However, for all of the reasons stated above, we believe that the Proposed Guidelines that have, at present, been promulgated by the Attorney General fail to take into account the inherent differences between adolescents and adults and fail to recognize the growing body of knowledge regarding recent discoveries in the area of adolescent brain development. The Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways discussed above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration. May we thank you in advance for your kind consideration and attention to this matter.

Respectfully,

Robert Sheil, Esq.

Vermont Juvenile Defender

[1] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report; a*vailable at http://www.ojjdp.ncjrs.org/.

[2] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[3] 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.

[4] 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.

5 Ibid

[6] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

**Rogers, Laura**

**From:** DCox@ESD.WA.GOV
**Sent:** Thursday, May 31, 2007 7:58 PM
**To:** GetSMART
**Subject:** My Opinion
**Attachments:** Fw When Worlds Collide.htm

It is my opinion that all of these Sex Offender laws are lumping all sex offenders into one group which is pure asininel There are different degrees of offense from first time offense to repeat offenders and the punishment should NOT be the same for first time offenders. Just take a look at the attachment to see what happened to one man that created a law that came back to haunt him. Shows that anger and good common sense do not have a thing in common. Don't label all sex offenders because I personally know people that have never, ever repeated their crime and have turned their lives over to our Lord and Savior. Be very, very careful how you ruin lives with your anger and ignorance.

Diane Cox
[redacted]

----- Original Message -----
**From:** Buffy
**Sent:** Wednesday, May 30, 2007 7:39 PM
**Subject:** When Worlds Collide

# When Worlds Collide

http://www.americanchronicle.com/articles/viewArticle.asp?articleID=28315

Amanda Rogers
May 30, 2007

Cofucius once said, "Before you embark on a journey of revenge, dig two graves."
On February 24, 2005, 9 year old Jessica Lunsford went missing from her Florida home which she shared with her father, Mark and her grandparents. She was later found murdered, her body wrapped in garbage bags, hastily buried just a few yards from her own home. Her killer, John Evander Couey, was convicted earlier this year for the rape and murder of Jessica and has been sentenced to death. Mr. Couey was a registered sex offender with a 23 year long criminal history for a variety of offenses, from DUI, to burglary, unlawful sexual contact with a minor, and just about everything in between. He was a homeless, jobless, drug abusing wanderer with absolutely nothing left to lose. He had asked for help long before killing Jessica, but he never got it.

After his daughter's death, Mark Lunsford took to the streets demanding harsher sentences and punishments for registered sex offenders, stating "I can't get my hands on the guy that murdered my daughter so I've made it my job to make the rest of these sexual offenders and predators' lives miserable, as miserable as I can."

He quickly established the Jessica Marie Lunsford Foundation, collecting contributions to facilitate his lobbying efforts all across the country. As of this writing 30 states have now passed some version of "Jessica's Law", a law named in her memory.

Unfortunately, Mr. Lunsford was so blinded by his anger and rage that he may have inadvertently bit off his nose despite his face as his very own son now stands to suffer the wrath of the litany of ill thought out, punitive, and vengeful laws. Laws which, for the Lunsford family have now come full circle.

On May 18, 2007 Joshua D. Lunsford age 18, son of Mark Lunsford and brother of Jessica Lunsford, was arrested in Clark County Ohio on a felony charge of unlawful sexual conduct with a minor. He has been released on $5,000.00 bond. The charge stems from an incident involving his girlfriend who is 14. The legal age of consent in Ohio is 16.

Court documents reveal what countless others across the nation do, that Joshua and his girlfriend are nothing more than a modern day Romeo and Juliett. Joshua did not force himself upon this young girl, she consented (albeit illegally). It is apparent that, for whatever reason, the young girl's parents did not approve of Joshua. They warned him on numerous occasions to stay away from their daughter and had threatened that if he continued to come around they would press charges because their daughter was in fact a minor.

If convicted of the felony charge, Joshua Lunsford will not only face many years in prison, but also life as a registered sex offender. He will bear the same label as John Couey, the monster that murdered his little sister Jessica. He will also have to bear the burden and consequences of the sex offender legislation that his own father, Mark Lunsford has fought so very hard for. The road to hell is paved with good intentions. This has to be a wake up call of extreme magnitude for Mark Lunsford and my heart goes out to him. He must know that his son's life is forever ruined because he will be forced to pay the "collective" price for everyone's sex crimes, including

John Couey's, instead of simply his own. Perhaps while Mr. Lunsford still has the spotlight he can draw attention to this grave disparity in sex offender laws and punishment. While it may be too late to save little Jessica, he might still have a chance at saving his son. It would certainly be a step in the right direction and one that is long overdue.

While I don't condone or advocate teen sex, I do consider myself a realist. I have a 14 year old daughter too and can tell you first hand that teens do in fact have a sex drive and some of them do and will have sex regardless of whether or not it is legal, against their parents wishes, or what is in their best interests. This is nothing new or deviant.

Teens have been having sex since time began and in the not too distant past it would be considered more abnormal than not if a young woman reached her 18th birthday and was not married.

It is hard to believe that here in the 21st century we are still resorting to "shaming" and "collective" forms of punishment which is what registering as a sex offender is really all about, and incarcerating people for consensual activity. Lumping people together under one stereotypical label which more often than not doesn't even begin to reflect the "crime" for which one was actually guilty of is a crime in and of itself..

If convicted, Joshua will join a growing number of thousands of young men and women across the nation that bear the child molester label (i.e. Registered Sex Offender). He will have to abide by residency restrictions, and registration requirements, and may even be forced into homelessness, joblessness, and hopelessness. Why? How will doing that to him, like we have so many others before him, make our world a better or safer place? It is high time we, as Americans, pull our heads out of the sand and say enough! Don't wait until it happens to your child. Think it can't? I'll bet Mark Lunsford used to think the same thing up until a few weeks ago.

Amanda Rogers
5/29/2007

**Rogers, Laura** 4 wks

**From:** [redacted]
**Sent:** Thursday, July 05, 2007 4:13 PM
**To:** GetSMART
**Subject:** DocketNoOAG121

I have a concern regarding the provisions of the SORNA.

The section that deals with the "tiers" of sex offenders.
All a victim has to do is say I was forced, doesn't matter if it was true or not. That puts the offender in a "tier" III. That is registration for life. It would seem to me that a better determination, such as a psychological profile, would help to better put a person in the correct "tier". The very broad classifications are most unfair. What would happen if a sex offender, convicted of CSC 3rd degree - force, received HYTA. In our state that is Holmes Youthful Trainee Act. There is no conviction and the records are sealed. However, they still must register. Other similar cases in other states do not have to register nor do they if they received HYTA after 2004 in our state. The state should determine the length of time a person should register.

Thank you very much.

## Rogers, Laura

**From:** Kaplan, April
**nt:** Friday, July 13, 2007 8:52 PM
Rogers, Laura
**Subject:** Fw: SORNA guidelines

SORNA comment

----- Original Message -----
From: Mary_Schuman@utp.uscourts.gov <Mary_Schuman@utp.uscourts.gov>
To: Kaplan, April
Sent: Fri Jul 13 16:08:44 2007
Subject: SORNA guidelines

I suggest the first line in which talks about TIER classification being based on "substance" and not form or terminology, be reworded so it is more clear that we are basing the tiers on conduct of the offense and not what the count of conviction may ultimately have been.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Tuesday, June 12, 2007 3:59 PM
**To:** GetSMART
**Subject:** OAG Docket No121

I am writting to you today to express my concern that under the new SORNA you did not make it manditory that each state set up some type of Tier system to classify sex offenders. The failer to do so will lead to the watering down of the usefulness of the law. If a state includes all sex offenders under one classification system, the public has no idea of who on the SOR they should realy worry about. States such as Michigan have over 40,000 S.O.s on the SOR and it is like trying to find waldo on the old game of were in the world is waldo. Futhermore if you are truly interested in protecting the public you would require that this tier system be based on empirically determained risk to re -offend. Using a scientifically based risk assessments to determaine whether and individual should be placed on the registry and at what tier level. The way you have set it up now valuable law enforcement resources will be used to check on ex offenders who are of no danger to the pubic.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Tuesday, June 19, 2007 3:54 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

The following should be added to the SNORA. A way for a tier II to be reevaluated from a tier II to a Tier 1. If truly we are interested in protecting the public from these sex offenders then no good is shown by keeping a person at a higher Tier level then they really are. If you do that you are opening up for the courts to look at this as additional punishment and not a safety measure as the court ruling Smith V. Doe (01-729) 538 US 84 (2003) says it is set up to be.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, June 20, 2007 12:56 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

I would like to see the following added to the law. Each state will within three (3) years of enactment of the SONRA be required to set up a tier system of placing sex offenders level of danger to the public on the public web sight. This system will include but not be limited to the following, a empirically based risk factors to show who the high risk offenders are. Tier 1 offenders will be of the least risk and the information on them will not be on the public sex offender registry. Tier 2 will be moderate risk and the states may determine if they are to be included on the public registry. Tier 3 offenders will be high risk offenders and in keeping with the reasoning for having a Sex Offender Registry, the information on this tier level offender will be mandatory on the public sex offender registry and the SONRA.

The reasoning here is that if we are looking to get those high risk offenders on the National Registry as the United States Supreme Court declared that the registry was never intended to be used as a punishment for low - risk offenders. (Smith V. Doe (01-729) 538 U.S. 84 (2003). Then removing those of low risk will be in line with what the court was saying. Furthermore if we put all levels of offenders on the registry, it will water down the usefulness of the registry in the publics mind. It will also make it harder for the public to pick out a sex offender if they live in an area that has a lot of sex offenders in it. By just having the high risk offenders on the registry that will help limit the number of faces and locations offenders live, the public will have to recall.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Friday, June 22, 2007 9:26 AM
**To:** GetSMART
**Subject:** OAG Docket No121

V classifications of Sex Offenders.

(Small print is copyed from the OAG Docket;) For example, tier I includes a sex offender whose registration offense is not punishable by imprisonment for more than one year, a sex offender whose registration offense is the receipt or possession of child pornography, and a sex offender whoes registration offense is a sexual assault against an adult that involves sexual contact but not a completed or attempted sexual act.

**Problem:** If you read the above as you have written it a Tier 1 offender would include a person who is in possession of child pornography. And yet a person who is convicted of physical contact by touching trough the clothing of an adult will not be able to be classified as a Tier 1 under the SONRA as written. The reason, in some states the crime although a misdemeaner, it is punishable by more than one year in jail.

Recommendations: Adopt a tiered approach to identify **high risk** offenders founded on empirically based risk factors. This would show that the SNORA is not trying to punitive. It would also set up a system that would identify the high risk offenders, and is that not what you really want to do. Certainly you are not trying to set up a registry that has a lot of people on it just to set up a large data base.

At a minimum the way to correct this is to change the wording from any crime that is less than one year in Jail is a Tier 1; to any crime that is classified as a misdemeanor is a tier one crime.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, June 28, 2007 1:58 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Under the SORNA as your office has written it, the same law broken, will be a Tier1 in one state while being a Tier 2 in another state. I understand that the Tier system is not mandatory in any state however under the SORNA you are trying to standardize the sex offender registry. One way to do that would be to make any misdemeanor conviction a tier 1. As stated above if you go with the wording as you have it now, the SORNA will be inconsistent. In that in some States a misdemeanor is any crime you can get less than one year in jail for. In other states a misdemeanor includes any crime so set by the state as a misdemeanor that is punishable by two years or less in prison.

Another way this issue could be cleared up would be to go to a tiered approach to identify HIGH-RISK offenders founded on empirically based risk factors. This would go to the real meaning of the SORNA and protect the citizens form high-risk offenders. This would also let law enforcement use its resources to track the high-risk predators, instead of using law enforcements precious resources tracking low-risk offenders. This would go to the hart of the Alaska V J.Doe case, in that as ruled the sex offender registries were not intended to be punitive to low risk offenders.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Friday, June 29, 2007 1:58 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Sec III (2)-(4) Classifications of sex offenders. The SORNA does not require that state set up classifications of sex offenders. The SORNA should require states to set up a tiered system of classifications of sex offenders. This should be done using testing that is available and will show what danger the offender is to the public. This would assist the public and the police as to who they should be watching out for. The Tier system should be a three level system with the following. Tier I offenders being the least likely re-offend. Offenders in this tier level should not be posted on the public sex offender registry or the SORNA. Tier II would be those who tested to be of some risk to re-offend and the availability of offender information on the internet should be limited to the name, photo, location were the offender lives and all sex crimes the offender has been convicted of, and the dates of those convictions. Tier III should include those that are the most likely to re-offend and information about this tier level offender would not be limited as to what was posted on the internet about this offender. This would fill the purpose of the sex offender registry and keep the public informed of those who are a danger and the most likely to re-offend.

The Tier level should include a system that would let those in Tier II and in tier III to request retesting at the cost of the offender to be reevaluated for a tier of lower danger level to the public. Furthermore a petition process for removal form state and federal registries if they are tested and found to be of no chance of re-offending at all should be available to anyone on any tier level. No public good is done by keeping people on the registry that are of no threat to the public. And to further stigmatize and isolate low - risk or rehabilitated people, exposing them to harassment , and depriving them of the normal opportunities for education, employment, and housing. Furthermore by keeping them on registries we are wasting Law Enforcement resources tracking and monitoring these low risk or no risk offenders. Our best use of precious Law Enforcement resources would be to monitor high-risk predators. The use of a system like I am suggesting would also be more in line with the supreme courts ruling Smith V Alaska. It would also show that this Attorney General is not trying to be punitive in the rules he is issuing, but is trying to be prudent and fair.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, July 09, 2007 2:35 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

SEC.III (2) - (4) Classification of Sex Offenders. The SO Classification does not require states to classify sex offenders on a Tier System it does however lay out what it does want sex offenders classified as to how long they will have to stay on a sex offender registry. Tier I 15 years or 10 if no crimes committed Tier II 25 years on a sex offender registry with no possibility of being reclassified to a Tier I offender. Tier III life time registry required with no availability of ever being lowered to another lower tier level. And states may be harder on sex offenders because this is just the floor and their is no ceiling as to how hard or placing more restrictions on sex offenders than the floor that is required in the SONRA. IE if a person would normally fall in a Tier I status the state may instead place them in a Tier II or Tier III status because this would meet the requirement of the floor set by the SONRA of 15 years or more of registration in a Tier I.

Furthermore if one reads what the SORNA recommends a Tier I as stated in the SONRA; child pornography possession of would under the guide lines of the SONRA allow the states to place this type of conviction in a Tier I. And yet if one reads on an adult who touches another adult though clothing the victim has on; with or without force in many states is a classification of a Tier II under the SONRA as written, as in many states this is a misdemeanor that will get a person more than one year in jail. I find it very troubling that this is written this way. The SONRA should have realized that when setting up the floor for placing people on Tier levels, the best way to accomplish this would have been adopt a tiered approach to identify 'high-risk' offenders founded on empirically based risk factors. The system the SONRA is recommending will confuse the public and will identify so many low risk offenders, the public will not find that this is of any use at all. Also law enforcement will be forced to use precious resources tracking low-risk offenders rather than monitoring **high-risk predators.** The SONRA is setting up a sex offender registry that will at a minimum have over 600,000 names on it and the number of names on it is a number well top way past that point with no end in sight. So what the SONRA is asking the public to do is pick out those on the sex offender on the registry that are of the most danger to the public, without any mandatory guide lines from empirically based risk factors. So what is being asked of the public is to pick out from over 600,000 names and photos the very small number that are a real danger to them. This is like the old game of Were in the World is Waldo. In that game it was almost imposable to find waldo among a little over 1,000 photos that were alike. Given the boundary's the U.S. Attorney Generals office has set up, one has to question is the A.G. just trying to be harder on sex offenders than the next guy or is he really trying to protect the public? I will not attempt to answer that one because one only has to read the rules as written to see what the real motive is. The SNORA as written does not let a sex offender petition for a new threat level or tier level, nor does it allow for a reasoned, circumspect petition process for removal form state and federal registries. No public good is done by keeping people on the registry that are no risk or low risk to the public. The only purpose for keeping them on the registry is so that they can be continually stigmatized, isolated, harassed and depriving them of the normal opportunities for education, employment, and housing.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, July 11, 2007 12:01 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SNORA as written does not require states to set up a Tier system of any type, does require the states to follow the general guide lines of what the SNORA has determined crimes committed would then fall into a general guide line of a Tier system.

Tier I duration of required time on the SNORA is 15 years. With some possibility of being removed after (10) ten years if conditions are met. This is a very good crime prevention measure that will put the work on the sex offender not to re-offend and if they stay crime free they can be removed from the registry sooner. This is good for the public, in that the offender who reaches this goal has not committed another crime and has not cost the tax payer anymore money.

Tier II Duration of required time on the SNORA is 25 years. This level has no crime prevention measures in it. And furthermore a Tier II has no way to became a Tier I even if they do not do any more crimes. Also as by way of example the SNORA lets a sex offender who has been caught and convicted for having child pornography be classified as a Tier I offender. And yet Tier II offenders will include those who are convicted of a misdemeanor that is punishable by more than one year in jail. Many states including Michigan have misdemeanors that are punishable by more than one year in jail. CSC 4th the touching of a person by another even if the touching is done though clothing; in Michigan this is is a misdemeanor punishable by up to two years in jail. So what I am trying to say is that the SNORA is very inconsistent in how the Tier levels are arrived at.

Tier III Duration of required time on the SNORA is lifetime. This one offers no chance to have your tier level changed. This tier level has no crime prevention tools in it at all. This one will cause many sex offenders to have no hope at all, and they will decide to keep offending. In that they will have little chance of getting any employment with this classification they will re-offend. This will not be good for the victim, the public or the government. Far thinking would have you understand that by offering this group no hope at all you are setting them up to repeat crime. If you were to give this group hope as I am suggesting below, you will probably save more children and adults from being the victim of a crime.

I am suggesting that all Tier level offenders should have an opportunity to be re evaluated to a lower tier level. This should be done so that the sex offenders will have a goal to work toward, that they know if they fail not only will they have to spend time in jail, but their status of a sex offender will remain on the SNORA for a longer time frame. With what I am suggesting the SNORA will reach its goal of having those that are the most high risk predators on it. At the same time it will let law enforcement use the precious resources tracking and monitoring high risk offenders and not wasting those resources on low risk offenders.

The above can be done in a number of ways but the best would be to use a testing system that identifies individuals based on empirically based risk factors. After which the offender is placed on the tier which best shows their risk factor.

This system would cut down on the numbers of sex offenders that would be on the SNORA, but after all

is said and done is not the idea of the SNORA to protect the public from those that are at the most risk to re-offend. No public good is served by keeping a lot of people on the SNORA that are low risk or rehabilitated people, and just being stigmatized, harassed, and depriving them of normal opportunities for education, employment, and housing.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:44 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No 121

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**From:** Tim Poxson [redacted]
**Sent:** Wednesday, July 25, 2007 1:05 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SORNA as written did not include any way for a person who is in a higher tier level (II) or (III) to be assessed to a lower level. Placement on the SORNA is offense based even when a tier approach is used by a state. It is not based on te facts of the case or an emmpirically determainded risk to re-offend. Even if the sex offender has participated in, and successfully completed, sex offender treatment programs. Some sex offenders have also undergone risk assessments and determained to be low or no risk for re-offending, but will still be required to abide by the SORNA rules of placement on a tier level based on SORNA. Many states have been using scientifically based risk assessment to determine whether an individual should be place on the states registry or at what risk level. The SORNA will undo ıis, and force each state to use an out dated system that does not prove what risk a sex offender is. Some tier I (crime based) sex offenders may be more of a risk than some tier III (crime based) sex offenders. If the goal of the SORNA (ADAM WALSH ACT) is to protect the public from known sex offenders, all efforts should be made to identify which ones are the most risk to re-offend.

**Rogers, Laura** recid

**From:** JERRY BEAL [redacted]

**Sent:** Wednesday, July 25, 2007 4:42 PM

**To:** GetSMART

**Subject:** You're making a big mistake!

I have studied for over 20 years, something that TRADITIONAL psychology hasn't been studying at all. I have made myself an expert on this subject.

Non violent sex offenders are being prosecuted with no "causation" proven in the trials... as a matter of fact! And it would be on thing if this only had to do with the supposed perpetrator... buy way worse is the robbing of young minds and young emotions of their own personal truth and power. You're doing just that in coming from the premise... "the event or events or the adult person in the event or events with a youth causes the mental and emotional anguish the youth is having."

It's not! It's coming from the youth's own IMPOSED definitions and meanings, in the form of a mind context, that turns 'what happened' to a judgment ABOUT what happened. An ancient noted Roman philosopher named Epictetus said clear back in the year, 101AD... "People's minds are not disturbed by events, but by their [own] judgments ON events." I say the same thing this way... "Conditions and events often affect bodies, but conditions and events never affect our mental or emotional state of mind. Only our own beliefs and interpretations ABOUT the conditions and events are giving us our feelings and our experiences and nothing else is."

What's really happening with all of this is that we're using our own beliefs and interpretations to gain our feelings, one way or the other, and then we're blaming a condition or event for what our own interpretations are causing. This is called, "trouble making" and you're right in the middle of all of this nonsense!

Listen here... I can prove to you, that non violent sexual activities, performed by anyone with any other one... where there is no bodily harm done, does not matter at all... because it can't matter at all. You're saying that "it" matters. "It" doesn't matter, because "it" can't matter. It's our own interpretations that SEEM to make it matter, but then we're ignoring our own interpretations completely, as having anything to do with our feelings and experiences, and then we're blaming the symbol, the condition, the activity for what our own interpretations are causing.

'Do-gooder people' like those that rush to the scene of a youth being sexual with an adult and cry foul... and way much more. How else then is the youth able to experience their own personal truth and power that PROVES... "I create or mis-create all of my feelings and all of my experiences and all of the time."

YOU ARE BEING FLAGRANTLY WRONG WITH ALL OF THIS!!!! And yet you're the "justice" system. Stop lying to these little ones, please! Stop blocking and start helping these young mind and young emotions... please!

You are really making a mess of things with these lies... "events cause feelings and experiences"... when they don't and can't. I have a written manuscript with 56 short chapters to it that explains much more about this horrible thought reversal problem that virtually everyone on earth is unconsciously conspired in. I also have a website at www.eventsdontcauseexperiences.ws

ps... **Here's proof you're making a terrible mistake!**... It's never what someone else did to you, that's bothering you now. And if the deed was done 10 years ago or 10 seconds ago, it's still the same thing. It's never what someone else did to you, that's bothering you now. Instead, its what you're doing to them, that's bothering you now. And what is it that you're doing to them, where you're thinking of it as some way they've victimized you? Right now, in your own mind, and at your own choosing, you giving them a role of perpetrator and you're giving yourself

a role of victim and then you're experiencing your feelings based on your own CHOSEN mind scenario, **and that's based in the false idea, that the event caused the experience.** Meanwhile you're leaving out entirely, your own interpretation, has having anything to do with your experience. How dishonest and irresponsible is that!? It's very dishonest and irresponsible.

Please... please... please reply to this email. I have tried over a hundred times to get traditional psychology to deal with this greatest social blunder, which is also traditional psychology's fundamental flaw. Please surprise me and reply to this! But way more... **please stop lying to young minds and young emotions.** Please stop robbing them of their own personal truth and power... please!!

**Rogers, Laura** recid

**From:** [redacted]
**Sent:** Sunday, July 08, 2007 9:10 AM
**To:** GetSMART
**Subject:** Feedback re: proposed SNORA

To whom it may concern,

I applaud your efforts to continue working towards the protection of children. However, I have many concerns about the proposed SNORA. First, I'd like to know what evidence you have suggesting that monitoring sex offenders and requiring registration is effective at reducing the number of sex offenses being committed. The USDoJ reported that 94% of sex crimes are being committed by people not on the sex offender registry. In my humble opinion, knowing this means to me that the government should be spending tax payers money not on developing means for monitoring those who've already been convicted but on preventing new sex crimes. Also, is it not a violation of Civil Rights to those who've been charged, convicted and done their time to change their sentence by forcing them to now give their DNA and change their registration requirements? What kinds of problems with identity theft will ensue if you make their Social Security numbers public? Also, what is the purpose of posting their criminal histories? The justice system in the United States is supposed to be based on rehabilitation. Where is the plan for treatment of sex offenders in SNORA?

One of the problems occurring as a result of the Sex Offender Registries is that communities in which a sex offender lives are in states of mass hysteria. They think that their neighbor now is hiding in the bushes waiting to attack and kill their child. Where is the plan for public education about the facts related to sex offenders (i.e., the 5.3% recidivism rate, the education to curb the myth of "stranger danger"; the fact that at least 90% of sex offenses against children are committed by family members, etc)?

I believe this proposal is going way too far and a complete waste of tax payer money and a violation of the Civil Rights of those who are registered sex offenders. I absoluetly do not support this at all.

**Rogers, Laura**

recidivism

**From:** [redacted]

**Sent:** Wednesday, May 30, 2007 8:55 PM

**To:** GetSMART

**Cc:** [redacted]

**Subject:** Docket No. OAG 121

My comments regarding the proposed registration:

I have spent 23 of my 30 years as a therapist practicing in the subspecialty field of sexual abuse.

I'm one of the founders, and past president of the Montana Sex Offender Treatment Association from cities (in 1987). Our recidivism rates have consistently been 2% and under for decades. (Less than 1% for low-risk sex offenders)

I'm also a specialist in the treatment of sexual abuse victims.

I think registration of TRUE PREDATORS is a good idea.

Though we all share protective and emotional reactions to children being sexually abused -- (almost all my and my colleagues' work is motivated by the purpose of preventing further victims) -- this idea of registering people is an example of a law based on fear, not facts.

Emotional reactivity creates very poor policy. This proposal represents an unfortunate example of such policy.

UNFORTUNATELY, the Adam Walsh act is crafted in a way that predator is defined by the age of the victim, which in my clinical experience, appears to be more closely related to win a sex offender was abused in some way -- often sexually. This has implications for registration.

The age of the victim is not correlated in the research to risk to reoffend, so I cannot support a law that will create more victims than it will prevent. Offenders will go underground.

Registration of low and moderate risk sex offenders create a force whose impact will be to INCREASE recidivism. This statement is based on lots of research that provides evidence that increasing isolation, and decreasing access to positive based support people, housing, and jobs, etc. will have the exact opposite effect that I trust you intend.

**Research demonstrates that 93%** of sex offenders **know their victims** and their families. **They don't molest strangers.**

I have yet to have anyone explain to me how registering a low or moderate risk sex offender has ever prevented a sex offense. What these rules actually do is reinforce untrue myths about the danger of sex offenders, **unnecessarily scaring the public.**

Putting their pictures ensures increased vigilante action -- not just towards them, but victimizing their children and relatives.

This is even worse idea for adolescents.

'andating evidence based evaluations that separate sex offenders by risk level, and then using the justice stem to create an external control towards breaking any remaining denial in the low and moderate risk sex offenders has been a very rewarding experience. It would also be a much more effective way to spend taxpayer money.

With good evaluations, the decision to register a person should be based on scientific evidence that supports the possibility of victim prevention. This would pretty much limit registration to the highest risk sex offenders, and since treatment can work with many of them, there should also be a mechanism that reflects the lowering of their risk IF they respond positively to treatment.

Accurate education about the Bureau of Justice statistics on sex offenders released and is there recidivism rates (which are very low) should also accompany any registry.

Rather than play on fear, how about educating the public about what incredibly positive and effective results come from a good partnership between probation and specialized treatment providers, who have combined the best of the chemical dependency, law enforcement (polygraph use), and mental health therapy fields, have accomplished?

Wouldn't that be something?

We could register true predators, treat the majority of sex offenders who are low and moderate risk that their own expense and the community, (instead of at taxpayer expense), and create a society consistent with the redemption and accountability values that I believe most people actually have -- all while saving money!

Andy Hudak LCPC
[redacted]

**Rosengarten, Clark** assesmt tools

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 23, 2007 1:01 PM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121 (Submitted by Kelly Ward for Larry Michael Francis)
**Attachments:** Docket OAG 121.doc

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**From:** Kelly Ward [redacted]
**Sent:** Sunday, July 22, 2007 3:15 PM
**To:** GetSMART
**Cc:** [redacted]
**Subject:** Docket No. OAG 121 (Submitted by Kelly Ward for Larry Michael Francis)

July 18, 2007

Docket No. OAG 121

Public Comment on Sex Offender Registration and Notification Act
aka: Adam Walsh Act's Sex Offender Registration and Notification
or SORNA, for short

Specifically these comments refer to the National Guidelines for Sex Offender Registration and Notification which were posted May 30, 2007, in the Federal Register. Comments must be received by August 1, 2007. The Adam Walsh Act was passed July 27, 2006, which gave the states a deadline of July 27, 2007, to implement the Walsh Act in order to maintain federal law enforcement funding. Some states, in a panic to keep in favor with the Washington politicians, have gone forward with their own interpretation of the Walsh legislation, guessing at what they believe could be the final government guidelines. Any guidelines which impinge on inalienable rights must, whether federal or state, also provide recourse and remedy, including due process for defense (for example when mitigating circumstances exist or when sex offenders have been restored through treatment and no longer pose a risk to society) and equal protection (to insure that a low risk or no significant risk offender is not categorized or stereotyped with high risk or violent offenders).

The Guidelines Must Be In Keeping With The Nature of The Act

Clearly, the nature of the Act, also conveyed by the common name of the Act, is to protect our children from sexual predators. Since there seems to be a mean-spirited segment of the government that wishes to see persons with sex offenses punished, shamed and banished as long as possible, and seeks to

find another way to cause further anguish to sex offenders' lives; then surely there must be substantial evidence that these guidelines will actually protect our children, and the evidence does not show that. Historically rather there is evidence that registration and notification provides a source of information for discrimination, stigmatism, and vigilante-based attacks against offenders, regardless of their risk factors, rehabilitation, recovery, restoration, or even the actual crime (sometimes just a failure to appear in court). Perhaps the worst problem with the guidelines is that the dangerous sex offenders are driven underground and farther away from preventative treatment.

Sex offenses are deviant behaviors, but just like most other crimes the deviant behavior is a learned behavior. Just like any other learned behavior, that behavior can be retrained, re-learned, and modified through treatment. Some sex offenders, such as true-incest offenders, only have a 5% recidivism risk in the first year after discovery, and for them the risk drops to 0% after the first year, even without treatment. The behavioral modification curve shows that the recovery and restoration process for a sex offender is like any other treatment process and that the offender is finally returned to a normal state. The Guidelines allow only for a continual registration, perhaps for a lifetime, that does not take restoration into account. There are even cases where a statutory offender is now married to his "victim-girlfriend" and should be able to live a normal life without interference by government. If the guidelines adhered to the nature of the Act, then there would be provisions within them to exclude certain offenders from the initial registration, and to remove offenders from the requirement once they have met treatment benchmarks of recovery.

There are tools available to forensic psychologists to assess risk to our children based on a clinical evaluation. The guidelines should consider these assessments over a strict determination made by mean-spirited governmental agencies or vigilante groups. Simply put, if a sex offender's behavior is controlled, then they are not a threat.

Respectfully Submitted,
Larry Michael Francis, Commentor
[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, June 25, 2007 1:50 PM
**To:** GetSMART; christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

In that the Adam Walsh act (SNORA) will become law within a few years in all states. And in that the U.S. A.G. is the official rule maker of how this law will be applied. Also in that the U. S. Dept. of Justice Bureau of Justice Statistics on Recidivism is the official keeper of the records on recidivism for the U.S. government. I am suggesting that in the disclaimer and the part that every citizen that is checking a sex offender registry have to read and check a box that they have read it. That the statistics that the U.S. Dept. of Justice has on recidivism of sex offenders be posted on the opening pages of any sex offender registry in the U.S. A. That also must be checked that the person opening the sex offender registry has read it and understands it. And that a link to the U. S. Dept. of Justice Bureau of Justice web sight also should be posted. The web sight is as follows:
http://www.ojp.usdoj.gov/bjs/pub/press/rsorp94pr.htm

Reason: I am suggesting that this be added in that would help cut down on the wrong ideas about sex offenders, that they are all going to repeat a sex crime. Also it would cut down on the vigilante effects that present sex offender registry's are having on people posted on the registry. Given that the official department of the government puts sex offenders that may re-offend within 3 years of release from prison at 5.3% charged with a sex crime and 3.5% of them reconvicted of a sex crime. In that this is one of the lowest recidivism rates for all criminals with the exception of those criminals that have committed murder. It should be incumbent on the government that is requiring Sex Offender Registries, to also put out the official numbers on recidivism so help educate the public. Furthermore this will assist with the public not thinking that they are safe fully if they know were all sex offenders are. The governments own numbers show that over 90% of all sexual assaults are committed by a person well known and trusted by the victim, be that victim an adult or child, with over 50% of those being a family member. So it is important to the public and in the best interest of the government to require that all the official facts be placed on all sex offender registries within the United States. Thank You

**Rogers, Laura**

**From:** [redacted]
**Sent:** Tuesday, June 26, 2007 12:08 PM
**To:** GetSMART
**Cc:** christine_leonard@40judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

I am writing to you today about the rules that the AG's office has issued on the Adam Walsh act. I find that they are missing some very important points. The reasoning behind the SONRA is to identify sex offenders who are at high risk to re- offend. If that is the case and you are not just trying to punish offenders further, the SNORA should provide a reasoned, circumspect petition process for removal from the SNORA and state registries. A provision is needed to allow registered individuals, identified empirically as a low - risk to the community, the opportunity to petition for release fro the registry. No public good is served by stigmatizing and isolating low - risk or rehabilitated people, exposing them to harassment, and depriving them of the normal opportunities for education, employment, and housing. By leaving these low - risk offenders on the registry we are also making it harder for the public to locate which offenders are high risk and require special watching. Furthermore it goes against the original Supreme court ruling (Smith v Doe) that said that sex offender registries are not meant as punishment and should be used to protect the public from high risk offenders.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:40 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAg Docket No 121

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**From:** Tim Poxson [redacted]
**Sent:** Tuesday, July 24, 2007 1:08 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAg Docket No 121

The SORNA should include a requirement that each state have an opening page to the sex offender registry that as the reader signs off they will comply with the terms and conditions of use of the sex offender registry, and before doing the check off the reader is given some educational facts with directions to the web pages that support the educational facts on sex offenders. One such fact that should be included is that the US Dept. Of Justice Bureau of Justice Statistics on Recidivism says that " within three years of release from prison sex offenders 3.5% of them will be reconvicted of another sex crime. " This information needs to be included so the public gets some more of the facts known to the government. If sex offender registries fail to include this type of information the public is given the false idea that if they know who and were all sex offenders are, they and their family's will be safe from sexual assaults. Given that the governments own statistics show that over 90% of sexual assaults are committed by a person well known and trusted by the victim, and over 50% of sexual assaults are done by a family member, to give the public the false idea that knowing were all sexual offenders are will protect them is not good public policy. The full picture should be painted so the public does not move forward with a false sense of security.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 10:59 AM
Rosengarten, Clark; Rogers, Laura; Kaplan, April
**Subject:** FW: OAG Docket No. 121 Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification ACT (SORNA) regarding adults

**Attachments:** 20121-Home Office-Review of the protection of children from sex offenders.pdf; Shajnfeld, A. & Krueger, R-Non-Puntive Responses to Sex Offending copy.pdf; Z-Los Angeles Times- The new American witch hunt.pdf; Static-99-coding-Rule#80763.pdf


20121-Home ffice-Review of th..


Shajnfeld, A. & Krueger, R-Non...


Z-Los Angeles Times- The new A...


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-----Original Message-----
From: Richard B. Krueger, M.D. [redacted]
Sent: Monday, July 30, 2007 7:27 PM
To: GetSMART
Cc: Alisa Klein; Meg Kaplan
Subject: Re: OAG Docket No. 121 Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification ACT (SORNA) regarding adults

Dear Ms. Rogers:

A colleague pointed out that there was an editing issue with my recent e-mail to you, so please find my re-edited comments below:

I writing to offer some broad commentary on the proposed guidelines.

I have done research on and evaluated and treated adult sex offenders for 20 years.

I have evaluated several hundred offenders arrested for crimes against children using the Internet and/or involving child pornography obtained via the Internet. Additionally, I have performed risk assessments on hundreds of sex offenders for the State of New York.

Broadly speaking, I support a system of registration and tracking of individuals convicted of sex offenses who are at substantial risk of reoffense. The proposed federal guidelines are analogous to the current system of national registration of physicians who have had malpractice or disciplinary actions against them, and who, before the creation of a national physician database, could pick up and move to another state. This has ended with the national database.

I am concerned, however, that the proposed guidelines go too far in terms of public notification and in the removal incentive for individuals to not reoffend.

I am appending an article which I co-authored on the so-called "non-punative" aspects of sex offender sentencing and an op-ed that I was asked to write for the Los Angeles Times, which questions the logic of including offenders in public notification using the Internet whose only crime has been the possession of child pornography.

Additionally I am including a report that was just released by Great Britain's Home Office which examined the system of community notification existent in the United States, and concluded that a system of controlled disclosure made more sense for Britain, because public disclosure in the United States had actually been counterproductive, resulting in homelessness and authorities losing track of sex offenders.

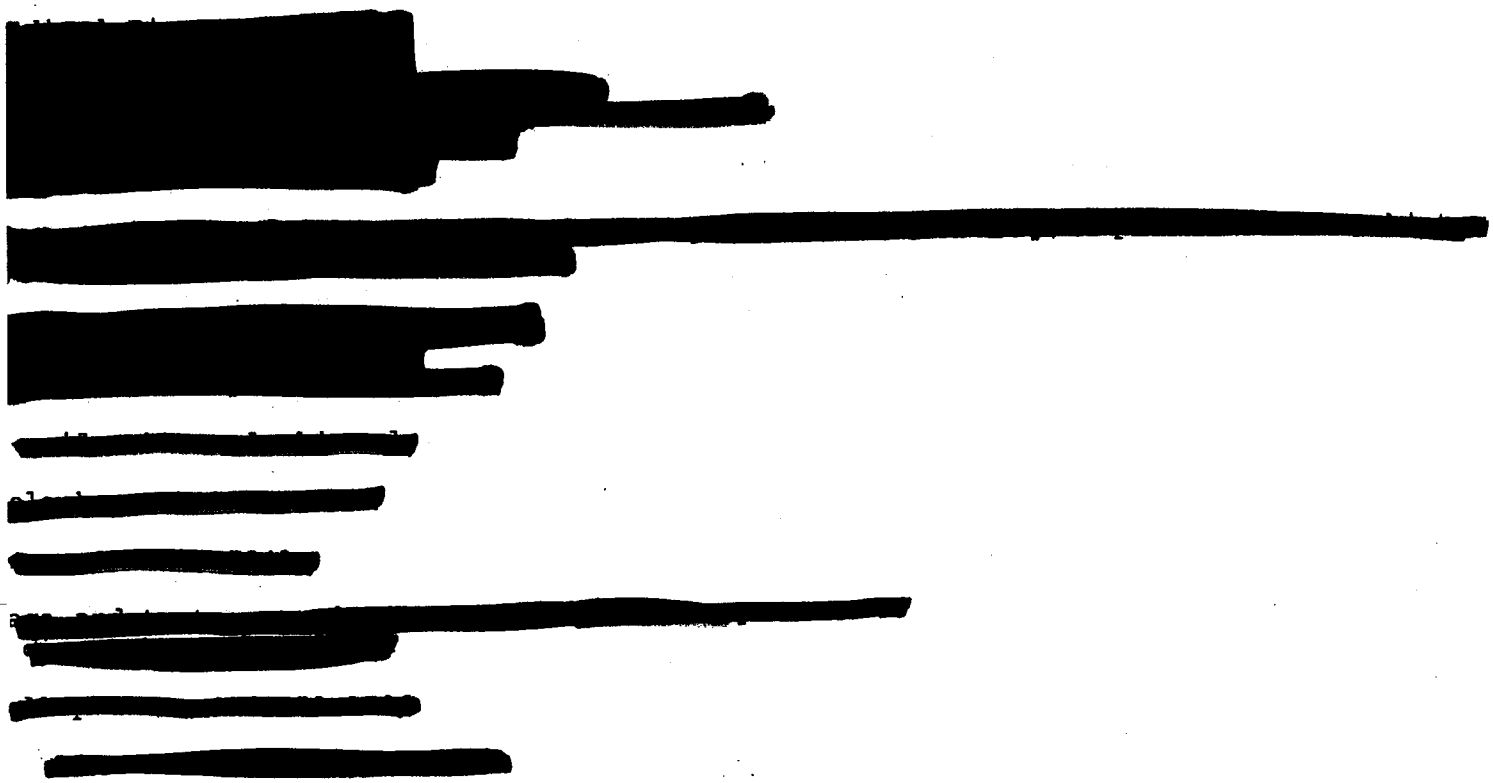
I would also suggest that better discrimination of sentencing and conditions of probation in the community should be developed which would take into account an individual's risk of sexual reoffense utilizing modern actuarial instruments developed to assess risk, and I

anada routinely, and now in New York State.

hank you for your consideration of my commentary

cerely,

ard B. Krueger, M.D.



. DO NOT EVEN IN THE LEAST KNOW THE FINAL CAUSE OF SEXUALITY. THE WHOLE SUBJECT IS IDDEN IN DARKNESS--CHARLES DARWIN 1862.

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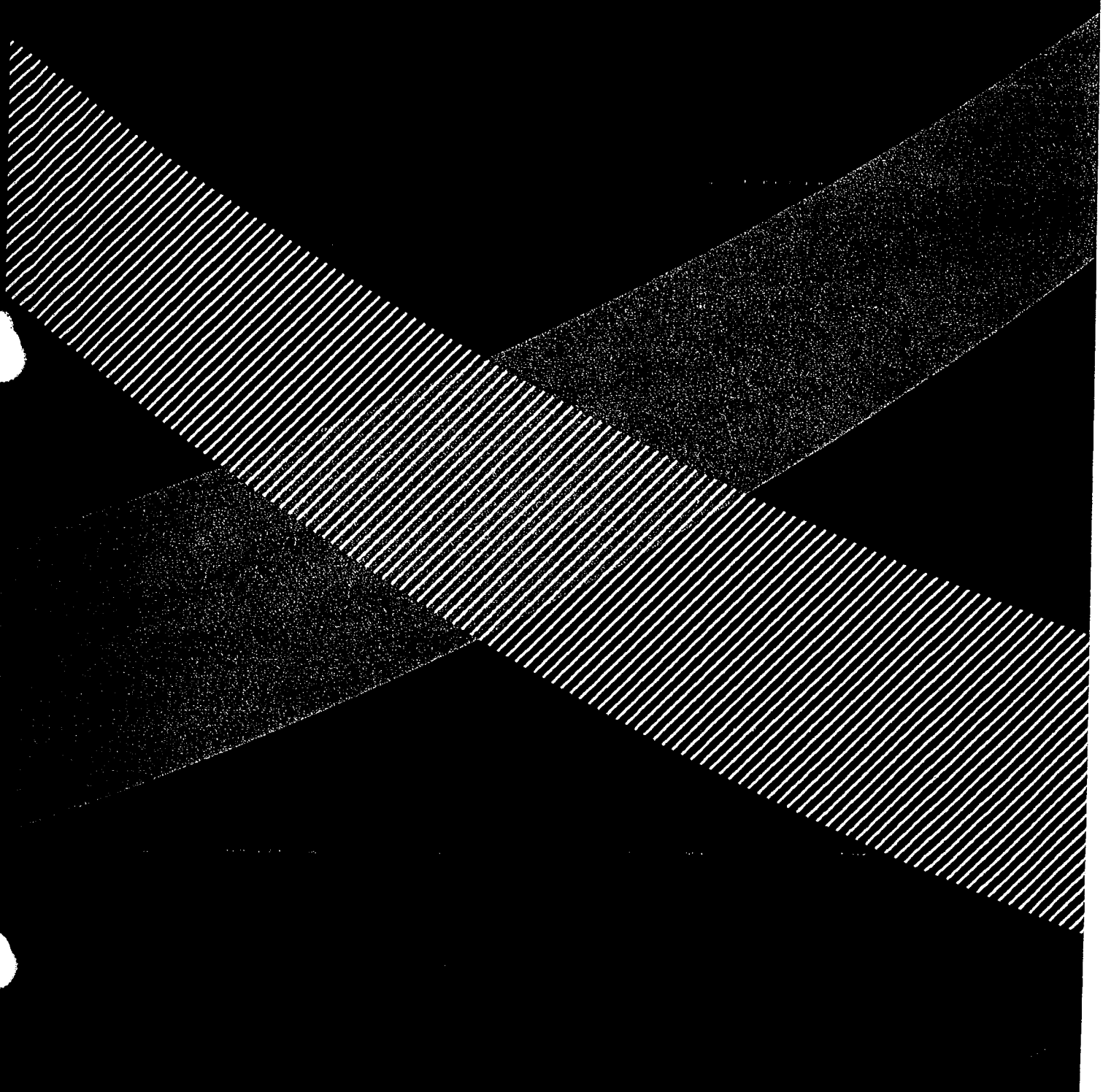
ıank you for your cooperation.

# REVIEW OF THE PROTECTION OF CHILDREN FROM SEX OFFENDERS

Home Office



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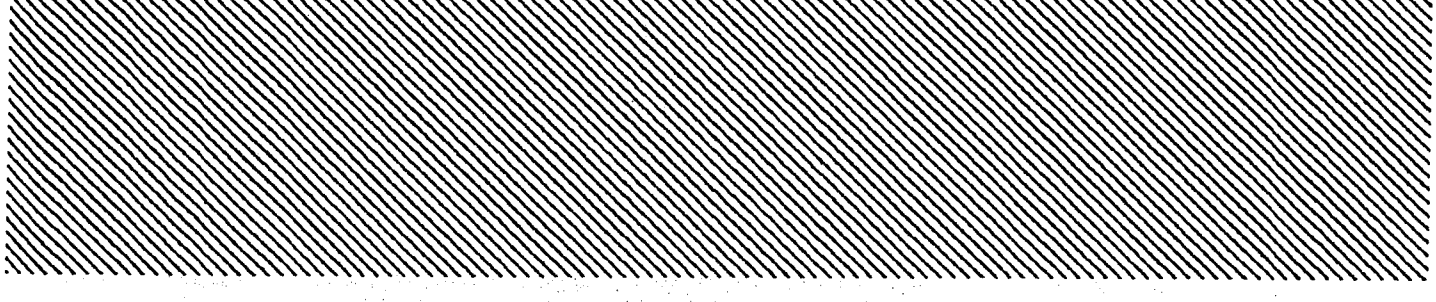


# Ministerial foreword

The protection of our children is of the greatest importance to all of us. There are few crimes more damaging, more emotive and more sensitive than sexual offences against children. The impact of these offences on the victims and their families is devastating. The public deserves to be protected from these offenders, by keeping them in prison while they pose too great a risk to be released, and by effectively managing and monitoring those who are released into the community. We should be ready to use the most up-to-date methods and technology to help us achieve this.

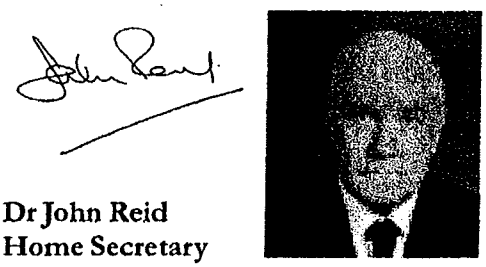
We have done a lot in recent years to improve public protection. Sex offenders must register with the police, they are visited in their homes, and if they break the rules they are sent back to prison. We have developed treatment shown to be effective in preventing re-offending. There are over 100 approved premises where high-risk offenders are closely supervised.

But while these measures have greatly increased public protection from sex offenders, I believe we can still do much more, and so in June last year I called for a review of the management of child sex offenders. This review has been a careful examination of where improvements in public protection can be made, to give greater reassurance to the public by creating a safer environment.

As Home Secretary, public protection is my priority. As part of the review, we have looked at how other countries operate. Although we have found that we are one of the leading countries in the management of sex offenders, I still want to see a process of continual improvement.

The proposals set out in this review will lead to short, medium and long-term improvements in how we protect children from sex offenders. They range from strengthening guidance and bringing in new laws, to providing more information about convicted child sex offenders to the public. We have consulted closely with police, childcare agencies and victims' organisations, and listening to stakeholders has been vital to the review. I want to see that continue through the national stakeholder advisory group for sexual violence and abuse. It is important that these views are heard as we begin to implement the actions in this report.

The Government and authorities have a vital role in managing offenders, but as parents, grandparents and carers, we all have a stake in protecting children and an important role to play.



**Dr John Reid**
**Home Secretary**

# Executive summary

In June 2006, the Home Secretary commissioned a comprehensive review of child sex offenders and protecting the public.

The review has carefully explored how we can improve child protection and provide greater reassurance to the public on the management of these offenders. The test of any proposal in this area should be whether its introduction would enhance the protection of children.

To inform the process there have been extensive discussions with organisations with a stake in child protection, such as the National Society for the Prevention of Cruelty to Children (NSPCC) and Barnardo's. The views of police and probation professionals working on the front line have also been sought, and international comparisons have been carried out on approaches to sex offender management. This process of consultation will continue through the national stakeholder advisory group for sexual violence and abuse.

This document sets out our plans to improve the way we protect our children. The main actions are listed below:

## GREATER RIGHTS AND MORE INFORMATION FOR THE PUBLIC

- We will strengthen the multi-agency system (Multi-Agency Public Protection Arrangements – MAPPA) that manages offenders and apply good practice more consistently, and we will seek to improve public awareness of how we manage known sex offenders.
- There will be a duty on MAPPA authorities (including the police and probation services) to consider the disclosure of information on offenders in every case.
- We will pilot a new process whereby certain people can register with the police their child protection interest in a named individual. Where this individual is a known child sex offender, there will be a duty on the police to consider disclosure. In all instances, general guidance on child protection will be provided in response to enquiries about offenders.

## NEXT STEPS

- We will change the law so that we will be able to require registered sex offenders to notify the police of any foreign travel, whether anyone under 18 is living at their registered address, e-mail addresses and their passport and bank account details.
- We will optimise use of the latest technology in the management of offenders, including trialling the use of mandatory polygraph tests (lie detectors), and we will review the use of satellite tagging and tracking.
- We will maximise the number of offenders treated and the effectiveness of that treatment.
- Restrictions on placing child sex offenders in approved premises immediately adjacent to schools and nurseries will continue.
- We will develop national standards for MAPPA and ensure each area has strong central co-ordination and administration. There will also be greater MAPPA engagement with the community, and a central point of contact for the public.
- We will establish a defined and consistent role for MAPPA lay advisers, which will include increasing public awareness.
- There will be compulsory programmes of activity for offenders residing at approved premises, and there will be a standard set of core rules of residence.

# Introduction

In June 2006, the Home Secretary commissioned a comprehensive review of the arrangements for protecting children from sex offenders. The review considered the way in which the risks presented by child sex offenders in the community are managed, including the amount of information about child sex offenders that is disclosed to the public.

There have always been child sex offenders, and we know that they are present in every community around the world. These offences cause enormous anxiety and trauma because the victims, the children, are vulnerable and unable to protect themselves. As parents and carers, we want to protect a child's innocence, which is immensely precious to us.

To prevent these offences from occurring, we need to manage offenders effectively and be alert to the risks. Child sex offenders do not all fall into the same category. There is a wide range of offending activity, some of which involves physical contact and some of which does not (for example internet offences). But all of these are serious crimes. Of the offenders themselves, we know that about 30 per cent are aged under 18,[1] approximately 99 per cent are male,[2] and at least 75 per cent are known to their victims as either a relative or a family friend.[3]

In recent years we have learnt more about child sex offending and have begun to talk more openly about it, although it is still a greatly under-reported crime. We need to do more to encourage victims to break the taboo and speak out. Research shows that 72 per cent of sexually abused children do not tell anyone about what has happened at the time, and that 31 per cent still have not told anyone by early adulthood.[4]

In addition, we have developed increasingly sophisticated systems for managing offenders and protecting children. The UK is now considered to have a better management system than most other countries. Although we will never be able to build an entirely risk-free environment, it is our aim to do everything we can to minimise the risk to children.

In carrying out this review, the Home Office has looked at every aspect of how child sex offenders are managed, and has explored how the systems and arrangements in place might be improved. As well as working closely with other government departments and police and probation service professionals, we have sought the opinions and expertise of a wide range of non-governmental organisations and lobby groups representing children and victims of sexual abuse, and offenders. These include organisations such as the NSPCC, Barnardo's and Stop it Now!

We have looked at practice in other countries to see whether any elements might enhance child protection in the UK, including detailed research and a conference with colleagues from a number of EU states. We have also visited the United States to investigate how 'Megan's Law' is working and what impact it has had on child protection. 'Megan's Law' allows communities direct, uncontrolled access to information on offenders, mainly through websites.

We have been in discussion with colleagues in the Department of Health and the Department for Education and Skills, as well as in Scotland and Northern Ireland. Close discussion will continue across government when it comes to implementing the proposals in this report.

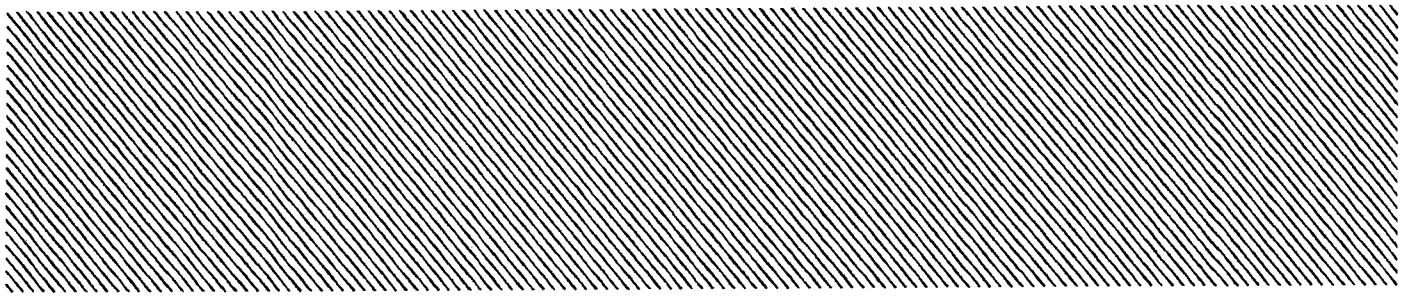
The principal aim of all the actions in this report is to provide greater child protection. This may be achieved through reducing re-offending by known offenders, preventing initial offending, and identifying where offences are taking place by increasing people's confidence to report them.

[1] Fisher, D and Beech, A, Adult Male Sex Offenders in Kemshall, H and Melvor, G (eds), *Managing Sex Offender Risk* (pp 25–47), Research Highlights in Social Work 46, Jessica Kingsley Publishers, London, 2004.

[2] *Offender management caseload statistics 2005*, Home Office Statistical Bulletin 18/06, Research, Development and Statistics, National Offender Management Service, 2006.

[3] Grubin, D, *Sex offending against children: Understanding the risk*, Police Research Series Paper 99, Home Office, 1998.

[4] *Key child protection statistics: sexual abuse*, NSPCC, March 2006.



This report identifies three parties that need to be addressed in order to achieve greater child protection:

- **the public** – who protect the children in their care and are in a position to prevent harm and to work with the authorities to expose offending where it is taking place. It is important that parents and carers are equipped with the information and understanding needed to protect children;
- **offenders** and those concerned about their sexual behaviour – who in addition to punishment need to understand the gravity of their actions, accept responsibility for what they have done, and undergo treatment as well as legal controls over their future behaviour where necessary; and
- **the authorities** – who can further improve the management of known offenders through ensuring the provision of effective monitoring and housing. **Technology** can play an important role in enabling the authorities to improve the monitoring of sex offenders.

The focus of this review is on how child sex offenders are managed and how sexual offending against children can be prevented. For this reason, it does not directly address victim support. However, support for victims is, of course, a vitally important part of the response to child sex offending, and the Home Office is taking forward a range of work to improve services for victims. Over the last three years, the Home Office has supported services by, for example:

- extending the network of Sexual Assault Referral Centres – this work will continue into 2007/08;
- supporting voluntary sector counselling services for victims of sexual violence through the Victims Fund; and
- funding, training and evaluating independent sexual violence advisers, who provide advocacy and support to victims delivered by a number of different agencies.

The report refers on many occasions to child sex offenders. For the avoidance of any confusion, that wording refers to people who commit sex offences against children, not to young sex offenders. However, sex offences committed by young people are also a significant problem addressed in this report.

# Background – what has been done so far?

Serious child sex offenders should be in custody for as long as they present a severe risk to the public. Those offenders who present a sufficiently lowered risk to be released safely should be effectively monitored and managed in the community. If their risk levels increase, tough enforcement should be in place to return them to prison to prevent them committing a further offence.

Over the last decade, the Government has made a number of significant improvements to the systems that protect the public from child sex offenders (see page 8 for a summary). These new measures have moved us from a system where there were no formalised arrangements for managing child sex offenders when they were released from prison, to one that is regarded as among the most effective in the world.

Offenders are managed under multi-agency arrangements, known as Multi-Agency Public Protection Arrangements, primarily involving the police, probation and prison services. Sentences can be served both in prison and on licence in the community, and any prison sentence of 12 months or more will involve a period of both. Release from the custodial part of the sentence is either at a point specified by law or decided by the independent Parole Board. Offenders serving life sentences, or one of the new indeterminate sentences we have introduced for dangerous offenders, will not be released until the Parole Board considers it safe to do so.

When an offender is serving part of a sentence on licence in the community, they are supervised by the probation service and must comply with a range of conditions designed to support rehabilitation and reduce the risk of re-offending. These may, for example, include requirements to attend treatment courses, to reside at a hostel, not to have contact with children or not to enter a particular area. If an offender breaches any of the conditions of their licence, or takes any action that increases their risk of re-offending, they may be recalled to prison for the remainder of their sentence.

Notification requirements provide the authorities with an additional means to continue protecting the public from sex offenders after they have completed their sentence. The Sex Offenders' Register requires offenders to provide details of their whereabouts to the police on a regular basis once they are out of prison. This helps the authorities keep track of sex offenders and effectively monitor their risk.

Some offenders may also be subject to a Sexual Offences Prevention Order, which prohibits certain activities, for example going near schools or playgrounds. There are also robust systems in place for vetting people seeking to work with children and barring all those who have convictions for sex offences from doing so.

Figures show that re-conviction among sex offenders is low (less than 0.5 per cent of medium to high-risk managed offenders committed serious further offences last year). But we recognise there is no room for complacency as reporting is low – any child sex offence has a terrible impact on the victim, their family and the wider community. The public is understandably concerned about every child sex offender and the risk they may pose when released from prison. Although a comprehensive set of arrangements exists, we recognise that this is not a perfect system and can be improved.

**Strengthening public protection: recent changes**

- The **Sex Offenders' Register** was established under the Sex Offenders Act 1997 and is an invaluable way for the police to keep track of the whereabouts of known offenders. The Association of Chief Police Officers has assessed compliance with the requirements by sex offenders as 97 per cent.
- Established by the Criminal Justice and Court Services Act 2000, **Multi-Agency Public Protection Arrangements (MAPPA)** place a legal duty on the relevant authorities to work in partnership and share information to manage high-risk offenders in the community. The level of public protection from such offenders has increased considerably, and the number of serious further offences committed by MAPPA-managed offenders is very low.
- The Criminal Justice Act 2003 introduced sentences to protect the public from dangerous violent or sex offenders:
  - **Extended sentences** – offenders will serve the usual term in prison but will have an extended licence period of up to eight years.
  - **Indeterminate public protection sentences** – offenders will not be released until their level of risk is manageable in the community. They will then be on licence for a minimum of 10 years and must apply again to the Parole Board for their licence to be removed.
- The Sexual Offences Act 2003 introduced the **Sexual Offences Prevention Order (SOPO)**, which can impose prohibitions on sex offenders who pose a risk of serious sexual harm. For example, a SOPO could be used to prohibit an offender from being alone with children under 16. It is a criminal offence to breach these prohibitions, punishable by up to five years' imprisonment. The Act also introduced Risk of Sexual Harm Orders, restricting those who have not committed sex offences but are at risk of doing so, and Foreign Travel Orders banning travel abroad.
- **Local Safeguarding Children Boards (LSCBs)** were established by the Children Act 2004. A range of organisations in each local area, including the police, local authority, social and health services, have a legal duty to work together to safeguard and promote the welfare of children in that area. LSCBs play a key role in ensuring local agencies work together to prevent abuse and neglect, proactively targeting particular groups that are vulnerable, for example to sexual violence or exploitation, identify abuse and neglect where they occur and take action to protect children who are suffering or at risk of suffering.
- The **Child Exploitation and Online Protection (CEOP) Centre** was set up in April 2006. Affiliated to the Serious Organised Crime Agency and with powers under the Serious Organised Crime and Police Act 2005, CEOP employs police officers with specialist experience of tracking and prosecuting sex offenders, professionals from child protection charities and secondments from key IT providers. CEOP works closely with the police and has a national remit to gather and co-ordinate intelligence on high-risk child sex offenders, to reduce the harm caused to children and to support operations against child sex offenders.
- The **Violent Crime Reduction Act 2006** included law changes that give the police powers of entry and search when visiting the homes of registered sex offenders, for the purpose of assessing risk. (The police already had powers of entry if they believe a crime may have taken place.)
- The **Safeguarding Vulnerable Groups Act 2006** provides for the creation of a **new vetting and barring scheme** for all those working with children and vulnerable adults. An independent statutory body will be created to use its expertise to take all discretionary decisions as to those individuals who should be barred from working with children and/or vulnerable adults. All those working closely with these groups will be required to be centrally vetted, and employers will need to check their status in the scheme. The new scheme is expected to be rolled out from Autumn 2008. It will integrate List 99, the Protection of Children Act list and the Disqualification Order regime into a single list of people barred from working with children. There will be a separate, but aligned, list of people barred from working with vulnerable adults.

# Equipping the public with the information and understanding needed to protect children

During the review, those involved in protecting children stressed the importance of public involvement in enhancing child protection. We need to give the public the means to fulfil this role, and we need to achieve a culture change whereby the relationship between the police and the public is more open, with information being shared in both directions.

Part of this process will be to provide general information to the public about how offenders are managed and how we can protect our children. Part of it will also involve sharing, or disclosing, information about specific sex offenders who may pose a threat to particular children. But the police will maintain discretion over who will be given this information.

## COMMUNICATING GENERAL INFORMATION

There is already a lot of information available from the Government and child protection organisations on protecting children from sexual abuse, but we need to do more to make the public aware of how child sex offenders are managed. Some people believe that sex offenders are unsupervised once released from prison, with no restrictions on their behaviour and nothing to prevent them committing further offences. This false perception of unmanaged sex offenders adds to the anxiety that parents and carers feel about the safety of their children.

We need to ensure information about child protection and risk awareness is reaching the people who need it. Although public concern has focused on predatory stranger sex offences, at least 75 per cent of child sex offenders are in fact related or known to their victim.[5] Enabling the public to accept and react appropriately to difficult messages like this requires excellent communication between public protection experts and communities. Helping parents have an open and honest relationship with their children, and be more alert to any warning signs of abuse, will enable them to protect their children better from all sex offenders – both the convicted, managed sex offenders and those who have not yet been detected.

ACTION 1

**Pilot a community awareness programme, in partnership with non-governmental organisations, to provide better child protection advice and develop messages to help parents and carers safeguard children effectively**

- to equip parents with the knowledge required to safeguard their children.

ACTION 2

**Increase public awareness of how sex offenders are managed in the community, by ensuring easy-to-use information is widely available, and by ensuring strong local communication of MAPPA's work**

- to reassure the public that protection arrangements are in place, and to ensure a transparent system operates in which the public is fully aware of the true level of risk.

[5] Grubin, D, *Sex offending against children: Understanding the risk*, Police Research Series Paper 99, Home Office, 1998.

## SHARING SPECIFIC INFORMATION

More information can and should be placed in the public domain as long as it can be shown, in every case, that sharing the information enhances public protection.

There have been calls from some groups for the public to have direct, uncontrolled access to information about specific sex offenders living in their area. This would be similar to the US system under 'Megan's Law'. Others have expressed concern that such a law could be counter-productive and hinder child protection, as uncontrolled access to information could lead to offenders going 'underground'. We have examined the options and the experiences of child protection professionals in the US, and have considered what increases child protection in the US model and what has a negative impact.

'Megan's Law' was introduced in the US in 1996 and requires individual states to keep a register of offenders convicted of sex crimes against children, and to make private and personal information about registered sex offenders available to the public. Information may include their name, address and photograph. Individual states can decide how they implement 'Megan's Law', but all states proactively advise members of local communities about the presence of some sex offenders, and all states operate websites on which members of the public can search for known sex offenders living in their area.

When considering this kind of information disclosure, it is important to remember that it only applies to offenders who have committed an offence and have been convicted of it. Disclosure about known, convicted offenders does not remove the need for public engagement to protect children from new and unknown offenders.

Under existing MAPPA guidance, the police in England and Wales already disclose information about registered sex offenders in a controlled way. The police disclose information to a variety of people, including head teachers, leisure centre managers, employers and landlords, as well as parents. However, the extent to which information is disclosed and the way decisions are recorded varies from area to area.

In addition to disclosure under MAPPA guidance, the website operated by the Child Exploitation and Online Protection (CEOP) Centre (www.ceop.gov.uk) publishes details of high-risk offenders who have gone missing.

There is a risk, which is supported by evidence from the US, that if offenders' details were automatically made available to all members of the public, a proportion would no longer comply with the notification requirements and could disappear, leaving the authorities unsure of their whereabouts and unable to monitor them. Also, some US states have a high proportion of offenders registering as 'homeless', suggesting that they either are not being truthful with the authorities or are choosing to live rough to avoid having their whereabouts published. In either case, the risk they pose increases considerably.

The aim of sharing information about offenders must always be to provide greater protection to children. High levels of non-compliance with the notification requirements would make it harder for authorities to manage offenders, and would therefore increase the risk to children. Public disclosure of non-compliant offenders' details, as on the CEOP website, is helpful, however, as it reinforces the offender's need to comply with notification requirements, and helps the police find them and take further action if they do not.

There also needs to be a responsibility on the person receiving the information to use it solely for the purpose of child protection. It should not be used to facilitate vigilante activity, or to attack or harass offenders.

Greater use should be made of controlled disclosure of information about child sex offenders to those who need to know, for example a single mother who might be sharing a home with a registered offender. We will introduce a new legal duty on the responsible authorities to consider disclosure in every case. This process should

be formalised and auditable, with clear guidance to ensure it is a consistent and accountable part of the MAPPA process.

Disclosure should be a two-way process. The police will continue to proactively disclose information where appropriate and members of the public will share information with them. The public will be able to register an interest in someone with whom they have a personal relationship and who has regular unsupervised access to their children in a private context. The police will then establish whether that individual has any convictions for child sex offences, and, if so, whether they present a risk of serious harm to the children of the member of the public who registered the interest. If they are considered to pose a risk, the presumption will be that the police will disclose that information to the member of the public.

This model would offer the advantage of bringing to light intelligence about risk that would not otherwise have been available to the authorities. Anyone providing false information in registering their interest, or misusing any information disclosed, for example by engaging in vigilantism or the harassment of sex offenders, would be subject to police action.

ACTION 3

**Introduce a legal duty for MAPPA authorities to consider the disclosure of information about convicted child sex offenders to members of the public in all cases. The presumption will be that the authorities will disclose information if they consider that an offender presents a risk of serious harm to a member of the public's children.**

ACTION 4

**Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sex offences and is considered a risk, there will be a presumption that this information will be disclosed to the relevant member of the public.**

**We want to pilot the new policy in order to work through the details of implementation and to ensure we have a system of two-way disclosure that is as effective as possible without increasing the risk to children. It will be important for people who register an interest to receive a timely response. In all cases they should be given generic information on how best to protect their children. Following the pilot, we will consider whether this principle of two-way disclosure should be extended.**

**How this might work**

Mr A, a 42-year-old man, was convicted in the early 1990s of a number of offences of indecent assault, relating to the abuse of a friend's young daughter who he was babysitting. He served his prison sentence and his time on licence without incident, and has had no further convictions. He is now living in the community and has not come to the attention of the police for any reason. Because he was convicted before the Sex Offenders Register was introduced, he is not subject to the notification requirements.

Miss B is a 30-year-old woman who lives on her own with her 5-year-old daughter. She recently met Mr A in a bar, and the couple have now formed a relationship. Mr A will regularly look after Miss B's daughter alone while she is out. Mr A has asked if he can move into Miss B's home.

Miss B is told by a friend that her new boyfriend is a convicted child sex offender. Miss B is understandably very concerned to hear this, although Mr A has given her no reason to believe his behaviour towards her daughter is inappropriate, and she doubts it is true. Miss B is also afraid to question Mr A about the rumours as, due to her previous abusive relationships, she is afraid of confrontation and fears she will be at risk of domestic violence. She approaches her local police force and registers her interest in Mr A, explaining her situation.

Police check whether Mr A has any previous convictions for child sex offences, and, on finding that he has, they refer the case to the local Multi-Agency Public Protection Arrangements (MAPPA).

At a multi-agency meeting, the MAPPA authorities discuss the case and consider whether Mr A's convictions should be disclosed to Miss B. They balance the fact that he has not been re-convicted, and has not come to the attention of the police for any reason since his first offences, against the similarities between his present domestic situation and the one in which he previously offended, the fact that the child is in the same age group as his previous victim, and the risk of serious harm to the child if he does re-offend.

Having considered the facts of the case, the MAPPA authorities conclude that the risk Mr A poses to Miss B's daughter is such that it is necessary to disclose his convictions to Miss B, so that Miss B is able to take the appropriate steps to protect her child. Social services will have been involved in the decision to disclose, and will then take the lead in any follow-up child protection work.

# Minimising the risk to children posed by certain individuals through the provision of treatment

Child sex offenders vary greatly. Some understand that their actions and thoughts are wrong and take positive steps to change, but others are more challenging to deal with. Psychological treatment is one of the means available to us to manage the risk posed by sex offenders and to reduce re-offending, and this kind of treatment has been shown to be one of the most effective in addressing offending behaviour.[6] Treatment of sex offenders involves helping the offender confront their criminal behaviour, take responsibility for their actions, and develop victim empathy. It also involves helping them learn to recognise and avoid risky situations where they are more likely to offend. The UK is seen as one of the world leaders in the field of sex offender treatment.

## TREATING MORE OFFENDERS

The main treatment programmes in the UK are a suite of Sex Offender Treatment Programmes (SOTP), undertaken by offenders in prisons and on licence in the community. The target for sex offenders completing treatment in prison for 2006/07 is 1,240, and for offenders in the community is 1,200. We need to increase the number of offenders who receive treatment, and improve the quality of that treatment. We have reviewed the programme delivery and have considered where there are gaps, and where the system might be improved. We will also explore more methods to provide intensive treatment to certain highest risk sex offenders in the community.

Currently, not all sex offenders in prison undergo treatment. There are various reasons for this. For example, the offender may be serving a shorter sentence and may not be in prison for long enough to complete the SOTP course; they may deny their offence and therefore be unsuitable for the course; or they may refuse to attend. Young offenders who commit sexual crimes also do not all receive treatment at present, as there are no treatment programmes specifically aimed at young people. When developing our treatment programmes, we therefore need to look at how the risk these offenders present is affected by the lack of treatment. We also need to look at the treatment needs of the individuals in question, and to consider how we can better engage with these groups.

## EARLY TREATMENT

Existing treatments are mostly for convicted offenders. Some people realise they are developing worrying sexual thoughts and behaviour towards children and want help before they go on to offend. There are a small but significant number of these potential offenders, and we should not wait until a crime has been committed before taking action. The Government has funded the Stop it Now! helpline, to which about 40 per cent of the 4,000 or so callers have been individuals concerned about their own behaviour and seeking help to deal with their own deviant sexual thoughts about children. It is in everyone's interests that we are able to prevent these people from becoming offenders.

ACTION 5

**Provide early access to help for non-convicted individuals concerned about their sexual thoughts or behaviour, to prevent new or continued sexual abuse from occurring**

- to prevent sexual abuse before it has started, and to provide interventions where risk is not already managed within the criminal justice system.

[6] Losel, F and Schumucker, M, 'The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis, *Journal of Experimental Criminology*, 2005, 1, 117–46.

## IMPROVED TREATMENT

Current treatment takes a psychological approach, but we need to explore the use of drug treatment as well. This would involve using either hormonal medication to reduce an offender's sexual urges, or one of the newer antidepressant drugs (SSRIs), where early evidence of greater control of deviant urges is encouraging. This needs to happen in combination with psychological treatment to help people understand their sexual thoughts and to challenge deviant thought processes. The advantage of this approach is that it would both reduce an offender's sexual urges and help them break the cycle of offending behaviour. However, there are side effects with any drug treatment, so such an approach is unlikely to be appropriate in all cases.

ACTION 6

**Develop the use of drug treatment to support existing psychological treatment**

- to reduce offenders' sexual urges through the use of medication, and to support them in successfully completing psychological treatment. In addition, we will explore intensive treatment options for those of greatest risk.

## CIRCLES OF SUPPORT

Sex offenders are often very isolated individuals with poor social skills. Being alienated from mainstream society can increase the risk of them offending. In addition to treatment programmes, an initiative known as 'Circles of Support and Accountability' (CSA) has been running as a pilot project since 2001. CSA provide a group of four to six volunteers to act as a support network for socially isolated sex offenders in the community, particularly those with learning difficulties or personality disorders.

This approach has also been successfully used in Canada and is considered to be an innovative way of monitoring offenders. The results are encouraging. An evaluation of the programme in Canada found that only 5 per cent of offenders who had attended CSA went on to re-offend in the next four years, compared with 17 per cent in a group that did not attend.[7] The Home Office has provided funding for this programme in the UK.

## MORE JOINED-UP TREATMENT

Some offenders do not begin treatment in prison, as they are not there long enough to finish the programme. We need to examine ways in which such offenders can begin treatment in prison and continue it in the community. The programmes run by the probation service for offenders in the community currently have a different structure, so an offender cannot continue the same course begun in prison. We will consider the feasibility of developing a joint prison and probation treatment programme. This approach may help more offenders access treatment, and would facilitate continuity between offender management in prison and in the community.

ACTION 7

**Conduct a feasibility study of joint prison and probation treatments**

- to ensure risk is reduced as much as possible during the time sex offenders are in prison and there is continuity between offender management in prison and in the community.

[7] Wilson, R J, Picheca, J E and Prinzo, M, *Circles of Support and Accountability: An evaluation of the pilot project in South-Central Ontario*, R-168, Correctional Service of Canada, 2005.

# Maximising the effectiveness of the management of known sex offenders by the authorities

Offenders released from prison are much less likely to re-offend if managed by professionals than if left to their own devices. Effective management means ensuring all relevant authorities work together to make collective decisions about offenders and the level of risk they pose.

Multi-Agency Public Protection Arrangements (MAPPA) were introduced in 2001 and are a set of arrangements under which the prison, probation and police services (the 'responsible authorities') in all 42 MAPPA areas across England and Wales are legally required to share information and work together to assess and manage the risk posed by dangerous violent and sex offenders. A range of other agencies are also under a duty to co-operate, for example local government, health, Youth Offending Teams (YOTs) and housing services.

Information and intelligence about offenders who are subject to MAPPA, or who have been identified as posing a high risk of harm to the public, are stored on a computer database called ViSOR (Violent and Sex Offender Register). This system is being developed to support quick and easy sharing of information between the responsible authorities.

The offender management system uses various methods to assess the level of risk an offender poses. Police or probation officers visit offenders, and the information gathered is used to evaluate and re-evaluate their risk over time. Once a particular level of risk is identified, representatives from the relevant responsible authorities and 'duty to co-operate' agencies will regularly meet to discuss the case of the offender. These discussions will consider many areas of an offender's life, including their relationships, employment, housing, health, treatment and social activities. The disclosure of information to the public is also considered.

There are different ways in which the authorities can increase the level of monitoring of an offender. Registered sex offenders are required to provide personal information, including their address, on a regular basis.

There are also various civil orders available, prohibiting offenders from certain activities such as going near schools or travelling abroad. Finally, offenders on licence can be housed in supervised accommodation where they can be monitored daily.

Overall, those involved in public protection consider the MAPPA system to be very effective. In 2005/06, 13,783 high-risk sexual and violent offenders were referred to MAPPA, and 61 (0.44 per cent) of those offenders went on to commit a serious further offence.[8] While we will never be able to eliminate entirely the risk of serious offences being committed, we want to do everything possible to reduce that risk further and to maintain the success we have achieved so far. There are a number of ways in which we can further improve the system.

## STRUCTURAL AND MANAGEMENT IMPROVEMENTS TO THE MAPPA SYSTEM

The 42 MAPPA areas in England and Wales operate according to national guidance which explains the principles and activities of MAPPA. Local MAPPA areas have built up local practices and have developed different ways of tackling similar issues. This needs to be addressed to make practice more consistent across areas, and to enable the sharing of good practice. A consistent approach is necessary in order to build up a national picture of performance.

One way of achieving consistent practice between MAPPA areas is for them to put in place dedicated administrative support, and to follow the same administrative 'model'. This support could also act as the point of contact for public enquiries, and could help communicate the work of MAPPA to local communities.

Offenders are managed at three different levels under the MAPPA system, depending on their level of risk and the level of resources required to manage it. It is important to ensure these levels are being assigned in the same way across the country. Strong central co-ordination could help with this.

[8] MAPPA, 2006 annual reports press release.

Another area that needs addressing is the recording of information on individual cases. At each Multi-Agency Public Protection Panel (MAPPP) meeting, intelligence about offenders is discussed and decisions are made about their management. However, there is a lack of consistency across MAPPA areas in what information should be recorded and stored on ViSOR. Dedicated administrative support, with consistent standards in minute taking and inputting data on ViSOR, and a supporting template for data gathering, would have many benefits. It would enable faster, more detailed and more consistent recording of information about offenders, thereby providing a larger, more reliable and more up-to-date intelligence database for the authorities. It would also remove some of the administrative burden from the front-line probation officers who currently undertake these duties.

### PERFORMANCE MANAGEMENT

We need robust performance management arrangements for MAPPA, so that we can make proper comparisons on how each area is performing; for example, how quickly each MAPPA area recovers missing offenders, or recalls to prison offenders who are non-compliant. The new information gathered under the administrative model we are proposing will allow this kind of performance measurement and management.

### LAY ADVISERS

When MAPPA were first created, there were calls for the public to have a direct role in the system of managing offenders. Lay advisers were introduced into MAPPA in 2003, and each MAPPA area has two lay advisers. However, their activities vary between MAPPA areas. Lay advisers form an essential link between the authorities and the public, and should play a key role in communication. We need a clearer definition of the lay adviser role, and to ensure it is applied across all areas.

### CROSS-BORDER CASES

Sometimes an individual will commit an offence in a different jurisdiction of the UK from where they usually live. Someone who lives in England but commits an offence in Scotland, for example, will usually be sentenced and imprisoned there. On release from prison, it will often be considered appropriate to let them return to were they formerly lived, to encourage a more stable home life and so manage risk better. At present, there are insufficient guidelines and standard procedures for the handover of responsibility for these offenders between jurisdictions. We intend to review the processes and the relevant legislation and make changes as necessary.

ACTION 8

**Develop national MAPPA structural and management arrangements to be applied in each area to ensure consistent, auditable processes**

- to ensure best practice is followed consistently across the country and the public is consistently protected from sex offenders.

ACTION 9

**Develop national standards for MAPPA and ensure each area has strong central co-ordination and administration and is able to provide a single point of contact for general public enquiries about the work of MAPPA, support the roll-out of ViSOR, facilitate the duty to consider disclosure and support the key processes of risk assessment, recording of decisions and follow-up**

- to ensure best practice is followed on risk assessment and there is a single point of contact for the general public.

ACTION 10

**Develop robust performance management arrangements for MAPPA**

- to ensure the performance of MAPPA can be monitored and managed, and to drive up standards.

ACTION 11

**Establish a defined and consistent role for MAPPA lay advisers, which includes increasing public awareness**

- to make the best use of the lay adviser role to increase public awareness and respond to public concern about child sex offenders.

ACTION 12

**Develop the current process for managing cross-border MAPPA cases**

- to improve the management of this group of offenders, and to ensure the public is consistently and effectively protected from them throughout the transfer process.

## NOTIFICATION REQUIREMENTS

Sex offenders can be required by the courts to register their personal details with the police. Often referred to as the Sex Offenders' Register, this system requires offenders to provide their local police station with a record of their name, address, date of birth and National Insurance number. The register allows the police to keep track of the whereabouts of individual sex offenders. It is an invaluable tool to the authorities in managing the risk of known sex offenders and is thought to deter them from re-offending, as the police will immediately know which offenders are living in the area if an offence is committed.

Expanding the list of notification requirements could enhance public protection. We will change the law so that we can require all registered sex offenders to:

- provide a DNA sample where one has not been given previously;
- notify the police of any e-mail addresses;
- notify the police of passport numbers;
- notify the police of any bank account numbers;
- notify the police if they are living in the same household as a child under the age of 18;
- notify the police of *any* foreign travel (at present only trips of three days or longer must be notified); and
- report regularly to a police station if they register as homeless.

These changes would mean that the police would have more information to assist in the investigation of offences. Offenders could also be formally required to tell the police about risk factors that might increase the likelihood of them re-offending, for example if they form a relationship with a woman who has children. As with the current notification requirements, if an offender breached these rules, they would be subject to a maximum penalty of five years in prison.

All of these possible changes would be made easier by a legal change to the Sexual Offences Act 2003, to allow amendments to notification requirements to be made through secondary legislation rather than primary.

ACTION 13

**Take a power to amend sex offender notification requirements by secondary legislation, and consider changes to the information registered to strengthen public protection.**

## THE MANAGEMENT OF YOUNG OFFENDERS

The issues involved in managing young sex offenders are different from those for adults. Young offenders are still growing in maturity and have a better chance of changing their behaviour.

To be sure that we are managing the risk of young sex offenders as effectively as possible, and that this is central to any new MAPPA model, we will specify that issues relevant to young sex offenders must be included in future amendments to the MAPPA guidance.

In every local authority in England and Wales, there is a YOT, which comprises representatives from the police, probation and social services, health, education, drugs and alcohol misuse, and housing officers. We should improve multi-agency responses to youth offending generally. Specific guidance and training should be available to YOTs on the MAPPA system, and protocols for YOT engagement with MAPPA should be formally set out in a public protection policy.

Formally bringing together MAPPA and YOTs in this way will help ensure all the agencies responsible for managing young sex offenders are aligned to work together to protect the public, and equipped with the knowledge to do so in the most effective way possible.

ACTION 14

**Revise MAPPA guidance to provide direction on managing young offenders**

- to ensure specific issues concerning the management and risk assessment of young sex offenders are considered by MAPPA.

ACTION 15

**The Youth Justice Board to ensure all Youth Offending Teams have appropriate guidance and training on MAPPA, and all Youth Offending Teams have a policy on public protection that includes reference to engagement with the local MAPPA**

- to ensure all the agencies responsible for the management of young sex offenders are aligned to work together to protect the public, and are equipped with the knowledge to do so in the most effective way possible.

## HOUSING CERTAIN SEX OFFENDERS

When offenders are released from prison, they are on licence for the remainder of their sentence. They must be supervised by the probation service for that period, and must adhere to the conditions of their licence, which may include a requirement to live at a specified address or at approved premises (formerly known as probation or bail hostels). There are 104 approved premises in England and Wales, providing around 2,200 bed spaces.

Approved premises are places approved by the Government for the supervision of people on bail, on community orders or on licence. They offer a range of advantages over other types of housing for high-risk offenders, due to the tight controls and strict measures available to manage the residents. These include curfews, round-the-clock staffing, CCTV, monitoring of residents' movements and behaviour, room searches, drug testing and strong links with MAPPA, including the facility for immediate recall to prison.

The purpose of approved premises for offenders on licence is to provide additional monitoring of their risk and supervision to manage that risk while they are resettling into the community. Naturally, there are strong feelings in communities about the location of approved premises. However, the alternative is for these offenders to be in private accommodation, or in some cases homeless, where supervision would be less effective and more costly.

The public has been understandably concerned about some approved premises that are immediately adjacent to schools. In response to this concern and to reassure the public, the Government has excluded sex offenders from 15 approved premises in these types of location.

Having reviewed the use of approved premises, we think it is right for certain high-risk child sex offenders to be supervised on release from prison in approved premises. These are offenders who are due to be released from prison and might otherwise be released to an address close to vulnerable families, without the kind of supervision provided by approved premises. But there are some important improvements that can be made.

At present, demand for places at approved premises is greater than supply,[9] and we should work in the future to increase capacity where possible. In seeking to create additional capacity, it is vital that we address public concerns about where approved premises are and how they are run.

Offenders in approved premises may be required to keep to a night-time curfew, or to report to the approved premises during the day, depending on their level of risk. Offenders are required to have regular meetings with their probation officer and may be required to attend treatment to address their offending behaviour. Approved premises are not always able to provide a significant amount of structure or purpose to the offender's day, especially if they are unemployed. Lack of occupation can increase the risk of them returning to offending. We are therefore recommending that compulsory programmes of purposeful activity be introduced for offenders residing in approved premises. This activity could, for example, take the form of improving the offender's educational or vocational skills. It would also mean that offenders would be subject to increased supervision during the day.

[9] Wood, J et al., *The operation and experience of Multi-Agency Public Protection Arrangements*, Home Office Research Findings, Home Office, 2007.

ACTION 16

**Develop guidance on compulsory programmes of purposeful activity for residents in approved premises**

- to increase the supervision of approved premises' residents and get them engaged in useful activity during the day.

Each approved premises has its own set of rules that offenders must follow in order to stay there. If a resident breaks the rules they may be evicted, and in some cases they may then be recalled to prison. The obvious advantage of having rules is that clear boundaries are set for residents, which limit disruptive or risky behaviour and allow enforcement action to be taken if a resident does not comply. While the rules at individual approved premises are generally robust and effective, they are not standardised, so there is some inconsistency between areas in the circumstances in which residents are warned, evicted or recalled to prison for breaching the rules. A standard and rigorous set of rules, to which all offenders at approved premises must conform, would also help reassure the public that clear restrictions are placed on residents of approved premises.

ACTION 17

**Implement standard rules of residence for all approved premises**

- to place clear and non-negotiable boundaries on the behaviour of offenders in approved premises.

# Harnessing new technologies to provide additional management capabilities

Recent advances in technology have provided new ways to monitor child sex offenders and to assess and manage risk, including more efficient ways of gathering and sharing information.

However, with the development of the internet, technology has also opened up new ways of offending. Some offenders use chat rooms and internet forums to groom victims, and obtaining and distributing child pornography has become easier. It is vital that we act on these developments to ensure we are able to protect children online as well as offline.

The following examples highlight where new technology has already been harnessed to help manage offenders:

- A new database, ViSOR, has been developed to record information on dangerous offenders and share it nationally between the MAPPA responsible authorities. This has facilitated the enforcement of the Sex Offenders' Register.
- Various types of offender are electronically tagged, enabling the authorities to impose curfews and monitor compliance remotely.
- CEOP provides a dedicated service to protect children and conduct surveillance of child sex offenders both online and offline.
- Trials have been run of voluntary polygraph (lie detector) testing for child sex offenders on licence. This report recommends a change in the law to allow trials of their compulsory use on offenders.

These are significant achievements, but as technology continues to move forward, so must our solutions. We need to build on the trials conducted and, where possible, implement these modern approaches on a wider scale.

## USING TECHNOLOGY TO SHARE EXISTING INFORMATION

Gathering information is only the first step in successful offender management; sharing it with the right people is also vital. ViSOR is a computer database that stores a substantial amount of information (including photographs) about offenders. It holds records of offenders who are subject to MAPPA, registered sex offenders and other individuals who have been identified as posing a high risk of violent or sexual harm to the public.

ViSOR is already accessible to the police and is now being rolled out to the probation and prison services. This will ensure authorities at all stages of the criminal justice process are able to access the same information about dangerous individuals. They will also be able to record on it any new information they gather, so that it is not lost and can be shared with the other agencies.

The CEOP website (www.ceop.gov.uk) publishes a 'most wanted' list of high-risk child sex offenders who are not complying with their notification requirements and have gone missing. Offender details include photographs, names and aliases, dates of birth and other identifying information. The profile of this website should be raised, so the public is aware of the most high-risk offenders who have absconded and are therefore not being managed by the authorities. The website has already been shown to increase the likelihood of listed offenders being apprehended.

ACTION 18

**Maximise the use and awareness of the Child Exploitation and Online Protection Centre website's 'most wanted' list of non-compliant and missing high-risk sex offenders**

- to make the best use of this resource, maximise public awareness of high-risk non-compliant and missing sex offenders, and maximise intelligence received from the public on the whereabouts of these offenders.

## POLYGRAPH TESTING – GATHERING NEW INFORMATION ON OFFENDERS

A polygraph (lie detector) test is designed to support traditional supervision by encouraging offenders to be more truthful in discussing their behaviour, in a way that helps both themselves and those who manage them. The test measures an offender's physical reactions when asked questions: their breathing, their heart rate and how much they are sweating. The offender is asked questions, and the results of the polygraph are used to help assess whether or not they are answering truthfully. They are used routinely by probation officers in the US.

The use of polygraphs was trialled in the UK with sex offenders who volunteered to take part. The majority of probation officers considered them very useful in managing offenders; however, testing on volunteers is limited in proving these benefits. We will therefore begin trialling mandatory polygraph testing. This requires a change in the law, expected later this year.

Polygraphs are not appropriate for all offenders and are not a stand-alone solution: they are one of a range of offender management tools. Results from polygraphs will not be relied on for gathering criminal evidence.

ACTION 19

**Pilot the use of compulsory polygraph (lie detector) tests as a risk management tool**

- to establish whether compulsory polygraph tests lead to increased disclosure of information that is helpful in the treatment and supervision of child sex offenders.

## THE INTERNET

As the internet becomes a greater part of everyday life, so it becomes an increasing source of risk to children. The anonymity it offers and the opportunities it brings for contact with new people of all ages provide new avenues for child sex offenders.

Of course, most families use the internet quite safely. Parents can monitor their children's use of the family computer and can teach their children not to meet anyone they contact on the internet. However, many parents do not have the knowledge to monitor their children's use of the internet properly, and some child sex offenders are very skilled at concealing their identity online or masquerading as a child. This means that some children are at risk from predatory child sex offenders on the internet.

It is vitally important for parents to supervise and monitor their children's use of the internet. However, as a second line of child protection on the internet, CEOP conducts online surveillance of child sex offenders, and in its short history has had a major impact in stopping offenders harming children.

We should maintain and, where possible, develop this capability to monitor the online activities of child sex offenders. We will investigate the possibility of developing software to install on offenders' computers, to keep a record of websites and chat rooms visited and to record what is typed. This software could also be designed to contact the police automatically if certain trigger words or phrases that indicate grooming activity are typed.

## SATELLITE TRACKING

Finally, the use of satellite tracking could be expanded to monitor the highest risk offenders. This can be used to monitor compliance with orders or licence conditions that ban the offender from a specified area. It could also potentially be used to conduct general surveillance of offenders' movements. The offender wears a tag, which, using the Global Positioning System (GPS), allows their location to be tracked as they move around.

This could help identify risky behaviour at an early stage, so that pre-emptive action could be taken to protect children before they become victims. Breaking licence conditions can lead to recall to prison, so, as the offender would be aware of the monitoring, there may also be a deterrent effect.

ACTION 20

**Review the potential to expand the use of satellite tracking to monitor high-risk sex offenders**

- to improve the monitoring of offenders, and help prevent child sex offences from occurring.

# Contact

We are keen to hear your views and suggestions on the proposals contained in this review report. We would be grateful if you could direct your observations and enquiries to:

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e-mail: public.enquiries@homeoffice.gsi.gov.uk

# Annex 1 – Contributors

### Stakeholders

Association of Chief Police Officers

Barnardo's

Child Exploitation and Online Protection Centre

Churches' Child Protection Advisory Services

Circles of Support and Accountability

Derwent Initiative

GMAP

Kidscape

Langley House Trust

Leicestershire Children and Young People's Service

Local Government Association

Lucy Faithfull Foundation

Metropolitan Police Service

National Association for Probation and Bail Hostels

National Children's Home

National Organisation for the Treatment of Abusers

National Society for the Prevention of Cruelty to Children

Newcastle Hospital, Sexual Behaviour Unit

Office of the Children's Commissioner

Parole Board

Phoenix Survivors

Probation Board Association

Victim Support

### International stakeholders

Anstalten ved Herstedvester State Prison, Denmark

Circuit Court of Warsaw, Poland

Circuit Court of Wroclaw, Poland

Colorado Bureau of Investigation

Department of Corrections, Washington State

Department of Justice, Equality and Law Reform, Ireland

Department of Prisons and Probation, Denmark

Interior Ministry, France

Justice Ministry, France

Justice Ministry, Poland

Latvian Probation Service

Oregon Department of Corrections

Seattle Police Department

### Officials

Attorney General

Avon and Somerset Probation Service

Department for Education and Skills

Department of Health

Her Majesty's Courts Service

Her Majesty's Prison Service

Home Office

Local Government Association

London Probation Service

National Probation Directorate

Northern Ireland Office

PA Consulting

Scottish Executive

Violent and Sex Offender Register

Welsh Assembly Government

Youth Justice Board

# Annex 2 – Project terms of reference

The terms of reference for the project are:

- to assess the strengths and weaknesses of the current arrangements for managing child sex offenders in England and Wales;
- to examine the case for adopting community notification requirements, including the benefits and costs, the experience in the USA of operating 'Megan's Law', and the impact of MAPPA and policies on rehabilitation, treatment and sentencing;
- to review the arrangements, in particular community notification requirements, for managing child sex offenders in the EU and selected overseas jurisdictions;
- to consider community education and awareness issues;
- to identify any research gaps; and
- to make costed recommendations to ministers with a view to publishing recommendations in spring 2007.

# Annex 3 – List of actions

ACTION 1
Pilot a community awareness programme, in partnership with non-governmental organisations, to provide better child protection advice and develop messages to help parents and carers safeguard children effectively.

ACTION 2
Increase public awareness of how sex offenders are managed in the community, by ensuring easy-to-use information is widely available, and by ensuring strong local communication of MAPPA's work.

ACTION 3
Introduce a legal duty for MAPPA authorities to consider the disclosure of information about convicted child sex offenders to members of the public in all cases. The presumption will be that the authorities will disclose information if they consider that an offender presents a risk of serious harm to a member of the public's children.

ACTION 4
Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sex offences and is considered a risk, there will be a presumption that this information will be disclosed to the relevant member of the public.

We want to pilot the new policy in order to work through the details of implementation and to ensure we have a system of two-way disclosure that is as effective as possible without increasing the risk to children. It will be important for people who register an interest to receive a timely response. In all cases they should be given generic information on how best to protect their children. Following the pilot, we will consider whether this principle of two-way disclosure should be extended.

ACTION 5
Provide early access to help for non-convicted individuals concerned about their sexual thoughts or behaviour, to prevent new or continued sexual abuse from occurring.

ACTION 6
Develop the use of drug treatment to support existing psychological treatment.

ACTION 7
Conduct a feasibility study of joint prison and probation treatments.

ACTION 8
Develop national MAPPA structural and management arrangements to be applied in each area to ensure consistent, auditable processes.

ACTION 9
Develop national standards for MAPPA and ensure each area has strong central co-ordination and administration and is able to provide a single point of contact for general public enquiries about the work of MAPPA, support the roll-out of ViSOR, facilitate the duty to consider disclosure and support the key processes of risk assessment, recording of decisions and follow-up.

ACTION 10
Develop robust performance management arrangements for MAPPA.

ACTION 11
Establish a defined and consistent role for MAPPA lay advisers, which includes increasing public awareness.

ACTION 12
Develop the current process for managing cross-border MAPPA cases.

ACTION 13
Take a power to amend sex offender notification requirements by secondary legislation, and consider changes to the information registered to strengthen public protection.

ACTION 14
Revise MAPPA guidance to provide direction on managing young offenders.

ACTION 15
The Youth Justice Board to ensure all Youth Offending Teams have appropriate guidance and training on MAPPA, and all Youth Offending Teams have a policy on public protection that includes reference to engagement with the local MAPPA.

ACTION 16
Develop guidance on compulsory programmes of purposeful activity for residents in approved premises

ACTION 17
Implement standard rules of residence for all approved premises.

ACTION 18
Maximise the use and awareness of the Child Exploitation and Online Protection Centre website's 'most wanted' list of non-compliant and missing high-risk sex offenders.

ACTION 19
Pilot the use of compulsory polygraph (lie detector) tests as a risk management tool.

ACTION 20
Review the potential to expand the use of satellite tracking to monitor high-risk sex offenders

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# Reforming (purportedly) Non-Punitive Responses to Sexual Offending

By Adam Shajnfeld* and Richard B. Krueger**

## I. Introduction

Clovis Claxton, who was developmentally disabled and wheelchair-bound after contracting meningitis and encephalitis as a child, was twenty-four years old and living with his family in Washington state in 1991 when he exposed himself to the nine-year-old daughter of a caregiver.[1] Although he had the mental capacity of a ten- to twelve-year-old child, he was charged with first-degree child molestation and served twenty-seven months in prison.[2] When his family moved to Florida in 2000, Claxton was listed as a sexual offender on the Florida Department of Law Enforcement website, but the website inaccurately indicated he had been charged with the rape of a child.[3] Claxton had not been charged with any other offense since his release from prison, but sheriff's deputies in Florida did take him into custody at least five times for threatening suicide.[4]

In 2005, brightly-colored fliers were dropped into mailboxes and pinned to trees around Claxton's neighborhood, where he lived in an apartment adjoining his parents' house.[5] A short time before, a county commissioner had urged that warning signs be posted in neighborhoods where convicted sex offenders live.[6] The fliers displayed Claxton's picture and address, downloaded from the Florida website, and the words "child rapist."

Claxton, distraught and fearing for his life, called the sheriff's office and said he wanted to kill himself.[7] He was taken for an overnight psychiatric assessment, but released the next day.[8] The following morning he was found dead, an apparent suicide, with one of the fliers lying next to him.[9]

Alan Groome was eighteen years old when he was convicted of a sex offense.[10] He was paroled after serving a number of years behind bars in the state of Washington. Upon his release, he moved in with his mother, but they were evicted from their apartment when residents learned of his past. They then moved in with his grandmother, but Groome was forced to leave when police officers knocked on the doors of 700 neighbors, handing out fliers with his address and photo.

Groome became homeless, begging for money. "I got the feeling no one cares about me, so why should I care about myself and what I do?" said Groome. One detective described Groome as "a man without a country." His parole officer loaned him money because he believed Groome had "a lot of potential." A little over two years after being

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[1] Cara Buckley, *Town Torn Over Molester's Suicide*, MIAMI HERALD, Apr. 23, 2005, at 1; Daniel Ruth, *Who Was the Real Threat to the Town?* TAMPA TRIB., Apr. 27, 2005, at 2.

[2] Buckley, *supra* note 1, at 1.

[3] *Id.*

[4] *Id.*; Ruth, *supra* note 1, at 2.

[5] Buckley, *supra* note 1, at 1; Ruth, *supra* note 1, at 2.

[6] Buckley, *supra* note 1, at 1.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] The quotes and facts in this paragraph are taken from Daniel Golden, *Sex-Cons*, BOSTON GLOBE, Apr. 4, 1993, at 12. This article does not address the many issues surrounding juvenile sex offenders. For a treatment of these issues, 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).

released from prison, Groome had not been re-arrested but was living in a homeless shelter, looking for employment.[11]

As will be discussed, the United States Supreme Court has distinguished between society's punitive and non-punitive responses to sexual offenders, granting society more discretion and affording sexual offenders few protections in conjunction with non-punitive responses. Although all agree that sexual offenses should generally result in punitive sanctions, including prison sentences, the so-called non-punitive responses to sex offenders currently employed by society are not only very punitive in nature, but they are also largely unhelpful in curbing and may even be increasing sexual offending. Sex offender registration and notification requirements, for example, place offenders in physical danger, force offenders out of their homes and cause them to lose their jobs, and create public hysteria.[12]

These requirements often bear little relation to the risk posed by the offender. The label "sex offender" can refer to anyone from a child rapist to an adult involved in a consensual, albeit incestuous, relationship with another adult. These requirements are typically insensitive to differences in motivation and intent, the nature of the offense and its impact on the victim, and the likelihood of recidivism and risk to society. Further, these regimes rarely allow sex offenders who successfully undergo treatment or who can be demonstrated to be highly unlikely to reoffend to be relieved of these requirements before at least many years have passed, if at all.

Legal and societal responses should take better account of what is currently known about sex offenders and be changed accordingly. This Article describes the characteristics of sex offenders (Part II), discusses various registration and notification requirements (Part III), explores Constitutional challenges to registration and notification laws (Part IV), addresses the civil commitment of sex offenders (Part V), analyzes the various problems with current responses to sex offenders (Part VI), reports current options for treating sex offenders (Part VII), provides various recommendations for implementing a more appropriate societal response to sex offenders (Part VIII), and offers some concluding remarks (Part IX).

## II. Characteristics of Sex Offenders

"Sex offender" is a legal, not a psychological term.[13] There is no uniform definition of a sex offender. One who engages or attempts to engage in a sexual act with a minor, or who commits or attempts to commit aggravated sexual battery against a person of any age, is widely considered to be a sex offender.[14] In many states, persons who have been

[11] *Turning Point with Barbara Walters* (ABC News television broadcast Sept. 21, 1994), transcript available on LexisNexis ("Interview with Alan Groome, Transcript #131").

[12] Although this article mainly addresses three particular so-called non-punitive responses: civil commitment, registration, and community notification, there are others, including restrictions on where a sex offender can reside and work. In Virginia, for example, a person convicted of various sex offenses involving children is permanently prohibited from loitering within 100 feet of a primary, secondary, or high school or a child day program (VA. CODE § 18.2-370.2 (2006)), residing within 500 feet of any child day center, or primary, secondary, or high school (VA. CODE § 18.2-370.3 (2006)), or working or engaging in any volunteer activity on property that is part of a public or private elementary or secondary school or child day center (VA. CODE § 18.2-370.4 (2006)).

[13] Richard B. Krueger & Meg S. Kaplan, *The Paraphilic and Hypersexual Disorders: An Overview*, 7 J. PSYCHIATRIC PRAC. 391, 393 (Nov. 2001).

[14] The federal enactment establishing the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program Act defines "sex offender" as "an individual who was convicted of a sex offense" and defines "sex offense" generally as a criminal offense that has an element involving a sexual act or sexual contact with another, various listed criminal offenses against a minor, or an attempt or conspiracy to commit these offenses. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 111 (2006). Many state statutes are more specific. *See, e.g.*, VA. CODE ANN. § 9.1-902 (2006); WASH. REV. CODE § 9A.44.130(9) (2006).

convicted of possessing child pornography are also classified as sex offenders,[15] as are adults engaged in consensual incest,[16] persons who indecently expose themselves,[17] and statutory rapists (for instance, a twenty-two year old who has sex with her sixteen year-old boyfriend).[18] The legal definition of a sex offender includes a very wide range of offenders. From a psychological perspective, though, sex offenders are extremely diverse. The psychological profiles, recidivism rates, and effective treatment modalities of such offenders vary greatly. To appropriately respond to these individuals, a better understanding of these variations is needed.

For example, it is important to distinguish between paraphilic sex offenders and non-paraphilic sex offenders. Paraphilias are psychiatric disorders defined as

> recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving 1) nonhuman objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other nonconsenting persons that occur over a period of at least 6 months.[19]

To be diagnosed as having a paraphilia, depending on the type of paraphilia,[20] the person must also either have acted on the urge or there must be resulting clinically significant distress or impairment in important areas of functioning.[21] Those who develop paraphilias tend to lack social skills and suffer from depression, substance abuse, or other co-occurring psychiatric disorders.[22] Far more men than women develop paraphilias.[23]

Paraphilias need not involve illegal behavior. Transvestic fetishism, where a heterosexual male engages in cross-dressing, is not a crime. Further, not all sex offenders suffer from paraphilias. For example, many rapists commit sex offenses out of anger and desire for domination, not for sexual gratification.[24] In one study involving thirty-six convicted male sex offenders, only 58% could be diagnosed with a paraphilia.[25]

Regardless of these variations, as of 2006, there were roughly 566,700 registered sex offenders in the United States.[26] This figure, however, is not a reliable measure of the actual number of sex offenders, as sex offenses are extremely underreported.[27] At

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[15] FLA. STAT. §§ 775.21(4)(a)1b, 827.071(5) (2006); BURNS IND. CODE ANN. § 35-42-4-4(c) (2006). An Indiana appellate court left open the question of whether that state's statute could be applied to virtual child pornography. Logan v. State, 836 N.E.2d 467, 472 (Ind. Ct. App. 2005). The federal law governing sex offender registration and notification was recently expanded to include possession, production, or distribution of child pornography. Adam Walsh Child Protection and Safety Act of 2006 § 111(7)(G).

[16] LA. REV. STAT. ANN. § 14:78 (2006). The statute includes within the definition of incest an uncle and niece either marrying or having sexual intercourse with one another, regardless of how old they are. *Id.*

[17] TEX. PENAL CODE § 21.08 (2006). Under Texas law, a person can be guilty of indecent exposure even if no one else actually sees the defendant's genitals. Boyles v. State, No. 05-94-01727-CR, 1996 WL 403992, at *8 (Tex. App. July 12, 1996).

[18] N.Y. PENAL LAW § 130.25(2) (Consol. 2006).

[19] AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: FOURTH EDITION, TEXT REVISION 566 (2000) [hereinafter DSM-IV-TR].

[20] The various types of paraphilia include Exhibitionism, Fetishism, Frotteurism, Pedophilia, Sexual Masochism, Sexual Sadism, Transvestic Fetishism, Voyeurism, and Paraphilia Not Otherwise Specified. *See id.* at 569-76.

[21] *Id.* at 566.

[22] SIMON LEVAY & SHARON M. VALENTE, HUMAN SEXUALITY 469 (2002); Krueger & Kaplan, *supra* note 13, at 399-400.

[23] THE MERCK MANUAL OF DIAGNOSIS AND THERAPY, § 15, Ch. 192 (1999-2005), *available at* http://www.merck.com/mrkshared/mmanual/section15/chapter192/192d.jsp.

[24] KAREN J. TERRY, SEXUAL OFFENSES AND OFFENDERS: THEORY, PRACTICE, AND POLICY 92 (2006).

[25] Krueger & Kaplan, *supra* note 13, at 393 (citing Susan L. McElroy et al., *Psychiatric Features of 36 Men Convicted of Sexual Offenses*, 60 J. CLINICAL PSYCHIATRY 414, 416 (1999)).

[26] National Center for Missing and Exploited Children, *Registered Sex Offenders in the United States* (Mar. 6, 2006), *at* http://www.missingkids.com/en_US/documents/sex-offender-map.pdf.

[27] TERRY, *supra* note 24, at 7, 10.

the same time, this number can be mistakenly read to indicate the number of current active sex offenders in this country, a conclusion that fails to take into account the effects of treatment and monitoring, and the fact that many of these offenders are relatively unlikely to reoffend.

One of the most complicated and contested issues regarding sex offenders is that of recidivism.[28] Calculating their rate of recidivism is difficult for a number of reasons. First, as noted, sex offenses are underreported.[29] Second, sex offenders may continue to re-offend for many years, and thus recidivism rates differ depending on the length of time considered.[30] Third, recidivism differs substantially depending on the type of sex offender in question.[31] For instance, sex offenders who molest a family member (i.e., those who commit incest) are less likely to re-offend than those who molest non-family members.[32] Similarly, one study found recidivism rates for rapists and child molesters to be 18.9% and 12.7%, respectively, over an average four to five year follow-up period.[33] Collapsing all sex offenders together into a single category and making generalizations about this diverse range of offenders using this aggregate determination is likely to result in substantial mischaracterizations regarding the risk of re-offending for many of these individuals.

Even though lumping the recidivism rates of all sex offenders together is unhelpful in assessing the risk posed by these offenders, it does shed light on the dubiety of popular claims about sex offender recidivism. One meta-analysis of recidivism studies of over 23,000 sex offenders found the rate of recidivism to be 13.4% on average for a four to five year follow-up period.[34] Another study, from the United States Department of Justice, found recidivism for sex offenders released from prison to be 5.3% for a three-year follow-up period.[35] In contrast, a Department of Justice report of recidivism rates for nearly 300,000 released prisoners found that 13.4% of those imprisoned for robbery were rearrested for robbery after release, and 22% of those imprisoned for assault were rearrested for assault following release, all within a three-year follow-up period.[36] Thus, while recidivism rates are difficult to measure and reported results vary, and there are numerous factors that make recidivism for a particular individual more or less likely,[37] the recidivism of sex offenders is neither inevitable[38] nor nearly as high as popularly believed.[39]

A number of studies have reported higher recidivism rates for sex offenders, most prominently the so-called "Abel study" where 561 non-incarcerated paraphiliacs reported that they had committed a total of 291,737

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[28] For a good review of the recidivism issue, including the results of many studies, see CENTER FOR SEX OFFENDER MANAGEMENT (PRINCIPAL AUTHOR TIM BYNUM), RECIDIVISM OF SEX OFFENDERS (May 2001), http://www.csom.org/pubs/recidsexof.pdf.

[29] TERRY, *supra* note 24, at 7, 10.

[30] Lucy Berliner, *Sex Offenders: Policy and Practice*, 92 Nw. U. L. Rev. 1203, 1209 (1998) (citing R. Karl Hanson et al., *Long Term Recidivism of Child Molesters*, 61 J. CONSULTING & CLINICAL PSYCHOL. 646 (1993)).

[31] *Id.*

[32] Hanson et al., *supra* note 30, at 646.

[33] R. Karl Hanson & Monique T. Bussière, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. CONSULTING & CLINICAL PSYCHOL. 348, 351 (1998).

[34] *Id.* at 357. The meta-analysis included studies that measured recidivism in terms of re-conviction, re-arrest, and offenders' self-reports. *Id.* at 350.

[35] PATRICK A. LANGAN ET AL., RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, 1 (2003), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/rsorp94.pdf.

[36] PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1994, NCJ 193427, at 9 (2002), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf.

[37] LEVAY & VALENTE, *supra* note 22, at 467.

[38] Hanson & Bussière, *supra* note 33, at 357.

[39] ROBERT ALAN PRENTKY & ANN WOLBERT BURGESS, FORENSIC MANAGEMENT OF SEXUAL OFFENDERS 237 (2000). *See also* SARAH BROWN, TREATING SEX OFFENDERS: AN INTRODUCTION TO SEX OFFENDER TREATMENT PROGRAMS 8 (2005).

"paraphilic acts" against 195,407 victims.[40] The Abel study suffers from a number of serious problems. First, "paraphilic acts" are defined very broadly, including fetishism, homosexuality, sadism, and masochism.[41] These behaviors, though, are not illegal when they involve a consenting adult, and homosexuality is no longer considered a paraphilia. In fact, the Abel study hints at this confusion, at one point using the term "victim/partner."[42] Thus, it is doubtful that the high rate of recidivism is reflective of what is currently thought to be a sex offense. Second, the median values of the number of victims per paraphiliac are significantly lower than the mean (average) values, which indicate that a small percentage of paraphiliacs are responsible for a disproportionately large amount of the sex offenses.[43] Broad generalizations from a study such as this one fuel panic, but do not accurately reflect the fact that, although there are outliers who are extreme offenders, recidivism rates are low for most sex offenders.

### III. Registration and Notification Laws

In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.[44] While not imposing mandatory obligations on the states, the Wetterling Act was a significant milestone because it provided significant financial incentives for the states to adopt various provisions pertaining to sex offenders.[45] For example, it required sex offenders to register for at least ten years with authorities following release from prison or placement on parole, supervised release, or probation.[46] Further, state officials were expected to collect and maintain information about offenders, such as their name, home address, photograph, fingerprints, offense history, and documentation of any treatment received for mental abnormality or personality disorder.[47] In 1996, the Wetterling Act was amended to include a notification provision, known as "Megan's Law," which allows states to disclose information collected through registration for "any purpose permitted under the laws of the State."[48] Megan's Law, like many other broad sex offender laws, was enacted in the politically and emotionally charged aftermath of a brutal act against a child.[49] Currently, all fifty states have enacted some type of Megan's Law.[50]

Recently, Congress passed a new version of the Wetterling Act as part of the Adam Walsh Child Protection and Safety Act of 2006.[51] The bill expands the sex offender registration and notification requirements previously imposed on the states. First, it broadens the definition of sex offender, divides sex offenders into three tiers (tier III being the most serious) based on the severity of the crime for which the offender was convicted, and requires that all sex offender registries include the offender's name (including any alias), physical description, current photograph, Social Security number, residential address, vehicle and license plate number, DNA sample, fingerprints, criminal offense, and criminal history; the name and

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[40] Gene G. Abel et al., *Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs*, 2 J. INTERPERSONAL VIOLENCE 3, 19 (1987).
[41] *Id.* at 18.
[42] *Id.* at 17.
[43] *See id.*
[44] 42 U.S.C. 14071 (2006). As will be discussed, this law was recently amended. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248 (2006).
[45] *Id.* at (g), (i). States that do not comply face a reduction of 10% of funds allocated under § 42 U.S.C. 3751 for criminal justice projects.
[46] *Id.* at (b)(6).
[47] *Id.* at (b)(1)(A)(iv), (b)(1)(B).
[48] Pub. L. No. 104-145 (1996) (codified as 42 U.S.C. § 14071(e) (2006)).
[49] *See* Michele L. Earl-Hubbard, *Comment: The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990s*, 90 NW. U.L. REV. 788, 813 (1996); TERRY, *supra* note 24, at 184.
[50] Doron Teichman, *Sex, Shame, and the Law: An Economic Perspective on Megan's Laws*, 42 HARV. J. LEGIS. 355, 357 (2005).
[51] Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248 (2006).

address of any employer; and the name and address of any school that is being attended.[52]

Second, it requires all jurisdictions to make virtually all sex offender registry information publicly accessible via the Internet and creates a national sex offender website.[53] This generally forces states to broadly disseminate information on every registered sex offender, not just those who pose the greatest risk of re-offending.[54]

A few items cannot be posted, including the identity of any victim, the Social Security number of the sex offender, and any reference to arrests that did not result in conviction, and a few items are left to the discretion of the state, including any information about a tier I sex offender convicted of an offense other than a specified offense against a minor, the name of the employer of the sex offender, and the name of an educational institution where the sex offender is a student.[55]

Third, the bill imposes a registration and Internet notification requirement of fifteen years for a tier I sex offender (with a reduction of five years if a "clean record" is maintained), of twenty-five years for a tier II sex offender, and of life-long duration for a tier III offender.[56] A tier I offender is required to re-register in person at least once a year, a tier II offender every six months, and a tier III offender every three months.[57]

For purposes of comparison, the following are some existing examples of state registration and notification regimes. In Washington, a sex offender can be relieved of the requirement to register ten years after the offender has either been released from confinement, or, if there was no confinement, ten years from entry of judgment and sentence.[58] In Florida, the earliest a sex offender who offended as an adult can be relieved of the requirement to register is twenty years after the offender has been released from sanction, supervision, or confinement, whichever is later.[59] To be relieved of this requirement after twenty years, the offender cannot have been arrested for any felony or misdemeanor (not just a sexual or related offense) since his release,[60] and a court must grant the offender's petition for relief.[61] In Washington and Florida, even if a sex offender no longer poses a risk of re-offending, he must still register as a sex offender until at least either ten or twenty years, respectively, have passed.[62]

Registration, though, did not necessarily mean that the community would be notified about the sex offender. Under the previous Wetterling Act, states were required to notify the community of certain offenders, while notification for others remained optional.[63] State-sponsored Internet sites were routinely used as a means to provide this notification.[64]

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[52] *Id.* at §§ 111, 114.
[53] *Id.* at §§ 118, 120.
[54] Some states had already begun to take this step. In Virginia, for example, the General Assembly in 2006 expanded dissemination via the Internet from individuals "convicted of murder of a minor and violent sex offenders" to individuals "convicted of an offense for which registration is required." *See* VA. CODE § 9.1-913 (2006).
[55] Adam Walsh Child Protection and Safety Act of 2006 § 118.
[56] *Id.* at § 115.
[57] *Id.* at § 116.
[58] WASH. REV. CODE § 9A.44.140(1)(c) (2006).
[59] FLA. STAT. § 943.0435(11)(a) (2006).
[60] *Id.* at 11(a).
[61] *Id.* at 11.
[62] In these states, an offender who was a physically castrated quadriplegic suffering from dementia would still have to register for this entire period of time.
[63] *See* 42 U.S.C. 14071(e)(2) (2006), which requires that states release information to the community when "necessary to protect the public concerning a specific person required to register under this section." The Department of Justice has interpreted this provision to require release of information to the community about the most dangerous offenders, but permits a state to choose not to release information regarding sex offenders it deems are not a threat to public safety. U.S. DEP'T OF JUSTICE, MEGAN'S LAW; FINAL GUIDELINES FOR THE JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION ACT, AS AMENDED, No. RIN 1105-AA56, 582 (1997).
[64] Of the fifty states, only Rhode Island provides no information about sex offenders on an Internet site.

Many states, however, made information regarding *all* sex offenders accessible via the Internet as well.[65] The amount of information available on a particular offender varied from state to state, but all states included the offender's name, offense, physical characteristics, and age.[66] Florida's Internet sex offender database also included the offender's photograph and last known address.[67]

Some states employed risk-tiers, with offenders classified by their risk of re-offending. For example, Rhode Island law provided for three risk-tiers: low risk, moderate risk, and high risk.[68] The level of community notification, if any, depended on the offender's classification.[69] Law enforcement agents were notified of low risk offenders.[70] For moderate and high risk offenders, Internet notification was permitted.[71]

While community notification today is typically provided via the Internet, this need not be the exclusive means. Louisiana, in addition to having a searchable Internet database of sex offenders,[72] also has perhaps the strictest and most comprehensive notification requirements of any state.[73] Upon release from confinement, a sex offender must supply his name, address, crime information, and photograph to all residences and businesses within a one-mile radius in a rural area, or 3/10 mile radius in an urban area, of the offender's residence. The offender must also notify all adults also residing in his place of residence and the superintendent of the school district in which he resides of his status.[74] A court may even require the offender to wear special clothing indicating that he is a sex offender.[75]

## IV. Constitutionality of Registration and Notification Laws

The Supreme Court has issued two major rulings on the constitutionality of sex offender registration and notification laws, both in 2003.

### A. Procedural Due Process: *Connecticut Department of Public Safety v. Doe*[76]

In 1999, a person (referred to as John Doe) required to register as a sex offender under Connecticut law,[77] filed a federal lawsuit under 42 U.S.C. § 1983[78] against the Connecticut agencies responsible for administering the State's sex offender registry. Connecticut's law required certain classes of sex offenders to register, and provided for community notification of the presence of these offenders without regard to the registrant's degree of dangerousness to the community.[79] Instead, the registration requirement was linked to whether they had been convicted of certain specified sex offenses.[80]

Doe asserted that this registration requirement harmed his reputation and altered his status under state law. Doe alleged, *inter alia*, that the failure to provide him with a pre-registration hearing to determine if he was

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*See* http://www.klaaskids.org/pg-legmeg.htm (last visited July 17, 2006).

[65] For example, Florida provides a searchable Internet database generally listing all convicted sex offenders available at http://www3.fdle.state.fl.us/sexual_predators/ (last visited July 17, 2006).

[66] Teichman, *supra* 50, at 381.

[67] *See* http://www3.fdle.state.fl.us/sexual_predators/search.asp?sopu=true&PSessionId=819208581& (last visited July 18, 2006).

[68] R.I. GEN. LAWS § 11-37.1-12 (2006).

[69] *Id.*

[70] *Id.* at (b).

[71] *Id.*

[72] *See* http://lasocpr1.lsp.org/ (last visited July 18, 2006).

[73] *See* LA. REV. STAT. ANN. § 15:542 (2006).

[74] *Id.* at § 15:542(B)(1)(a)-(c).

[75] *Id.* at § 15:542(B)(3) ("Give any other notice deemed appropriate by the court in which the defendant was convicted of the offense . . . including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.").

[76] 538 U.S. 1 (2003).

[77] CONN. GEN. STAT. § 54-250-261 (2001).

[78] This section allows a person to sue, in federal court, for a state's violation of his or her civil rights.

[79] *Connecticut Department of Public Safety v. Doe*, 538 U.S. at 4-5, 7.

[80] CONN. GEN. STAT. § 54-258a (2001).

dangerous violated his procedural due process rights under the Fourteenth Amendment because he was deprived of his liberty interests without a hearing.

The Supreme Court found no violation of procedural due process.[81] The Court reasoned that procedural due process only requires a hearing on the existence of a particular fact (or facts) when such fact is relevant under a state statute.[82] Here, as the statute did not claim that the list was comprised of dangerous sex offenders, but instead merely claimed to be a list of sex offenders regardless of level of danger, Doe was not entitled to a hearing to determine his dangerousness.

In *dicta*, the Court noted that one could still challenge the State's law on substantive due process grounds, an issue not brought up nor addressed in the case.[83]

### B. Ex Post Facto: *Smith v. Doe*[84]

The Ex Post Facto Clause of the Constitution[85] prohibits the government from imposing punishment for an act that was not a crime at the time it was committed, and from imposing more punishment for an offense than was prescribed by law at the time the crime was committed.[86]

In 1994, Alaska passed its Sex Offender Registration Act (SORA).[87] SORA contains a registration requirement and provides for community notification.[88] Alaska makes much of the information it gathers available on the Internet.[89] Of primary relevance to this lawsuit, however, was that SORA was made retroactive, thereby encompassing sex offenders who committed their crimes before SORA was enacted.[90] Respondents John Doe I and John Doe II, both convicted of sex offenses before passage of SORA and then, after the passage of SORA, required to register under it, brought an action under 42 U.S.C. § 1983 challenging SORA as it applied to them as a violation of the Ex Post Facto Clause. The Supreme Court found no violation of the Ex Post Facto Clause.[91]

The primary question as far as the Court was concerned was whether SORA imposed additional punishment after the fact (i.e., after the crime was committed). The Court determined that if the legislature intended to impose punishment through its legislation, then its retroactive application was indeed a violation of the Ex Post Facto Clause.[92] If the legislature intended to enact a civil (non-punitive) regulatory scheme through its legislation, however, there was an Ex Post Facto violation only if the statutory scheme was so punitive in its effect as to negate the legislature's stated intent.[93] The Court stated that it was required to be deferential to the legislature's stated intent,[94] requiring the "clearest proof" of punitiveness to overcome a presumption that the legislature had

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[81] *Connecticut Department of Public Safety v. Doe*, 538 U.S. at 1.
[82] *Id.* at 7.
[83] *Id.* at 8. A substantive due process claim asserts that the claimant has a fundamental right to some constitutionally-protected interest that is being infringed by the law/action in question, and that the government has to justify abridging that fundamental right. If a fundamental right is implicated, a court strictly scrutinizes the law/action, and a very strong justification is required to overcome a presumption of unconstitutionality. Less strict standards of review are applicable to abridgments of quasi- or non-fundamental rights. *See* Gunderson v. Hvass, 339 F.3d 639, 643-44 (8th Cir. 2003).
[84] 538 U.S. 84 (2003).
[85] U.S. CONST. art. I, § 9, cl 3.
[86] Cummings v. Missouri, 71 U.S. 277, 325-26 (1867).
[87] *See* 1994 Alaska Sess. Laws page no. 41 (codified at ALASKA STAT. §§ 12.63, 18.65.087 (1994)).
[88] *See id.*
[89] *Smith v. Doe*, 538 U.S. at 91.
[90] 1994 Alaska Sess. Laws page no. 41, § 12.
[91] *Smith v. Doe*, 538 U.S. at 84.
[92] *Id.* at 92.
[93] *Id.* at 92 (citing United States v. Ward, 448 U.S. 242, 248-49 (1980)).
[94] *Id.* at 92 (citing Kansas v. Hendricks, 521 U.S. 346, 361 (1997)).

accurately depicted the nature of its legislation.[95]

In the case before it, the Court noted that the Alaska legislature had stated that its intent in enacting SORA was to protect public safety.[96] As a result, the Court found that the stated intent of the legislature was not to impose punishment on sex offenders with the registration requirement.[97] The Court then proceeded to determine whether the legislation had sufficient punitive effect to undercut this characterization.

The Court discussed five of seven factors previously established,[98] which, while not "exhaustive or dispositive,"[99] provided "useful guideposts" in determining if a law is sufficiently punitive in effect to overcome the stated intent of the legislation.[100] The factors were whether the regulatory scheme: (1) has been historically/traditionally regarded as punishment, (2) serves the traditional aims of punishment, (3) imposes an affirmative restraint or disability on the offender, (4) has an alternative (non-punitive) purpose to which it may be rationally connected, and (5) is excessive in relation to the alternative purpose.[101]

Under this analysis, the Court found no punitive effect sufficient to overcome the legislature's stated intent.[102] First, while SORA might resemble colonial shaming punishments—in which the offender was held up before others, forced to confront them face-to-face, and sometimes expelled from the community—SORA was substantively different, as public shaming often involved corporal punishment and, even when it did not, involved more than mere dissemination of information.[103] Second, the Court found that SORA imposed no physical restraint on the offender, nor did it restrain the activities sex offenders may pursue, such as employment.[104] Third, while the statute might deter crimes, the mere presence of a deterrent effect did not render legislation criminal.[105] Fourth, SORA was determined to have a legitimate, non-punitive purpose, namely, that of promoting and ensuring public safety, and its execution was rationally connected to this purpose.[106] Fifth, SORA was not considered to exceed its non-punitive purpose, even though it was potentially over-inclusive by failing to mandate individual determinations of dangerousness, because Alaska could rationally conclude that a conviction for a sex offense provided evidence of a substantial risk of recidivism.[107]

### C. Other Potential Constitutional Challenges

By casting Megan's Law statutes as non-punitive (i.e., they do not impose punishment on sex offenders), the Court has also precluded a constitutional challenge based on an Eighth Amendment "cruel and unusual punishment" theory.[108] In addition, although the Supreme Court has yet to address these issues, federal courts of appeals have generally rejected attacks against registration and notification statutes based on purported violations of substantive due process,[109] privacy,[110] and equal protection.[111] In light of

[95] *Id.* at 92 (quoting Hudson v. United States, 522 U.S. 93, 100, 139 (1997) (quoting Ward, 448 U.S. at 249)).
[96] *Id.* at 93.
[97] *Id.* at 96.
[98] Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963).
[99] *Smith v. Doe*, 538 U.S. at 96 (quoting Ward, 448 U.S. at 249).
[100] *Id.* at 96 (quoting Hudson, 522 U.S. at 99).
[101] *Mendoza-Martinez*, 372 U.S. at 168-69.
[102] *Doe*, 538 U.S. at 105.
[103] *Id.* at 98.
[104] *Id.* at 100.
[105] *Id.* at 102 (citing Hudson, 522 U.S. at 105).
[106] *Id.* at 102-03.
[107] *Id.* at 104.
[108] *See id.* at 102-03.
[109] Gunderson v. Hvass, 339 F.3d 639, 643-44 (8th Cir. 2003), *cert. denied* 540 U.S. 1124 (2003) (holding that no fundamental right is implicated by such a statute, and that the statute is rationally related to a legitimate government purpose). *See also In re* W.M., 851 A.2d 431, 450 (D.C. Cir. 2004), *cert. denied* 125 S. Ct. 885 (2005) (holding that Alaska's SORA statute does not implicate a fundamental right).
[110] A.A. v. New Jersey, 341 F.3d 206 (3d Cir. 2003) (stating that any privacy right of a sex offender is

the Court's unwillingness to strike down sex offender registration and notification laws in the two cases it considered, sex offenders would likely face an uphill battle pursuing these other challenges before the Supreme Court.

## V. Civil Commitment

Another means widely thought to limit the danger posed by sex offenders is to impose on them civil commitment through "sexually violent predator" (SVP) laws.[112] Under this approach, sex offenders are confined to a treatment facility, typically following the completion of their prison term, based on a finding that "because of a mental abnormality or personality disorder, [the person] finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts."[113] "Mental abnormality" or "personality disorder" is frequently defined to mean "a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others."[114] This approach employs the civil, rather than the criminal, process and allows a person to be involuntarily hospitalized if, following a hearing, that person is found to pose a risk of self-harm or harm to others.[115] This approach permits the state to confine the person until he or she no longer poses a danger to society.[116]

In *Kansas v. Hendricks*, the United States Supreme Court upheld a Kansas statute that allowed the involuntary civil commitment of a sex offender who, due to a "mental abnormality or personality disorder," is likely to engage in "predatory acts of sexual violence."[117] In *Hendricks*, the respondent was a convicted sex offender whose pedophilia was considered to constitute the requisite "mental abnormality."[118]

Five years later, the Court issued a second ruling that clarified that *Hendricks* does not require that the state prove that sex offenders are completely incapable of controlling themselves before the state may commit them.[119] In *Kansas v. Crane*, the Court established that the state is only required to prove that it would be "difficult" for the person to control his or her dangerous behavior as a predicate to civil commitment.[120]

As of 2006, nineteen states had civil commitment statutes for certain sex offenders.[121] After an initial rapid proliferation of such laws, enthusiasm for additional enactments has waned. In the decade of the 1990s, fifteen state programs were passed; since 2000, only four states have enacted such programs. Reasons for this vary, but prohibitive cost, lack of ability to control costs, better alternative uses of funds and resources, lack of release back into the community resulting in an ever increasing number of

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outweighed by the state's compelling interest in protecting public safety (citing Paul P. v. Farmer, 227 F.3d 98, 107 (3d Cir. 2000))).

[111] Doe v. Moore, 410 F.3d 1337, 1346-49 (11th Cir. 2005), *cert. denied*, 126 S. Ct. 624 (2005) (finding no equal protection violation).

[112] *See* JOHN Q. LA FOND, PREVENTING SEXUAL VIOLENCE: HOW SOCIETY SHOULD COPE WITH SEX OFFENDERS 128 (2005).

[113] VA. CODE ANN. § 37.2-900 (2006).

[114] *Id.*

[115] ANDREW J. HARRIS, CIVIL COMMITMENT OF SEXUAL PREDATORS: A STUDY IN POLICY IMPLEMENTATION xiii (2005); John Kirwin, *One Arrow in the Quiver--Using Civil Commitment as One Component of a State's Response to Sexual Violence*, 29 WM. MITCHELL L. REV. 1135, 1137 (2003).

[116] *See, e.g.*, FLA. STAT. § 394.917(2) (2005).

[117] Kansas v. Hendricks, 521 U.S. 346, 350 (1997) (quoting KAN. STAT. ANN. § 59-29a01 (1994)). The phrase "predatory acts of sexual violence" has since been replaced with "repeat acts of sexual violence." KAN. STAT. ANN. § 59-29a01 (2005).

[118] *Kansas v. Hendricks*, 521 U.S. at 360.

[119] Kansas v. Crane, 534 U.S. 407, 411 (2002).

[120] *Id.* at 411.

[121] Susan Broderick, *Innovative Legislative Strategies for Dealing with Sexual Offenders*, 18(10) AMERICAN PROSECUTORS RESEARCH INSTITUTE UPDATE 1 (2006), http://www.ndaa-apri.org/publications/newsletters/update_vol_18_number_10_2006.pdf.

individuals committed, and lack of demonstrated efficacy are all cited.[122] As of December 2004, 3,943 people had been confined under these laws, with only 427 of them having been conditionally released (most of them) or discharged.[123]

Civil commitment is arguably the most draconian of the so-called non-punitive sex offender legislation in that it confines, for an indeterminate and potentially life-long period of time, offenders who have already served their criminal sentences. It confines these offenders essentially because of crimes they might commit in the future. Civil commitment should be used as a last resort and only for offenders whose dangerousness has been established on a case-by-case basis.

## VI. Problems with the Current Responses to Sexual Offending

Current sex offender legislation regarding community notification in particular needs to be more focused. The broad range of offenders encompassed by these laws detracts attention and resources away from those offenders that need the greatest attention, monitoring, and supervision, namely, offenders who pose the highest risk of recidivism. As discussed, individuals who commit incest or statutory rape, or who possess child pornography, are often considered to be sex offenders for purposes of community notification. While the putative reason for sex offender legislation is a regulatory one–protecting citizens[124]–notification regimes are not risk-discriminating. For instance, adult relatives who engage in consensual sexual intercourse with one another pose little, if any, risk to the community, yet they can be subject to registration and notification requirements. This broad scope needlessly scares community members by overstating the presence of what are perceived to be dangerous offenders, places burdens on offenders who pose little or no risk of harming anyone, and drains financial, law enforcement, and administrative resources.

Notification also makes it difficult for offenders to obtain housing and employment. In a study involving thirty convicted sex offenders subjected to community notification, 83% reported that they had been excluded from a residence and 57% reported that they had lost employment as a result of their status as sex offenders.[125] In another study, 300 employers were surveyed as to whether they would hire ex-convicts, including offenders who had committed sexual crimes against children or sexual assault against adults.[126] The overwhelming majority of employers surveyed stated that they would not hire the sex offenders.[127] Job stability, however, significantly reduces the likelihood that a sex offender will re-offend,[128] making notification counterproductive in this respect.

Given that landlords are reluctant to house sex offenders, not surprisingly many are homeless.[129] Ironically, this makes monitoring them more difficult. In addition, with sex offenders forced to move from place to place, even state to state, it becomes harder for offenders to maintain needed ongoing relationships with mental health professionals and family members, friends, or community members and organizations that can provide

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[122] John Q. La Fond & Bruce J. Winick, *Doing More Than Their Time* (op-ed), N.Y. TIMES, May 21, 2006, at sec. 14, p. 13.
[123] *Id.*
[124] *See, e.g.*, N.Y. CORRECT. LAW Art. 6-C Note (2005).
[125] Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Managing High Risk Criminals or Exacting Further Vengeance?* 18 BEHAV. SCI. & L. 375, 383 (2000).
[126] Shelley Albright & Furjen Denq, *Employer Attitudes Toward Hiring Ex-Offenders*, 76(2) PRISON J. 118, 124-25 (1996).
[127] *Id.* at 129-31.
[128] Candace Kruttschnitt et al., *Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls*, 17 JUST. Q. 61, 80 (2000).
[129] *See, e.g.*, Monica Davey, *Iowa's Residency Rules Drives Sex Offenders Underground*, N.Y. TIMES, Mar. 15, 2006, at A1.

support services, which in turn may enhance the likelihood of recidivism.[130]

Vigilantism has also been associated with community notification laws. When communities are notified about the presence of a sex offender, some community members may harass, intimidate, or even violently attack the offenders. In one instance, a teenage offender received death threats and found his dog decapitated on his step.[131] In another instance, arsonists burned down the home where a released sex offender was supposed to live.[132] One study found that amongst 942 sex offenders in Washington state subject to community notification, there were thirty-three reported incidents of harassment of some form against the offender or his family.[133] While this number may seem low, one must keep in mind that such incidents may be underreported, as offenders may not want to call further attention to themselves or their families, and that even the possibility of such vigilantism can cause significant worry amongst offenders and their families and hamper treatment efforts.

Another common result of notification is isolation. Social ostracism that the sex offender experiences may push him farther from integrating with society, decrease social skills, and make re-offense more likely.[134]

While community notification increases public anxiety,[135] an article published in October 2005 noted that in the ten years that such laws have been in place, there has not been a single study that has shown reduced recidivism of sexual violence attributable to notification.[136] In December of that same year, a report from the Washington Institute of Public Policy did find that sex offenses had decreased in the years since Washington's passage of sex offender legislation that contained registration and notification provisions.[137]

There are a number of problems with drawing conclusions from this decrease, however. First, as the report acknowledges, Washington has increased the length of incarceration for sex offenders during this period.[138] If offenders are incarcerated for longer periods of time, they have less opportunity to offend. Thus, the decrease in recidivism could be attributable to increased length of incarceration. Second, even if one ignores the incarceration issue, the notification regime in Washington is risk-discriminating in that it provides for community notification only for

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[130] Further exacerbating this dislocation, a number of communities and states prohibit convicted sex offenders from living within a certain distance of designated locations such as schools or child-care centers. *See, e.g.*, IOWA CODE § 692A.2A (2005). These restrictions have had the effect of virtually excluding convicted sex offenders from urban areas, as well as preventing them from living with family members. Davey, *supra* note 129. Interestingly, the Iowa County Attorney's Association, an organization of Iowa prosecutors, has criticized such legislation as being counterproductive, asserting that it causes homelessness and is too broad, and that no research shows that such a restriction reduces sex offenses. IOWA COUNTY ATTORNEYS ASSOCIATION, STATEMENT ON SEX OFFENDER RESIDENCY RESTRICTIONS IN IOWA (Jan. 2006), http://spd.iowa.gov/filemgmt_data/files/SexOffender.pdf.

[131] Jan Hoffman, *New Law Is Urged on Freed Sex Offenders*, N.Y. TIMES, Aug. 4, 1994, at B1.

[132] Joshua Wolf Shenk, *Do 'Megan's Laws' Make a Difference?* U.S. NEWS & WORLD REP., Mar. 9, 1998, at 27.

[133] SCOTT MATSON & ROXANNE LIEB, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, COMMUNITY NOTIFICATION IN WASHINGTON STATE: 1996 SURVEY OF LAW ENFORCEMENT, Executive Summary, Doc. No. 96-11-1101 (Nov. 1996), *available at* http://www.wsipp.wa.gov/rptfiles/sle.pdf.

[134] TERRY, *supra* note 24, at 196.

[135] Mary Bolding, *California's Registration and Community Notification Statute: Does It Protect the Public from Convicted Sex Offenders?*, 25 W. ST. U.L. REV. 81, 81 (1997).

[136] EXECUTIVE BOARD OF DIRECTORS, ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, THE REGISTRATION AND COMMUNITY NOTIFICATION OF ADULT SEXUAL OFFENDERS (Oct. 5, 2005), http://www.atsa.com/ppnotify.html.

[137] ROBERT BARNOSKI, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, SEX OFFENDER SENTENCING IN WASHINGTON STATE: HAS COMMUNITY NOTIFICATION REDUCED RECIDIVISM? Doc. No. 05-12-1202 (Dec. 2005), http://www.wsipp.wa.gov/rptfiles/05-12-1202.pdf.

[138] *Id.*

moderate and high risk offenders,[139] thus obviating some, but not all, of the inefficiencies and counterproductive components of notification regimes. Those notification regimes that are not risk-discriminating and that are not accompanied by treatment, employment, and housing for offenders are unjust and inefficient. Third, it is notable that with fifty states having enacted community notification laws, this is the only study that we have located that suggests some effect in terms of reducing recidivism. Clearly, more research on the impact of these laws is needed.

Civil commitment as a mechanism for responding to sexual offenders also carries a heavy price. First, a general right to be free from physical restraint and various liberty interests are afforded by the Constitution.[140] There are of course situations where these important guarantees can be tempered, but such restrictions should be limited.[141] Second, civil commitment is very expensive. The cost of housing and treating a civilly committed person for one year in Washington is $138,000.[142] Overall, the cost of operating special facilities for the commitment of sex offenders at the national level is estimated to be $224 million per year.[143] Thus, if there are cheaper or less restrictive ways to achieve the goals of civil commitment, namely, protect public safety and promote rehabilitation, they should be pursued.

## VII. Treatment Options

While there is no known cure for inappropriate sexual thoughts and behavior,[144] there are treatments that can significantly reduce their strength and occurrence. Treatments include non-biological therapies such as cognitive behavioral therapy, and biological therapies such as surgical castration and pharmacological (drug) therapy.

Among the non-biological treatments for sex offenders, cognitive-behavioral therapy is the most common.[145] During cognitive-behavioral therapy, offenders may obtain social skills training, sex education, cognitive restructuring, aversive conditioning, and victim empathy therapy.[146]

Social skills training attempts to provide the offender with social competency, so that the individual may pursue appropriate social interactions; sex education informs the offender of the risks and practice of sexual behavior; cognitive restructuring helps the offender avoid cognitive distortions that may have provided the offender with a justification for his behavior; aversive conditioning pairs painful, annoying, or unpleasant experiences, such as a bad smell, with an offender's inappropriate sexual fantasy; and victim empathy therapy helps offenders understand the harm they have caused to the victim and that the victim is also a person with feelings.[147] Offenders may also undergo relapse prevention therapy, a type of cognitive-behavioral therapy, where they learn how to identify problematic thoughts and behaviors and stop their progression.[148]

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[139] WASH. REV. CODE § 4.24.550 (2006).
[140] *See Kansas v. Hendricks*, 521 U.S. at 356.
[141] *Id.*
[142] TERRY, *supra* note 24, at 211.
[143] ROXANNE LIEB & KATHY GOOKIN, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT PREDATORS: COMPARING STATE LAWS, Doc. No. 05-03-1101 (2005), *available at* http://www.wsipp.wa.gov/rptfiles/05-03-1101.pdf. On the other hand, the average cost per year of housing an inmate in state prison is $22,650. JAMES STEPHAN, U.S. DEP'T OF JUSTICE, STATE PRISON EXPENDITURES, 2001, SPECIAL REPORT, NCJ 202949 (June 2004), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/spe01.pdf.

[144] TERRY, *supra* note 24, at 139.
[145] *Id.* at 154.
[146] Richard B. Krueger & Meg S. Kaplan, *Behavioral and Psychological Treatment of the Paraphilic and Hypersexual Disorders*, 8 J. PSYCHIATRIC PRAC. 24-25 (2002).
[147] *Id.*
[148] THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, REDUCING SEXUAL ABUSE THROUGH REATMENT AND INTERVENTION WITH ABUSERS (1996), http://www.atsa.com/pptreatment.html [hereinafter ATSA].

Cognitive behavioral therapy, while often successful in reducing recidivism amongst sex offenders,[149] does not always work, either completely or at all.[150] Thus, it is very important for a mental health professional to determine when cognitive-behavioral therapy is appropriate, and to monitor its effectiveness.

Surgical castration[151] involves removal of the testes, which has the effect of significantly reducing circulating testosterone.[152] While surgical castration does decrease sex drive,[153] it does not always do so completely.[154] Further, many view surgical castration, which they associate with the eugenics movement that sought to sterilize those with undesirable traits thought to be hereditary,[155] with fear and skepticism. Additionally, the reduction of sex drive achieved through surgical castration can be overcome with the use of exogenous androgens, such as testosterone,[156] which may be obtained surreptitiously. Nevertheless, some authorities believe that surgical castration may become more common, as it has achieved the lowest recidivism rate of any treatment.[157]

Pharmacological therapy,[158] however, is a viable option for many, particularly those with paraphilias. One of the most noteworthy studies on pharmacological therapy for sex offenders tested the efficacy of triptorelin, a drug that reduces male testosterone levels, in decreasing the deviant sexual desire and behavior of thirty men.[159] All of the men suffered from paraphilias, with twenty-five of them suffering specifically from pedophilia.[160] Before triptorelin use, the men reported an average of forty-eight deviant sexual fantasies per week (with a standard deviation of ten) and five incidents of abnormal sexual behavior per month (with a standard deviation of two).[161]

During treatment, which involved monthly intramuscular injections of triptorelin, supplemented with regular supportive psychotherapy (one to four sessions a month), all of the men had a prompt reduction in paraphilic activities, with the maximal reduction in the intensity of their sexual desire and symptoms occurring after three to ten months with the exception of one man in whom it was achieved after two years.[162] All of the men reported that their sexual desire decreased considerably, that their sexual behavior became easily controllable, that their deviant sexual fantasies and urges disappeared completely, and that there were no incidents of abnormal sexual behavior during therapy.[163] Once the maximal effects of treatment were achieved, there were no sexual offenses reported by the men, by their relatives, or by a probation officer.[164] Symptoms returned among those men who stopped treatment, including three who

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[149] Polizzi et al., *What Works in Adult Sex-Offender Treatment? A Review of Prison- and Non-Prison Based Treatment Programs*, 43 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 357, 371 (1999).
[150] See ATSA, *supra* note 148.
[151] Surgical castration is also referred to as physical castration or orcheictomy.
[152] Kurt Freund, *Therapeutic Sex Drive Reduction*, 62 (Supp. 287) ACTA PSYCHIATRICA SCANDINAVICA 5, 15 (1980). For an updated review of surgical castration, see Richard B. Krueger et al., Orchiectomy (in preparation).
[153] Richard Wille & Klaus M. Beier, *Castration in Germany*, 2 ANNALS SEX RESEARCH 103, 129 (1989).
[154] TERRY, *supra* note 24, at 154.
[155] *See* Charles Scott & Trent Holmberg, *Castration of Sex Offenders: Prisoners' Rights Versus Public Safety*, 31 J. AM. ACAD. PSYCHIATRY L. 502, 502 (2003).
[156] J. Michael Bailey & Aaron S. Greenberg, *The Science and Ethics of Castration: Lessons from the Morse Case*, 92 NW. U.L. REV. 1225, 1235 (1998).
[157] Ariel Rosler & Eliezer Witztum, *Pharmacotherapy of Paraphilias in the Next Millennium*, 18 BEHAV. SCI. & L. 43, 44 (2000).
[158] Pharmacological therapy is also referred to as drug therapy or chemical castration.
[159] Ariel Rosler & Eliezer Witztum, *Treatment of Men with Paraphilia with a Long-Acting Analogue of Gonadotropin-Releasing Hormone*, 338 NEW ENG. J. MED. 416 (1998).
[160] *Id.* at 417.
[161] *Id.* The study did not include a control group "because the men might have continued to offend while receiving a placebo." *Id.*
[162] *Id.* at 418.
[163] *Id.*
[164] *Id.* at 418-19.

reported intolerable side effects. Further, for three of these men who were subsequently given an alternative medication (cyproterone acetate), two were subsequently prosecuted and received prison sentences for sex crimes.[165] Case studies of another testosterone-reducing drug, leuprolide acetate (brand name Lupron), reported successful results similar to those of triptorelin.[166]

Currently, medroxyprogesterone acetate (MPA)[167] is the drug most commonly used to reduce serum testosterone levels.[168] MPA is given by injection and need only be administered once every three months.[169] Each injection costs about $30 to $75.[170] Gonadotropin releasing hormone agonists, such as depot-leuprolide acetate, though, are gaining a foothold[171] because they have fewer adverse side-effects[172] and are considered more effective[173] than MPA. Although leuprolide acetate is significantly more expensive than MPA,[174] considering its treatment potential, it may well be worth the cost.

Pharmacological therapies are generally given to those with paraphilias, as they have stronger and more intense deviant sexual desires than other sex offenders.[175] As noted, however, pharmacological therapies may induce unpleasant or harmful side effects or for other reasons may be resisted by sex offenders. While the testosterone-reducing effects of drugs like MPA and leuprolide acetate may be overcome by taking exogenous androgens, standard laboratory analyses of blood and urine can be used to test for the presence of such androgens.[176] It is also important to note that pharmacological therapies need not be life-long; these therapies may be employed for short-term treatment that allows offenders to obtain some measure of control over their sexual impulses and enables other forms of treatment, such as behavioral therapy, to become effective.[177]

However, pharmacological therapies have their limits. For instance, drugs that reduce

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[165] *Id.* 419.

[166] Richard B. Krueger & Meg S. Kaplan, *Depot-Leuprolide Acetate for Treatment of Paraphilias: A Report of Twelve Cases*, 30(4) ARCHIVES SEXUAL BEHAV. 409 (2001). *See also* Peer Briken et al., *Treatment of Paraphilia with Luteinizing Hormone-Releasing Hormone Agonists*, 27 J. SEX & MARITAL THERAPY 45, 52 (2001); Richard B. Krueger & Meg S. Kaplan, *Chemical Castration: Treatment for Pedophilia*, *in* 2 DSM-IV-TR CASEBOOK 309, 309 (Michael B. First et al. eds., 2006).

[167] Available under the brand name Depo-Provera.

[168] TERRY, *supra* note 24, at 153.

[169] MPA can also be given orally. Luk Gijs & Louis Gooren, *Hormonal and Psychopharmalogical Interventions in the Treatment of Paraphilias: An Update*, 33(4) J. SEX RESEARCH 273, 275 (1996).

[170] JENNIFER JOHNSEN, PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., IS THE SHOT RIGHT FOR YOU? (2006), http://www.plannedparenthood.org/pp2/portal/files/portal/medicalinfo/birthcontrol/pub-depo-provera.xml.

[171] Fabian M. Saleh & Laurie L. Guidry, *Psychosocial and Biological Treatment Considerations for the Paraphilic and Nonparaphilic Sex Offender*, 31 J. AM. ACAD. PSYCHIATRY & L. 486, 490 (2003).

[172] Krueger & Kaplan, *supra* note 166, at 418 (citing Smith et al., *Clinical Effects of Gonadotrophin-releasing Hormone Analogue in Metastatic Carcinoma of Prostate*, 25 UROLOGY 106 (1985)). Side effects of MPA include hyperglycemia, nightmares, weight gain, and lethargy. Rosler & Witztum, *supra* note 159, at 420. Side effects of leuprolide acetate include hot flashes and decreases in bone density, which can be countered by administering, among other things, alendronate, vitamin D, and calcium. *Id.* at 419-20; Richard B. Krueger et al., *Prescription of Medroxyprogesterone Acetate to a Patient with Pedophilia, Resulting in Cushing's Syndrome and Adrenal Insufficiency*, SEXUAL ABUSE: J. RES. & TREATMENT (forthcoming 2006).

[173] *Id.* at 420-21.

[174] Although costs vary, the cost of one four-month dose has been set at $2,660. WALGREENS, LUPRON DEPOT 30MG INJ, http://www.walgreens.com/library/finddrug/druginfo1.jsp?particularDrug=Lupron&id=15887) (last visited July 19, 2006).

[175] TERRY, *supra* note 24, at 153.

[176] *See* Bailey & Greenberg, *supra* note 156, at 1236. For instance, anabolic steroids such as testosterone cypionate, which may help increase sex-drive, are easily detectible, even months after use. Lorenz C. Hofbauer & Armin E. Heufelder, *Endocrine Implications of Human Immunodeficiency Virus Infection*, 75 MED. 262, 271 (1996); Morris B. Mellion, *Anabolic Steroids in Athletics*, 30 AM. FAM. PHYSICIAN 113, 118 (1984).

[177] Krueger & Kaplan, *supra* note 166, at 419.

testosterone levels, like leuprolide acetate and MPA, may not have any effect on nonsexual violence.[178] Thus, for offenders without paraphilias or whose primary problems are non-sexual, or for offenders with paraphilias and nonsexual violence problems, behavioral therapies, either alone or in conjunction with pharmacological therapies, are necessary.

## VIII. Recommendations

Before better means to reduce the occurrence of sexual offenses can be established, the potent obstacle of the political process must be recognized. In a representative democracy, elected legislators are responsible to and dependent upon the support of their constituents. Considering the significant inaccuracies in, and overall frenetic nature of, popularly held beliefs and attitudes regarding sex offenders, it is not surprising that legislators often feel they must adopt measures driven by fear rather than sound science or public policy.

In this vein, a Police Chief in Des Moines, Iowa, arguing for the repeal of an Iowa law placing residency restrictions on certain sex offenders that increased their homelessness and subsequently decreased the ability to monitor their whereabouts, worried that state legislators would not re-work the counterproductive statute out of political cowardice.[179] This fear needs to be overcome and the following recommendations implemented.

(1) Current medical practice has embraced "evidence-based medicine," which is "the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients."[180] This approach integrates "individual clinical expertise with the best available external clinical evidence [drawn] from systematic research."[181] There is a similar need for "evidence-based legislation." Although recidivism rates are frequently bandied about in the course of legislative debates over proposed sex offender legislation, there is a need for more accurate and precise information on risk and treatment that will enable more appropriate decisions to be made. In general, educational and training programs regarding sex offenders should be made available to legislators and their staff to inform their decision-making.

(2) Sex offender legislation should be preceded by careful study and a projected cost-benefit analysis, rather than rely on speculation and public fears. In addition, any legislation that is enacted should always include a provision mandating and funding a cost-benefit analysis of the legislation and its effects. Building "sunset" provisions into this legislation can provide an opportunity for a systematic review of the cost-benefit analysis and the impact of the legislation, and can be considered in determining whether to modify the legislation.[182]

(3) Sexual offending is a complex behavior and understanding and redressing it is a difficult challenge. Accordingly, proposals to reduce this criminal behavior should be carefully considered and studied. To promote this effort, multidisciplinary commissions should be formed with governmental support and charged to fully evaluate the effects and integration of sex offender-related legislation. These commissions should include mental health professionals, lawyers, criminologists, judges, and legislators. Such commissions should address sex abuse as both a criminal justice and a public health problem. The Centers for Disease Control and Prevention and the World Health Assembly (the decision-making body for the World Health Organization) have declared violence to be a

[178] *Id.*
[179] Lee Rood, *New Data Shows Twice as Many Sex Offenders Missing*, DES MOINES REG. & TRIB., Jan. 23, 2006, at 1A.
[180] David L. Sackett et al., *Evidence Based Medicine: What It Is and What It Isn't*, 312 BRITISH MED. J. 71, 71 (1996).
[181] *Id.*
[182] A "sunset" provision provides that the legislation, unless renewed, will expire after a specified period of time or upon a given date.

public health priority, and The Association for the Treatment of Sexual Abusers has suggested that this framework be extended to sexual violence.[183] The public health model is used to complement the criminal justice approach and strives to prevent the occurrence of crimes through the identification of risk factors and the development of interventions to address these factors.[184] A public health approach can develop not only appropriate post-offense responses, but also generate broader, more systematic, long-term changes that can help prevent the occurrence of sexual abuse and the development of sex offenders.

(4) Risk level classifications should be incorporated into society's responses to sex offenders, particularly with regard to their community notification systems, and a graduated response employed that limits the use of the most "punitive" mechanisms to those offenders that have been shown to pose the greatest risk. This would enable offenders who pose minimal risk and are unlikely to re-offend to reintegrate into society, as well as motivate all offenders to seek and comply with needed treatment programs to obtain this level of classification. Mental health professionals can now identify factors that are related to recidivism and, using sophisticated, empirically-validated instruments, accurately assess the likelihood of future risk.[185] These instruments should be used, for example, to determine what level of community notification is employed for various categories of sex offenders. Community notification should be tailored to the risk these offenders present.

(5) Legislative responses to sex offending should incorporate incentives that reward offenders who undergo, comply with, and maintain treatment, such as relieving these offenders of some of the obligations and hardships they would otherwise face. As noted, the strictest measures should be reserved for those offenders who pose the greatest, most difficult-to-reduce risk of re-offending, thereby targeting scarce resources and focusing attention in a more efficient and productive manner. Such incentives will further motivate offenders to seek and comply with needed treatment programs.

(6) Less restrictive alternatives (including both behavioral and pharmacological treatment) should be considered before civilly committing a sex offender and, where appropriate, be offered to the offender.[186] Such treatment should be provided free of charge or at least at an affordable rate. The successful employment of these alternatives can avoid the huge costs associated with civil commitment, while enhancing the likelihood that an offender becomes a productive member of society. At the same time, the availability of civil commitment or other mechanisms can help ensure treatment compliance.

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[183] *See, e.g.,* THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, SEXUAL ABUSE AS A PUBLIC HEALTH PROBLEM (2001), http://www.atsa.com/pppublichealth.html.

[184] *Id.*

[185] While there are a number of instruments used to predict the likelihood of recidivism, the Static-99 is the most common and most validated. R. KARL HANSON, PUBLIC SAFETY AND EMERGENCY PREPAREDNESS CANADA, THE VALIDITY OF STATIC-99 WITH OLDER SEXUAL OFFENDERS (2005), http://ww2.psepc-sppcc.gc.ca/publications/Corrections/20050630_e.asp. The Static-99 considers ten static factors about an offender, such as the offender's gender and prior sexual offenses, and assigns a score to an offender based on the answers to questions related to these factors. *See* TERRENCE W. CAMPBELL, ASSESSING SEX OFFENDERS 83-84 (2004). Static-99 shows "moderate predictive accuracy." R. Karl Hanson & David Thornton, *Improving Risk Assessments for Sex Offenders: A Comparison of Three Actuarial Scales*, 24 L. & HUM. BEHAV. 119, 129 (2000). Static-99 has its critics. *See, e.g.,* CAMPBELL, *supra*, at 83-97. It is properly used as a starting point, both in practice and as a springboard for further research. A more comprehensive view of risk would involve considering both static and dynamic (such as current employment stability) factors. Further research is necessary, but risk assessment instruments have experienced steady improvement, improvement that will continue with new research and testing.

[186] Involuntary pharmacological therapy is not addressed here, as it raises numerous constitutional and ethical concerns that merit a separate, thorough analysis.

(7) Government supported opportunities for offenders to obtain employment, housing, treatment, and support services should be enhanced. Offenders cannot reintegrate into society and develop healthy living habits if they have no income, shelter, treatment, or support. Enhancing the likelihood that offenders must or will continually relocate because they lack these opportunities not only virtually ensures that offenders will not improve and exhibit appropriate behavior, but also makes it more difficult to monitor the offender to enhance public safety.

(8) Resources available to treat potential offenders should receive more publicity. Existing state-sponsored websites, publications, and education programs appropriately highlight the resources available to victims, as well as how people can identify and locate sex offenders. There is little or no attention given to advertising how and where a person with a sexual disorder can obtain competent and confidential treatment that will prevent inappropriate behavior from occurring. Governmental funding should be provided to enhance awareness of these services.[187] Additionally, governmental support should be supplied to ensure that people can obtain these resources even when they lack the ability to pay for these services.

(9) Drug and mental health courts have been successfully implemented in some locations.[188] These courts hear mostly or exclusively drug cases or relatively minor criminal cases involving defendants with a mental disorder, respectively, and have thus developed significant experience and expertise in such matters. Sex offense courts may be a viable mechanism in which judges and parole or probation officers are knowledgeable about sex offenders, the treatment modalities specifically designed for sex offenders, the appropriate mechanisms to prevent recidivism, and how best to monitor and supervise offenders to ensure public safety.

However, there is much debate regarding specialized courts in the literature, and thus the matter needs further study.[189] Regardless of whether such specialized courts are implemented, educational and training programs regarding sex offenders should be made available to judges, as well as probation and parole officers, to inform their decision-making.

(10) Because of the limited knowledge and understanding of sex offending, funding and support for research to enhance this understanding is essential. Further research should focus on improving the collection and analysis of recidivism data; studying the effects on recidivism of existing non-punitive responses to sex offenders and possible alternatives; and examining, evaluating, and improving the efficacy of non-biological and biological treatment.

## IX. Conclusion

[187] Examples of organizations that provide referrals to mental health professionals and programs that treat sex offenders include: The Safer Society Foundation, P.O. Box 340, Brandon, VT, 05733-0340, (802) 247-5141, www.safersociety.org; The Association for the Treatment of Sexual Abusers (ATSA), 4900 S.W. Griffith Dr., Suite 274, Beaverton, OR, 97005, (503) 643-1023, www.atsa.com, atsa@atsa.com.

[188] *See, e.g.,* Jonathan E. Fielding et al., *Los Angeles County Drug Court Programs: Initial Results*, 23 J. SUBSTANCE ABUSE TREATMENT 217, 223 (2002).

[189] The issue of specialized sex courts is not a simple one. Scholars have long debated the merits and drawbacks of specialized courts as compared to courts of general jurisdiction. Proponents see specialization as beneficial insofar as the courts can develop significant expertise in the area of specialization and produce efficiencies such as those that economists have noted flow from specialization in the production of goods and services. Opponents worry that specialization can render these courts more susceptible to special interests and bias, and that the monotony (hearing the same cases over and over) and lack of prestige of a specialized judgeship might attract a lower-quality judiciary than a generalized judgeship would. For an excellent review of these issues, consult Jeffrey Stempel, *Two Cheers for Specialization*, 61 BROOK. L. REV. 67 (1995).

Crafting appropriate responses for sex offenders is no easy task. As they are some of the most hated and reviled members of society, legislators (even those who are well-intentioned) fear opposing legislation targeting these offenders, regardless of how misguided the legislation may be. In the long run, however, well-informed and carefully crafted measures will prove more effective than impulsive, ill-conceived responses in reducing sex offenses.

Four principles should guide the development of these responses. First, sex offenders should be recognized to be a heterogeneous group, distinguishable by offense type and risk of re-offense. Second, the law should take into account new pharmacological therapies, such as testosterone-suppressing drugs, as well as other innovations and therapeutic approaches as a means of reducing the likelihood of future offenses.[190] Third, greater efforts should be made to promote offender reintegration into society, thereby improving their chances for successful treatment and diminishing the likelihood that they will reoffend. Fourth, it is critical to assess the effects of such legislation and to invest in research into the causes, treatment, and prevention of sexual violence.

By integrating law and therapeutic efforts, responses can be formulated that prevent future offenses and victimization, offer offenders and potential offenders the optimal opportunity to lead healthy, productive lives, and decrease the cost of sexual offending to society. By implementing the recommendations described above, society can move one step closer to these goals.



[190] These therapies are not cure-alls. They must be used appropriately, as discussed in this article and in the medical literature.

http://www.latimes.com/news/opinion/la-op-krueger11mar11,0,2986016.story?coll=la-opinion-center

# The new American witch hunt

**Demonizing sex offenders by passing tough, mindless laws rather than treating them makes little sense.**

By Richard B. Krueger
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March 11, 2007

INCREASINGLY, legislation dealing with sex offenders is being passed that is punitive, untested, expensive and, in many cases, counterproductive — demonizing people who commit sexual offenses without offering any empirical information that the new laws will reduce sexually violent crime.

Last week, for instance, New York became the 19th state to enact so-called sexually violent predator legislation. This legislation provides for the indefinite "civil commitment" of sexual offenders who have served their time in prison and are about to be released.

The legislation was passed despite a lack of evidence that such laws actually reduce sexual violence and despite recent reports of warehousing and chaos in some programs and relentlessly rising costs in others.

It is just one example of the kind of punitive laws being passed across the country. Other measures include increasingly strict residency restrictions (such as those imposed by Proposition 83 in California, approved by the voters in November), more stringent rules for community notification regarding sexual offenders and monitoring by GPS (also mandated under Proposition 83, with cost projections of $100 million annually, according to the state's legislative analyst).

In many states, politicians are eager to pass such legislation, which is enthusiastically supported by the public. Indeed, ask citizens what they ·nd you're likely to hear that they support laws to "get rid of perverts" who, in the eyes of many people, "deserve what they get."

.is is not new. In general, dispassionate discussion of sexuality is difficult, even more so when it comes to sexual crimes. Ebbs and flows of public attention and vilification have often occurred in this country.

In the 1930s and '40s, castration was practiced in California, where sex offenders and homosexuals received this "treatment." Also, the first generation of sexual psychopath laws was passed during this time, mandating indefinite commitment for sexually violent predators. In the 1980s, society was roiled by a series of high-profile day-care-center abuse cases (such as the McMartin case and others that proved later to be unfounded). In the 1990s, there was a media uproar over supposed "ritualistic" and "satanic" sexual abuse.

These days, the pendulum continues to swing further toward the punitive end of the spectrum, with ever more draconian sentencing and post-release conditions. Under the federal Adam Walsh Child Protection Act, signed into law by President Bush in July, all sex offenders will be listed on the Internet, making information on offenders, regardless of whether they belong to a low-, medium- or high-risk category, publicly accessible; this includes people, for example, whose only crime is the possession of child pornography.

Obviously, this makes it increasingly difficult for ex-offenders to obtain residences or jobs — the mainstays of stability — and it subjects them to ongoing vigilantism and public censure. Although notification may make sense for some, it does not make sense for all.

In California, the most recent debate has been over whether Proposition 83, the law passed last year banning registered sex offenders from living within 2,000 feet of a school or park, can be retroactively applied to the 90,000 offenders who have already been released from prison. (Two federal judges ruled last month that it may not.)

What is being created is a class of individuals that is progressively demonized by society and treated in such a way that a meaningful reintegration into society is impossible.

Yes, sexual abuse is a serious matter. Yes, individuals who commit sexual crimes should be punished. Unquestionably, a small percentage of sex offenders are very dangerous and must be removed from society. What's more, we know that sexual crimes are devastating to victims and their families and that we must do all we can to protect ourselves from "predators."

I monizing people rather than treating them makes little sense, and passing laws that are tough but mindless in response to political pressure ... solve the problem either.

The reality is that, despite the popular perception to the contrary, recidivism rates for sexual offenders are among the lowest of any class of criminals. What's more, 90% of sex offenders in prison will eventually be released back into the community — and 90% of sexual offenses are

committed by people known to their victim, such as family members or trusted members of the community — so rehabilitation is critical. It is not possible, affordable, constitutional or reasonable to lock up all sex offenders all of the time.

S ety's efforts to segregate sex offenders are backfiring, resulting in unintended consequences. Homelessness is increasing among sex offenders, tance, making it harder to monitor them and causing some law enforcement officials to call for a repeal of residency restrictions.

One of the greatest challenges to workable civil commitment programs is that offenders are so feared that, when they are ready to be reintroduced into society, no community will accept them — so instead they remain institutionalized indefinitely, creating ever-increasing costs without an end in sight.

Why has this demonization occurred? One reason is that offenders are hot news, and the more heinous the sexual crime, the more the media focus on it. Thus, our minds create a stereotype of egregious evil with respect to all sex offenders. We no longer distinguish between the most egregious cases and the others, despite the fact that the most terrible crimes represent only a small proportion of all sexual offenses.

But there *are* less serious crimes, and we should acknowledge that. Possession of child pornography is categorically different from a sexual assault. So is exhibitionism. The wife of a man who committed a hands-off crime involving possession of child pornography put it this way: "Each of these horrendous crimes drives another nail into our coffin."

Another reason for the demonization is that society has failed to fund research on the treatment and management of people convicted of sexual crimes — despite the fact that states are willing to spend hundreds of millions of dollars on unproven programs for treatment and containment.

The current public discourse on sex offenders is, therefore, without a base of empirical studies. Psychiatry, psychology and our national research institutes have eschewed involvement with such research.

No one is suggesting that sexual crimes should go unpunished or that some of the newer approaches — such as medication, intensive community supervision or even carefully considered civil commitment — are without value. What is becoming clearer, however, is that the climate in the United States makes reasonable discussion difficult.

What can be done? Some scholars, in an effort to interpose rationality between public fear and legislation, have suggested the concept of "evidence-based legislation." This is analogous to "evidence-based medicine" and would call on legislative bodies to inform their proposed laws with the best available scientific evidence — something that is rarely done now.

is happening now with individuals who have committed sexual crimes is the modern-day equivalent of a witch hunt. Our images of the letermine what we mete out to all sex offenders. It is time to reexamine our approaches and develop empirically based, scientifically sound easures and treatments to bring rationality back to this discussion.

# STATIC-99 Coding Rules

# Revised - 2003

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**STATIQUE-99 Règles de codage révisées – 2003**

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# How To Use This Manual

In most cases, scoring a STATIC-99 is fairly straightforward for an experienced evaluator. If you are unfamiliar with this instrument we suggest that you turn to the back pages of this manual and find the one-page STATIC-99 Coding Form. You may want to keep a copy of this to one side as you review the manual.

We strongly recommend that you read pages 3 to 21 and the section "Scoring the STATIC-99 and Computing the Risk Estimates" before you score the STATIC-99. These pages explain the nature of the STATIC-99 as a risk assessment instrument; to whom this risk assessment instrument may be applied; the role of self-report; exceptions for juvenile, developmentally delayed, and institutionalized offenders; changes from the last version of the STATIC-99 coding rules; the information required to score the STATIC-99; and important definitions such as "Index Offence", Category "A" offences versus Category "B" offences, "Index Cluster", and "Pseudo-recidivism".

Individual item coding instructions begin at the section entitled "Scoring the Ten Items". For each of the ten items, the coding instructions begin with three pieces of information: **The Basic Principle, Information Required to Score this Item,** and **The Basic Rule.** In most cases, just reading these three small sections will allow you to score that item on the STATIC-99. Should you be unsure of how to score the item you may read further and consider whether any of the special circumstances or exclusions apply to your case. This manual contains much information that is related to specific uses of the STATIC-99 in unusual circumstances and many sections of this manual need only be referred to in exceptional circumstances.

We also suggest that you briefly review the ten appendices as they contain valuable information on adjusting STATIC-99 predictions for time free in the community, a self-test of basic concepts, references, surgical castration, a table for converting raw STATIC-99 scores to risk estimates, the coding forms, a suggested report format for communicating STATIC-99-based risk information, a list of replication studies for the STATIC-99, information on inter-rater reliability and, how to interpret Static-99 scores greater than 6.

We appreciate all feedback on the scoring and implementation of the STATIC-99. Please feel free to contact any of the authours. Should you find any errors in this publication or have questions/concerns regarding the application of this risk assessment instrument or the contents of this manual, please address these concerns to:

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# Introduction

## The Nature of the STATIC-99

The STATIC-99 utilizes only static (unchangeable) factors that have been seen in the literature to correlate with sexual reconviction in adult males. The estimates of sexual and violent recidivism produced by the STATIC-99 can be thought of as a baseline of risk for violent and sexual reconviction. From this baseline of long-term risk assessment, treatment and supervision strategies can be put in place to reduce the risk of sexual recidivism.

The STATIC-99 was developed by R. Karl Hanson, Ph.D. of the Solicitor General Canada and David Thornton, Ph.D., at that time, of Her Majesty's Prison Service, England. The STATIC-99 was created by amalgamating two risk assessment instruments. The RRASOR (Rapid Risk Assessment of Sex Offender Recidivism), developed by Dr. Hanson, consists of four items: 1) having prior sex offences, 2) having a male victim, 3) having an unrelated victim, and 4) being between the ages of 18 and 25 years old. The items of the RRASOR were then combined with the items of the Structured Anchored Clinical Judgement – Minimum (SACJ-Min), an independently created risk assessment instrument written by Dr. Thornton (Grubin, 1998). The SACJ-Min consists of nine items: 1) having a current sex offence, 2) prior sex offences, 3) a current conviction for non-sexual violence, 4) a prior conviction for non-sexual violence, 5) having 4 or more previous sentencing dates on the criminal record, 6) being single, 7) having non-contact sexual offences, 8) having stranger victims, and 9) having male victims. These two instruments were merged to create the STATIC-99, a ten-item prediction scale.

The strengths of the STATIC-99 are that it uses risk factors that have been empirically shown to be associated with sexual recidivism and the STATIC-99 gives explicit rules for combining these factors into a total risk score. This instrument provides explicit probability estimates of sexual reconviction, is easily scored, and has been shown to be robustly predictive across several settings using a variety of samples. The weaknesses of the STATIC-99 are that it demonstrates only moderate predictive accuracy (ROC = .71) and that it does not include all the factors that might be included in a wide-ranging risk assessment (Doren, 2002).

While potentially useful, an interview with the offender is not necessary to score the STATIC-99.

The authors of this manual strongly recommend training in the use of the STATIC-99 before attempting risk assessments that may affect human lives. Researchers, parole and probation officers, psychologists, sex offender treatment providers, and police personnel involved in threat and risk assessment activities typically use this instrument. Researchers are invited to make use of this instrument for research purposes and this manual and the instrument itself may be downloaded from www.sgc.gc.ca.

It is possible to score more than six points on the STATIC-99 yet the top risk score is 6 (High-Risk). In analyzing the original samples it was found that there was no significant increase in recidivism rates for scores between 6 and 12. One of the reasons for this finding may be diminishing sample size. However, in general, the more risk factors, the more risk. There may be some saturation point after which additional factors do not appear to make a difference in risk. It is useful to keep in mind that all measurement activities contain some degree of error. If the offender's score is substantially above 6 (High-Risk), there is greater confidence the offender's "true" score is greater than 6 (High-Risk) than if the offender had only scored a 6.

The STATIC-99 does not address all relevant risk factors for sexual offenders. Consequently a prudent evaluator will always consider other external factors that may influence risk in either direction. An obvious example is where an offender states intentions to further harm or "get" his victims (higher risk).

Or, an offender may be somewhat restricted from further offending either by health concerns or where he has structured his environment such that his victim group is either unavailable or he is always in the company of someone who will support non-offending (lower risk). These additional risk factors should be stated in any report as "additional factors that were taken into consideration" and not "added" to the STATIC-99 Score. Adding additional factors to the STATIC-99, or adding "over-rides" distances STATIC-99 estimates from their empirical base and substantially reduces their predictive accuracy.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is "Ever Lived With ..." (Item #2). If no information is available, this item should be scored as a "0" (zero) – as if the offender **has lived** with an intimate partner for two years.

- **Recidivism Criteria** – In the original STATIC-99 samples the recidivism criteria was a new conviction for a sexual offence.

- **Non-Contact Sexual Offences** – The original STATIC-99 samples included a small number of offenders who had been convicted of non-contact sexual offences. STATIC-99 predictions of risk are relevant for non-contact sexual offenders, such as Break-&-Enter Fetishists who enter a dwelling to steal underwear or similar fetish objects.

- **RRASOR or STATIC-99?** On the whole, if the information is available to score the STATIC-99 it is preferable to use the STATIC-99 over the RRASOR as estimates based on the STATIC-99 utilize more information than those based upon RRASOR scores. The average predictiveness of the STATIC-99 is higher than the average predictiveness of the RRASOR (Hanson, Morton, & Harris, in press).

## Recidivism Estimates and Treatment

The original samples and the recidivism estimates should be considered primarily as "untreated". The treatment provided in the Millbrook Recidivism Study and the Oak Ridge Division of the Penetanguishene Mental Health Centre samples were dated and appeared ineffective in the outcome evaluations. Most of the offenders in the Pinel sample did not complete the treatment program. Except for the occasional case, the offenders in the Her Majesty's Prison Service (UK) sample would not have received treatment.

## Self-report and the STATIC-99

Ten items comprise the STATIC-99. The amount of self-report that is acceptable in the scoring of these questions differs across questions and across the three basic divisions within the instrument.

Demographic Questions: For Item #1 – Young, while it is always best to consult official written records, self-report of age is generally acceptable for offenders who are obviously older than 25 years of age. For Item #2 – Ever Lived With..., to complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. There may, however, be certain cases (immigrants, refugees from third world countries) where confirmation is not possible. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. For further guidance on the use of self-report and the STATIC-99 please see section "Item #2 – Ever Lived with an Intimate Partner – 2 Years".

Criminal History Questions: For the five (5) items that assess criminal history (Items 3, 4, 5, 6, & 7) an official criminal history is required to score these items and self-report is not acceptable. This being said, there may be certain cases (immigrants, refugees from third world countries) where self-report of crimes may be accepted if it is reasonable to assume that no records exist or that existing records are truly un-retrievable. In addition, to the evaluator, the self-report must seem credible and reasonable.

Victim Questions: For the three (3) victim items self-report is generally acceptable assuming the self-report meets the basic criteria of appearing reasonable and credible. Confirmation from official records or collateral contacts is always preferable.

**Who can you use the STATIC-99 on?**

The STATIC-99 is an actuarial risk prediction instrument designed to estimate the probability of sexual and violent reconviction for adult males who have already been charged with or convicted of at least one sexual offence against a child or a non-consenting adult. This instrument may be used with first-time sexual offenders.

This instrument is not recommended for females, young offenders (those having an age of less than 18 years at time of release) or for offenders who have only been convicted of prostitution related offences, pimping, public toileting (sex in public locations with consenting adults) or possession of pornography/indecent materials. The STATIC-99 is not recommended for use with those who have never committed a sexual offence, nor is it recommended for making recommendations regarding the determination of guilt or innocence in those accused of a sexual offence. The STATIC-99 is not appropriate for individuals whose only sexual "crime" involves consenting sexual activity with a similar age peer (e.g., Statutory Rape {a U.S. charge} where the ages of the perpetrator and the victim are close and the sexual activity was consensual).

The STATIC-99 applies where there is reason to believe an actual sex offence has occurred with an identifiable victim. The offender need not have been convicted of the offence. The original samples used to create this instrument contained a number of individuals who had been found Not Guilty by Reason of Insanity and others who were convicted of non-sexual crimes, but in all cases these offenders had committed real sex crimes with identifiable victims. The STATIC-99 may be used with offenders who have committed sexual offences against animals.

In some cases, an evaluator may be faced with an offender who has had a substantial period at liberty in the community with opportunity to re-offend, but has not done so. In cases such as these, the risk of sexual re-offence probabilities produced by the STATIC-99 may not be reliable and adjustment should be considered (Please see Appendix #1).

**STATIC-99 with Juvenile Offenders**

It should be noted that there were people in the original STATIC-99 samples who had committed sexual offences as juveniles (under the age of 18 years) and who were released as adults. In some cases an assessment of STATIC-99 risk potential may be useful on an offender of this nature. If the juvenile offences occurred when the offender was 16 or 17 and the offences appear "adult" in nature (preferential sexual assault of a child, preferential rape type activities) – the STATIC-99 score is most likely of some utility in assessing overall risk.

Evaluations of juveniles based on the STATIC-99 must be interpreted with caution as there is a very real theoretical question about whether juvenile sex offending is the same phenomena as adult sex offending in terms of its underlying dynamics and our ability to affect change in the individual. In addition, the younger the juvenile offender is, the more important these questions become. In general, the research literature leads us to believe that adolescent sexual offenders are not necessarily younger versions of adult sexual offenders. Developmental, family, and social factors would be expected to impact on recidivism potential. We have reason to believe that people who commit sex offences only as children/young people are a different profile than adults who commit sexual offences. In cases such as these, we recommend that STATIC-99 scores be used with caution and only as part of a more wide-ranging assessment of sexual and criminal behaviour. A template for a standard, wide-ranging assessment can be found in the

Solicitor General Canada publication, Harris, A. J. R., (2001), High-Risk Offenders: A Handbook for Criminal Justice Professionals, Appendix "d" (Please see the references section).

At this time we are aware of a small study that looked at the predictiveness of the STATIC-99 with juveniles. This study suggested that the scale worked with juveniles; at least in the sense that there was an overall positive correlation between their score on the STATIC-99 and their recidivism rate. This Texas study (Poole et al., 2000) focused on older juveniles who were 19 when released but younger when they offended.

In certain cases, the STATIC-99 may be useful with juvenile sexual offenders, if used cautiously. There would be reasonable confidence in the instrument where the convictions are related to offenses committed at the age of 17. In general, the younger the child, the more caution should be exercised in basing decisions upon STATIC-99 estimates. For example, if a 17-year-old offender committed a rape, alone, on a stranger female, you would have reasonable confidence in the STATIC-99 estimates. On the other hand, if the offender is now an adult (18+ years old) and the last sexual offence occurred when that individual was 14 or 15, STATIC-99 estimates would not apply. If the sexual offences occurred at a younger age and they look "juvenile" (participant in anti-social behaviour towards peers that had a sexual component) we would recommend that the evaluator revert to risk scales specifically designed for adolescent sexual offenders, such as the ERASOR (Worling, 2001).

The largest category of juvenile sexual offenders is generally antisocial youth who sexually victimize a peer when they are 13 or 14 years of age. These juvenile sexual offenders are most likely sufficiently different from adult sexual offenders that we do not recommend the use of the STATIC-99 nor any other actuarial instruments developed on samples of adult sexual offenders. We would once again refer evaluators to the ERASOR (Worling, 2001).

When scoring the STATIC-99, Juvenile offences when they are known from official sources, count as charges and convictions on "Prior Sexual Offences" regardless of the present age of the offender. Self-reported juvenile offences in the absence of official records do not count.

**STATIC-99 with Juvenile Offenders who have been in prison for a long time**

In this section we consider juvenile offenders who have been in prison for extended periods (20 years plus) and who are now being considered for release. In one recent case a male juvenile offender had committed all of his offences prior to the age of 15. This individual is now 36 years old and has spent more than 20 years incarcerated for these offences. The original STATIC-99 samples contained some offenders who committed their sexual offences as juveniles and were released as adults. However, most of these offenders were in the 18 – 20 age group upon release. Very few, if any, would have served long sentences for offences committed as juveniles. Although cases such as these do not technically violate the sampling frame of the STATIC-99, such cases would have been sufficiently rare that it is reasonable for evaluators to use more caution than usual in the interpretation of STATIC-99 reconviction probabilities.

**STATIC-99 with Offenders who are Developmentally Delayed**

The original STATIC-99 samples contained a number of Developmentally Delayed offenders. Presently, research is ongoing to validate the STATIC-99 on samples of Developmentally Delayed offenders. Available evidence to date supports the utility of actuarial approaches with Developmentally Delayed offenders. There is no current basis for rejecting actuarials with this population.

## STATIC-99 with Institutionalized Offenders

The STATIC-99 is intended for use with individuals who have been charged with, or convicted of, at least one sexual offence. Occasionally, however, there are cases where an offender is institutionalized for a non-sex offence but, once incarcerated, engages in sexual assault or sexually aggressive behaviour that is sufficiently intrusive to come to official notice. In certain of these cases charges are unlikely, e.g., the offender is a "lifer". If no sanction is applied to the offender, these offences are not counted. If the behaviour is sufficiently intrusive that it would most likely attract a criminal charge had the behaviour occurred in the community and the offender received some form of "in-house" sanction, (administrative segregation, punitive solitary confinement, moved between prisons or units, etc.), these offences would count as offences on the STATIC-99. If that behaviour were a sexual crime, this would create a new Index sexual offence. However, if no sanction is noted for these behaviours they cannot be used in scoring the STATIC-99.

The STATIC-99 may be appropriate for offenders with a history of sexual offences but currently serving a sentence for a non-sexual offence. The STATIC-99 should be scored with the most recent sexual offence as the Index offence. The STATIC-99 is not applicable to offenders who have had more than 10 years at liberty in the community without a sexual offence before they were arrested for their current offence. STATIC-99 risk estimates would generally apply to offenders that had between two (2) and ten (10) years at liberty in the community without a new sexual offence but are currently serving a new sentence for a new technical (fail to comply) or other minor non-violent offence (shoplifting, Break and Enter). Where an offender did have a prolonged (two to ten years) sex-offence-free period in the community prior to their current non-sexual offence, the STATIC-99 estimates would be adjusted for time free using the chart in Appendix One – "Adjustments in risk based on time free".

Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence. Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences.

## STATIC-99 with Black, Aboriginal, and members of other Ethnic/Social Groups

Most members of the original samples from which recidivism estimates were obtained were white. However, race has not been found to be a significant predictor of sexual offence recidivism. It is possible that race interacts with STATIC-99 scores, but such interactions between race and actuarial rates are rare. It has been shown that the SIR Scale works as well for Aboriginal offenders as it does for non-aboriginal offenders (Hann et al., 1993). The LSI-R has been shown to work as well for non-white offenders as it does for white offenders (Lowenkamp et al., 2001) and as well for aboriginal offenders as it does for non-aboriginal offenders (Bonta, 1989). In Canada there is some evidence that STATIC-99 works as well for Aboriginal sexual offenders as it does for whites (Nicholaichuk, 2001). At this time, there is no reason to believe that the STATIC-99 is culturally specific.

## STATIC-99 and Offenders with Mental Health Issues

The original STATIC-99 samples contained significant numbers of individual offenders with mental health concerns. It is appropriate to use the STATIC-99 to assess individuals with mental health issues such as schizophrenia and mood disorders.

## STATIC-99 and Gender Transformation

Use of the STATIC-99 is only recommended, at this time, for use with adult males. In the case of an offender in gender transformation the evaluator would score that person based upon their anatomical sex at the time their first sexual offence was committed.

# What's New? What's Changed?

Since the last version of the Coding Rules

The most obvious change in the layout of the STATIC-99 is the slight modification of three of the items to make them more understandable. In addition, the order in which the items appear on the Coding Form has been changed. It is important to remember that no item definitions have been changed and no items have been added or subtracted. Present changes reflect the need for a clearer statement of the intent of the items as the use of the instrument moves primarily from the hands of researchers and academics into the hands of primary service providers such as, parole and probation officers, psychologists, psychometrists and others who use the instrument in applied settings. The revised order of questions more closely resembles the order in which relevant information comes across the desk of these individuals.

The first item name that has been changed is the old item #10, Single. The name of this item has been changed to "Ever lived with an intimate partner – 2 years" and this item becomes item number 2 in the revised scale. The reason for this change is that the new item name more closely reflects the intent of the item, whether the offender has ever been capable of living in an intimate relationship with another adult for two years.

The two Non-sexual violence items, "Index Non-sexual violence" and "Prior non-sexual violence" have been changed slightly to make it easier to remember that a conviction is necessary in order to score these items. These two items become "Index Non-sexual violence – Any convictions?" and "Prior Non-sexual violence – Any convictions?" in the new scheme.

Over time, there have been some changes to the rules from the previous version of the coding rules. Some rules were originally written to apply to a specific jurisdiction. In consultation with other jurisdictions, the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item. These minor changes are most evident in Item #6 – Prior Sentencing Dates.

Over the past two years, a large number of direct service providers have been trained in the administration of the STATIC-99. The training of direct service providers has revealed to us that two related concepts must be clearly defined for the evaluator. These concepts are "Pseudo-recidivism" and "Index cluster". Pseudo-recidivism results when an offender who is currently engaged in the criminal justice process has additional charges laid against them for crimes they committed before they were apprehended for the current offence. Since these earlier crimes have never been detected or dealt with by the justice system they are "brought forward" and grouped with the Index offence. When, for the purposes of scoring the STATIC-99, these offences join the "Index Offence" this means there are crimes from two, or more, distinct time periods included as the "Index". This grouping of offences is known as an "Index Cluster". These offences are not counted as "priors" because, even though the behaviour occurred a long time ago, these offences have never been subject to a legal consequence.

Finally, there is a new section on adjusting the score of the STATIC-99 to account for offenders who have not re-offended for several years. There is reason to downgrade risk status for the offender who has not re-offended in the community over a protracted period (See Appendix One).

# Information Required to Score the STATIC-99

Three basic types of information are required to score the STATIC-99, Demographic information, an official Criminal Record, and Victim information.

## Demographic Information

Two of the STATIC-99 items require demographic information. The first item is "Young?". The offender's date of birth is required in order to determine whether the offender is between 18 and 25 years of age at the time of release or at time of exposure to risk in the community. The second item that requires knowledge of demographic information is "Ever lived with an intimate partner – 2 years?". To answer this question the evaluator must know if the offender has ever lived in an intimate (sexual) relationship with another adult, continuously, for at least two years.

## Official Criminal Record

In order to score the STATIC-99, the evaluator must have access to an official criminal record as recorded by police, court, or correctional officials. From this official criminal record you score five of the STATIC-99's items: "Index non-sexual violence – Any convictions", "Prior non-sexual violence – Any convictions", "Prior sex offences", "Prior sentencing dates", and "Non-contact sex offences – Any convictions". Self-report is generally not acceptable to score these five items – in the Introduction section, see sub-section – "Self-report and the STATIC-99".

## Victim Information

The STATIC-99 contains three victim information items" "Any unrelated victims", "Any stranger victims" and, "Any male victims". To score these items the evaluator may use any credible information at their disposal except polygraph examination. For each of the offender's sexual offences the evaluator must know the pre-offence degree of relationship between the victim and the offender.

# Definitions

## Sexual Offence

For the purposes of a STATIC-99 assessment a sexual offence is an officially recorded sexual misbehaviour or criminal behaviour with sexual intent. To be considered a sexual offence the sexual misbehaviour must result in some form of criminal justice intervention or official sanction. For people already engaged in the criminal justice system the sexual misbehaviour must be serious enough that individuals could be charged with a sexual offence if they were not already under legal sanction. **Do not count offences such as failure to register as a sexual offender or consenting sex in prison.**

Criminal justice interventions may include the following:

- Alternative resolutions agreements (Restorative Justice)
- Arrests
- Charges
- Community-based Justice Committee Agreements
- Criminal convictions
- Institutional rule violations for sexual offences (Do not count consenting sexual activity in prison)
- Parole and probation violations

Sanctions may include the following:

- Alternative resolution agreements
- Community supervision
- Conditional discharges
- Fines
- Imprisonment
- Loss of institutional time credits due to sexual offending ("worktime credits")

Generally, "worktime credit" or "institutional time credits" means credit towards (time off) a prisoner's sentence for satisfactory performance in work, training or education programs. Any prisoner who accumulates "worktime credit" may be denied or may forfeit the credit for failure or refusal to perform assigned, ordered, or directed work or for receiving a serious disciplinary offense.

Sexual offences are scored only from official records and both juvenile and adult offences count. You may not count self-reported offences except under certain limited circumstances, please refer to the Introduction section – sub-section "Self-report and the STATIC-99".

An offence need not be called "sexual" in its legal title or definition for a charge or conviction to be considered a sexual offence. Charges or convictions that are explicitly for sexual assaults, or for the sexual abuse of children, are counted as sexual offenses on the STATIC-99, regardless of the offender's motive. Offenses that directly involve illegal sexual behaviour are counted as sex offenses even when the legal process has led to a "non-sexual" charge or conviction. An example of this would be where an offender is charged with or pleads guilty to a Break and Enter when he was really going in to steal dirty underwear to use for fetishistic purposes.

In addition, offenses that involve non-sexual behavior are counted as sexual offenses if they had a sexual motive. For example, consider the case of a man who strangles a woman to death as part of a sexual act but only gets charged with manslaughter. In this case the manslaughter charge would still be considered a sexual offence. Similarly, a man who strangles a woman to gain sexual compliance but only gets charged

with Assault; this Assault charge would still be considered a sexual offence. Further examples of this kind include convictions for murder where there was a sexual component to the crime (perhaps a rape preceding the killing), kidnapping where the kidnapping took place but the planned sexual assault was interrupted before it could occur, and assaults "pled down" from sexual assaults.

Physical assaults, threats, and stalking motivated by sexual jealousy do not count as sexual offenses when scoring the STATIC-99.

**Additional Charges**

Offences that may not be specifically sexual in nature, occurring at the same time as the sexual offence, and under certain conditions, may be considered part of the sexual misbehaviour. Examples of this would include an offender being charged with/convicted of:

- Sexual assault (rape) and false imprisonment
- Sexual assault (rape) and kidnapping
- Sexual assault (rape) and battery

In instances such as these, depending upon when in the court process the risk assessment was completed, the offender would be coded as having been convicted of two sexual offences plus scoring in another item (Index or Prior Non-sexual Violence). For example if an offender were convicted of any of the three examples above prior to the current "Index" offence, the offender would score 2 "prior" sex offence charges and 2 "prior" sex offence convictions (On Item #5 – Prior Sexual Offences) and a point for Prior Non-sexual Violence (Please see "Prior Non-sexual Violence" or "Index Non-sexual Violence" for a further explanation).

**Category "A" and Category "B" Offences**

For the purposes of the STATIC-99, sexual misbehaviours are divided into two categories. Category "A" involves most criminal charges that we generally consider "sexual offences" and that involve an identifiable child or non-consenting adult victim. This category includes all contact offences, exhibitionism, voyeurism, sex with animals and dead bodies.

Category "B" offences include sexual behaviour that is illegal but the parties are consenting or no specific victim is involved. Category "B" offences include prostitution related offences, consenting sex in public places, and possession of pornography. Behaviours such as urinating in public or public nudity associated with mental impairment are also considered Category "B" offences.

**Rule:** if the offender has **any** category "A" offences on their record - all category "B" offences should be counted as sex offences for the purpose of scoring sexual priors or identifying the Index offense. They do not count for the purpose of scoring victim type items. The STATIC-99 is not recommended for use with offenders who have only category "B" offences.

Offence names and legalities differ from jurisdiction to jurisdiction and a given sexual behaviour may be associated with a different charge in a different jurisdiction. The following is a list of offences that would typically be considered sexual. Other offence names may qualify when they denote sexual intent or sexual misbehaviour.

**Category "A" Offences**

- Aggravated Sexual Assault
- Attempted sexual offences (Attempted Rape, Attempted Sexual Assault)
- Contributing to the delinquency of a minor (where the offence had a sexual element)
- Exhibitionism

- Incest
- Indecent exposure
- Invitation to sexual touching
- Lewd or lascivious acts with a child under 14
- Manufacturing/Creating child pornography where an identifiable child victim was used in the process (The offender had to be present or participate in the creation of the child pornography with a human child present)
- Molest children
- Oral copulation
- Penetration with a foreign object
- Rape (includes in concert) (Rape in concert is rape with one or more co-offenders. The co-offender can actually perpetrate a sexual crime or be involved to hold the victim down)
- Sexual Assault
- Sexual Assault Causing Bodily Harm
- Sexual battery
- Sexual homicide
- Sexual offences against animals (Bestiality)
- Sexual offences involving dead bodies (Offering an indignity to a dead body)
- Sodomy (includes in concert and with a person under 14 years of age)
- Unlawful sexual intercourse with a minor
- Voyeuristic activity (Trespass by night)

**Category "B" Offences**

- Consenting sex with other adults in public places
- Crimes relating to child pornography (possession, selling, transporting, creating where only pre-existing images are used, digital creation of)
- Indecent behaviour without a sexual motive (e.g., urinating in public)
- Offering prostitution services
- Pimping/Pandering
- Seeking/hiring prostitutes
- Solicitation of a prostitute

Certain sexual behaviours may be illegal in some jurisdictions and legal in others (e.g., prostitution). Count only those sexual misbehaviours that are illegal in the jurisdiction in which the risk assessment takes place and in the jurisdiction where the acts took place.

**Exclusions**

The following offences would not normally be considered sexual offences

- Annoying children
- Consensual sexual activity in prison (except if sufficiently indiscreet to meet criteria for gross indecency).
- Failure to register as a sex offender
- Being in the presence of children, loitering at schools
- Possession of children's clothing, pictures, toys
- Stalking (unless sexual offence appears imminent, please see definition of "Truly Imminent" below)
- Reports to child protection services (without charges)

**Rule:** Simple questioning by police not leading to an arrest or charge is insufficient to count as a sexual offence.

**Probation, Parole or Conditional Release Violations as Sexual Offences**

**Rule:** Probation, parole or conditional release violations resulting in arrest or revocation/breach are considered sexual offences when the behaviour could have resulted in a charge/conviction for a sexual offence if the offender were not already under legal sanction.

Sometimes the violations are not clearly defined as a sexual arrest or conviction. The determination of whether to count probation, parole, or conditional release violations as sexual offences is dependent upon the nature of the sexual misbehaviour. Some probation, parole and conditional release violations are clearly of a sexual nature, such as when a rape or a child molestation has taken place or when behaviours such as exhibitionism or possession of child pornography have occurred. These violations would count as the Index offence if they were the offender's most recent criminal justice intervention.

Generally, violations due to "high-risk" behaviour would not be considered sex offences. The most common of these occurs when the offender has a condition not to be in the presence of children but is nevertheless charged with a breach - being in the presence of children. A breach of this nature would not be considered a sexual offence. This is a technical violation. The issue that determines if a violation of conditional release is a new sex offence or not is whether a person who has never been convicted of a sex offence could be charged and convicted of the breach behaviour. A person who has never faced criminal sanction could not be charged with being in the presence of minors; hence, because a non-criminal could not be charged with this offence, it is a technical violation. Non-sexual probation, parole and conditional release violations, and charges and convictions such as property offences or drug offences are not counted as sexual offences, even when they occur at the same time as sexual offences.

Taking the above into consideration, some high-risk behaviour may count as a sexual offence if the risk for sexual offence recidivism was truly imminent and an offence failed to occur only due to chance factors, such as detection by the supervision officer or resistance of the victim.

**Definition of "Truly Imminent"**

Examples of this nature would include an individual with a history of child molesting being discovered alone with a child and about to engage in a "wrestling game." Another example would be an individual with a long history of abducting teenage girls for sexual assault being apprehended while attempting to lure teenage girls into his car.

**Institutional Rule Violations**

Institutional rule violations resulting in institutional punishment can be counted as sex offences if certain conditions exist. The first condition is that the sexual behaviour would have to be sufficiently intrusive that a charge for a sexual offence would be possible were the offender not already under legal sanction. In other words, "if he did it on the outside would he get charged for it?" Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. Poorly timed or insensitive homosexual advances would not count even though this type of behaviour might attract institutional sanctions. The second condition is that the evaluator must be sure that the sexual assaults actually occurred and the institutional punishment was for the sexual behaviour.

In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female officer and masturbates in front of her, where she is the obvious and intended target of the act, would count as a

"charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell is discovered by a female officer and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge' and could not stand as an Index offence. If the evaluator has insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and the evaluator would not score these occurrences. A further important distinction is whether the masturbation takes place covered or uncovered. Masturbating under a sheet would not be regarded as an attempt at indecent exposure.

Consider these two examples:

(1) A prisoner is masturbating under a sheet at a time when staff would not normally look in his cell. Unexpectedly a female member of staff opens the observation window, looks through the door, and observes him masturbating. This would not count as a sex offence for the purposes of STATIC-99, even if a disciplinary charge resulted.

(2) In the alternate example, a prisoner masturbates uncovered so that his erect penis is visible to anyone who looks in his cell. Prison staff have reason to believe that he listens for the lighter footsteps of a female guard approaching his cell. He times himself so that he is exposed in this fashion at the point that a female guard is looking into the cell. This would count as a sexual offence for the purposes of scoring STATIC-99 if it resulted in an institutional punishment.

**Rule: Prison Misconducts and Institutional Rule Violations for Sexual Misbehaviours count as one charge per sentence**

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

**Mentally Disordered and Developmentally Delayed Offenders**

Some offenders suffer from sufficient mental impairment (major mental illness, developmental delays) that criminal justice intervention is unlikely. For these offenders, informal hearings and sanctions such as placement in treatment facilities and residential moves would be counted as both a charge and a conviction for a sexual offence.

**Clergy and the Military**

For members of the military or religious groups (clergy) (and similar professions) some movements within their own organizations can count as charges and convictions and hence, Index offences. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of this would be the "de-frocking" of a priest or minister or being publicly denounced. Another example would be where an offender is transferred within the organization and the receiving institution knows they are receiving a sex offender. If this institution considers it part of their mandate to address the offender's problem or attempt to help him with his problem then this would function as equivalent to being sent to a correctional institution, and would count as a conviction and could be used as an Index Offence.

For members of the military, a religious group (clergy) or teachers (and similar professions) being transferred to a new parish/school/post or being sent to graduate school for re-training does not count as a conviction and cannot be used as an Index Offence.

**Juveniles**

Instances in which juveniles (ages 12–15) are placed into residential care for sexual aggression would count as a charge and conviction for a sexual offence. In jurisdictions where 16 and 17 year old sexual offenders remain in a juvenile justice system (not charged, tried, and sent to jail as adults are), where it is possible to be sent to a "home" or "placement", this would count as a charge and a conviction for a sexual offence. In jurisdictions where juveniles aged 16 and 17 are charged, convicted, sentenced, and jailed much like adults, juvenile charges and convictions (between ages 16 & 17) would be counted the same as adult charges and convictions.

Sexual misbehaviour of children 11 or under would not count as a sex offence unless it resulted in official charges.

**Official Cautions – United Kingdom**

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

**Similar Fact Crimes**

An Offender assaults three different women on three different occasions. On the first two occasions he grabs the woman as she is walking past a wooded area, drags her into the bushes and rapes her. For this he is convicted twice of Sexual Assault (rape). In the third case he grabs the woman, starts to drag her into the bushes but she is so resistant that he beats her severely and leaves her. In this case he is convicted of Aggravated Assault. In order for the conviction to be counted as a sexual offence, it must have a sexual motivation. In a case like this it is reasonable to assume that the Aggravated Assault had a sexual motivation because it resembles the other sexual offences so closely. In the absence of any other indication to the contrary this Aggravated Assault would also be counted as a sexual offence. Note: This crime could also count as Non-sexual Violence.

Please also read subsection "Coding Crime Sprees" in section "Item #5 – Prior Sex Offences".

## Index offence

The Index offence is generally the most recent sexual offence. It could be a charge, arrest, conviction, or rule violation (see definition of a sexual offence, earlier in this section). Sometimes Index offences include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. If this results in a single conviction regardless of the number of counts, all counts are considered part of the Index offence. Convictions for sexual offences that are subsequently overturned on appeal can count as the Index offence. Charges for sexual offences can count as the Index Offence, even if the offender is later acquitted.

Most of the STATIC-99 sample (about 70%) had no prior sexual offences on their record; their Index offence was their first recorded sexual misbehaviour. As a result, the STATIC-99 is valid with offenders facing their first sexual charges.

**Acquittals**

Acquittals count as charges and can be used as the Index Offence.

**Convictions Overturned on Appeal**

Convictions that are subsequently overturned on appeal can count as an Index Offence.

**"Detected" by Child Protection Services**

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction. This is insufficient to create a new Index Offence.

**Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences – As an Index Offence**

Occasionally, offenders on conditional release in the community who have a life sentence, who have been designated as Dangerous Offenders (Canada C.C.C. Sec. 753) or other offenders with indeterminate sentences either commit a new offence or breach their release conditions while in the community. Sometimes, when this happens the offenders have their conditional releases revoked and are simply returned to prison rather than being charged with a new offence or violation. Generally, this is done to save time and court resources as these offenders are already under sentence.

> If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour this can serve as the Index Sexual Offence if the behaviour is of such gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence given the same behaviour. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police.

## Historical Offences

The evaluator may face a situation where an offender is brought before the court on a series of sexual offences, all of which happened several years in the past. This most often occurs when an offender has offended against children in the past and as these children mature they come forward and charge the perpetrator. After the first charge is laid it is not unusual for other victims to appear and lay subsequent charges. The evaluator may be faced with an offender with multiple charges, multiple court dates, and possibly multiple convictions who has never before been to court – or who has never before been sanctioned for sexual misbehaviour. In a case like this, where the offender is before the court for the first time, all of the charges, court appearances and convictions become what is known as an "Index Cluster" and they are all counted as part of the Index Offence.

## Index Cluster

An offender may commit a number of sexual offences in different jurisdictions, over a protracted period, in a spree of offending prior to being detected or arrested. Even though the offender may have a number of sentencing dates in different jurisdictions, the subsequent charges and convictions would constitute an "Index Cluster". These "spree" offences would group together – the early ones would not be considered "priors" and the last, the "Index", they all become the "Index Cluster". This is because the offender has not been "caught" and sanctioned for the earlier offences and then "chosen" to re-offend in spite of the sanction. Furthermore, historical offences that are detected after the offender is convicted of a more recent sexual offence would be considered part of the Index offence (pseudo-recidivism) and become part of the Index Cluster (See subsequent section).

For two offences to be considered separate offences, the second offence must have been committed after the offender was detected and detained and/or sanctioned for the previous offence. For example, an offence committed while an offender was released on bail for a previous sexual offence would supersede

the previous charge and become the Index offence. This is because the offender knew he/she had been detected for their previous crimes but chose to re-offend anyway.

**An Index cluster can occur in three ways.**

The first occurs when an offender commits multiple offences at the same time and these offences are then subsequently dealt with as a group by the police and the courts.

The second occurs when an Index offence has been identified for an offender and following this the evaluator becomes aware of previous historical offences for which the offender has never previously been charged or convicted. These previous offences come forward and become part of the "Index Cluster". This is also known as "Pseudo-recidivism". It is important to remember, these historical charges do not count as "priors" because the offending behaviour was not consequenced before the offender committed the Index offence. The issue being, the offender has not been previously sanctioned for his behaviour and then made the choice to re-offend.

The third situation arises when an offender is charged with several offences that come to trial within a short period of time (a month or so). When the criminal record is reviewed it appears that a cluster of charges were laid at the end of an investigation and that the court could not attend to all of these charges in one sitting day. When the evaluator sees groups of charges where it appears that a lot of offending has finally "caught up" with an offender – these can be considered a "cluster". If these charges happen to be the last charges they become an Index Cluster. The evaluator would not count the last court day as the "Index" and the earlier ones as "priors". A second example of this occurs when an offender goes on a crime "spree" – the offender repeatedly offends over time, but is not detected or caught. Eventually, after two or more crimes, the offender is detected, charged, and goes to court. But he has not been independently sanctioned between the multiple offences.

> **For Example:** An offender commits a rape, is apprehended, charged, and released on bail. Very shortly after his release, he commits another rape, is apprehended and charged. Because the offender was apprehended and charged between crimes this does not qualify as a crime "spree" – these charges and possible eventual convictions would be considered separate crimes. If these charges were the last sexual offences on the offender's record – the second charge would become the Index and the first charge would become a "Prior".
>
> However, if an offender commits a rape in January, another in March, another in May, and another in July and is finally caught and charged for all four in August this constitutes a crime "spree" because he was not detected or consequenced between these crimes. As such, this spree of sexual offences, were they the most recent sexual offences on the offenders record, would be considered an "Index Cluster" and all four rape offences would count as "Index" not just the last one.

**Pseudo-recidivism**

Pseudo-recidivism occurs when an offender currently involved in the criminal justice process is charged with old offences for which they have never before been charged. This occurs most commonly with sexual offenders when public notoriety or media publicity surrounding their trial or release leads other victims of past offences to come forward and lay new charges. Because the offender has not been charged or consequenced for these misbehaviours previously, they have not experienced a legal consequence and then chosen to re-offend.

> **For Example:** Mr. Jones was convicted in 1998 of three sexual assaults of children. These sexual assaults took place in the 1970's. As a result of the publicity surrounding Mr. Jones' possible release in 2002, two more victims, now adults, come forward and lay new charges in 2002. These offences also took place in the 1970's but these victims did not come forward until 2002. Because Mr. Jones

had never been sanctioned for these offences they were not on his record when he was convicted in 1998. Offences for which the offender has never been sanctioned that come to light once the offender is in the judicial process are considered "pseudo-recidivism" and are counted as part of the "Index Cluster". Historical charges of this nature are not counted as "priors".

The basic concept is that the offender has to be sanctioned for previous mis-behaviours and then "chose" to ignore that sanction and re-offend anyway. If he chooses to re-offend after a sanction then he creates a new offence and this offence is considered part of the record, usually a new Index offence. If historical offences come to light, for which the offender has never been sanctioned, once the offender is in the system for another sexual offence, these offences "come forward' and join the Index Offence to form an "Index Cluster".

**Post-Index Offences**

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

**For Example, Post-Index Sexual Offences:** Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered a separate crime. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

**For Example, Post-Index Violent Offences:** Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, as an "external risk factor", outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

**Prior Offence(s)**

A prior offence is any sexual or non-sexual crime, institutional rule violation, probation, parole or conditional release violation(s) and/or arrest charge(s) or, conviction(s), that was legally dealt with PRIOR to the Index offence. This includes both juvenile and adult offences. In general, to count as a prior, the sanction imposed for the prior offense must have occurred before the Index offense was committed. However, if the offender was aware that they were under some form of legal restraint and then goes out and re-offends in spite of this restriction, the new offence(s) would create a new Index offence. An example of this could be where an offender is charged with "Sexual Communication with a Person Under the Age of 14 Years" and is then released on his own recognizance with a promise to appear or where they are charged and released on bail. In both of these cases if the offender then committed an "Invitation to Sexual Touching" after being charged and released the "Invitation to Sexual Touching" would become the new Index offence and the "Sexual Communication with a Person Under the Age of 14 Years" would automatically become a "Prior" sexual offence.

In order to count violations of conditional release as "Priors" they must be "real crimes", something that someone not already engaged in the criminal justice system could be charged with. Technical violations such as Being in the Presence of Minors or Drinking Prohibitions do not count.

# Scoring the 10 Items

## Item # 1 - Young

**The Basic Principle:** Research (Hanson, 2001) shows that sexual recidivism is more likely in an offender's early adult years than in an offender's later adult years. See Figure 1, next page.

**Information Required to Score this Item:** To complete this item the evaluator has to confirm the offender's birth date or have other knowledge of the offender's age.

**The Basic Rule:** If the offender is between his 18th and 25th birthday at exposure to risk you score the offender a "1" on this item. If the offender is past his 25th birthday at exposure to risk you score the offender a "0" on this item.

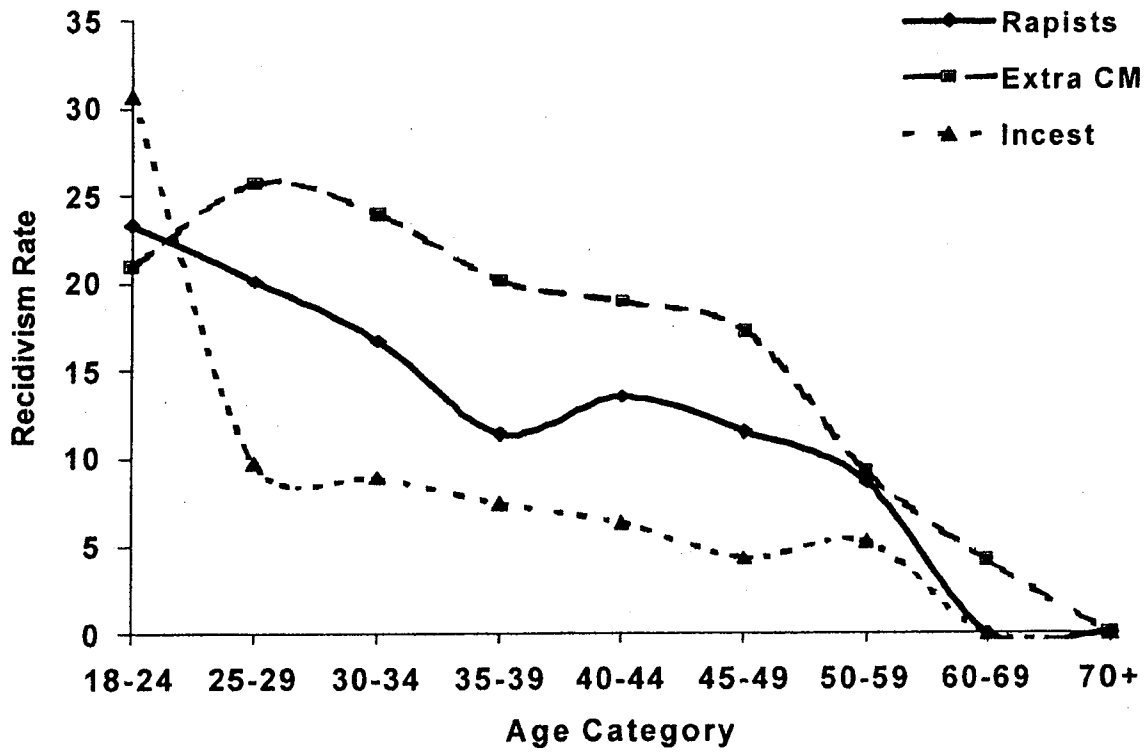
STATIC-99 is not intended for those who are less than 18 years old at the time of exposure to risk.

Under certain conditions, such as anticipated release from custody, the evaluator may be interested in an estimate of the offender's risk at some specific point in the future. This may occur if the offender is presently incarcerated (January) and you are interested in his risk when he is eligible for release in September. However, you know that the offender's 25th birthday will occur in May. If you were assessing the offender's estimated risk of re-offence for his possible release in September – because at time of exposure to risk he is past his 25th birthday - you would not give the risk point for being less-than-25 even though he is only 24 today. You calculate risk based upon age at exposure to risk.

Sometimes the point at which an offender will be exposed to risk may be uncertain, for example, if he is eligible for parole but may not get it. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change according to when he is released.

**Figure 1**

**Age Distribution of Sexual Recidivism in Sexual Offenders**




Rapists (n = 1,133)
Extra-familial Child Molesters [Extra CM] (n = 1,411)
Incest Offenders (n = 1,207)

Hanson, R. K. (2002). Recidivism and age: Follow-up data on 4,673 sexual offenders. Journal of Interpersonal Violence, 17, 1046-1062.

Hanson, R. K. (2001). *Age and sexual recidivism: A comparison of rapists and child molesters.* User Report 2001-01. Ottawa: Department of the Solicitor General of Canada. Department of the Solicitor General of Canada website, www.sgc.gc.ca

## Item # 2 – Ever Lived with an Intimate Partner – 2 Years

**The Basic Principle:** Research suggests that having a prolonged intimate connection to someone may be a protective factor against sexual re-offending. See Hanson and Bussière (1998), Table 1 – Items "Single (never married) and Married (currently)". On the whole, we know that the relative risk to sexually re-offend is lower in men who have been able to form intimate partnerships.

**Information Required to score this Item:** To complete this item it is highly desirable that the evaluator confirm the offender's relationship history through collateral sources or official records.

**The Basic Rule:** If the offender has never had an intimate adult relationship of two years duration you score the offender a "1" on this item. If the offender has had an intimate adult relationship of two years duration you score the offender a "0" on this item.

The intent of this item is to reflect whether the offender has the personality/psychological resources, as an adult, to establish a relatively stable "marriage-like" relationship with another person. It does not matter whether the intimate relationship was/is homosexual or heterosexual.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is this one (Ever Lived With – Item #2). If no information is available this item should be scored a "0" (zero) – as if the offender has lived with an intimate partner for two years.

- To complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. There may be certain cases (immigrants, refugees from third world countries) where it is not possible to access collaterals or official records. Where the evaluator, based upon the balance of probabilities, is convinced this person has lived with an intimate partner for two years the evaluator may score this item a "0". It is greatly preferred that you confirm the existence of this relationship through collateral contacts or official records. This should certainly be done if the assessment is being carried out in an adversarial context where the offender would have a real motive to pretend to a non-existent relationship.

- In cases where confirmation of relationship history is not possible or feasible the evaluator may chose to score this item both ways and report the difference in risk estimate in their final report.

If a person has been incarcerated most of their life or is still quite young and has not had the opportunity to establish an intimate relationship of two years duration, they are still scored as never having lived with an intimate partner for two years. They score a "1". There are two reasons for this. The first being, this was the way this item was scored in the original samples and to change this definition now would distance the resulting recidivism estimates from those validated on the STATIC-99. Secondly, having been part of, or experienced, a sustained relationship may well be a protective factor for sexual offending. As a result, the reason why this protective factor is absent is immaterial to the issue of risk itself.

The offender is given a point for this item if he has never lived with an adult lover (male or female) for at least two years. An adult is an individual who is over the age of consent to marriage. The period of co-habitation must be continuous with the same person.

Generally, relationships with adult victims do not count. However, if the offender and the victim had two years of intimate relationship before the sexual offences occurred then this relationship would count, and the offender would score a "0" on this item. However, if the sexual abuse started before the offender and the victim had been living together in an intimate relationship for two years then the relationship would not count regardless of it's length.

Cases where the offender has lived over two years with a child victim in a "lover" relationship do not count as living with an intimate partner and the offender would be scored a "1" on this item. Illegal relationships (Incestuous relationship with his Mother) and live-in relationships with "once child" victims do not count as "living together" for the purposes of this item and once again the offender would score a "1" on this item. A "once child" victim is the situation where the offender abused a child but that victim is either still living, as an adult, in an intimate relationship with the offender or who has lived, as an adult, in an intimate relationship with the offender.

**Exclusions**

- Legal marriages involving less than two years of co-habitation do not count
- Male lovers in prison would not count
- Prison marriages (of any duration) where the offender is incarcerated during the term of the relationship do not count
- Illegal relationships, such as when the offender has had an incestuous relationship with his mother do not count
- Intimate relationships with non-human species do not count
- Relationships with victims do not count (see above for exception)
- Priests and others who for whatever reason have chosen, as a lifestyle, not to marry/co-habitate are still scored as having never lived with an intimate partner

**Extended Absences**

In some jurisdictions it is common for an offender to be away from the marital/family home for extended periods. The offender is generally working on oilrigs, fishing boats, bush camps, military assignment, or other venues of this nature. While the risk assessment instrument requires the intimate co-habitation to be continuous there is room for discretion. If the offender has an identifiable "home" that he/she shares with a lover and the intimate relationship is longer than two years, the evaluator should look at the nature and consistency of the relationship. The evaluator should attempt to determine, in spite of these prolonged absences, whether this relationship looks like an honest attempt at a long-term committed relationship and not just a relationship of convenience.

If this relationship looks like an honest attempt at a long-term committed relationship then the evaluator would score the offender a "0" on this item as this would be seen as an intimate relationship of greater than two years duration. If the evaluator thinks that the relationship is a relationship of convenience, the offender would score a "1". If the living together relationship is of long duration (three plus years) then the periods of absence can be fairly substantial (four months in a logging camp/oil rig, or six months or more on military assignment).

## Item # 3 – Index Non-sexual Violence (NSV) – Any Convictions

**The Basic Principle:** A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item "Prior Violent Offences". The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense.

**Information Required to Score this Item:** To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

**The Basic Rule:** If the offender's criminal record shows a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on the same sentencing occasion as the Index sex offence. A separate Non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim. All non-sexual violence convictions are included, providing they were dealt with on the same sentencing occasion as the Index sex offence(s).

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

**Included are:**

- Aggravated Assault
- Arson
- Assault
- Assault causing bodily harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item
- Kidnapping
- Murder

- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

**Excluded are:**

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

**Weapons offences**

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

**Resisting arrest**

"Resisting Arrest" does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with "Assault a Peace/Police Officer" which would count as non-sexual violence.

**Convictions that are coded as only "sexual"**

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for "Sexual Battery" (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

**Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence**

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences

would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" sexual offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

**For Example**

| **Criminal Record for Joe Smith** | | | |
|---|---|---|---|
| **Date** | **Charge** | **Conviction** | **Sentence** |
| July 2000 | Forcible Confinement | Forcible Confinement | 20 Months incarceration and 3 years probation |
| **If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")** | | | |

However, were you to see the following:

| **Criminal Record for Joe Smith** | | | |
|---|---|---|---|
| **Date** | **Charge** | **Conviction** | **Sentence** |
| July 2000 | 1) Forcible Confinement<br>2) Sexual Assault | 1) Forcible Confinement<br>2) Sexual Assault | 20 Months incarceration and 3 years probation |
| **If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")** | | | |

**Military**

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

**Murder – With a sexual component**

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

**Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences**

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that would generally attract a sexual charge if the offender were not already under sanction and at the same time this same offender committed a violent act sufficient that it would generally attract a

separate criminal charge for a violent offence, this offender can be scored for Index Non-sexual Violence when the accompanying sexual behaviour stands as the Index offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that both a sexual offence charge and a violent offence charge would be laid by police.

## Item # 4 – Prior Non-sexual Violence – Any Convictions

**The Basic Principle:** A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item "Prior Violent Offences". The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for prior non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense. Sub-analyses of additional data sets confirm the relation of prior non-sexual violence and sexual recidivism (Hanson & Thornton, 2002).

**Information Required to Score this Item:** To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

**The Basic Rule:** If the offender's criminal record shows a separate conviction for a non-sexual violent offence prior to the Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence prior to their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on a sentencing occasion that pre-dates the Index sex offence sentencing occasion. A separate non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim, but the offender must have been convicted for this non-sexual violent offence before the sentencing date for the Index offence. All non-sexual violence convictions are included, providing they were dealt with on a sentencing occasion prior to the Index sex offence.

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

**Included are:**

- Aggravated Assault
- Arson
- Assault
- Assault Causing Bodily Harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item

- Kidnapping
- Murder
- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

**Excluded are:**

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

**Weapons offences**

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

**Resisting arrest**

"Resisting Arrest" does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with "Assault a Peace/Police Officer" which would count as non-sexual violence.

**Convictions that are coded as only "sexual"**

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for "Sexual Battery" (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

**Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence**

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

**For Example**

| **Criminal Record for Joe Smith** | | | |
|---|---|---|---|
| **Date** | **Charge** | **Conviction** | **Sentence** |
| July 2000 | Forcible Confinement | Forcible Confinement | 20 Months incarceration and 3 years probation |
| **If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")** | | | |

However, were you to see the following:

| **Criminal Record for Joe Smith** | | | |
|---|---|---|---|
| **Date** | **Charge** | **Conviction** | **Sentence** |
| July 2000 | 1) Forcible Confinement<br>2) Sexual Assault | 1) Forcible Confinement<br>2) Sexual Assault | 20 Months incarceration and 3 years probation |
| **If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")** | | | |

**Military**

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

**Murder – With a sexual component**

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

**Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences**

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence has been revoked (returned to prison from conditional release in the community without trial) for a Non-sexual Violent offence that happened prior to the Index sexual offence (or Index Cluster) this revocation can stand as a conviction for Non-sexual Violence if that non-sexually violent act were sufficient that it would generally attract a separate criminal charge for a violent offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a violent offence charge would be laid by police.

## Item # 5 – Prior Sex Offences

**The Basic Principle:** This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the "the best predictor of future behaviour, is past behaviour". Andrews & Bonta (2003) state that having a criminal history is one of the "Big Four" predictors of future criminal behaviour. More recently, and specific to sexual offenders, a meta-analytic review of the literature indicates that having prior sex offences is a predictive factor for sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item "Prior Sex Offences".

**Information Required to Score this Item:** To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

**The Basic Rule:** This is the only item in the STATIC-99 that is not scored on a simple "0" or "1" dichotomy. From the offender's official criminal record, charges and convictions are summed separately. Charges that are not proceeded with or which do not result in a conviction are counted for this item. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Charges and convictions are summed separately and these totals are then transferred to the chart below.

**Note:** For this item, arrests for a sexual offence are counted as "charges".

| Prior Sexual Offences | | |
|---|---|---|
| **Charges** | **Convictions** | **Final Score** |
| None | None | 0 |
| 1-2 | 1 | 1 |
| 3-5 | 2-3 | 2 |
| 6+ | 4 | 3 |

Whichever column, charges or convictions, gives the offender the "higher" final score is the column that determines the final score. Examples are given later in this section.

This item is based on officially recorded institutional rules violations, probation, parole and conditional release violations, charges, and convictions. Only institutional rules violations, probation, parole, and conditional release violations, charges, and convictions of a sexual nature that occur **PRIOR** to the Index offence are included.

### Do not count the Index Sexual Offence

The Index sexual offence charge(s) and conviction(s) are not counted, even when there are multiple offences and/or victims involved, and the offences occurred over a long period of time.

### Count all sexual offences prior to the Index Offence

All pre-Index sexual charges and convictions are coded, even when they involve the same victim, or multiple counts of the same offence. For example, three charges for sexual assault involving the same victim would count as three separate charges. Remember, "counts count". If an offender is charged with six counts of Invitation to Sexual Touching and is convicted of two counts you would score a "6" under

charges and a "2" under convictions. Convictions do not take priority over charges. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Generally when an offender is arrested, they are initially charged with one or more criminal charges. However, these charges may change as the offender progresses through the criminal justice system. Occasionally, charges are dropped for a variety of legal reasons, or "pled down" to obtain a final plea bargain. As a basic rule, when calculating charges use the most recent charging document as your source of official charges.

In some cases a number of charges are laid by the police and as the court date approaches these charges are "pled-down" to fewer charges. When calculating charges and convictions you count the number of charges that go to court. In other cases an offender may be charged with a serious sexual offence (Aggravated Sexual Assault) and in the course of plea bargaining agrees to plead to two (or more) lesser charges (Assault). Once again, you count the charges that go to court and in a case like this the offender would score as having more charges than were originally laid by the police.

When scoring this item, counting charges and convictions, it is important to use an official criminal record. One incident can result in several charges or convictions. For example, an offender perpetrates a rape where he penetrates the victim once digitally and once with his penis while holding her in a room against her will. This may result in two convictions for Sexual Battery (Sexual Assault or equivalent) and one conviction of False Imprisonment (Forcible Confinement or equivalent). So long as it is known that the False Imprisonment was part of the sexual offence, the offender would be scored as having three (3) sexual charges, three (3) sexual convictions and an additional risk point for a conviction of Non-sexual Violence [the False Imprisonment] (Either "Index" {Item #3} or "Prior" {Item #4} as appropriate).

**Probation, Parole and Conditional Release Violations**

If an offender violates probation, parole, or conditional release with a sexual misbehaviour, these violations are counted as one charge.

If the offender violates probation or parole on more than one occasion, within a given probation or parole period, each separate occasion of a sexual misbehaviour violation is counted as one charge. For example, a parole violation for indecent exposure in July would count as one charge. If the offender had another parole violation in November for possession of child pornography, it would be coded as a second charge.

Multiple probation, parole and conditional release violations for sexual misbehaviours laid at the same time are coded as one charge. Even though the offender may have violated several conditions of parole during one parole period, it is only counted as one charge, even if there were multiple sex violations.

The following is an example of counting charges and convictions.

**Criminal History for John Jack**

| Date | Charges | Convictions | Sanction |
|---|---|---|---|
| July 1996 | Lewd and Lascivious with Child (X3)<br>Sodomy<br>Oral Copulation<br>Burglary | Lewd and Lascivious with Child (X3)<br>Sodomy (dismissed)<br>Oral Copulation (dismissed)<br>Burglary (dismissed) | 3 Years |
| May 2001 | Sexual Assault on a Child | | |

To determine the number of Prior Sex Offences you first exclude the Index Offence. In the above case, the May 2001 charge of Sexual Assault on a Child is the Index Offence. After excluding the May 2001

charge, you sum all remaining sexual offence charges. In this case you would sum, {Lewd and Lascivious with Child (X3), Sodomy (X1), and Oral Copulation (X1)} for a total of five (5) previous Sex Offence charges. You then sum the number of Prior Sex Offence convictions. In this case, there are three convictions for Lewd and Lascivious with Child. These two sums are then moved to the scoring chart shown below. The offender has five prior charges and three prior convictions for sexual offences. Looking at the chart below, the evaluator reads across the chart that indicates a final score for this item of two (2).

| Prior Sexual Offences | | |
|---|---|---|
| **Charges** | **Convictions** | **Final Score** |
| None | None | 0 |
| 1-2 | 1 | 1 |
| 3-5 | 2-3 | 2 |
| 6+ | 4 | 3 |

Charges and Convictions are counted separately – the column that gives the higher final score is the column that scores the item. It is possible to have six (6+) or more charges for a sexual offence and no convictions. Were this to happen, the offender's final score would be a three (3) for this item.

**Acquittals**

Acquittals count as charges and can be used as the Index Offence. The reason that acquittals are scored this way is based upon a research study completed in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Note: Acquittals do not count for Item #6 – Prior Sentencing Dates.

**Adjudication Withheld**

In some jurisdictions it is possible to attract a finding of "Adjudication Withheld", in which case the offender receives a probation-like period of supervision. This is counted as a conviction because a sentence was given.

**Appeals**

If an offender is convicted and the conviction is later overturned on appeal, code as one charge.

**Arrests Count**

In some instances, the offender has been arrested for a sexual offence, questioning takes place but no formal charges are filed. If the offender is arrested for a sexual offence and no formal charges are filed, a "1" is coded under charges, and a "0" is coded under convictions. If the offender is arrested and one or more formal charges are filed, the total number of charges is coded, even when no conviction ensues.

**Coding "Crime Sprees"**

Occasionally, an evaluator may have to score the STATIC-99 on an offender who has been caught at the end of a long line of offences. For example, over a 20-day period an offender breaks into 5 homes, each of which is the home of an elderly female living alone. One he rapes, one he attempts to rape but she gets away, and three more get away, one with a physical struggle (he grabs her wrists, tells her to shut up). The offender is subsequently charged with Sexual Assault, Attempted Sexual Assault, B & E with Intent (X2), and an Assault. The question is, do all the charges count as sexual offences, or just the two charges

that are clearly sexual? Or, does the evaluator score the two sex charges as sex charges and the assault charges as Non-sexual Violence?

In cases such as this, code all 5 offences as sex offences - based upon the following thinking:

1) From the evidence presented this appears to be a "focused" crime spree – We assume the evaluator has little doubt what would have happened had the women not escaped or fought back.
2) Our opinion of "focus" is reinforced by the exclusive nature of the victim group, "elderly females". This offender appears to want something specific, and, the very short time span - 20 days – leads us to believe that the offender was feeling some sexual or psychological pressure to offend.
3) An attempted contact sex offence is scored as a contact sex offence for the purposes of the STATIC-99. Charges such as Attempted Sexual Assault (Rape) and Invitation to Sexual Touching are coded as contact sex offences due to their intention.
4) We recommend that if the evaluator "based on the balance of probabilities" (not "beyond a reasonable doubt") - is convinced that sex offences were about to occur that these actions can be counted as sex offences.
5) Please also read sub-section "Similar Fact Crimes" in the "Definitions" section.

**Conditional Discharges**

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

**Consent Decree**

Where applicable, "Consent Decree" counts as a conviction and a sentencing date.

**Court Supervision**

In some states it is possible to receive a sentence of Court Supervision, where the court provides some degree of minimal supervision for a period (one year), this is similar to probation and counts as a conviction.

**Detection by Child Protection Officials**

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction.

**Extension of Sentence by a Parole Board (or similar)**

In some jurisdictions Parole Boards (or similar) have the power to extend the maximum period of incarceration beyond that determined by the court. If an offender is assigned extra time, added to their sentence, by a parole board for a sexual criminal offence this counts as an additional sexual charge and conviction. The new additional period of incarceration must extend the total sentence and must be for sexual misbehaviour. This would not count as a sexual conviction if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is not presently possible in Canada.

**Giving Alcohol to a Minor**

The charge of Giving Alcohol to a Minor (or it's equivalent, drugs, alcohol, noxious substance, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit a sexual offence. If there were evidence the alcohol (or substance) was given to the victim just prior to the sexual assault, this would count as a sexual offence. If

there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

**Institutional Disciplinary Reports**

Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female guard and masturbates in front of her, where she is the obvious and intended target of the act would count as a "charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell and is discovered by a female employee and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge' and could not stand as an Index offence. If you have insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and you do not score the occurrence.

> An example of a behaviour that might get an inmate a disciplinary charge, but would not be used as a charge for scoring the STATIC-99, includes the inmate who writes an unwanted love letter to a female staff. The letter does not contain sexual content to the extent that the offender could be charged. Incidents of this nature do not count as a charge.
>
> Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

**Juvenile Offences**

Both adult and juvenile charges and convictions count when scoring this item. In cases where a juvenile was not charged with a sexual offence but was moved to a secure or more secure residential placement as the result of a sexual incident, this counts as a charge and a conviction for the purposes of scoring Prior Sex Offences.

**Juvenile Petitions**

In some states, it is impossible for a juvenile offender to get a "conviction". Instead, the law uses the wording that a juvenile "petition is sustained" (or any such wording). For the purposes of scoring the STATIC-99 this is equivalent to an adult conviction because there are generally liberty-restricting consequences. Any of these local legal wordings can be construed as convictions if they would be convictions were that term available.

**Military**

For members of the military, a discharge from service as a result of sexual crimes would count as a charge and a conviction.

If an "undesirable discharge" were given to a member of the military as the direct result of a sexual offence, this would count as a sexual conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have, and the "undesirable discharge" is the equivalent to a bad job reference, the undesirable discharge would not count as a sexual offence or as a Sentencing Date (Item #6).

**Military Courts Martial**

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence, rather than a purely military offence {failure of duty}, these offences count, both charges and convictions, when scoring the STATIC-99. If the charges are sexual they count as sexual offences and if violent, they count as violent offences. These offences also count as sentencing dates (Item #6). Pure Military Offences {Conduct Unbecoming, Insubordination, Not following a lawful order, Dereliction of Duty, etc.} do not count when scoring the STATIC-99.

**Noxious Substance**

The charge of Giving A Noxious Substance (or it's equivalent, drugs, alcohol, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit the sexual offence. If there were evidence the substance was given to the victim just prior to the sexual assault, this would count as a sexual offence. If there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

**Not Guilty**

Being found "Not Guilty" can count as charges and can be used as the Index Offence. Note: This is not the case for Item #6, "Prior Sentencing Dates", where being found "Not Guilty" is not counted as a Prior Sentencing Date.

**Official Cautions – United Kingdom**

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

**Official Diversions**

Official diversions are scored as equivalent to a charge and a conviction (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

**Peace Bonds, Judicial Restraint Orders and "810" Orders**

In some instances a Peace Bond/Judicial Restraint Order/810 Orders are placed on an offender when sexual charges are dropped or dismissed or when an offender leaves jail or prison. Orders of this nature, primarily preventative, **are not counted** as charges or convictions for the purposes of scoring the STATIC-99.

**"PINS" Petition (Person in need of supervision)**

There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to sexual aggression. This would count as a charge and a conviction for a sexual offence.

**Priests and Ministers**

For members of a religious group (Clergy and similar professions) some disciplinary or administrative actions within their own organization can count as a charge and a conviction. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of an official sanction would be removal from a parish for a priest or minister under the following circumstances.

If the receiving institution knows they are being sent a sex offender and considers it part of their mandate to address the offender's problem or attempt to help, this would function as equivalent to being sent to a

correctional institution and would count as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Allegations that result in a "within-organization" disciplinary move or a move designed to explicitly address the offenders problems would be counted as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Being transferred to a new parish or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a priest/minister is transferred between parishes due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

**Prison Misconducts for Sexual Misbehaviours Count as One Charge per Sentence**

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

**Post-Index Offences**

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

> **For Example, Post-Index Sexual Offences:** Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered separate crimes. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.
>
> **For Example, Post-Index Violent Offences:** Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

**Probation before Judgement**

Where applicable, "Probation before judgment" counts as a charge, conviction, and a sentencing date.

**Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences**

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence, this revocation of conditional release would

count as both a Prior Sex Offence "charge" and a Prior Sex Offence "conviction". Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police. Revocations for violations of conditional release conditions, so called "technicals" (drinking violations, failure to report, being in the presence of minors, being in the possession of legally obtained pornography) are insufficient to stand as Prior Sentencing Dates.

**RRASOR and STATIC-99 – Differences in Scoring**

Historical offences are scored differently between the RRASOR and the STATIC-99. On the RRASOR, if the offender is charged or convicted of historical offences committed prior to the Index Offence, these are counted as Prior Sexual Offences (User Report, The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism 1997-04, Pg. 27, end of paragraph titled Prior Sexual Offences). This is not the case for the STATIC-99. For the STATIC-99, if the offender is charged or convicted of historical offences after the offender is charged or convicted of a more recent offence, these offences are to be considered part of the Index Offence (pseudo-recidivism) – forming an "Index Cluster".

**Suspended Sentences**

Suspended sentences should be treated as equivalent to a charge and a conviction.

**Teachers**

Being transferred to a new school or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a teacher is transferred between schools due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

## Item # 6 Prior Sentencing Dates

**The Basic Principle:** This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the "the best predictor of future behaviour, is past behaviour". Andrews & Bonta (2003) state that having a criminal history is one of the "Big Four" predictors of future criminal behaviour. Prior Sentencing Dates is a convenient method of coding the length of the criminal record.

**Information Required to Score this Item:** To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99 in the Introduction section.

**The Basic Rule:** If the offender's criminal record indicates four or more separate sentencing dates prior to the Index Offence, the offender is scored a "1" on this item. If the offender's criminal record indicates three or fewer separate sentencing dates prior to the Index Offence, the offender scores a "0" on this item.

Count the number of distinct occasions on which the offender was sentenced for criminal offences. The number of charges/convictions does not matter, only the number of sentencing dates. Court appearances that resulted in complete acquittal are not counted, nor are convictions overturned over on appeal. The Index sentencing date is not included when counting up the sentencing dates.

If the offender is on some form of conditional release (parole/probation/bail etc.) "technical" violations do not count as new sentencing dates. For example, if an offender had a condition prohibiting drinking alcohol, a breach for this would not be counted as a new sentencing date. To be counted as a new sentencing date, the breach of conditions would have to be a new offence for which the offender could be charged if he were not already under criminal justice sanction.

Institutional rule violations do not count, even when the offence was for behaviour that could have resulted in a legal sanction if the offender had not already been incarcerated.

**Count:**

- Juvenile offences count (if you know about them – please see section on the use of self-report in the Introduction)
- Where applicable "Probation before judgment" counts as a conviction and a sentencing date
- Where applicable "Consent Decree" counts as a conviction and a sentencing date
- Suspended Sentences count as a sentencing date

**Do Not Count:**

- Stayed offences do not count as sentencing dates
- Institutional Disciplinary Actions/Reports do not count as sentencing dates

The offences must be of a minimum level of seriousness. The offences need not result in a serious sanction (the offender could have been fined), but the offence must be serious enough to permit a sentence of community supervision or custody/incarceration (as a juvenile or adult). Driving offences generally do not count, unless they are associated with serious penalties, such as driving while intoxicated or reckless driving causing death or injury.

Generally, most offences that would be recorded on an official criminal history would count – but the statute, as written in the jurisdiction where the offence took place, must allow for the imposition of a custodial sentence or a period of community supervision (adult or juvenile). Only truly trivial offences

are excluded; those where it is impossible to get a period of incarceration or community supervision. Offences that can **only** result in fines do not count.

Sentences for historical offences received while the offender is incarcerated for a more recent offence (pseudo-recidivism), are not counted. For two offences to be considered separate offences, the second offence must have been committed after the offender was sanctioned for the first offence.

Offence convictions occurring after the Index offence cannot be counted on this item.

**Conditional Discharges**
Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

**Diversionary Adjudication**
If a person commits a criminal offence as a juvenile or as an adult and receives a diversionary adjudication, this counts as a sentencing date (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

**Extension of Sentence by a Parole Board (or similar)**
If an offender is assigned extra time added to their sentence by a parole board for a criminal offence this counts as an additional sentencing date if the new time extended the total sentence. This would not count as a sentencing date if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is presently not possible in Canada.

**Failure to Appear**
If an offender fails to appear for sentencing, this is not counted as a sentencing date. Only the final sentencing for the charge for which the offender missed the sentencing date is counted as a sentencing date.

**Failure to Register as a Sexual Offender**
If an offender receives a formal legal sanction, having been convicted of Failing to Register as a Sexual Offender, this conviction would count as a sentencing date. However, it should be noted that charges and convictions for Failure to Register as a Sexual Offender are not counted as sexual offences.

**Juvenile Extension of Detention**
In some states it is possible for a juvenile to be sentenced to a Detention/Treatment facility. At the end of that term of incarceration it is possible to extend the period of detention. Even though a Judge and a prosecutor are present at the proceedings, because there has been no new crime or charges/convictions, the extension of the original order is not considered a sentencing date.

**Juvenile Offences**
Both adult and juvenile convictions count in this item. In the case where a juvenile is not charged with a sexual or violent offence but is moved to a secure or more secure residential placement as the result of a sexual or violent incident, this counts as a sentencing date for the purposes of scoring Prior Sentencing Dates.

**Military**
If an "undesirable discharge" is given to a member of the military as the direct result of criminal behaviour (something that would have attracted a criminal charge were the offender not in the military),

this would count as a sentencing date. However, if the member left the military when he normally would have and the "undesirable discharge" is the equivalent to a bad job reference then the criminal behaviour would not count as a Sentencing Date.

**Military Courts Martial**
If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence rather than a purely military offence {failure of duty} this counts as a sentencing date. Pure Military Offences {Insubordination, Not Following a Lawful Order, Dereliction of Duty, Conduct Unbecoming, etc.} do not count as Prior Sentencing Dates.

**Not Guilty**
Being found "Not Guilty" is not counted as a Prior Sentencing Date.

**Official Cautions – United Kingdom**
In the United Kingdom, an official caution should be treated as equivalent to a sentencing date.

**Post-Index Offences**
Post-Index offences are not counted as sentencing occasions for the STATIC-99.

**Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences**
If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for criminal behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a criminal offence, this revocation of conditional release would count as a Prior Sentencing Date. Note: the evaluator should be sure that were this offender not already under sanction that a criminal charge would be laid by police and that a conviction would be highly likely. Revocations for violations of conditional release conditions, so called "technicals", (drinking violations, failure to report, being in the presence of minors) are insufficient to stand as Prior Sentencing Dates.

> Note: for this item there have been some changes to the rules from previous versions. Some rules were originally written to apply to a specific jurisdiction. Over time, and in consultation with other jurisdictions the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item.

**Suspended Sentences**
Suspended sentences count as a sentencing date.

## Item # 7 - Any Convictions for Non-contact Sex Offences

**The Basic Principle:** Offenders with paraphilic interests are at increased risk for sexual recidivism. For example, most individuals have little interest in exposing their genitals to strangers or stealing underwear. Offenders who engage in these types of behaviours are more likely to have problems conforming their sexual behaviour to conventional standards than offenders who have no interest in paraphilic activities.

**Information Required to Score this Item:** To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

**The Basic Rule:** If the offender's criminal record indicates a separate conviction for a non-contact sexual offence, the offender is scored a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-contact sexual offence, the offender is scored a "0" on this item.

This category requires a conviction for a non-contact sexual offence such as:

- Exhibitionism
- Possessing obscene material
- Obscene telephone calls
- Voyeurism
- Exposure
- Elicit sexual use of the Internet
- Sexual Harassment (Unwanted sexual talk)
- In certain jurisdictions "Criminal Trespass" or "Trespass by Night" may be used as a charge for voyeurism – these would also count

The criteria for non-contact sexual offences are strict: the offender must have been convicted, and the offence must indicate non-contact sexual misbehaviour. The "Index" offence(s) may include a conviction for a non-contact sexual offence and this offence can count in this category. The most obvious example of this is where an offender is charged and convicted of Exposure for "mooning" a woman from a car window. This would result in a coding of "1" for this item.

There are some cases, however, where the legal charge does not reflect the sexual nature of the offence. Take, for example, the same situation where an offender is charged with Exposure for "mooning" a woman from a car window, but the case is pled-down to, and the offender is finally convicted of Disorderly Conduct. In cases like this, while this item requires that there be a conviction, the coding of a non-contact sexual offence can be based on the behaviour that occurred in cases where the name of the offence is ambiguous.

Charges and arrests do not count, nor do self-reported offences. Sexual offences in which the offender intended to make contact with the victim (but did not succeed) would be considered attempted contact offences and are coded as contact offences (e.g., invitation to sexual touching, attempted rape). Some offences may include elements of both contact and non-contact offences, for example, sexual talk on Internet - arranging to meet the child victim. In this case, the conviction would count as a non-contact sex offence.

**Attempted Contact Offences**

Invitation to Sexual Touching, Attempted Rape and other such "attempted" contact offences are counted as "Contact" offences due to their intention.

**Internet Crimes**

Internet crimes were not recorded in the original samples for the STATIC-99 because the Internet had not advanced to the point where it was commonly available. As a result, determining how to score Internet crimes on the STATIC-99 requires interpretation beyond the available data. Internet crimes could be considered in two different ways. First, they could be considered a form of attempted sexual contact, where the wrongfulness of the behaviour is determined by what is about to happen. Secondly, they could be considered an inappropriate act in themselves, akin to indecent telephone calls (using an older technology). We believe that luring children over the Internet does not represent a fundamentally new type of crime but is best understood as a modern expression of tradit ional crimes. We consider communicating with children over the Internet for sexual purposes to be an inappropriate and socially harmful act in itself and, therefore, classify these acts with their historical precursors, such as indecent/obscene telephone calls, in the category of non-contact sexual offences.

**Pimping and Prostitution Related Offences**

Pimping and other prostitution related offences (soliciting a prostitute, promoting prostitution, soliciting for the purposes of prostitution, living off the avails of prostitution) do not count as non-contact sexual offences. (Note: prostitution was not illegal in England during the study period, though soliciting was).

**Plea Bargains**

Non-contact sexual offence convictions do not count if the non-contact offence charge arose as the result of a plea bargain. Situations such as this may appear in the criminal record where charges for a contact offence are dropped and the non-contact charges appear simultaneously with a guilty plea. An occurrence of this nature would be considered a contact offence and scored as such.

**Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences**

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a Non-contact Sexual Offence that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a Non-contact Sexual Offence, this revocation of conditional release would count as a conviction for a Non-contact Sexual Offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a non-contact sexual offence charge would be laid by police.

## Items #8, #9, & # 10 – The Three Victim Questions

The following three items concern victim characteristics: Unrelated Victims, Stranger Victims, and Male Victims. For these three items the scoring is based on all available credible information, including self-report, victim accounts, and collateral contacts. The items concerning victim characteristics, however, only apply to sex offences in which the victims were children or non-consenting adults (Category "A" sex offences). Do not score victim information from non-sexual offences or from sex offences related to prostitution/pandering, possession of child pornography, and public sex with consenting adults (Category "B" sex offences). Do not score victim information on sexual offences against animals (Bestiality and similar charges).

In addition to all of the "everyday" sexual offences (Sexual Assault, Rape, Invitation to Sexual Touching, Buggery) you also score victim information on the following charges:

- Illegal use of a Minor in Nudity-oriented Material/Performance
- Importuning (Soliciting for Immoral Purposes)
- Indecent Exposure (When a specific victim has been identified)
- Sexually Harassing Telephone Calls
- Voyeurism (When a specific victim has been identified)

**You do not score Victim Information on the following charges:**

- Compelling Acceptance of Objectionable Material
- Deception to Obtain Matter Harmful to Juveniles
- Disseminating/Displaying Matter Harmful to Juveniles
- Offences against animals
- Pandering Obscenity
- Pandering Obscenity involving a Minor
- Pandering Sexually-Oriented Material involving a Minor
- Prostitution related offences

**"Accidental Victims"**

Occasionally there are "Accidental Victims" to a sexual offence. A recent example of this occurred when an offender was raping a woman in her living room. The noise awoke the victim's four-year-old son. The son wandered into the living room and observed the rape in progress. The victim instructed her son to return to his bedroom and he complied at once. The perpetrator was subsequently charged and convicted of "Lewd and Lascivious Act on a Minor" in addition to the rape. In court the offender pleaded to both charges. In this case, the four-year-old boy would not count as a victim as there was no intention to commit a sexual offence against him. He would not count in any of the three victim items regardless of the conviction in court.

A common example of an accidental victim occurs when a person in the course of his/her daily life or profession happens across a sexual offence. Examples include police officers, park wardens, janitors, and floor walkers who observe a sexual offence in the course of their duties. If a male officer were to observe an exhibitionist exposing himself to a female, the offender would not be given the point for "Male Victim" as there was no intention to expose before the male officer. The evaluator would not give the offender a point for "male victim" unless the offender specifically chose a male officer to expose himself to. In the same vein, a floor walker or janitor who observes an offender masturbating while looking at a customer in a store would not be counted as a "stranger victim" or an "unrelated victim". In short there has to be some intention to offend against that person for that person to be a victim. Merely

stumbling upon a crime scene does not make the observer a victim regardless of how repugnant the observer finds the behaviour.

**Acquitted or Found Not Guilty**

The criteria for coding victim information is "all credible information". In this type of situation it is important to distinguish between the court's stringent standard of determining guilt (Beyond a reasonable doubt) and "What is most likely to be true" – a balance of probabilities. When the court sticks to the "Beyond a reasonable doubt" criteria they are not concluding that someone did not do the crime, just that the evidence was insufficient to be certain that they did it. The risk assessment perspective is guided by: "On the balance of probabilities, what is most likely to be true?" If the assessor, "On the balance of probabilities" feels that the offence more likely than not took place the victims may be counted.

For the assessment, therefore, it may be necessary to review the cases in which the offender was acquitted or found "Not Guilty" and make an independent determination of whether it is more likely than not that there were actual victims. If, in the evaluators opinion, it were more likely that there was no sexual offence the evaluator would not count the victim information. In the resulting report the evaluator would generally include a score with the contentious victim information included and a score without this victim information included, showing how it effects the risk assessment both ways.

This decision to score acquittals and not guilty in this manner is buttressed by a research study in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

**Child Pornography**

Victims portrayed in child pornography are not scored as victims for the purposes of the STATIC-99. They do not count as non-familial, stranger, nor male victims. Only real, live, human victims count. If your offender is a child pornography maker and a real live child was used to create pornography by your offender or your offender was present when pornography was created with a real live child, this child is a victim and should be scored as such on the STATIC-99 victim questions. (Note: manipulating pre-existing images to make child pornography [either digitally of photographically] is not sufficient – a real child must be present) Making child pornography with a real child victim counts as a "Category A" offence and, hence, with even a single charge of this nature, the STATIC-99 is appropriate to use.

The evaluator may, of course, in another section of the report make reference to the apparent preferences demonstrated in the pornography belonging to the offender.

**Conviction, But No Victim**

For the purposes of the STATIC-99, consensual sexual behaviour that is prohibited by statute does not create victims. This is the thinking behind Category "B" offences. Examples of this are prostitution offences and public toileting (Please see "Category "A" and Category "B" offences" in the Introduction section for a further discussion of this issue). Under some circumstances it is possible that in spite of a conviction for a sexual offence the evaluator may conclude that there are no real victims. An example of this could be where a boy (age 16 years) is convicted of Statutory Rape of his 15-year-old boyfriend (Assume age of consent in this jurisdiction to be 16 years of age). The younger boy tells the police that the sexual contact was consensual and the police report informs the evaluator that outraged parents were the complainants in the case. In a scenario like this, the younger boy would not be scored as a victim, the conviction notwithstanding.

**Credible Information**

Credible sources of information would include, but are not limited to, police reports, child welfare reports, victim impact statements or discussions with victims, collateral contacts and offender self-report.

If the information is credible (Children's Protective Association, victim impact statements, police reports) you may use this information to code the three victim questions, even if the offender has never been arrested or charged for those offences.

**Exhibitionism**

In cases of exhibitionism, the three victim items may be scored if there was a targeted victim, and the evaluator is confident that they know before whom the offender was trying to exhibit. If the offender exhibits before a mixed group, males and females, do not score "Male Victim" unless there is reason to believe that the offender was exhibiting specifically for the males in the group. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

> Example: If a man exposed to a school bus of children he had never seen before (both genders), the evaluator would score this offender one risk point for Unrelated Victim, one risk point for Stranger Victim, but would not score a risk point for Male Victim unless there was evidence the offender was specifically targeting the boys on the bus.

In cases where there is no sexual context (i.e., the psychotic street person who takes a shower in the town fountain) there are no victims regardless of how offended they might be or how many people witnessed the event.

**Internet Victims and Intention**

If an offender provides pornographic material over the Internet, the intent of the communication is important. In reality a policeman may be on the other end of the net in a "sting" operation. If the offender thought he was providing pornography to a child, even though he sent it to a police officer, the victim information is counted as if a child received it. In addition, when offenders attempt, over the Internet, to contact face-to-face a "boy or girl" they have contacted over the Internet the victim information counts as the intended victim, even if they only "met" a policeman.

Intention is important. In a case were a child was pretending to be an adult and an adult "shared" pornography with that person in the honest belief that they were (legally) sharing it with another adult there would not be a victim.

**Polygraph Information**

Victim information derived solely from polygraph examinations is not used to score the STATIC-99 unless it can be corroborated by outside sources or the offender provides sufficient information to support a new criminal investigation.

**Prowl by Night - Voyeurism**

For these types of offences the evaluator should score specific identifiable victims. However, assume only female victims unless you have evidence to suggest that the offender was targeting males.

**Sexual Offences Against Animals**

While the sexual assault of animals counts as a sexual offence, animals do not count as victims. This category is restricted to human victims. It makes no difference whether the animal was a member of the family or whether it was a male animal or a stranger animal.

**Sex with Dead Bodies**

If an offender has sexual contact with dead bodies these people do count as victims. The evaluator should score the three victim questions based upon the degree of pre-death relationship between the perpetrator and the victim.

**Stayed Charges**

Victim information obtained from stayed charges should be counted.

**Victims Not at Home**

If an offender breaks into houses, (regardless of whether or not the victims are there to witness the offence) to commit a sexual offence, such as masturbating on or stealing their undergarments or does some other sexual offence – victims of this nature are considered victims for the purposes of the STATIC-99. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

## Item # 8 - Any Unrelated Victims?

**The Basic Principle:** Research indicates that offenders who offend only against family members recidivate at a lower rate compared to those who have victims outside of their immediate family (Harris & Hanson, Unpublished manuscript). Having victims outside the immediate family is empirically related to a corresponding increase in risk.

**Information Required to Score this Item:** To score this item use all available credible information. "Credible Information" is defined in the previous section "Items #8, #9, & #10 -The Three Victim Questions".

**The Basic Rule:** If the offender has victims of sexual offences outside their immediate family, score the offender a "1" on this item. If the offender's victims of sexual offences are all within the immediate family score the offender a "0" on this item.

A related victim is one where the relationship is sufficiently close that marriage would normally be prohibited, such as parent, brother, sister, uncle, grandparent, stepbrother, and stepsister. Spouses (married and common-law) are also considered related. When considering whether step-relations are related or not, consider the nature and the length of the pre-existing relationship between the offender and the victim before the offending started. Step-relationships lasting less than two years would be considered unrelated (e.g., step-cousins, stepchildren). Adult stepchildren would be considered related if they had lived for two years in a child-parent relationship with the offender.

**Time and Jurisdiction Concerns**

A difficulty in scoring this item is that the law concerning who you can marry is different across jurisdictions and across time periods within jurisdictions. For example, prior to 1998, in Ontario, there were 17 relations a man could not marry, including such oddities as "nephew's wife" and "wife's grandmother". In 1998 the law changed and there are now only 5 categories of people that you cannot marry in Ontario: grandmother, mother, daughter, sister, and granddaughter (full, half, and adopted). Hence, if a man assaulted his niece in 1997 he would not have an unrelated victim but if he committed the same crime in 1998 he would technically be assaulting an unrelated victim. We doubt very much the change in law would affect the man's choice of victim and his resulting risk of re-offence. As a result the following rules have been adopted.

**People who are seen as related for the purposes of scoring the STATIC-99**

1. Legally married spouses
2. Any live-in lovers of over two years duration. (Girlfriends/Boyfriends become related once they have lived with the offender as a lover for two years)
3. Anyone too closely related to marry (by jurisdiction of residence of the perpetrator)
4. The following relations whether or not marriage is permitted in the jurisdiction of residence of the perpetrator:
    - Aunt
    - Brother's wife
    - Common-law wife/Ex common-law wife (lived together for 2 years)
    - Daughter
    - Father's wife/step-mother
    - First cousins
    - Granddaughter
    - Grandfather
    - Grandfather's wife

- Grandmother
- Grandson's wife
- Mother
- Niece/Nephew
- Sister
- Son's wife
- Stepdaughter/Stepson (Must have more than two years living together before abuse begins)
- Wife and Ex-wife
- Wife's daughter/step-daughter
- Wife's granddaughter
- Wife's grandmother
- Wife's mother

The relationships can be full, half, adopted, or common-law (two years living in these family relationships). The mirror relationships of the opposite gender would also count as related (e.g., brother, sons, nephews, granddaughter's husband).

**People who are seen as <u>unrelated</u> for the purposes of scoring the STATIC-99**

- Any step-relations where the relationship lasted less than two years
- Daughter of live-in girlfriend/Son of live-in girlfriend
  (less than two years living together before abuse begins)
- Nephew's wife
- Second cousins
- Wife's aunt

Decisions about borderline cases (e.g., brother's wife) should be guided by a consideration of the psychological relationship existing prior to the sexual assault. If an offender has been living with the victim in a family/paternal/fraternal role for two years prior to the onset of abuse, the victim and the offender would be considered related.

**Becoming "Unrelated"**

If an offender who was given up for adoption (removed etc.) at birth (Mother and child having no contact since birth or shortly after) and the Mother (Sister, Brother etc.) is a complete stranger that the offender would not recognize (facial recognition) as their family, these biological family members could count as Unrelated Victims. This would only happen if the offender did not know they were offending against a family member.

## Item # 9 - Any Stranger Victims?

**The Basic Principle:** Research shows that having a stranger victim is related to sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item "Victim Stranger (versus acquaintance)".

**Information Required to Score this Item:** Use all credible information to score this item. "Credible Information" is defined in the section "Items #8, #9, & #10 - The Three Victim Questions".

**The Basic Rule:** If the offender has victims of sexual offences who were strangers at the time of the offence, score the offender a "1" on this item. If the offender's victims of sexual offences were all known to the offender for at least 24 hours prior to the offence, score the offender a "0" on this item. If the offender has a "stranger" victim, Item #8, "Any Unrelated Victims", is generally scored as well.

A victim is considered a stranger if the victim did not know the offender 24 hours before the offence. Victims contacted over the Internet are not normally considered strangers unless a meeting was planned for a time less than 24 hours after initial communication.

For Stranger victims, the offender can either not know the victim or it can be the victim not knowing the offender. In the first case, where the offender does not know the victim, (the most common case), the offender chooses someone who they are relatively sure will not be able to identify them (or they just do not care) and offends against a stranger. However, there have been examples where the offender "should" have known the victim but just did not recognize them. This occurred in one case where the perpetrator and the victim had gone to school together but the perpetrator did not recognize the victim as someone they knew. In cases like this, the victim would still be a stranger victim as the offender's intention was to attack a stranger.

The criteria for being a stranger are very high. Even a slight degree of knowing is enough for a victim not to be a stranger. If the victim knows the offender at all for more than 24 hours, the victim is not a stranger. For example, if the victim was a convenience store clerk and they recognized the perpetrator as someone who had been in on several occasions to buy cigarettes, the victim would no longer be a stranger victim. If a child victim can say they recognize the offender from around the neighborhood and the perpetrator has said "Hi" to them on occasion, the child is no longer a stranger victim. The evaluator must determine whether the victim "knew" the offender twenty-four hours (24) before the assault took place. The criteria for "know/knew" is quite low but does involve some level of interaction. They need not know each other's names or addresses. However, simply knowing of someone but never having interacted with them would not be enough for the victim to count as "known".

**The Reverse Case**

In cases of "stalking" or stalking-like behaviours the offender may know a great deal about the victim and their habits. However, if the victim does not know the offender when they attack this still qualifies as a stranger victim.

The "24 hour" rule also works in reverse – there have been cases where a performer assaulted a fan the first time they met. In this case, the victim (the fan) had "known of" the performer for years, but the performer (the perpetrator) had not known the fan for 24 hours. Hence, in cases such as this, the victim would count as a stranger because the perpetrator had not known the victim for 24 hours prior to the offence.

**Internet, E-mail, and Telephone**

Sometimes offenders attempt to access or lure victims over the Internet. This is a special case and the threshold for not being a stranger victim is quite low. If the offender and the victim have communicated over the Internet (e-mail, or telephone) for more than twenty-four hours (24 hours) before the initial face-

to-face meeting, the victim (child or adult) is not a stranger victim. To be clear, this means that if an offender contacts, for the first time, a victim at 8 p.m. on a Wednesday night, their first face-to-face meeting must start before 8 p.m. on Thursday night. If this meeting starts before 8 p.m., and they remain in direct contact, the sexual assault might not start until midnight – as long as the sexual assault is still within the first face-to-face meeting – this midnight sexual assault would still count as a stranger assault. If they chat back and forth for longer than 24 hours, the victim can no longer be considered a stranger victim for the purposes of scoring the STATIC-99.

It is possible in certain jurisdictions to perpetrate a sexual offence over the Internet, by telephone or e-mail and never be in physical proximity to the victim. If the offender transmits sexually explicit/objectionable materials over the Internet within 24 hours of first contact, this can count as a stranger victim; once again the "24 hour rule" applies. However, if the perpetrator and the victim have been in communication for more than 24 hours prior to the sending of the indecent material or the starting of indecent talk on the telephone then the victim can no longer be considered a stranger.

**Becoming a "Stranger" Again**

It is possible for someone who the offender had met briefly before to become a stranger again. It is possible for the offender to have met a victim but to have forgotten the victim completely (over a period of years). If the offender believed he was assaulting a stranger, the victim can be counted as a stranger victim. This occurred when an offender returned after many years absence to his small hometown and assaulted a female he thought he did not know, not realizing that they had gone to the same school.

## Item # 10 - Any Male Victims?

**The Basic Principle:** Research shows that offenders who have offended against male children or male adults recidivate at a higher rate compared to those who do not have male victims. Having male victims is correlated with measures of sexual deviance and is seen as an indication of increased sexual deviance; see Hanson and Bussière (1998), Table 1.

**Information Required to Score this Item:** To score this item use all available credible information. "Credible Information" is defined in section "Items #8, #9, & #10 - The Three Victim Questions".

**The Basic Rule:** If the offender has male victims of sexual offences, non-consenting adults or child victims, score the offender a "1" on this item. If the offender's victims of sexual offences are all female, score the offender a "0" on this item.

Included in this category are all sexual offences involving male victims. Possession of child pornography involving boys, however, does not count. Exhibitionism to a mixed group of children (girls and boys) would not count unless there was clear evidence the offender was targeting the boys. Contacting male victims over the Internet does count.

If an offender assaults a transvestite in the mistaken belief the victim is a female (may be wearing female clothing) do not score the transvestite as a male victim. If it is certain the offender knew he was assaulting a male before the assault, score a male victim.

In some cases a sexual offender may beat-up or contain (lock in a car trunk) another male in order to sexually assault the male's date (wife, etc.). If the perpetrator simply assaults the male (non-sexual) in order to access the female you do not count him as a male victim on the STATIC-99. However, if the perpetrator involves the male in the sexual offence, such as tying him up and making him watch the rape (forced voyeuristic activity), the assault upon the male victim would count as a sexual offence and the male victim would count on the STATIC-99.

# Scoring the STATIC-99 & Computing the Risk Estimates

Using the STATIC-99 Coding Form (Appendix 5) sum all individual item scores for a total risk score based upon the ten items. This total score can range from "0" to "12".

Scores of 6 and greater are all considered high risk and treated alike.

Once you have computed the total raw score refer to the table titled STATIC-99 Recidivism Percentages by Risk Level (Appendix 6).

Here you will find recidivism risk estimates for both sexual and violent recidivism over 5, 10, and 15-year projections. In the left-most column find the offender's raw STATIC-99 risk score. Remember that scores of 6 and above are read off the "6" line, high risk.

For example, if an offender scored a "4" on the STATIC-99 we would read across the table and find that this estimate is based upon a sample size of 190 offenders which comprised 18% of the original sample. Reading further, an offender with a score of "4" on the STATIC-99 is estimated as having a 26% chance of sexual reconviction in the first 5 years of liberty, a 31% chance of sexual reconviction over 10 years of freedom, and a 36% chance of sexual reconviction over 15 years in the community.

For violent recidivism we would estimate that an offender that scores a "4" on the STATIC-99 would have a 36% chance of reconviction for a violent offence over 5 years, a 44% chance of reconviction for a violent offence over 10 years, and a 52% chance of reconviction for a violent offence over a 15 year period. It is important to remember that sexual recidivism is included in the estimates of violent recidivism. You **do not** add these two estimates together to create an estimate of violent and sexual recidivism. The estimates of violent recidivism include incidents of sexual recidivism.

STATIC-99 risk scores may also be communicated as nominal risk categories using the following guidelines. Raw STATIC-99 scores of "0" and "1" should be reported as "Low Risk", scores of "2" and "3" reported as "Moderate-Low" risk, scores of "4" and "5" reported as "Moderate-High" risk, and scores of "6" and above as "High Risk".

Having determined the estimated risk of sexual and violent recidivism we suggest that you review Appendix seven (7) which is a suggested template for communicating STATIC-99 risk information in a report format.

# Appendices

## Appendix One

## Adjustments In Risk Based on Time Free

In general, the expected sexual offence recidivism rate should be reduced by about half if the offender has five to ten years of offence-free behaviour in the community. The longer the offender has been offence-free, post-Index, the lower the expected recidivism rate. It is not known what the expected rates of sexual re-offence should be if the offender has recidivated post-Index with a non-sexual offence. Presently, no research exists shedding light on this issue. Arguments could be made that risk scores should be increased (further criminal activity), decreased (he has still not committed another sexual offence in the community) or remain the same. We suspect that an offender who remains criminally active will maintain the same risk for sexual recidivism.

**Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence.** Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences. For these purposes, an offender could, theoretically, commit minor property offences and still remain offence-free.

The recidivism rate estimates reported in Hanson & Thornton (2000) are based on the offender's risk for recidivism at the time they were released into the community after serving time for a sexual offence (Index offence). As offenders successfully live in the community without incurring new offences, their recidivism risk declines. The following table provides reconviction rates for new sexual offences for the three STATIC-99 samples where survival data were available (Millbrook, Pinel, HM Prison), based on offence-free time in the community. "Offence-free" means no new sexual or violent convictions, nor a non-violent conviction that would have resulted in more than minimal jail time (1-2 months).

The precise amount of jail time for non-violent recidivism was not recorded in the data sets, but substantial periods of jail time would invalidate the total time at risk. We do not recommend attempting to adjust the survival data given below by subtracting "time in prison for non-violent offences" from the total time elapsed since release from Index sexual offence.

For example, if offender "A" has been out for five years on parole got 60 days in jail for violating a no-drinking condition of parole the adjusted estimates would most likely still apply. However, if offender "B" also out on parole for five years got 18 months for Driving While Under the Influence these adjustments for time at risk would not be valid.

Adjusted risk estimates for time free would apply to offenders that are returned to custody for technical violations such as drinking or failing to register as a sexual offender.

**Table for Adjustments in Risk Based on Time Free**

| STATIC-99 Risk Level at original assessment | Years offence-free in community | | | | | |
|---|---|---|---|---|---|---|
| | 0 | 2 | 4 | 6 | 8 | 10 |
| | Recidivism rates – Sex Offence Convictions % | | | | | |
| **0-1 (n = 259)** | | | | | | |
| 5 year | 5.7 | 4.6 | 4.0 | 2.0 | 1.4 | 1.4 |
| 10 year | 8.9 | 6.4 | 4.6 | 3.3 | 3.2 | (5.8) |
| 15 year | 10.1 | 8.7 | 9.5 | 7.7 | (6.5) | |
| **2-3 (n = 412)** | | | | | | |
| 5 year | 10.2 | 6.8 | 4.4 | 3.1 | 5.5 | 5.3 |
| 10 year | 13.8 | 11.1 | 9.1 | 8.1 | 8.2 | 8.4 |
| 15 year | 17.7 | 14.5 | 13.6 | 13.9 | (18.7) | |
| **4-5 (n = 291)** | | | | | | |
| 5 year | 28.9 | 14.5 | 8.0 | 6.9 | 7.6 | 6.8 |
| 10 year | 33.3 | 21.4 | 13.7 | 11.5 | (13.1) | (11.5) |
| 15 year | 37.6 | 22.8 | (18.7) | | | |
| **6+ (n = 129)** | | | | | | |
| 5 year | 38.8 | 25.8 | 13.1 | 7.0 | 9.4 | 13.2 |
| 10 year | 44.9 | 30.3 | 23.7 | 16.0 | (17.8) | (17.8) |
| 15 year | 52.1 | 37.4 | (27.5) | | | |

**Note:** The total sample was 1,091. The number of cases available for each analysis decreases as the follow-up time increases and offenders recidivate. Values in parentheses were based on less than 30 cases and should be interpreted with caution.

## Appendix Two

## Self-Test

1. **Question:** In 1990, Mr. Smith is convicted of molesting his two stepdaughters. The sexual abuse occurred between 1985 and 1989. While on conditional release in 1995, Mr. Smith is reconvicted for a sexual offence. The offence related to the abuse of a child that occurred in 1980. Which conviction is the Index offence?

   *Answer:* The 1990 and 1995 convictions would both be considered part of the Index offence. Neither would be counted as a prior sexual offence. The 1995 conviction is pseudo-recidivism because the offender did not re-offend after being charged with the 1990 offence.

2. **Question:** In April 1996, Mr. Jones is charged with sexual assault for an incident that occurred in January 1996. He is released on bail and reoffends in July 1996, but this offence is not detected until October 1996. Meanwhile, he is convicted in September 1996, for the January 1996 incident. The October 1996 charge does not proceed to court because the offender is already serving time for the September 1996 conviction. You are doing the evaluation in November. What is the Index offence?

   *Answer:* The October 1996 charge is the Index offence because the offence occurred after Mr. Jones was charged for the previous offence. The Index sexual offence need not result in a conviction.

3. **Question:** In January 1997, Mr. Dixon moves in with Ms. Trembley after dating since March 1996. In September 1999, Mr. Dixon is arrested for molesting Ms. Trembley's daughter from a previous relationship. The sexual abuse began in July 1998. Is the victim related?

   *Answer:* No, the victim would not be considered related because when the abuse began, Mr. Dixon had not lived for two years in a parental role with the victim.

4. **Question:** At age 15, Mr. Miller was sent to a residential treatment centre after it was discovered he had been engaging in sexual intercourse with his 12 year old stepsister. Soon after arriving, Mr. Miller sexually assaulted a fellow resident. He was then sent to a secure facility that specialized in the treatment of sexual offenders. Charges were not laid in either case. At age 24, Mr. Miller sexually assaults a cousin and is convicted shortly thereafter. Mr. Miller has how many prior sexual offences?

   *Answer:* For Item #5, Prior Sexual Offences, score this as 2 prior charges and 2 prior convictions. Although Mr. Miller has no prior convictions for sexual offences, there are official records indicating he has engaged in sexual offences as an adolescent that resulted in custodial sanctions on two separate occasions. The Index offence at age 24 is not counted as a prior sexual offence.

5. **Question:** Mr. Smith was returned to prison in July 1992 for violating several conditions of parole including child molestation, lewd act with a child and contributing to the delinquency of a minor. Once back in prison he sexually assaulted another prisoner. Mr. Smith has now been found guilty of the sexual assault and the judge has asked you to contribute to a pre-sentence report. How many Prior Sexual Offence (Item #5) points would Mr. Smith receive for his parole violations?

*Answer:* 1 charge and no convictions. Probation, parole and conditional release violations for sexual misbehaviours are counted as one charge, even when there are violations of multiple conditions of release.

6. **Question:** Mr. Moffit was charged with child molestation in April 1987 and absconded before he was arrested. Mr. Moffit knew the police were coming to get him when he left. He travelled to another jurisdiction where he was arrested and convicted of child molesting in December 1992. He served 2 years in prison and was released in 1994. He was apprehended, arrested and convicted in January of 1996 for the original charges of Child Molestation he received in April 1987. Which offence is the Index offence?

   *Answer:* The most recent offence date, December 1992 becomes the Index offence. In this case, the offence dates should be put back in chronological order given that he was detected and continued to offend. The April, 1987 charges and subsequent conviction in January of 1996 become a prior sexual offence.

7. **Question:** While on parole, Mr. Jones, who has an extensive history of child molestation, was found at the county fair with an 8 year-old male child. He had met the child's mother the night before and volunteered to take the child to the fair. Mr. Jones was in violation of his parole and he was returned to prison. He subsequently got out of prison and six months later re-offended. You are tasked with the pre-sentence report. Do you count the above parole violation as a prior sex offence charge?

   *Answer:* No. Being in the presence of children is not counted as a charge for prior sex offences unless an offence is imminent. In this case, Mr. Jones was in a public place with the child among many adults. An incident of this nature exhibits "high-risk" behaviour but is not sufficient for a charge of a sex offence.

## Appendix Three

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## Appendix Four

## Surgical Castration in Relation to Sex Offender Risk Assessment

Surgical castration or orchidectomy is the removal of the testicles. In most cases this is done for medical reasons but in sex offenders may be done for the reduction of sexual drive. Orchidectomy was practiced in Nazi Germany and in post-war Europe in sufficient numbers that several studies have been conducted on the recidivism rates of those who have undergone the operation. In general, the post-operative recidivism rates are low, but not zero (2% - 5%). In addition, the subjects in the European samples tended to be older men and this data may not generalize well to ordinary sex offender samples. The recidivism rates reported, however, are lower than expected base rates. This may suggest that there is some protective effect from castration.

However, this effect can be reversed. There have been a number of case studies where a castrated individual has obtained steroids, reversed the effects of the operation, and gone on to re-offend.

In terms of overall risk assessment, if an individual has undergone surgical castration it is worth consideration but this is not an overriding factor in risk assessment. In particular, an evaluator must consider the extent to which sex drive contributes to the offence pattern and whether the offender has the motivation and intellectual resources to maintain a low androgen lifestyle in the face of potentially serious side effects (e.g., bone loss, weight gain, breast growth).

## Appendix Five

## STATIC-99 Coding Form

| Question Number | Risk Factor | Codes | Score |
|---|---|---|---|
| 1 | Young (S9909) | Aged 25 or older<br>Aged 18 – 24.99 | 0<br>1 |
| 2 | Ever Lived With (S9910) | Ever lived with lover for at least two years?<br>Yes<br>No | <br>0<br>1 |
| 3 | Index non-sexual violence - Any Convictions (S9904) | No<br>Yes | 0<br>1 |
| 4 | Prior non-sexual violence - Any Convictions (S9905) | No<br>Yes | 0<br>1 |
| 5 | Prior Sex Offences (S9901) | Charges / Convictions<br>None / None<br>1-2 / 1<br>3-5 / 2-3<br>6+ / 4+ | <br>0<br>1<br>2<br>3 |
| 6 | Prior sentencing dates (excluding index) (S9902) | 3 or less<br>4 or more | 0<br>1 |
| 7 | Any convictions for non-contact sex offences (S9903) | No<br>Yes | 0<br>1 |
| 8 | Any Unrelated Victims (S9906) | No<br>Yes | 0<br>1 |
| 9 | Any Stranger Victims (S9907) | No<br>Yes | 0<br>1 |
| 10 | Any Male Victims (S9908) | No<br>Yes | 0<br>1 |
| | **Total Score** | **Add up scores from individual risk factors** | |

### TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

| Score | Label for Risk Category |
|---|---|
| 0,1 | Low |
| 2,3 | Moderate-Low |
| 4,5 | Moderate-High |
| 6 plus | High |

## Appendix Six

## STATIC-99 Recidivism Percentages by Risk Level

| Static-99 score | sample size | sexual recidivism | | | violent recidivism | | |
|---|---|---|---|---|---|---|---|
| | | 5 years | 10 years | 15 years | 5 years | 10 years | 15 years |
| 0 | 107 (10%) | .05 | .11 | .13 | .06 | .12 | .15 |
| 1 | 150 (14%) | .06 | .07 | .07 | .11 | .17 | .18 |
| 2 | 204 (19%) | .09 | .13 | .16 | .17 | .25 | .30 |
| 3 | 206 (19%) | .12 | .14 | .19 | .22 | .27 | .34 |
| 4 | 190 (18%) | .26 | .31 | .36 | .36 | .44 | .52 |
| 5 | 100 ( 9%) | .33 | .38 | .40 | .42 | .48 | .52 |
| 6 + | 129 (12%) | .39 | .45 | .52 | .44 | .51 | .59 |
| Average | | | | | | | |
| 3.2 | 1086 (100%) | .18 | .22 | .26 | .25 | .32 | .37 |

## Appendix Seven

## Suggested Report Paragraphs for Communicating STATIC-99-based Risk Information

The STATIC-99 is an instrument designed to assist in the prediction of sexual and violent recidivism for sexual offenders. This risk assessment instrument was developed by Hanson and Thornton (1999) based on follow-up studies from Canada and the United Kingdom with a total sample size of 1,301 sexual offenders. The STATIC-99 consists of 10 items and produces estimates of future risk based upon the number of risk factors present in any one individual. The risk factors included in the risk assessment instrument are the presence of prior sexual offences, having committed a current non-sexual violent offence, having a history of non-sexual violence, the number of previous sentencing dates, age less than 25 years old, having male victims, having never lived with a lover for two continuous years, having a history of non-contact sex offences, having unrelated victims, and having stranger victims.

The recidivism estimates provided by the STATIC-99 are group estimates based upon reconvictions and were derived from groups of individuals with these characteristics. As such, these estimates do not directly correspond to the recidivism risk of an individual offender. The offender's risk may be higher or lower than the probabilities estimated in the STATIC-99 depending on other risk factors not measured by this instrument. This instrument should not be used with Young Offenders (those less than 18 years of age) or women.

Mr. X scored a ?? on this risk assessment instrument. Individuals with these characteristics, on average, sexually reoffend at ??% over five years and at ??% over ten years. The rate for any violent recidivism (including sexual) for individuals with these characteristics is, on average, ??% over five years and ??% over ten years. Based upon the STATIC-99 score, this places Mr. X in the Low, [score of 0 or 1](between the 1st and the 23rd percentile); Moderate-Low, [score of 2 or 3] (between the 24th and the 61st percentile); Moderate-High, [score of 4 or 5] (between the 62nd and the 88th percentile); High, [score of 6 plus](in the top 12%) risk category relative to other adult male sex offenders.

Based on a review of other risk factors in this case I believe that this STATIC-99 score (Over/Under/Fairly) represents Mr. X's risk at this time. The other risk factors considered that lead me to this conclusion were the following: {Stable Variables: Intimacy Deficits, Social Influences, Attitudes Supportive of Sexual Assault, Sexual Self-Regulation, and General Self-Regulation; Acute Variables: Substance Abuse, Negative Mood, Anger/Hostility, Opportunities for Victim Access - Taken from the SONAR*}, (Hanson & Harris, 2001). Both the STATIC-99 and the SONAR 2000 are available from the Solicitor General Canada's Website www.sgc.gc.ca.

* Note: This list is not intended to be definitive. Evaluators may want to include other static or dynamic variables in their evaluations.

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[Evaluator – these paragraphs are available electronically by e-mailing Andrew Harris, harrisa@sgc.gc.ca and requesting the electronic file – Standard STATIC-99 Paragraphs]

## Appendix Eight

## STATIC-99 Inter-rater Reliability

Reliability is the extent to which the same individual receives the same score on different assessments. Inter-rater reliability is the extent to which different raters independently assign the same score to the same individual at a given point in time.

These independent studies utilized different methods of calculating inter-rater reliability. The Kappa statistic provides a correction for the degree of agreement expected by chance. Percent agreement is calculated by dividing the agreements (where both raters score "0" or both raters score "1") by the total number in the item sample. Pearson correlations compare the relative rankings between raters. Intra-class correlations compare absolute values between raters.

The conclusion to be drawn from this data is that raters would rarely disagree by more than one point on a STATIC-99 score.

| Summary of Inter-rater Reliability | | | |
|---|---|---|---|
| **Study** | **N of cases double coded** | **Method of reliability calculation** | **Reliability** |
| Barbaree et al. | 30 | Pearson correlations between total scores | .90 |
| Hanson (2001) | 55 | Average Item Percent Agreement | .91 |
| | 55 | Average Item Kappa | .80 |
| | 55 | Intra-class correlation for total scores | .87 |
| Harris et al. | 10 | Pearson correlations between total scores | .96 |

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## Appendix Nine

## STATIC-99 Replication Studies References


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## STATIC-99 Replications

| Authors | Country | Sample | n | Reported ROC |
|---|---|---|---|---|
| **Hanson & Thornton (2000)** | **Canada & the UK** | **Prison Males** | **1,301** | **.71** |
| | **These are the original samples for the Static-99 Prison Males** | | | |
| Barbaree et al., (2001) | Canada | Prison Males | 215 | .70 |
| Beech et al., (2002) | England | Community | 53 | .73 |
| Hanson (2002) Unpublished | Canada | Community | 202 | .59 |
| Harris et al., (Submitted) | Canada | Forensic Mental Health Patients | 396 | .62 |
| Hood et al., (2002) | England | HM Prison Males | 162 | .77 |
| McGrath et al., (2000) | United States | Prison Males | 191 | .74 |
| Motiuk (1995) | Canada | Prison Males | 229 | .77 |
| Nicholaichuk (2001) | Canada | Aboriginal Males | 109 | .67 |
| Nunes et al., (2002) | Canada | Community Pre-trial | 258 | .70 |
| Poole et al., (2001) | United States | Juv. sex offenders released after age 18 | 45 | .95 |
| Reddon et al., (1995) | Canada | Prison Males | 355 | .76 |
| Sjöstedt & Långström (2001) | Sweden | All released male offenders (1993-1997) | 1,400 | .76 |
| Song & Lieb (1995) | United States | Community | 490 | .59 |
| Thornton (2000a) | England | Prison Males | 193 | .89 |
| Thornton (2000b) | England | Prison Males | 110 | .85 |
| Tough (2001) | Canada | Developmentally Delayed Males | 76 | .60 |
| Wilson et al., (2001) | Canada | Detained High-Risk Offenders | 30 | .61 |
| | | **TOTAL** | **4,514** | **MEAN = 72.4** |

## Appendix Ten

## Interpreting STATIC-99 Scores Greater than 6

In the original Hanson and Thornton (1999, 2000) study, all offenders with scores of 6 or more were grouped together as "high risk" because there were insufficient cases to provide reliable estimates for offenders with higher scores. Consequently, some evaluators have wondered how to interpret scores for offenders with scores greater than 6. We believe that there is insufficient evidence to conclude that offenders with scores greater than 6 are higher risk to re-offend than those who have a score of 6. However, as an offender's score increases, there is increased confidence that he is indeed a member of the high-risk group.

Below are the sexual and violent recidivism rates for the offenders with scores of 6 through 9. No offender in these samples had a score of 10 or greater. The rates were based on the same subjects and the same statistics (survival analysis) as those used to generate the estimates reported in Table 5 of Hanson and Thornton (1999, 2000).

Overall, the recidivism rates for the offenders with scores of 6, 7 and 8 were similar to the rates for the high-risk group as a whole. There were only three cases with a Static-99 score of 9, one of which sexually recidivated after 3 years, one re-offended with non-sexual violent offence after 18 years, and one did not recidivate. None of the differences between the groups were statistically significant.

| Static-99 score | sample size | Sexual recidivism | | | Violent recidivism | | |
|---|---|---|---|---|---|---|---|
| | | 5 years | 10 years | 15 years | 5 years | 10 years | 15 years |
| 6 | 72 | .36 | .44 | .51 | .46 | .53 | .60 |
| 7 | 33 | .43 | .43 | .53 | .43 | .46 | .56 |
| 8 | 21 | .33 | .52 | .57 | .43 | .57 | .62 |
| 9 | 3 | .33 | .33 | .33 | .33 | .33 | .33 |
| 10, 11, 12 | 0 | | | | | | |
| Scores 6 thru 12 | 129 | .39 | .45 | .52 | .44 | .51 | .59 |

**STATIC-99 Coding Form**

| Question Number | Risk Factor | Codes | Score |
|---|---|---|---|
| 1 | Young (S9909) | Aged 25 or older<br>Aged 18 – 24.99 | 0<br>1 |
| 2 | Ever Lived With (S9910) | Ever lived with lover for at least two years?<br>Yes<br>No | <br>0<br>1 |
| 3 | Index non-sexual violence - Any Convictions (S9904) | No<br>Yes | 0<br>1 |
| 4 | Prior non-sexual violence - Any Convictions (S9905) | No<br>Yes | 0<br>1 |
| 5 | Prior Sex Offences (S9901) | Charges / Convictions<br>None / None<br>1-2 / 1<br>3-5 / 2-3<br>6+ / 4+ | <br>0<br>1<br>2<br>3 |
| 6 | Prior sentencing dates (excluding index) (S9902) | 3 or less<br>4 or more | 0<br>1 |
| 7 | Any convictions for non-contact sex offences (S9903) | No<br>Yes | 0<br>1 |
| 8 | Any Unrelated Victims (S9906) | No<br>Yes | 0<br>1 |
| 9 | Any Stranger Victims (S9907) | No<br>Yes | 0<br>1 |
| 10 | Any Male Victims (S9908) | No<br>Yes | 0<br>1 |
| | **Total Score** | **Add up scores from individual risk factors** | |

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

| Score | Label for Risk Category |
|---|---|
| **0,1** | **Low** |
| **2,3** | **Moderate-Low** |
| **4,5** | **Moderate-High** |
| **6 plus** | **High** |

**STATIC-99 Coding Form**

| Question Number | Risk Factor | Codes | Score |
|---|---|---|---|
| 1 | Young (S9909) | Aged 25 or older<br>Aged 18 – 24.99 | 0<br>1 |
| 2 | Ever Lived With (S9910) | Ever lived with lover for at least two years?<br>Yes<br>No | <br>0<br>1 |
| 3 | Index non-sexual violence - Any Convictions (S9904) | No<br>Yes | 0<br>1 |
| 4 | Prior non-sexual violence - Any Convictions (S9905) | No<br>Yes | 0<br>1 |
| 5 | Prior Sex Offences (S9901) | Charges / Convictions<br>None / None<br>1-2 / 1<br>3-5 / 2-3<br>6+ / 4+ | <br>0<br>1<br>2<br>3 |
| 6 | Prior sentencing dates (excluding index) (S9902) | 3 or less<br>4 or more | 0<br>1 |
| 7 | Any convictions for non-contact sex offences (S9903) | No<br>Yes | 0<br>1 |
| 8 | Any Unrelated Victims (S9906) | No<br>Yes | 0<br>1 |
| 9 | Any Stranger Victims (S9907) | No<br>Yes | 0<br>1 |
| 10 | Any Male Victims (S9908) | No<br>Yes | 0<br>1 |
| | **Total Score** | **Add up scores from individual risk factors** | |

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

| Score | Label for Risk Category |
|---|---|
| 0,1 | Low |
| 2,3 | Moderate-Low |
| 4,5 | Moderate-High |
| 6 plus | High |

**Rogers, Laura** tiers/clean record

**From:** [redacted]
**Sent:** Monday, May 21, 2007 10:01 AM
**To:** GetSMART
**Cc:** [redacted]
**Subject:** SMART, comments regarding

Regarding page 52, third paragraph, last sentence:

It is a shame that those branded a tier II and III have no recourse to reduce their reporting requirements. Many such individuals, because of a singular offense that earned the tier designation, regardless of age when committed, are marked for a lifetime. There should be some consideration for a life worthily lived after a period of time to be able to free themselves from at least having to register for the rest of their lives. Being branded a sex offender is a life sentence in itself regardless of the tier. It makes finding meaningful employment and decent living arrangements extremely difficult for someone trying to be rehabilitated and perhaps raise a family.

Further, on page 53, the bulleted item at the top:

It appears that such successfully completed treatments, at least those conducted in a correctional facility, are not recognized once released and often repeated when on parole. Some sort of after incarceration treatment should be required but taking into account what the offender has already done.

Yours truly,

Edward M. Gundersen

registration length

**Rogers, Laura**

**From:** [redacted]
**Sent:** Tuesday, June 12, 2007 10:48 AM
**To:** GetSMART; [redacted]
**Subject:** Adam Walsh Act

I have a concern about the duration of registration requirement.
Under the Duration of Regsitration it states: It generally requires that sex offenders keep the registration current for 15 years in case of a tier I sex offender, for 25 years in case of a tier II sex offender, and for the life of the sex offender in case of a tier III sex offender, "excluding any time the sex offender is in custody or civilly committed." However, it does NOT deal with Non Compliance of offenders during the required registration period. This could cause a problem, becasue approximately 99% of the offenders we deal with are the ones who do not update their information, move and don't tell anyone and so forth. It would be nice if the act would also include "excluding anytime the sex offender is in custody, civilly commited or when any person who is required to register under this act knowingly or willfully fails to comply with the registration requirement."

Thank you,
Detective Kim Kleinsorge
[redacted]

**Rosengarten, Clark** Keep current

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:45 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** Grace Grogan [redacted]
**Sent:** Monday, July 30, 2007 8:46 AM
**To:** GetSMART
**Subject:** OAG Docket No. 121

Office of Sex Offender Sentancing, Monitoring, Apprehending, Registering and Tracking
Justice Department's Office of Justice Programs

SUBJECT: OAG Docket No. 121

I am writing to address some issues with the Adam Walsh Proposed Guidelines, Section X KEEPING THE REGISTRATION CURRENT

Section 113(c) provides that each sex offender must no later than three business days after each change of name, residence, employment or student status appear to register these changes. **It needs to be specified that all law enforcement agencies be required to accept registrations 24 hours per day, 7 days per week,** so that offenders can comply with these requirements without jeopardizing their jobs or interfering with their student activities. There are some law enforcement agencies that will only accept registrations during certain times of day, making it difficult for offenders to stay in compliance. The three-day rule makes this even harder, and therefore increases the need for all law enforcement agencies to accept registrations at any time of day or night.

This same section further requires offenders to register in Residence, Employment and School jurisdictions. By the terms of the Adam Walsh Act, a jurisdiction is a state. With the extensive information sharing capabilities of the software described in this Act, **it should be specified that one registration within that state covers all these areas.** There is no reason for offenders to be required to register in various cities or counties within their state jurisdiction...this causes increased paperwork, duplicates registration procedures and increases the chances for discrepancies caused by different agencies entering the information repeatedly.

**IT SHOULD BE MANDITORY THAT WHENEVER AN OFFENDER REGISTERS OR UPDATES HIS/HER INFORMATION THAT THEY BE PROVIDED WITH A COPY OF THAT UPDATE/REGISTRATION.** This is not designated in the guidelines, but is the only proof that that offender has to prove they have complied with the registration requirements in the event of an entering error on the part of the law enforcement agencies. Many young men and women have avoided prosecution only by being able to present documentation of this nature.

Thank you for your consideration.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 10:56 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** Grace Grogan [redacted]
**Sent:** Monday, July 30, 2007 9:09 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

Office of Sex Offender Sentancing, Monitoring, Apprehending, Registering and Tracking
Justice Department's Office of Justice Programs

SUBJECT: OAG Docket No. 121

I am writing concerning discrepancies/contradictions within the guidelines which may cause confusion and ultimately lead to offenders unknowingly violating registration requirements.

The goal should be to ensure compliance with registration guidelines, and for that to happen there needs to be some consistency.

Under Temporary Lodging Information Sec. 114(a)(7) – page 31 of the proposed guidelines, it states that jurisdictions must require sex offenders to provide information about any place in which the offender is staying for seven or more days, identifying the place and the period of time they will be staying there.

Section VIII. Where Registration is Required Section VIII. Where Registration is Required – Page 46 states that a jurisdiction must require a sex offender to register in the jurisdiction as a resident under SORNA if the sex offender has a home in the jurisdiction, or if the offender lives in the jurisdiction for at least 30 days, and that each jurisdiction may choose whether this is 30 consecutive days, 30 nonconsecutive days over a 45 day period or 30 nonconsecutive days within a calendar year.

The logical solution would be to incorporate Temporary Lodging under the 30 day allowance of Section VIII, but setting an established consecutive period of time before registration is required, and not allow states to shorten that period of time. To ensure the most compliance there should be an allowance for the length of time an offender can take a reasonable family vacation without have to register while traveling, and this time frame should be consistent within the 50 United States and its possessions. Since most businesses offer between 2-4 weeks of paid vacation each year, the 30 consecutive day requirement before having to register in a jurisdiction would be most reasonable and prevent unnecessary processing of paperwork, registrations, etc. Again, states should not be allowed to shorten the period of time when within their state.

Consistency amongst all of the states will allow for the most compliance and reduce paperwork,

needless prosecution due to confusion of requirements, etc.

Thank you for your consideration.

Mother, Grandmother
Concerned Cititzen

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**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, June 13, 2007 10:48 AM
**To:** GetSMART
**Subject:** OAG Docket No 121

I am writting to you about section 114 (a)(7) A sex offender is required to supply information about any place in which the sex offender is staying 7 days or more. This section is to general. Does it mean 7 days in a row? Does in mean 7 days in a calander year? The other problem with this is that how does it get enforced? This does not provide any more protection to the public, but gives them the feeling of more protection. Now if a sex offender does say they are staying at a place for more than 7 days will they be required to register at that location also? And if so will the sex offender have to register everytime they go to that location?

**Rogers, Laura**

**From:** [redacted]
**Sent:** Friday, June 15, 2007 1:01 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

Sec 113 (a) (b) (c) and Sec 117 (a) Change of address and loction of work. 3 working days to change that information at all of the locations is an unreasonable time. 10 working days. Futhermore the sex offender should only be reporting any changes to the place of primary residence. In this day and age of electronic comincations it is unreasonable to think this information can not be transmitted electronicly to say a different jursdiction then the sex offenders primary home if say they work in one jursidiction andlive in anouther. Futhermore if they are changing vehicles, e mail or phone numbers it says that infomation will be reported immediately. Again the sex offender should only have to report this information to the primary place of residence. The information then can be transmitted electronicly to the other jursdictions that the sex offender is working in or going to school in. To have them report in person to more locations than one will in the end be counter productive as many may go underground and stop reporting altogether. Futher if under the SONRA a sex offender is required to do so many steps, then soon an offender will take this to court. The courts may rule that this is additional punishiment and not in keeping with the public saftey requirement set fourth by the courts already.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, June 18, 2007 1:13 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

Sec 114 (a) (7) Seven consecitive days in one location requires reporting. This statement is to broad. It should read Seven conscitive days in one location in any calander year require reporting of address and location.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, June 27, 2007 2:44 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

The SONRA under the Adam Walsh act will require that all sex offenders report to any jurisdictions in which they live, go to school, and work. This will place an undue burden on law enforcement agencies though out the USA. Given that some jurisdictions will have over 200 sex offenders that will be required to report to them within the required three (3) days. In that short time frame some will have to register 200 or more sex offenders. To do that the jurisdiction will be forced to add more personnel just to get the offenders registered within the three (3) days. The three (3) days should be changed to ten (10) business days to report to the jurisdictions in question. Another issue with this part of the rules is that it will require a lot of duplication of work on the part of Law Enforcement, given that the sex offender will be required to report to multiple locations, when they work, live or go to school in one jurisdiction, but work, live or go to school in another jurisdiction. In that in this day and age the technology is available to forward information from one jurisdiction to another in a matter of seconds, it would be more prudent and a better use of resources for the sex offender to report to only one location and have that location forward the information to other jurisdictions the offender may work or go to school. The argument that having the sex offender report in person to all the locations, puts the offender on notice that they are known is one that holds little value in that the sex offender will already be aware that the information is forwarded to another jurisdiction of record. As for the Law Enforcement personnel recalling who they are and what they look like, this also holds little value in that it is very unlikely that the person registering the offender will recall what all the offenders they registered looked like, given the high numbers of offenders they will have to register.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, July 05, 2007 3:22 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Sec 113 (A) (b) (C) and 117(a) As written will require that sex offenders report within 3 days any change of address, change of school, change of work location. This section also says that a sex offender must immediately report any change in vehicle, e mail address or any phone number change. 3 days is an unreasonable amount of time and should be changed to (10) ten business days. Furthermore the sex offender should only have to report the change to one of the three locations and the agency receiving this information required to update the sex offender data base. It is redundant to have the sex offender report to all the locations the change that has occurred. The courts may look at this as being very punitive in nature, in that it will not only be time consuming to the offender; it will also be costly in terms of transportation cost. It should also be brought to your attention that the more restrictive and harder you make it on the sex offenders to complete the requirements under the SONRA, the more non compliant sex offenders will become with the rules. If you do not think this statement is true look to the state of Iowa that has found that they need to change some of the restrictions they put on the books for sex offenders as now the obedience to registering is falling off. This has resulted in many of them going "underground" and lowered the effectiveness of sex offender registry; the same as it will with all the hoops you are having the sex offender jump though with your rules as written on the SONRA.

**Rogers, Laura**

**From:** Tim Poxson[redacted]
**Sent:** Monday, July 16, 2007 2:25 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Section 114 Part VI of the SONRA states in part; Each Jurisdiction an offender is a resident the offender must report immediately changes in vehicle information, lodging of seven days or more, changes in designations used for self- identification or routing information, internet communications or posting, or telephonic communications.

This requirement should give the offender 10 (ten) days to report changes. The real issue here is that sex offenders who are not going to re-offend will be in to change the information. However if an sex offender is offending is some way, they are not going to come in and tell the authorities they are offending and using xyz as their identifier. They are going to cover it up or just not report it. So although this rule looks good on paper its real effects will be no effect at all.

**Rogers, Laura**

**From:** Tim Poxson [redacted]
**Sent:** Thursday, July 19, 2007 4:12 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

I will try to be as short as possible. I have some issue with the time lines you are giving sex offenders to do things.

Sec 113 (a) (b) and (c) a;sp sec. 117 (a) one says that change of address change of work or school must be reported within 3 days of making the change. This is not long enough and should be changed to ten (10) days. It is unreasonable to think that people can come in within 3 days of making such changes.

Must report immediately changes; changes in vehicles,E mail addresses and other communications, lodging of seven days or more. It is unreasonable and should be ten days. This will cause many to be in violation of the law if left like it is.

Sec 113 (a) provides that a sex offender must keep the registration current in each jurisdiction in which the sex offender resides, goes to school or works. This is unreasonable and should be accomplished by one of the locations contacting the others via the internet. This one will also cause many to be in violation if left like it is.

The 3 day requirement of above will also make law Enforcement work harder in that more offenders will be coming in to law enforcement in a short time frame causing them problems in getting this work done in 3 days. Ten days would spread the numbers of people coming in out over a longer time, giving law Enforcement more room to get this job done.

Section 114 Part VI again says each sex offender must report to each jurisdiction any change in address, autos, changes in designations used for self identification or routing internet or posting, or telephonic communications. This should be changed to reporting to just one jurisdiction, it is redundant to have the sex offender report to each jurisdiction the change. It will also cause for violations if left like it is. I understand the need to have this information for law Enforcement, but it should also be mandatory that each state can not post this information on the web sight were sex offenders information is posted. To do so will cause some to communicate with the offenders in a negative fashion. This posting of information such as the e mail address would also lead to sex offenders communicating. If someone from the public needs to check an e mail address, this request should be handled by them submitting a e mail address to be checked against the e mails that law enforcement has in its data base. This request should not be made in a manner that would give out an address unless the one submitted by the citizen does belong to a sex offender in the data base.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:49 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** David Hess[redacted]
**Sent:** Wednesday, July 25, 2007 9:11 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

RE: OAG Docket No. 121

Thank you for this opportunity to comment on the proposed National Guidelines for Sex Offender Registration and Notification. I am a pastor in New York State and also the New York State Representative of SOhopeful International, a group which advocates for effective sex offender laws.

One of the primary purposes of the Adam Walsh Act (AWA) was to establish consistent and uniform sex offender registries in the various states. The Act specifies that states "shall" establish a 3 tier system which specifies different terms of registration and degrees of public notification for various offenders depending on the crime of conviction.

Unfortunately, the proposed guidelines give states license to ignore the tier system. The proposed guidelines state, "the Act generally constitutes a set of minimum national standards and sets a floor, not a ceiling, for jurisdictions' programs." **The purpose of the Act was not to set "minimum" standards but to set uniform and consistent standards in the various states.**

The Act was intended to address an inconsistent situation where a particular offender would be subject to a 10 year term of registration in one state and a lifetime registration in another. Under the Adam Walsh Act the offender was to be subject to the same length of registration no matter the state in which he resided. Not so under the proposed guidelines. Inconsistent systems of registration are allowed to continue. The proposed guidelines do not implement the Adam Walsh Act; they sabotage it.

The guidelines justify this approach by stating: "Such measures, which encompass the SORNA baseline of sex offender registration and notification requirements but go beyond them, generally have no negative implication concerning jurisdictions' implementation of or compliance with SORNA. This is so because the general purpose of SORNA is to protect the public from sex offenders and offenders against children through effective sex offender registration and notification, and it is not intended to preclude or limit jurisdictions' discretion to adopt more extensive or additional registration and notification requirements to that end."

It must be pointed out that going beyond the AWA requirements does have negative implications. These certainly include continuing a system of patchwork laws, but they also may have negative safety implications. This has been pointed out by respected experts in the field of sex offender management

such as Andrew J. R. Harris and R. Karl Hanson (*Sex Offender Recidivism: A Simple Question*, 2004-03, Public Safety and Emergency Preparedness Canada):

> The variation in recidivism rates suggests that not all sex offenders should be treated the same. Within the correctional literature it is well known that the most effective use of correctional resources targets truly high-risk offenders and applies lower levels of resources to lower risk offenders (Andrews & Bonta, 2003). The greater the assessed risk, the higher the levels of intervention and supervision; the lower the assessed risk, the lower the levels of intervention and supervision. **Research has even suggested that offenders may actually be made worse by the imposition of higher levels of treatment and supervision than is warranted given their risk level** (emphasis mine) (Andrews & Bonta, 2003). Consequently, blanket policies that treat all sexual offenders as "high risk" waste resources by over-supervising lower risk offenders and risk diverting resources from the truly high-risk offenders who could benefit from increased supervision and human service.

To allow jurisdictions to ignore the uniform guidelines in AWA also makes AWA more difficult to implement. For example, Section 113 states:

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

An inconsistent implementation of AWA on the part of jurisdictions makes it extremely difficult and confusing for jurisdictions to know what other jurisdictions to notify since registration requirements would be allowed to vary greatly.

I urge you to eliminate this "floor, not a ceiling" language in the guidelines. A uniform and consistent implementation of the registration requirement are true to both the spirit and letter of the Adam Walsh Act.

Sincerely,

Rev. Dr. C. David Hess
[redacted]

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 10:53 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121

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**From:** [redacted]
**Sent:** Tuesday, July 31, 2007 10:47 AM
**To:** GetSMART
**Subject:** Docket No. OAG 121

Re:***Docket No. OAG 121***

The guidelines for the AWA should be a ceiling not a floor for the states anything other has a good chance of being deemed unconstitutional by the courts, I point to the narrative of the SCOTUS questions from the judges in the Alaska and Conn. cases.

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**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:46 AM
Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121

**Attachments:** 307788946-Bewig comments re Docket No. OAG 121.doc

Bewig comments re Docket No. O...

-----Original Message-----
From: Matthew Bewig [redacted]
Sent: Sunday, July 29, 2007 8:06 PM
To: GetSMART
Subject: Docket No. OAG 121

Attached are my comments on the proposed regulations relating to SORNA.

Thank you,

Matt Bewig

29 July 2007

VIA ELECTRONIC AND FIRST CLASS MAIL

Laura L. Rogers
Director, SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW
Washington, DC 20531

**Re: OAG Docket No. 121**
**Proposed National Guidelines for Sex Offender Registration and Notification**

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## Introduction

These comments are directed toward Sections II.B., V, and XII of the proposed guidelines, set forth at the Federal Register, Vol. 72, No. 103, (May 30, 2007). For the reasons set forth below, I respectfully request that the guidelines be withdrawn so that they can be rewritten to be in conformance with the statute, the intent of Congress, and the weight of expert opinion.

Specifically, the proposed guidelines state that, among other provisions, the sex offender registration requirements set forth at Sections 112 to 118 of the Sex Offender Registration Notification Act (hereinafter "SORNA"), P. L. 109–248, 120 Stat. 587, establish "a set of minimum national standards and sets a floor, not a ceiling, for jurisdictions' programs. Hence, for example, a jurisdiction may . . . require sex offenders to register for longer periods than those required by the SORNA standards." 72 Fed. Reg. at 30212. This approach is reflected as well in Sections V and XII of the proposed guidelines. This "minimum standards" aspect of the proposed regulations contradicts the plain language of the referenced sections of SORNA, and hence ought not to be adopted, as this would violate a cardinal rule of administrative law that regulations must be in accordance with, and may not be inconsistent with, the text of the statute they purport to interpret or enforce. Furthermore, this approach is inconsistent with the clear intent of Congress and the weight of expert opinion presented to the Congress.

## SORNA's Plain Language States that the Full Registration Periods are Maximums

First, the plain meaning of the statutory text of Sections 112 and 115 forecloses this "minimum standards" approach. Set forth below are relevant quotations of the statutory text (emphasis supplied):

"SEC. 112. REGISTRY REQUIREMENTS FOR JURISDICTIONS.
(a) JURISDICTION TO MAINTAIN A REGISTRY.—Each jurisdiction *shall maintain* a jurisdiction-wide sex offender registry conforming to the requirements of this title."
"SEC. 115. DURATION OF REGISTRATION REQUIREMENT.

(a) FULL REGISTRATION PERIOD.—A sex offender shall keep the registration current for the *full registration period* (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The *full registration period* is—

(1) 15 years, if the offender is a tier I sex offender;

(2) 25 years, if the offender is a tier II sex offender; and

(3) the life of the offender, if the offender is a tier III sex offender.

(b) REDUCED PERIOD FOR CLEAN RECORD.—

(1) CLEAN RECORD.—The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by—

(A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;

(B) not being convicted of any sex offense;

(C) successfully completing any periods of supervised release, probation, and parole; and

(D) successfully completing of an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

(2) PERIOD.—In the case of—

(A) a tier I sex offender, the period during which the clean record shall be maintained is 10 years; and

(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.

(3) REDUCTION.—In the case of—

(A) a tier I sex offender, the reduction is 5 years;

(B) a tier III sex offender adjudicated delinquent, the reduction is from life to that period for which the clean record under paragraph (2) is maintained."

The meaning of this text could not be plainer. Subtitle A of SORNA, comprising sections 111 through 131, establishes a comprehensive system of federal requirements for sex offender registries throughout the United States. Section 111 sets forth a set of carefully worded definitions for three "tiers" of offenders. Section 112, titled "REGISTRY REQUIREMENTS FOR JURISDICTIONS" mandates that each jurisdiction "shall maintain" a registry of offenders in conformity with SORNA or suffer the fiscal consequences set forth at Section 125. In using the word "shall," Congress stated a mandate, a requirement, not an optional choice. Section 115 sets forth the "full registration period" as being fifteen years, twenty-five years, and life, for Tier I, II, and III offenders, respectively. No language appears in Subtitle A or elsewhere in the statute, either stating or implying that these registration periods are minimums or floors. Had Congress intended these "full registration periods" to be minimums, it would have explicitly stated so, or it would have used terminology such as "minimum registration period" or the like. Instead, Congress chose to use the word "full," which, according to *Webster's Unabridged Dictionary* (1996), means "containing all that possibly can be placed or put within," and "having the normal or intended capacity supplied or accommodated : entirely occupied." In other words, by the plain meaning of the statute, Congress intended these to be maximum terms of registration, not minimum terms. Indeed, it is hard to understand how the life registration requirement for Tier III offenders could be anything other than a maximum.

The mandatory nature of these "full registration periods" is further underscored by the terms of Section 115(b), which states that "[t]he full registration period shall be reduced as described

in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by" meeting certain criteria. Once again, Congress uses the term "full registration period," with no qualifying language indicating that these are minimum periods of time, and mandates that these periods "shall be reduced" when the criteria are met.

Indeed, the structure of these statutorily mandated reductions makes sense only if the registration periods are maximums, and is unworkable under the regulations as currently written. Take the example of a Tier I offender who meets the "clean record" criteria of Section 115(b), but lives in a jurisdiction in which all sex offenders (regardless of Tier classification) are subject to lifetime registration—of which there are quite a number, and were at the time Congress passed the statute. A lifetime registration requirement cannot be reduced by five years because its indefinite nature renders any subtraction from its termination point logically impossible.

A fundamental rule of statutory construction—and of regulatory rulemaking pursuant to statute—is that the words of Congress must be interpreted in a way that gives them meaning and does not reduce them to a nullity. The only ways to give meaning to the terms of Section 115(b), especially with regard to Tier I offenders, are either to interpret the full registration periods as mandated maximums, or to assume that Congress meant the reductions to operate similarly for Tier I and Tier III offenders, so that just as the Tier III reduction shortens the registration period to the same length as the clean record period of 25 years, the Tier I reduction likewise shortens the registration period to ten years.

**The Legislative History Indicates that the Full Registration Periods were to be Maximums**

Furthermore, the legislative history of the statute demonstrates that Congress wrestled with the registration periods, and intended to create a nationally uniform sex offender registration system. For example, a key Senate report on the statute's legislative history states that "[t]he Registry provisions were designed to establish uniform standards for the registration of sex offenders, including a lifetime registration requirement for the most serious offenders." Activities Report of the Committee on the Judiciary, United States Senate, 2005–2006, Report 109–369, at 16. This report further states that "[i]n its original form, S. 1086 (the Senate antecedent to the Adam Walsh Act) was regarded by some Senate critics as too harsh in its requirements that states implement the provisions of a sex offender registry or face the loss of federal program funds. A similar concern was voiced regarding the bill's treatment of lower level offenders." *Id.* at 16. As to the first concern, Congress decided to relax the fiscal consequences of noncompliance—but not to remove the language requiring the states to comply with SORNA.

As to the latter issue, the relevant committees in both houses of Congress heard overwhelming testimony from experts in the field of sex offender recidivism and management that the best way to ensure public safety was to legislate shorter registration periods for low-risk offenders. For example, the Association for Treatment of Sexual Abusers, in written testimony submitted to the ranking Judiciary Committee members in both Houses, urged that "[l]ifetime registration . . . may in fact interfere with the stability of low risk offenders by limiting their employment and housing opportunities. Sex offenders represent a wide range of offense patterns and future risk. Research has found that community notification of low risk offenders may unnecessarily isolate them and lead to harassment and ostracism, which can inadvertently increasing their risk." Letter from the ATSA Board of Directors, "Pending Sex Offender Registry Legislation (HR 3132, S 792, S 1086)," dated August 15, 2005. Based on these expert findings, ATSA

recommended that "sex offenders should be allowed to petition for release from registration when the sex offender is deemed to pose a low risk to the community AND the offender has successfully completed a sex offender treatment program AND the offender has been living in the community offense free for at least five years." *Id.*

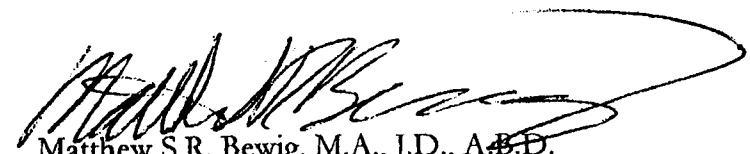
Congress's considered, and largely positive, response to ATSA's recommendations was at least twofold. First, Congress added the system of classification at Section 111 establishing three tiers of offenders, with three corresponding "full registration periods." Second, at Section 115(b), Congress explicitly adopted ATSA's proposal by legislating a means by which lower level offenders may be relieved of registration requirements by completing sex offender treatment and maintaining a clean record. Congress made this reduction available only to two classes of offenders—low level Tier I offenders, and some Tier III offenders adjudicated as juveniles. As indicated by the plain meaning of the statute and by the legislative history, Congress clearly intended to mandate a reduced registration period for these limited classes of offenders.

This legislative history, this careful deliberation on the part of the legislative branch of government, however, would be undermined by the proposed regulations, because they allow the states to ignore the three tier system, and even to render the indisputably mandatory registration period reduction provisions of Section 115(b) an unworkable nullity, as explained above. Regulations that frustrate the clear intent of the Congress are improper and ought not to be made final.

## Conclusion

For the reasons set forth above, the Department should withdraw the proposed regulations. The Department should then rewrite the regulations in such a way as to give effect to the plain language and clear intent of Congress, specifically by recognizing the mandatory nature of the "full registration periods" and the registration period reduction provisions.

Respectfully submitted,



Matthew S.R. Bewig, M.A., J.D., A~~B.D.~~

[redacted]

**Rosengarten, Clark**

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:49 AM
To: Rosengarten, Clark
Subject: FW: comments on DOJ "SMART" guidelines

-----Original Message-----
From: BelleAnne Curry [redacted]
Sent: Tuesday, July 31, 2007 8:18 PM
To: GetSMART; christine_leonard@judiciary-dem.senate.gov
Subject: comments on DOJ "SMART" guidelines

Dear GetSMART@usdoj.gov and Ms. Christine Leonard:

One of the positive aspects of the Adam Walsh legislation - as written and signed into law - is that it provides a uniform code for sex-offender registries by specifying and defining with some specificity the three-tier classification of offenders by offense and number of offenses.

The guidelines proposed by the Department of Justice, if implemented, will negate the benefits of a national three-tier system by treating the states' registration laws as minimums. These published guidelines repeatedly make the point that the federal legislation is really just a minimum standard that the states are free to exceed. I do not understand how "guidelines" can so clearly contradict the legislation's language.

A patchwork quilt of state registration laws has resulted in big problems for law enforcement and low-risk offenders because so many state lawmakers are interested in being the first on the block to devise new ways to get tough on sex offenders. It is only natural for people to attempt to avoid the negative consequences of registration, and when laws differ from jurisdiction to jurisdiction, such avoidance is possible. When State A has 15-year registration and State B has lifetime registration - for the same offense - offenders will naturally be inclined to live in State A, and who can blame them? But then, State A discerns that offenders are moving in and changes its laws because it doesn't want to look like the weak sister. Pretty soon, your reasonable three-tier system is in shambles because every state requires lifetime registration. The result is actually decreased public safety, because you have low-risk offenders and high-risk offenders lumped together and the public will not take the registry seriously.

A simple reading of the legislation does not suggest that the classification system is intended as "a minimum." Do not try to make it such.

**Rogers, Laura** "Conviction"

**From:** George and/or Barb[redacted]
**Sent:** Thursday, July 26, 2007 8:46 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

Dear Ms. Rogers,

I am writing concerning the interpretation of whether a person should have to register when they do not have a conviction on their record.

The language in the Adam Walsh Act (AWA) defines a "sex offender" as an "individual who was convicted of a sex offense." There are 2 caveats 1) the consensual exclusion, and 2) the 14 – 18 year old aggravated sexual abuse inclusion. The AWA, as written, does not include those without a conviction or adjudication on their record (with the exception of the 14-18 juvenile aggravated sexual abuse inclusion). It also does not say that someone who has been granted a set-aside of their conviction has to register. The AWA guidelines **Section IV – Convictions Generally, paragraph 3**, includes those whose offenses were vacated or set-aside but were required to serve what amounts to a criminal sentence for the offense.

Since the language in the AWA act does not specifically say these individuals should be included, it therefore appears that the intent was that those without a conviction or adjudication NOT be included in the definition of sex offender per the act. This would mean that each State could make the decision on how these individuals should be handled. In speaking with legislative aides prior to the enactment of the AWA there is no question that many people were led to believe that the intent was NOT to include those without a conviction.

Further support for the exclusion of those without a conviction or adjudication is found when comparing the language in the AWA and the Jacob Wetterling Act (JWA). The AWA makes use of the word convicted/conviction, without any explicit reference to including those without a conviction or adjudication. This terminology was also used in the Jacob Wetterling Act, but the JWA guidelines specifically allowed for the exclusion of those without a conviction. That was its intent, and that was how it was implemented, leaving discretion up to the states.

In addition, each state handles these kinds of programs (programs that keep a conviction off a person's record or allow for a set-aside) differently, so it would be inappropriate for the federal law to make assumptions on that, or apply a law broadly to that. It makes sense that it would be the individual states that need to make that decision on whether these individuals should be placed on their SOR or not. It's wrong to second-guess that state program, and its application, and broadly include them in the AWA. A judicious decision was made at some point, and respect should be given to that decision. These individuals should not be subject to the SORNA standards, but should be subject to the requirements of their own state. This is only right since a judicious decision was made for some valid reason which allowed them to participate in such a program, or be eligible to have a conviction set-aside.

Individuals that were given programs that didn't result in a conviction, or have been allowed to get a record set-aside, have had to meet the criteria for such programs. These programs are almost always determined by a judge, or with the judge's approval.

Please revise guidelines **Section IV – Convictions Generally, paragraph 3**, to exclude these individuals without a conviction or adjudication on their record, and leave that decision up to the individual states.

Sincerely,
Barb Lambourne
[redacted]

8/16/2007

**Rogers, Laura** conviction

**From:** [redacted]
**Sent:** Saturday, May 19, 2007 9:45 PM
**To:** GetSMART
**Subject:** Proposed Guidelines

I was wondering what is being done to protect children from offenders who have never been convicted, especially with the new trend of offenders pleading to lessor charges to avoid being placed on the sex offender registry.

In many more insulated Jewish communities it is frowned upon to report an offender to the "secular authorities." Instead rabbi tend to handle the cases on their own. Often chasing an offender out of town to unsuspecting new community. I know that this is not just happening in Jewish communities and is a problem that needs to be addressed.

Sincerely,
Vicki Polin, MA, ATR-BC, LCPC

*The Awareness Center, Inc.*
*(The Jewish Coalition Against Sexual Abuse/Assault)*
*P.O. Box 65273, Baltimore, MD 21209*
*www.theawarenesscenter.org*
*443-857-5560*

***"An oak tree is just a nut that held its ground"***

**Rogers, Laura** Gonwick

**From:** [redacted]
**Sent:** Tuesday, June 26, 2007 11:52 AM
**To:** GetSMART
**Cc:** christine_leonard@40judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Below is a direct copy out of the rules the AG issued. Section IV (a)

This does not mean,however, that nominal changes or terminological variations that do not relieve a conviction of substantive effect negate the SORNA requirements. For example, the need to require registration would not be avoided by a jurisdiction's having a procedure under which the convictions of sex offenders in certain categories (e.g., young adult sex offenders who satisfy certain criteria) are referred to as something other than "convictions," or under which the convictions of such sex offenders may nominally be "vacated" or "set aside," but the sex offender is nevertheless required to serve what amounts to a criminal sentence for the offense.Rather, an adult sex offender is "convicted" for SORNA purposes if the sex offender remains subject to penal consequences based on the conviction, however it may be styled. Likewise, the sealing of a criminal record or other action that limits the publicity or availability of a conviction, but does not deprive it of continuing legal validity, does not change its status as a "conviction" for purposes of SORNA.

Problem: The problem I see with this is that if you read the section right before this one you will see that states may leave this type of offender off the SONRA. So this section starts out with conflict. I do think it should be mandatory that this type of status that an offender may get should be left off the SONRA. If they are included on the SONRA, the need for states to have this type of disposition of a case will be pointless. It will also make prosecution more difficult in many cases, as the defendant will not want to "plea bargain" a case knowing they will still end up on the public sex offender registry. Furthermore prosecution of this type of case or plea bargaining of this type of case would not be used in any aggravated situation. Also again this type of disposition is mainly used in Juvenile cases and all juvenile cases should be left off the SNORA unless a case involving a Juvenile defendant who is tried as an adult.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, July 12, 2007 11:23 AM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SNORA says in part that a person who's conviction is set aside by any means, and what ever the state calls it, that offender shall still be required to register and have their name on the SNORA. NO PUBLIC GOOD is served by requiring these offender to the conditions of the SNORA. If the court hearing the case and the prosecution trying the case had thought this offender was so bad that they should be given no opportunity to reform, the court or the prosecution would not agree to any provision that would set aside the conviction. The court maybe offering this as a way to get someone help because they feel that the case is so weak. But for what ever reason it is being offered by the court, if the SNORA still requires this offender to register, no offenders are going to want to take this deal. The SNORA will in essence cause some very weak cases that do go to trail to end up in no conviction at all and no help for the accused sex offender. This in turn may cause this offender to go out and commit another sex offense and maybe hurt or kill a child, that otherwise could have been saved had the sex offender been able to get help. Instead of saving a child the SNORA will be responsible for the hurt, injury or death of a child.

**Rogers, Laura** comment

**From:** Desiree Allen-Cruz [redacted]
**Sent:** Wednesday, July 25, 2007 9:37 PM
**To:** GetSMART
**Cc:** Desiree Allen-Cruz
**Subject:** Guideline Recommendation
**Importance:** High

We have reviewed the Proposed Guidelines and agree "Notification to Jurisdictions" need to be defined to the greatest extent possible. While we understand that larger more electronically advanced jurisdictions (state, fed) are likely to work closely and quickly, smaller jurisdictions such as rural or frontier areas within the state do not. And, as such, Tribal jurisdictions are not usually a priority especially when we reside in the rural or frontier areas. **Defining an agency within jurisdictions** (residential, school, employment) **that must give notification to ensure quick and reliable notification is important for the safety of our communities.**

Example: A sex offender currently a resident of Colorado employed with a construction company within that state, travels to Pendleton, Oregon for a construction project on our Reservation. Will the Colorado SO Registering office contact the state of Oregon? Or will the Colorado SO Registering office be contacting our Tribal agency? Will that notification reach the Tribal agency before the SO arrives or within 3 days after arrival? Or, will the SO Colorado employer have to notify our Tribal Law Enforcement or other Tribal agency upon or prior to arrival? Or will we have to bear the wait of Colorado State notifying Oregon or the Federal jurisdiction who will in turn contact our Tribe?

If racism prevails within jurisdictions (by agency or employee), defining the agency responsible to notify along with timelines is of utmost and imperative importance.

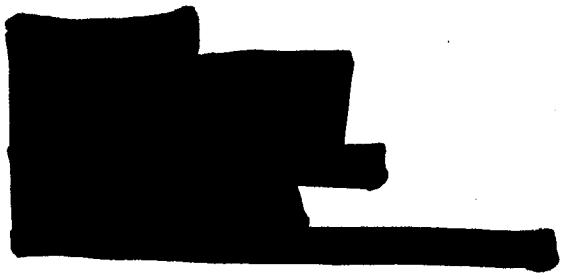
Please detail or further refine, within the proposed Guidelines, which agency within each jurisdiction that must notify which receiving agency of each jurisdiction and timeline for each.

Folks in attendance and in agreement of above include:

Jessie Grow Hodges, Tribal Sexual Assault/Teen Advocate; Desiree Allen-Cruz, Domestic Violence Services Coordinator; Kate Beckwith, Tribal Prosecutor; Ron Harnden, Tribal Chief of Police.

Respectfully,

**Desiree Allen-Cruz**
CTUIR, Domestic Violence Services Coord.



**Rogers, Laura** dates

**From:** Tim[redacted]
**Sent:** Friday, July 27, 2007 1:12 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

SONRA dates. In that the SONRA input to the get smart office is running behind schedule, the Important dates of the SONRA should be changed, so the OAG will have time to review all the comments sent in by the many who have e mail or mailed them in. To not back up the dates would send the wrong mesage. It would make people think that no matter what comments they sent in the get smart office of the A.G. had already made up it mind. I would think it would take 4 to 6 months to review all the comments and catalog them, and work on those issues that have been raised, with the first priority being the issues that draw the most input. July 27,2007 Date by which feerally recognized must elect to become a SORNA registration jurisdiction. The automatic delegation of duties to states for tribes not electing by July 27,2007. This date should be moved to Jan 1,2008.

July 27,2009 deadline for substantial implementation of SORNA for all registration jurisdictions. This date should be changed to July 27,2010 in that when the office of the get smart does review the input, time will now be needed to post any changes to the SORNA the get smart will recomend. The states will need time to adjust to the changes and write the changes in the laws they need to pass to become substantialy implemented.

April 27,2009 date to submit compliance packet to SMART office. This date should be changed to April 27,2010. Again so the states will have time to react to any changes that the A.G.s office may come out with as a result of the input.

Marriott
HOTELS & RESORTS

COLLIER SHERIFF'S OFFICE Naples, FL A.

NAT'L

Suggestion - pg 31 Passport / Travel / Immigration documents should have some type of marking to indicate their requirement to Register under SORNA

- Encryption, File hiding, File shredding software possession is violation of Probation / Parole

pg 34 - Criminal History info should not only have County, state of conviction it should include the Agency ORI so that Law enforcement can easily identify the Law Enforcement agency of conviction.

**Muhammad, Debra**

**From:** Rogers, Laura
**Sent:** Tuesday, December 11, 2007 10:22 AM
**To:** Muhammad, Debra
**Subject:** Concerning Proposed Guidelines The Adam Walsh Child Protection Act (AWA) of 2006 & SMART guidelines

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**From:** [redacted]
**Sent:** Friday, May 18, 2007 2:17 AM
**To:** GetSMART
**Subject:** Concerning Proposed Guidelines The Adam Walsh Child Protection Act (AWA) of 2006 & SMART guidelines

Dear, Attorney General et .al:

One of the concerns I have about your proposed rules is the listing of employers, I'm not sure if your looking at this from a 'real world' perspective, how could anybody maintain any kind of employment with this type of Machiavellian shamelessness by destroying all judicial remedies against terrorism, the families of registered sex offenders are being harassed, threatened on a daily basis. This has to stop.

Congress did not pass the Adam Walsh Act, Senator Sensenbrenner rushed into the hands of the president as a "non-controversial issue" ! This is a sad day in the United States of America.

God will Judge those who enforce such laws severely, it's just a matter of time.

For the government who claim they are not (regulatory) punishing people, this sure looks like punishment.

Where is the support systems? Where are the employment opportunities? Where is the Therapy while in the community (most important)?

I can just imagine all the children that will be murdered because of the harshness of these neo-nazi revivification in philosophies.

If any of you really were concerned about protecting children you would not be doing this?

Knowing where someone is does not, prevent sex crimes, what you are doing is making it so the very few sex offenders that do re-offend, will take the extra effort to cover their tracks.

If you think these type of laws acts as a deterrent, you are gravely mistaken.

Sincerely,

Erika P. , Phoenix, Arizona

**ACTUARIAL EVALUATION OF DANGEROUSNESS:**

12/11/2007

*"[W]hen everything is classified, then nothing is classified and the system becomes one to be disregarded by the cynical or careless."* - New York Times Company v. United States, 403 U.S. 713, 729 91971) (Stewart, J., concurring)

**...ETHICAL STANDARDS—APA:**

When assessing the risk a certain person may be to a community, serious issues are involved. The American Psychological Association recognized the problem and set forth ethical standards for such activities.

> Ethical Standard 2.02(a) therefore obligates psychologists to carefully consider the consequences of dealing with predictive variables in a dichotomous context. In particular, risk assessments made for sexual predator hearings will lead to one of the following four outcomes.4

**PREDICTION: OPTION**

1. Correctly classified as will re offend in the future does not re offend.

2. Correctly classified as will re offend in the future does re offend.

3. Incorrectly classified as will re offend in the future does not re offend.

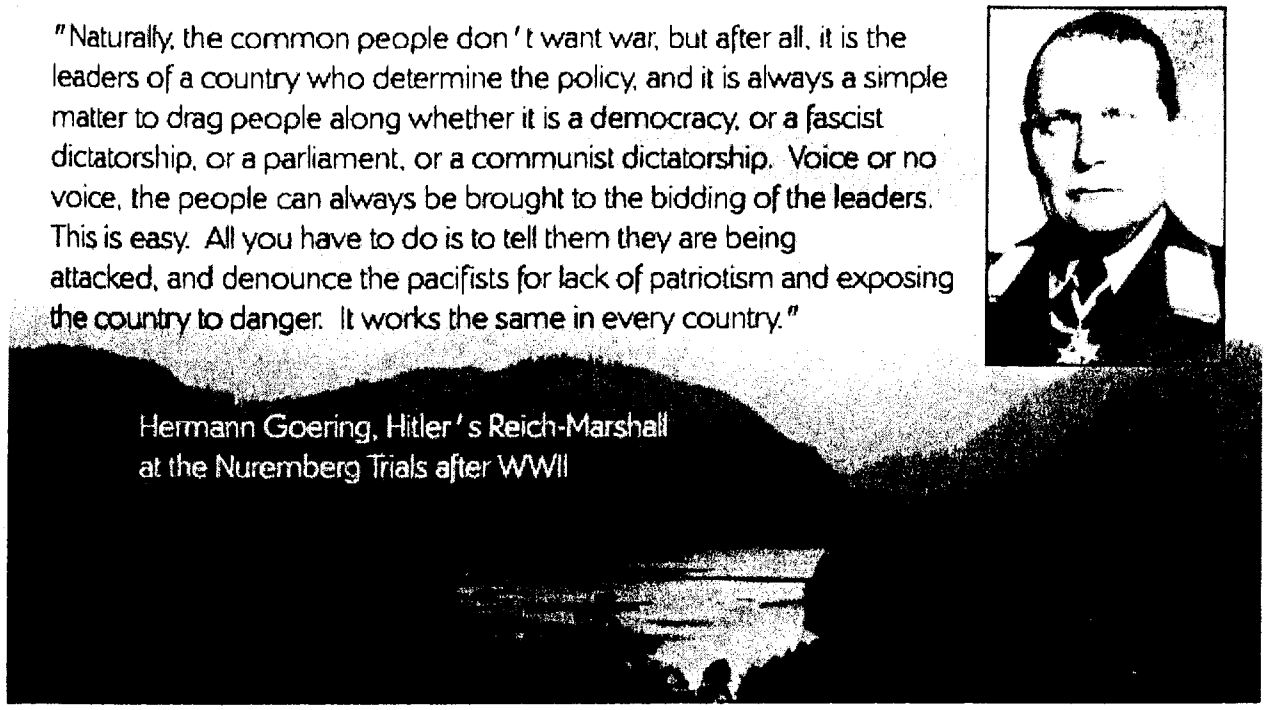
4. Incorrectly classified as will re offend in the future does re offend.

In any assessment of dangerousness there are four and only four possible choices in the re-offense prediction process, no more, no less. As only one can be right, three of the four options or 75 percent probability of being wrong in the selection. Even after the gymnastics of analysis and guessing are over, marks made on the paper and totaled, it is still a prediction of probability [odds] of an event until it happens, if it does. This is all the more problematic when the BJS published5 recent documented **empirical studies that documented that less than 5% of sex offenders re-offend sexually--leaving 95% that will not**. The question then becomes, which specific person is in the **5%** and will that specific person actually re-offend?...

# The Nuremberg Principles:

**International Conference on Military Trials: London, 1945 - Report to the President by Mr. Justice Jackson, October 7, 1946:**

"...6. It has been well said that this trial is the world's first post mortem examination of a totalitarian regime. In this trial, **the Nazis themselves with Machiavellian shamelessness exposed their methods of subverting people's liberties and establishing their dictatorship. The record is a merciless expose of the cruel and sordid methods by which a militant minority seized power, suppressed opposition, set up secret political police and concentration camps. They resorted to legal devices such as "protective custody[1], " which Goering**




**frankly said meant the arrest of people not because they had committed any crime but because of acts it was suspected they might commit if left at liberty. They destroyed all judicial remedies for the citizen and all protections against terrorism**. The record discloses the early symptoms of dictatorship and shows that it is only in its incipient stages that it can be brought under control. And the testimony records the German example that the destruction of opposition produces eventual deterioration in the government that does it. By progressive intolerance a dictatorship by its very nature becomes so arbitrary that it cannot tolerate opposition, even when it consists merely of the correction of misinformation or the communication to its highest officers of unwelcome intelligence. It was really the recoil **of the Nazi blows at liberty that destroyed the Nazi regime**. They struck down freedom of speech and press and other freedoms which pass as ordinary civil rights with us, so thoroughly that not even its highest officers dared to warn the people or the Fuehrer that they were taking the road to destruction. **The Nurnberg trial has put that handwriting on the wall for the oppressor as well as the oppressed to read."**

[1] Modern day equivalent: "Megan's Laws;" "Sex Offender Registries," "Residency Restrictions" and "Civil Commitment" etc. under the pre-text and guise of "public safety" i.e. "protection of children."

*[Source: October 7, 1946. THE PRESIDENT, The White House, Washington, D. C. MY DEAR MR. PRESIDENT: Respectfully submitted, ROBERT H. JACKSON (1) Nazi Conspiracy and Aggression, vols. I-VIII, Supplements A and B, Washington, 1946-48. (2) This recommendation was carried into effect by informal notification to other signatories on or about Jan. 22, 1947 http://www.yale.edu/lawweb/avalon/imt/jackson/jack63.htm The Avalon Project: International Conference on Military Trials : London, 1945 - Report to the President by Mr. Justice Jackson, October 7, 1946. Original Source: International Conference on Military Trials: London, 1945 Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials: London, 1945 International organization and conference series; II European and British Commonwealth 1 Department of State Publication 3080 Washington, DC : Government Printing Office, 1949]*

**Rogers, Laura** N26

**From:** AT[redacted]
**Sent:** Saturday, July 21, 2007 10:42 AM
**To:** GetSMART
**Subject:** Docket No. OAG 121

I am opposed to the inclusion of the following information in any sex offender registry:

- Registrants e-mail addresses and telephone numbers
- Temporary lodging information
- Passport information
- Employment information other than name and address of employer
- Professional licenses information
- Information where the registrant's vehicles are kept
- Date of birth

These changes are so significant that they should be subject to debate by Congress in public hearings. If after public debate, Congress believes that this information is necessary, it can amend the legislation. I view these proposals as an attempt to implement registration requirements which Congress was unwilling to include in the original Act.

Asma Tapert
[redacted]

**Rogers, Laura** website

**From:** AT[redacted]
**Sent:** Saturday, July 21, 2007 1:13 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

I am opposed to the inclusion of internet identifiers and addresses and telephone numbers in any sex offender registry.

Registrants and their families are in a dangerous position because of the ease in which this information can be copied and posted to other Web sites, shared on file-sharing networks, and passed around in instant messages and emails.

The risk of harassment and exploitation is very real. In particular, juvenile registrants will be at increased risk of bullying, blackmail, and/or physical threats. Juvenile registrants will be especially vulnerable to predatory individuals seeking to exploit a person's past troubles.

This information will be available without any control over who is accessing the information and increases the likelihood that the information will be used in a malicious manner.

Asma Tapert
[redacted]

**Rogers, Laura** website

**From:** AT[redacted]
**Sent:** Monday, July 23, 2007 2:49 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

I am opposed to the inclusion of date of birth in any public sex offender registry.

Public posting of birth dates will facilitate identity theft. In addition, juvenile registrants will be particularly vulnerable to predatory individuals seeking to exploit a person's past troubles. Also, they will be subject to an increased risk of bullying, blackmail and/or physical threats.

Asma Tapert
[redacted]

**Note:** This comment was originally sent on July 21, 2007, and received this message: "Unable to accept message because the server is out of disk space". Therefore, it is being resubmitted.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:41 PM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121

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**From:** AT[redacted]
**Sent:** Tuesday, July 24, 2007 8:34 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

I am opposed to the inclusion of other employment information and professional license information in any sex offender registry.

Other employment information may change frequently. For example, temporary employment agency personnel may be assigned to a new location every few days. Since the information can change quickly, the registrant could be in violation on a daily basis.

Expecting a registrant to change the information on a frequent basis is unrealistic both in terms of the registrant's ability to notify the jurisdiction and the jurisdiction's ability to keep the registry up-to-date. Registrant's need to maintain their employment and an unreasonable number of absences will jeopardize that employment. Jurisdictions will need to allocate addition personnel and funds to process frequent changes.

Information on professional licenses is unnecessary. Many professions require licensing but have no direct contact with children or vulnerable individuals such as city planners, architects or accountants.

This information will be available without any control over who is accessing the information and increases the likelihood that the information will be used in a malicious manner.

Asma Tapert
[redacted]

**Rogers, Laura** web

**From:** [redacted]
**Sent:** Tuesday, July 17, 2007 10:56 AM
**To:** GetSMART
**Subject:** Docket No. OAG 121

To whom it may concern:

I am the mother of a 20 year old adopted son who has a diagnosis of ARND (Alcohol Related Neurodevelopmental Disorder), who is also presently a registered sex offender in the State of Michigan. As I read through the SORNA proposed guidelines I have grave concerns with "What information is required in jurisdictions' sex offender registries; **Employers name and address**".

At present it already is nearly impossible for anyone with a sexual felony on their record to get a job. Posting employer information to the public will certainly discourage any employer from hiring a sex offender. Why would they wish to jeopardize their business when it's posted to the world that a sex offender is in their employment, be their job ever so menial.

Ultimately where will this population of people be able to find gainful employment and turn their lives around to become an asset to society rather than being ostracized, an outcast and a drain on the welfare role?

[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, May 21, 2007 9:28 PM
**To:** GetSMART
**Subject:** Sex Offenders

My main concern is about the families of sex offenders, I do not agree with the publishing of information concerning our cars, tag numbers, or telephone numbers. We are being victimized by this public information. How many innocent lives are going to be lost due to someone running an innocent person off the road and killing them, Or kill someone because they were at the right house wrong time. How many times is my family going to have to not answer the phone due to harrassing phone calls. Those of us who are trying to live in the system and abide by the rules are getting set up for failure due to the system I am all for giving all the information to the authorities but not all of it to the public. If it were not for families,how many sex offenders would stay in one place and try to obey the rules?We are truely trying to live by the rules,please take the families into consideration before you get us killed.

[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 10:54 AM
**To:** Rosengarten, Clark
**Subject:** FW: No. OAG 121 - Comments on AWA Guidelines

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**From:** [redacted]
**Sent:** Tuesday, July 31, 2007 12:45 AM
**To:** GetSMART
**Subject:** No. OAG 121 - Comments on AWA Guidelines

I urge the attorney general to do the following:

1) Section VI should not include the name and address of locations where a registrant volunteers. Registrants have a difficult time finding employment, and volunterism is a positive and productive way for them to use their energy and learn a skill. This requirement would mean that every time they volunteer somewhere, no matter how infrequent, or for how short a period of time, they would have to go report the name and location to the police. At a minimum there should be some threshold before volunteering must be reported - for example more than 80 hours in a calendar year for a particular organization. Section 114 of the AWA does not require that this information be collected..

2) VII – Disclosure and Sharing of Information - The AWA allows the employer and school name to be excluded by a jurisdiction on the public website. In keeping with this, the address of an employer and a school should also be allowed to be excluded by a jurisdiction from public access.. It's absurd that an address would be included, when it was the intent of the Act to allow that kind of information to be excuded if the jurisdiction so decides.

I urge you to make these changes. .

Sharon Denniston

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**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 12:00 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** Grace Grogan [redacted]
**Sent:** Friday, July 27, 2007 12:42 AM
**To:** GetSMART
**Subject:** OAG Docket No. 121

Attn: Laura L. Rogers, Director
SMART Office, Office of Justice Programs
United States Department of Justice

SUBJECT: Adam Walsh Act Guidelines – OAG Docket No. 121

I am writing concerning concerns I have with part VI. Required Registration Information of the above guidelines.

INTERNET IDENTIFIERS AND ADDRESSES: These are identifiers that are constantly changed, added, etc and maintaining and tracking records of this nature would be almost impossible. Many families share one computer and email address, this invades the privacy of any other individual who is living in the home of the offender – this includes spouses, parents, and innocent children.

This portion of the guidelines should apply only to those offenders who used the internet to commit a sexual crime. When you limit to those individuals only, it is easier for authorities to maintain, monitor and track those individuals who have a history of using the internet to target young children.

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**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:59 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121 - Discretionary Inclusions: Employment & Educational Institutions

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**From:** Grace Grogan [redacted]
**Sent:** Friday, July 27, 2007 12:44 AM
**To:** GetSMART
**Subject:** OAG Docket No. 121 - Discretionary Inclusions: Employment & Educational Institutions

Attn: Laura L. Rogers, Director
SMART Office, Office of Justice Programs
United States Department of Justice

SUBJECT: Adam Walsh Act Guidelines – OAG Docket No. 121

I am writing concerning concerns I have with part VI. Required Registration Information of the above guidelines.

DISCRETIONARY EXEMPTIONS AND REQUIRED INCLUSIONS:

Name of an Employer of the sex-offender should be a mandatory exemption on the public SOR. Disclosing such information to the public will prevent many businesses from hiring individuals who are on SOR, and may also result in the firing of offenders from their places of employment. There are many businesses who willingly employ these individuals, but if their name is going to be publicly connected with sex offenders, then they may no longer be willing to keep those individuals in their employ. This will result in more offenders being unemployable, putting them on either state assistance or into a homeless state and thereby making them harder to track. This also infringes on the rights of privacy for the business and opens the business, its owners and other employees to harassment.

Name of an Educational Institution where the sex offender is a student should be a mandatory exemption on the public SOR. Disclosing this information to the public opens up the possibility of educational institutions refusing admission to those individuals who are on SOR, as they do not want their institution associated with having offenders on their campus. This will affect the employability of thousands of young men and women who became offenders when adjudicated as juveniles and can no longer obtain a higher education. It also leaves those young offenders open to harassment from other students and educators, possibly endangering their lives as they move about campus for classes, especially during nighttime hours.

Address of Employers or Places Where Offender is Student – this should be a mandatory exemption from the public SOR for many of the same reasons noted above. With today's technology it is easy to find out the name of any business or institution through reverse look-up on the internet. Therefore listing the address without the business name does not afford that business, institution or anyone connected with it any degree of privacy.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:59 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121 - Licence Plates & Listing of Offences

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**From:** Grace Grogan [redacted]
**Sent:** Friday, July 27, 2007 12:47 AM
**To:** GetSMART
**Subject:** OAG Docket No. 121 - Licence Plates & Listing of Offences

Attn: Laura L. Rogers, Director
SMART Office, Office of Justice Programs
United States Department of Justice

SUBJECT: Adam Walsh Act Guidelines – OAG Docket No. 121

I am writing concerning concerns I have with part VI. Required Registration Information of the above guidelines.

DISCRETIONARY EXEMPTIONS AND REQUIRED INCLUSIONS:

**Sex Offence for which the offender is registered**: In addition to this information the registry should specifically note if this is a juvenile adjudication and the offender's age at the time of the offence.

**License Plate Number and Vehicle Description**: This should be a mandatory exemption and should not be required on the SOR in any means. By placing this information on the registry you are opening the opportunity for individuals to suffer harassment from police, who may randomly run license plate numbers and then find excuses to pull those individuals needlessly. Offenders repeatedly suffer harassment from law enforcement, and this is another means of encouraging such harassment.

Disclosure of this information may also cause an increase in road-rage, if vigilante-type individuals use a posted address to track down an offender, then note their license plates and target those individuals on the road, trying to cause accidents, etc.

Allowing registries the option of going one step further and publicly displaying this information on their registries is an absolute violation of the rights of privacy by anyone who owns or operates any of those vehicles but is not a registered sex offender and opens them to harassment as well. This may also prevent employers from hiring or keeping offenders in their employ, resulting in higher unemployment and increased homeless sex offenders, who are then harder to track and monitor.

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**Rosengarten, Clark** Web

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:45 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121 - Keeping Current Section B

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**From:** Grace Grogan [redacted]
**Sent:** Monday, July 30, 2007 8:56 AM
**To:** GetSMART
**Subject:** OAG Docket No. 121 - Keeping Current Section B

Office of Sex Offender Sentancing, Monitoring, Apprehending, Registering and Tracking
Justice Department's Office of Justice Programs

SUBJECT: OAG Docket No. 121

I am writing regarding the section on Keeping Registration Current, specifically Section B. Changes in Other Registration Information.

I believe the goal is to ensure that all registration information is kept as accurate and up-to-date as possible. Therefore, the goal should be to make it as easy as possible for offenders to comply in maintaining an accurate registration.

With the extensive software program that these Guidelines mention having, and the ability to immediately transmit such information to all other jurisdictions, any changes needed to be made to the registrations between designated registration periods should be able to be updated by the offender via internet – changes to items such as vehicle information, telephone numbers, internet addresses, etc. It would greatly reduce paperwork and man-hours necessary for monitoring and maintaining the registry if these changes could be made via internet, with a confirming email sent back to the offender confirming the receipt of the information. Such auto-replys are done regularly by companies when they take orders via internet. The information could then be confirmed at the regular in-person registration confirmation.

Thank You,

Mother, Grandmother, Citizen
Who wants a Useful Registry

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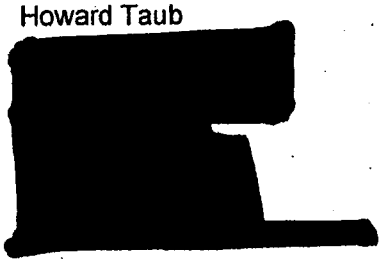
**Rogers, Laura** website

**From:** Howard Taub[redacted]
**Sent:** Friday, July 27, 2007 6:30 PM
**To:** GetSMART
**Subject:** SORNA GUIDELINES COMMENT

It's a terrible law, anyway.
We emply two RSOs, both quiet, decent men who are trying to rebuild their lives. By listing their employer on the internet, you are punishing small businesses who have invested in these men; and you are making them practically unemployable.
Plus, we are in an industrial park, so it will do nothing to prevent crime.
Howard Taub



**Rogers, Laura**

public registry

**From:** Florence Rogers [redacted]
**Sent:** Tuesday, July 31, 2007 11:40 PM
**To:** GetSMART
**Subject:** Registry Guidelines

Dear DOJ;

I have been reading about the proposed minimums for listing felons on the sex offender registry and I wanted to make some comments.

First, if a registry is going to be useful it needs to be restricted to people known to be a danger to minors. If a person's crime does not involve any interaction with a minor then that person is not known to be a danger. If they have not at least e-mailed a minor as was the recent case with the Senator and the Capitol Pages then I oppose putting that person on the registry.

A law enforcement officer in Atlanta has stated that putting unnecessary people on the registry keeps his office from being able to concentrate remorses on keeping close tract of dangerous people.

Keeping children as safe as possible is always going to require vigilance. The adults responsible must keep open lines of communication so that they know of any dangers as they arise. They should also teach children how to respond so that they can protect themselves as much as possible. It is not necessary to scare children with horror stories to do this. They need to be told they can say no to adults, that it is appropriate to scream is someone is scaring them and that they have a right to their bodies and no one other than parents and medical professionals have a right to touch them if they do not want to be touched. There is no way to list offenders before their first offense, so safe practices are necessary.

I believe that limiting the time a person is on the registry is helpful to them in trying to live a normal and stable life. At least they will not have to keep moving to comply with ever changing restrictions. But it should be remembered that once something is on the Internet it is never really gone, so in that sense everyone ever listed is listed for life.

Sincerely,
Florence S. Rogers

**Rogers, Laura** websites

**From:** Donna Miles [redacted]
**Sent:** Wednesday, July 25, 2007 9:09 PM
**To:** GetSMART
**Subject:** comments on new guidelines

I am writing to you to offer some thoughts I have on the new rules the AG is coming out with in the name of Adam Walsh Act. First let me say that there are some violent sex offenders whom I am afraid of. However I believe the majority of sex offenders on the public registry should not be there. They have offended family members and will continue to do so until they have had treatment and healing, emotionally mentally, and spiritually.
I know someone on your registry who is on probation for 4 years. The girl whom he had and improper relationship lied about her age. She told him she was 18. He believed her because she looked and acted like she was. She came to the home where this man lived and was very interested in him. one thing led to another when she was there and now this person is on probation for 4 years. He is on the registry. My point in sharing this story is that this person would be first to tell you he made a serious mistake. He is paying for it. But if all the new guidelines go through he would be in prison for 25 years.
Some of the guidelines I think need to thought through more carefully are:
Increasing amount of info the public receives about the sex offender. I believe giving info about where they work does nothing but bring about more hysteria. It is already difficult for them to find jobs. Please don't set them up for failure. All this will do is make the serious offenders go underground and those who are trying to do right more difficult to find good jobs. Who will hire them if the employees name is on the registry with them?? Also by giving the email address does nothing either...how easy is it for serious offenders to change their email address??Very! All this will do is to create vigilante hysteria. And make it easy to target and terrorize the many sex offenders who are trying...they are in treatment and going to their P.O.'s Please have a change in registration. Many serious offfenders need to be on there, but some do not. Why not make guidelines based on offenses and the circumstances around it. People who are on probation should not be on there. If they break probation then yes they should be..but give them a break. They would do a lot better without having to register. Just some thoughts on your new guidelines.
I am afraid if you don't make the registry different...just about everyone will be on there some time or another.
Thanks for reading this.
Donna

**Rogers, Laura**

STP web

**From:** [redacted]
**Sent:** Tuesday, June 12, 2007 4:03 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

VI Reguired to regisration of e mail address and other comunications tools.

I feel that this should be manditory that this information only be avalible to the public on special request and should not be posted on the public web registry.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, June 13, 2007 11:05 AM
**To:** GetSMART
**Subject:** OAG Docket No 121

Sec 114 (A) (4), and (A) (7) Sex offender to provide employment information. This information should NOT be available to the public. The reason I am saying this is because if this information is available to the public then many employers will not be willing to hire a sex offender. Now that will be counter productive to stopping the sex offender from re offending. No what we want is all of the sex offenders working and not having time on their hands so they become more inclined to maybe commit another crime. As a matter of fact the government should give some tax incentives to employers who hire sex offenders. This may help to keep a sex offender from repeating a sex crime.

I do understand the need for Law Enforcement to have this information but not the public. The other issue is if we make the sex offender register at their home and place of employment we may find that many sex offenders are going to be out of a job, because they are spending so much time away from work registering at all the locations. Now if that same sex offender works and goes to school and lives in different area for each, well they will spend all of a day or more going to each location. This information could be transmitted to all of the locations by having the sex offender just going to the location were they live and that being the point of contact for the sex offender only. The home jurisdiction would then be required to transmit any other information to the agency's that the sex offender will be in. If it is made so hard on the sex offender many more will drop out of sight and this is not what this law should be forcing to happen.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, June 14, 2007 12:44 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

Section 118 (c) (1) -(3); It should be manditory that All tier 1 be exempt from being on the web public look up. The reason I say this is because if this tier is of no danger to the public then they should not be avalible to the public on the web. If the reason for posting information on the web is to "protect the public" then by your stander and the US Supereme past ruling this group of sex offenders should not be avalible to the public. Futhermore if you look at the US Dept. Of Justice Bureau of Justice Statistics on Recidivism web sight you will see that sex offenders as a group are one of the lowest to repeat the crime after arrest. Per the bureaus web sight within 3 years of release from prison 5.3 % of sex offenders will be recharged with a sex crime and of that 3.5% will be convited. The only lower rate of recidivism amoung criminals is those who are arrested on murder charges. Given that information this group is very low at oddes to repeat a sex crime and those in tier 1 are even at a lower risk.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, June 14, 2007 12:52 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

All communications types that is collected by the registering agency should be manditory that this information not be made public. IE no e mail address or phone numbers cell or land line should be included on the public SONRA. The states should be reqired to set up a system were an e mail could be entered by a indivdiual trying to find out if a child has been e mailing a sex offender, and this system would check to see if it is an e mail that is infact one that belongs to a sex offender. If some states place the e mail addresses on the web sight, besides being able to communicate with eachother to maybe plan a new sex crimes, sex offenders would be able to band together to fight registration laws as a group, including putting money toward an all out fight to the highest court in the land.

**Rogers, Laura**

§ 118 web

**From:** [redacted]
**Sent:** Friday, June 15, 2007 1:11 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

114 (a) (6) (a) (7) All vehicles should only be placed on the non public information avalible to police. This informaiton should be excluded from the web SORNA and added to sec 118(b) as excluded informaiton.

The problem with posting the vehilces on the web sight is that this may encourage someone to strick out at the person driving that vehicle, when infact it may not be the sex offender driveing the vehicle but a member of the sex offenders family.

Posting of too much information on the web sight will hinder law enforcement in the investigation should someone look up the information about what vehilce is listed for the sex offender and then report that vehicle was in the area of a were a sex crime is being investigated. The people who report what they have seen should be doing it based on what they realy saw and not what they think they say because they were feed the information off the internet. Futhermore if a sex offender were thinking about commiting a crime, do not you think they would get a unlisted vehicle to do the crime with, since they will know which vehicles they have reported they drive. This will also make it harder to catch them as they will work hard not to get caught.

**Rogers, Laura** STAT web

**From:** [redacted]
**Sent:** Friday, June 29, 2007 2:34 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Section VI of the SORNA includes the option that states may post on the sex offender registry information as to sex offenders e mail address on the registry. This is without a drought a very problematic issue. I am suggesting that posting on the internet sex offender registry of a sex offenders e mail, phone numbers (land line & mobile), and along with social security numbers be prohibited.

Instead the approach should be that law enforcement may have that information given to them at time of registry of the sex offender, and if a citizen request to know if an e mail address the citizen submits to Law Enforcement is one that belongs to a sex offender, law enforcement can check to see if it does. The request to Law Enforcement should be made by contacting law enforcement in writing via the internet or some type of written commutations requesting the verification of a requested e mail address to be checked against the data base of e mail address that are associated with sex offenders.

**Rogers, Laura** WCb

**From:** [redacted]
**Sent:** Monday, July 02, 2007 1:15 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The rules issued under the AG, say that listing of names of employers of sex offenders is optional under the SONRA 114(a) (4) and (a) (7). I am suggesting that listing the names and address of employers of Sex Offenders will be counter productive to the intent of the SONRA!

The reason I say this is that if you look at the reasoning of the SONRA it is to protect the public from sex offenders. Well if a sex offender is working and not "out on the street", the chances of the sex offender re offending are a lot less. By posting the names and address on the public registry, will cause many employers to not want to employee sex offenders, as they will not want the business they own to be subject to boycott by those in the public that do not want to have anything to do with sex offenders and those who support them. It is a far better public policy to have sex offenders working then out of work and on public assistance of some type. If the law enforcement agency wants the information as to were a sex offender works, that is one thing and may be understandable. However the posting of this information on the public web sight will not enhance the public safety in anyway, and as stated may make the public at more risk to see these offenders recommit a crimes, and those crimes may not be sex crimes they may be other crimes when the offender is trying to keep food on the table when because the public posting of their employment information, the sex offender losses the job they have.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, July 02, 2007 1:35 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

SONRA Section 118 (c) (1) - (3) as issued will let states determine if they want Tier I to be left off the public on line sex offender registry. And that all though not forced to use a tier system each state may leave those offenders off the registry that would fall into tier I as defined by the SONRA.

The requirement that states leave Tier I sex offenders off the public sex offender registry should be mandated and required by each state to continue to get federal funds. This would work as a great crime prevention tool! If all sex offenders knew that they would have a chance to go to the non public sex offender registry if they stayed free and clear of all crimes for say ten (10) years, they would be able to ask the original court of record to review the courant tier level they were placed on at time of conviction. This would place the onus on the offender to be good and then you will get off the public registry. If using the thinking of the AG that all sex offenders are at a risk to re-offend, would reduce that likely hood by a number of offenses. This would be a public safety measure that has some hope of reducing future crimes. However the AG may not think the number it would cut down would be that high in that if you go to the official web sight of the government on recidivism, one is shocked that the number of sex offenders the US Dept. Of Justice Bureau of Justice Statistics on Recidivism is reporting that within three years of release from prison 5.3% of sex offenders will be rearrested for a sex crime and of that only 3.5% will be convicted. But given that information maybe we can cut that down to even less than it is now, even though it is the second lowest recidivism rates among all criminals with the exception of those who commit homicide. Well anyway if the goal of the SONRA is to protect the public from this group of offenders the AG will do all in his power to see that all the acts of the SONRA will help do just that. However if the goal of the SONRA is just to see how many names and faces it can have on it, well than of course the AG will not be interested in anything that will cut down on that number or cut down on crime.

**Rogers, Laura**

NCb

**From:** [redacted]
**Sent:** Tuesday, July 03, 2007 3:21 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** oag docket no 121

The SONRA rules as posted by the AG call for the states to decided if the sex offenders e mail and other types of communication contacts should be posted on the public web sight for all to see. By doing this you will subject the offenders to all types of additional harassment and could cause offenders to start to communicate with each other. I am suggesting that if this information is collected it should be mandatory left off the public sex offender registry. (this would include leaving off the e mail address and all phone numbers of the sex offenders)

**Rogers, Laura** wcb

**From:** [redacted]
**Sent:** Tuesday, July 03, 2007 3:57 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Section 114 (a) (6) & (a) (7) of the rules as posted as recommended by the office of the Attorney General, say that all information on the vehicles including any registered vehicle (water craft and alike) and any vehicle the sex offender has access to must be registered when the sex offender registers for the SONRA.

The issue I see with this is that this information should not be available to the public. The reason is that should a sex offender be identified in an assault, the defense attorney would be able to raise the issue that the only reason the victim was able to I. D. the vehicle used by the offender was because the victim got the information off the public sex offender registry.

I am suggesting that all vehicle information if obtained by the states would mandatory excluded from the SONRA and any other public sex offender registries. Having this information on a public web sight will add no additional safety for the public, in that they would have to be able to memorize the vehicles that any given sex offender has listed and then be watching for that vehicle. In the mean time the public would be faced with the fact that in some states the sex offender registry includes over 10,000 sex offenders. This would be a monumental undertaking to memorize the vehicles used by the offenders who are registered. Now if the reasoning to have the sex offender register all vehicles is a crime prevention tool, then this information should only be available to Law Enforcement and not the general public. Also if the reasoning to have all the vehicles information is to help Law Enforcement with an investigation, again this should limit the information to the police and not have the public have access to the information on the vehicles sex offenders may be able to use. The other issue with this type of information is that truly if an offender is going to be involved with a new sex crime, nothing would pohibite the offender from renting a vehilce for a short time frame. Use the rental vehilce to commite the crime and then return the rental vehilce to the renting agency. In that case detection on the part of the police would be harder. In summary; if you require the vehicles information be posted on the public sex offender registry you will be making the job of detection by the police and prosecution by the prosecutors office much harder.

**Rogers, Laura** 8114

**From:** [redacted]
**Sent:** Tuesday, July 10, 2007 11:40 AM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Sec 114 (a) (7) of the SNORA states in summary; concerning all licensing of registrant to engage in occupation or carry our a trade or business - " may provide a bases for notifying the responsible licensing authority if the registrants conviction of a sex offense may affect his or her eligibility for the license."

When looked at in first light this may seem like a reasonable thing to do, but upon close inspection this looks more like the SNORA is trying to give states the authority to be punitive. What good would it do for example for a member of the agency that has control over the sex offender registry to call say a state licensing agency in charge of issuing electricians licenses to tell them they have a sex offender with a licenses to do business. No place in the law does it say that a sex offender can not have a license to do electrical work. However looking at this if the agency gets a call from the state telling them about a sex offender with a electrical license do not you think the issuing agency will look for some way to take this persons license away from them? I am only using an electrician as an example.

Now if for example a sex offender reports having a licenses to teach for example, that is clearly against the law in most of the 50 states and should be investigated.

The issue I have is that this truly shows the intent of the SNORA is to be as punitive as possible on sex offenders and this is not what the sex offender registry is for or should be used for.

The other issue is that do you really think that if a sex offender has a license that they should not have because it is against the law, that they will report it when they register? NO not at all. If the reason to have a sex offender is to educate the public as to who the sex offenders are, and this information is posted on a web sight open to the public; then I submit to you that the checking of the sex offender registry to see if a sex offender has a license that is forbidden by law; it is the responsibility of the agency issuing licenses to check the on line sex offender registry. It is not the responsibility of the government agency controlling the information on sex offenders to contact the licensing agency's.

Had the SNORA only tried to gather licensing information for record reasons and nothing else than maybe it would be something that could be done. But since this issue has shown the real reason of the SNORA is to try to be as punitive as it can be. You need to have an outside agency review this full SNORA law before it goes into effect. Maybe even the US Supreme court should be consulted if that is possible. It is clear from what the A.G's office has written not only in this part of the SNORA but other parts that the office of the U.S. Attorney General is not without bias in this issue and is trying to make sure the SNORA does all it can to harm and humiliate sex offenders and that is beyond what the intent of Sex Offender Registries were enacted to do by law.

**Rogers, Laura** web

**From:** Tim Poxson[redacted]
**Sent:** Friday, July 20, 2007 3:38 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SORNA should prohibited the following activities

1. States should be prohibited from making those who are required to register pay more money when they register. The SORNA should not be used by the states or local government as a way to collect more money from people who by law are required to do something that is above and beyond what the court set as punishment for a crime they committed.

2. 114 (a) (4) and (a) (7) the SORNA should mandate that employment information not be made available to the public but the information can be collected for non public use by law enforcement. If this information is posted on the sex offender registries, many sex offenders will be fired from jobs they have, even when the employer knows they are a sex offender, the employer will not want to be at a loss of any business because they employee a sex offender so they will fire the sex offender. The last thing the SORNA should want to do is put offenders out of work who are legally employed, paying taxes and most of all working so they are less likely to commit any new crimes.

3. States should be prohibited from posting on the sex offender registries any information as to how to communicate with the sex offenders, including cell phone numbers, e mail addresses, internet names used by the sex offender, and any other form of communications that would let the public directly contact sex offenders. The collection of this information should be for law enforcement use only.

4.All vehicle registration information should be prohibited from being posted on the sex offender registries, as this will only lead to possible road rage on the part of a citizen who see a vehicle they think is an sex offenders auto. The collection of this information should be for law enforcement use only.

**Rosengarten, Clark** §114

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:44 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No 121

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**From:** Tim Poxson[redacted]
**Sent:** Wednesday, July 25, 2007 1:31 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Sec 114 (a) (7) covers that each state will collect all information from each sex offender as to any license they have. The SORNA states that one reason for this is so it "may provide a basis for notifying the responsible licensing authority to see if the registrants conviction of a sex offense may affect his or her eligibility for the license". Clearly if the sex offender has a license of some type that the laws of the state say he should not have, then that should be checked into. But this statement on the SORNA is a blanket statement to check with all licensing authorities, were does it say in any law of any state that for example a sex offender can not have a license to sell houses? But yet all states require a license to sell homes. Checking with this examples licensing authority (in most places this is the state its self) is outside of government law enforcements legal authority, and could be looked upon as harassment, and unitive punishment. In that if law enforcement starts checking with licensing agencies for which they know that no law prohibits a sex offender from having said license, then what is the real reason for make such checks? For the SORNA to even make such a statement shows the real intent of the SORNA; punitive and more punishment to sex offenders. The other issue is that if this causes a sex offender to be fired from a job, because of the loss of a license they legally have, I would think the SORNA and the state officials in question will have some type of law suit. And beyond that why would you want to stop a person from lawfully working? When the sex offender is working, they are paying taxes, and of much lower chance of recidivism.

**Rosengarten, Clark**

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**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:47 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121 - Comments to SMART Office on SORNA Proposed Guidelines
**Attachments:** Comments.SMART.SORNA.August.1.2007.FINAL.doc

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**From:** Abby Stewart [redacted]
**Sent:** Wednesday, August 01, 2007 12:29 AM
**To:** GetSMART
**Subject:** Docket No. OAG 121 - Comments to SMART Office on SORNA Proposed Guidelines

Attached please find comments submitted by LexisNexis regarding the SMART Office's Proposed Guidelines for the National Guidelines for Sex Offender Registration and Notification - due date August 1, 2007. LexisNexis appreciates the opportunity to provide these comments and looks forward to working with the SMART Office in the near future to help SORNA jurisdictions comply with the SORNA requirements. If there are any substantive questions regarding these comments, please contact Mr. Tom Regan of LexisNexis - thomas.regan@lnssi.com/ 202-378-1009 and any questions regarding this electronic submission should be addressed via a response to this email or a phone call to Abby Stewart [redacted]

Thank you -

Abby Stewart
[redacted]

LexisNexis

Thomas M. Regan
SVP, Executive Director for Privacy
and Regulatory Affairs
LexisNexis Special Services, Inc.
Suite 250
1150 18th Street, NW
Washington, DC 20036
202-378-1009
Thomas.regan@lnssi.com

August 1, 2007

Laura L. Rogers, Director
SMART Office, Office of Justice Programs
United States Department of Justice
810 7th Street, NW
Washington, DC 20531

**OAG Docket No. 121**

Re: Comments on the SMART Office's National Guidelines for Sex Offender Registration and Notification – Proposed Guidelines, May 2007

Dear Director Rogers:

Please consider the following comments from LexisNexis concerning the above:

## Introduction

LexisNexis appreciates the opportunity to submit the following comments to the newly established SMART Office (Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking Office) regarding the Proposed Guidelines for the National Guidelines for Sex Offender Registration and Notification, as published in the Federal Register on May 30, 2007. LexisNexis would also like to take this opportunity to commend the Department of Justice (DoJ) for establishing the SMART Office in a timely manner to begin the process of assisting the jurisdictions statutorily defined in the Adam Walsh Child Protection and Safety Act of 2006 (*P.L. 109-248* – hereinafter the "Adam Walsh Act") in complying with the comprehensive national standards set out in Title I of that Act – the Sex Offender Registration and Notification Act ("SORNA").

As an advanced data management and information sharing company, LexisNexis has, for many years, assisted law enforcement agencies by leveraging advanced

technology to integrate law enforcement data sets with public records to help rapidly and accurately generate new leads in complex investigations. To that end, LexisNexis has been particularly focused on helping law enforcement track and monitor convicted sex offenders once released into local communities. LexisNexis provides this assistance primarily through its well-proven Advanced Sex Offender Search (ASOS) technology. ASOS provides law enforcement agencies with a mechanism to rapidly link relevant state controlled data, including criminal histories, sex offender data, and Department of Corrections data with public records to provide immediate answers to queries such as whether a sex offender has moved without updating state sex offender registration information and whether a non-compliant ("absconder") sex offender was in a given area of a child abduction.

ASOS technology has numerous components that law enforcement jurisdictions could immediately deploy to help with SORNA compliance. Specifically, the information provided herein emphasizes how ASOS could help SORNA jurisdictions: 1) maintain updated sex offender registration information, including verifying relevant addresses of both "compliant" sex offenders (i.e., those who update their registration information as it changes) and "absconded" sex offenders (i.e., those who do not update their registration information); 2) provide alerts to other relevant SORNA jurisdictions about sex offenders moving into and out of those jurisdictions, without depending on the sex offender self-registering the new information; and 3) share vital information amongst jurisdictions immediately after a child goes missing to determine whether absconded sex offenders are in a given area, or have connections with a given area of an abduction.

LexisNexis is submitting these comments so that the SMART Office is aware as it drafts finalized SORNA Guidelines that technology already exists today to help jurisdictions comply with several primary SORNA legislative requirements. LexisNexis looks forward to working with the SMART Office in the future to continue to help relevant jurisdictions comply with SORNA.

## ASOS Program

*Technology Description*

ASOS is an information sharing program that enhances jurisdictions' ability to meet the following goals of the Adam Walsh Act. ASOS can:

- Help SORNA jurisdictions maintain accurate registration information, including addresses on both compliant sex offenders who provide updated information to state registries and non-compliant sex offenders – "absconders" – who do not provide registries with updated information;
- Provide SORNA jurisdictions with a Sex Offender Alert Service that notifies the jurisdictions when a sex offender moves from a registered address and also when a sex offender from another jurisdiction moves into a given jurisdiction; and
- Enable a SORNA jurisdiction, when confronted with a non-custodial abduction, to immediately identify both registered and non-compliant sex

offenders in the area who might be suspects in the commission of the crime.

At the heart of the ASOS technology is the *LexisNexis Enterprise Data Fusion System* (EDFS). EDFS enables loading, linking, querying, and analyzing of massive data sets from diverse data sources at unmatched speeds, and also enables rapid data fusion and analysis of tens of billions of records in seconds and minutes instead of hours, days, or even weeks. EDFS allows law enforcement to query comprehensive information in a missing child investigation and receive answers in real time.

Another key component of ASOS is the *Accurint Data Link* (ADL), a patent pending set of algorithms that leverages billions of LexisNexis public records and a state's own data sets to identify people and link multiple records into a complete, unified view. ADL technology uniquely identifies persons, properties, addresses, businesses, vehicles, and many other entities.

*LexisNexis Advanced Investigative Solution (AIS) software* provides advanced data analytics and visualization technology to enable law enforcement to quickly identify, locate and visually map addresses associated with both registered and non-compliant sexual offenders as well as other addresses of investigative interest. Using built-in mapping technology, law enforcement officials can also quickly analyze the proximity of sex offenders to locations such as elementary schools and day care facilities.

The data that powers ASOS emanates from two locations. The first is the LexisNexis public records database, which contains the sexual offender data for all 50 states plus the District of Colombia and also includes nearly 9,000 sources of records on persons, assets, relatives, associates, businesses, licenses, and courts. The other source is data that is possessed by participating states. The following state data sets are incorporated into the ASOS Program: 1) Sex Offender Registries and images; 2) Driver's License Records and images; 3) Motor Vehicle Records; 4) Criminal History Records and images; and 5) Department of Corrections Records and images.

*Maintaining Accurate and Updated Registration Information*

Section 114 of the Adam Walsh Act, and Section VI of the Proposed National Guidelines, entitled *"Required Registration Information"* recognize that crucial to the success of SORNA is accurate sex offender registration information. Section VI of the Proposed Guidelines lists the following information as that which will be required to be kept by the state sex offender registries: names/ aliases; internet identifiers; phone numbers; Social Security Numbers; residence/lodging/travel information; temporary lodging information; employment information; professional licenses; school/student information; vehicle information, including the license plate number and description of any vehicle owner by the registered sex offender; date of birth; physical description; text of registration offense; criminal history; current photograph; fingerprints and palm prints; DNA information; and Driver's License or ID card.

Much of this information is held in public records that LexisNexis manages within its core business function as a comprehensive data management company and can be accessed through the ASOS program. As such, LexisNexis has the most updated version of this information for most members of the public, including sex offenders – and it is all managed with appropriate privacy protections in place. Because ASOS has the ability to link the LexisNexis public record data with various information held only by the states, including criminal history information, ASOS can present a rapid, and most importantly current, view of sex offenders as they move throughout society. ASOS can be structured so that SORNA jurisdictions can receive periodic updates about sex offenders to check the accuracy of state sex offender registries. ASOS can also be accessed by SORNA jurisdictions when law enforcement officials have questions about the movements of specific sex offenders and whether their information as presented in the registry is correct.

*Alerts for SORNA jurisdictions as sex offenders move into and out of various jurisdictions*

A central theme throughout both SORNA and its proposed guidelines is that SORNA jurisdictions need to immediately and electronically share changes in state sex offender registry information as such information is received. Specifically, Section 119(b) requires that the Attorney General ensure that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions. Section 121(b)(3) requires that immediately after a sex offender registers or updates a registration, that information must be provided to each jurisdiction where the sex offender resides, is an employee, or is a student, and each jurisdiction from or to which a change of residence, employment, or student status occurs. The problem with this requirement is that it presumes that sex offenders willingly provide updated registry information.

LexisNexis has created a unique tool called the ASOS Sex Offender Alert System which can provide SORNA jurisdictions with updated sex offender registry information without relying on sex offenders to provide the information. Using the ASOS technology, state sex offender registries can be regularly monitored for discrepancies between a sexual offender's registered address and the current address obtained through public records information. This means that sexual offenders across the country who relocate and fail to register their new addresses are immediately flagged as living at an unverified address. The ASOS system then creates an "Alert" list of national at-risk sexual offenders that contains the following information regarding offenders: Name; Date of Birth; Social Security Number (if available); Registered Address; New Suspected Address; Record (and photograph if available); and Phone Numbers. The Sex Offender Alert is then encrypted and securely e-mailed to relevant SORNA jurisdictions for subsequent review and analysis. Thus, the ASOS Alert system can help SORNA jurisdictions comply with Sections 119(b) and 121(b)(3) without relying on sex offenders to provide updated information.

*Information Sharing Immediately After a Child Abduction*

At the heart of SORNA and the Adam Walsh Act is the nation's attempt to prevent any children from being abducted and subjected to unspeakable abuses by sex offenders. Due to the prominence of recidivism amongst sex offenders, in order to protect children, it is necessary for law enforcement personnel to determine the whereabouts of all sex offenders in a given radius of an abduction, whether they are compliant with a state sex offender registry's rules or not. Perhaps the strongest and most beneficial capability of ASOS is its ability to, immediately following a child abduction, link relevant public record information with state specific information to provide details on every sex offender with connections to a particular abduction site, whether that sex offender has updated information in the state sex offender registry or not.

ASOS delivers this application through the well-proven LexisNexis Advanced Investigative Solution (AIS) application that is easily downloaded onto an investigator's desktop and which enables access to the ASOS program data. Based on an initial query through the AIS, ASOS correlates both state data and LexisNexis public records data, and within seconds produces information that pinpoints all likely sex offender locations within a given radius of an abduction site. To permit investigators to focus on the locations most likely to produce results, locations are classified into four categories: 1) REGISTERED – a location within the given radius that is a sex offender's registered address; 2) UNREGISTERED – a location within the given radius that is not a sex offender's registered address but is nonetheless the address at which the offender is living (i.e., an absconder's or non-compliant offender's address); 3) HISTORICAL – a location within the given radius at which a sex offender resided at some point in the past; and 4) ASSOCIATE – any location within the given radius with which a sex offender may have a connection.

To maximize the usefulness of the response, the AIS application includes an integrated geospatial mapping component and link-analysis visualization capability to supplement tabular results. With this capability, investigators can visualize results in a single view for registered, unregistered, historical, and associate locations of sex offenders within a specified radius.

## Closing

The legislative requirements and proposed guidelines for the implementation of SORNA attempt to ensure that state sex offender registries are as accurate as possible to help SORNA jurisdiction's continually monitor and track sex offenders within each jurisdiction. However, the law and guidelines do not currently have much in place to help SORNA jurisdictions obtain updated registry information, outside of depending on the sex offender to provide it. The LexisNexis ASOS program currently has the capability of helping SORNA jurisdictions not only maintain accurate and complete sex offender registries, but protect children who are abducted by providing immediate answers regarding all sex offenders in a given radius after a child abduction.

**Rogers, Laura** DNA

**From:** [redacted]
**Sent:** Tuesday, July 10, 2007 11:57 AM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Section 114 (b) (6) of the SNORA states in part that DNA must be taken or must have been taken.

ISSUE> Many of the people the SNORA will now add to the data base of the sex offender registry were convicted before the advent of DNA and the everyday gathering of DNA evidence from persons arrested. The SNORA is calling for those who have no DNA sample in the data base to now be required to submit to a DNA draw or be subject to violation of the rules of the SNORA and their by opening them up to prosecution by State and or Federal authorities. The issue here is that this is clearly a case of an exo-facto law. I would draw your attention to the Alaska vs Doe case that in no place granted the authority to government to take DNA samples of sex offenders for use in a data base that is associated with the sex offender registry.

**Rosengarten, Clark** DNA

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:40 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No 121

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**From:** Tim Poxson [redacted]
**Sent:** Tuesday, July 24, 2007 1:22 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Section 114 (b) (6) of the SORNA should be rewritten as it stands now it says that all sex offenders must have on file a DNA sample or one must be taken.

The problem here is that in many cases DNA was not taken at time of conviction. IE the conviction was before DNA samples were taken, or the sex crime was so minor that a DNA sample was not requested. To ask for one now is a kin to ex post fact law. If the sex offender refuses to give a DNA sample at this date after the fact, the sex offender will be prosecuted under the rules and law of the SORNA which was written and became law after the fact of the conviction and sentence of the original crime. I understand the need of the government to collect a data base for possible further crimes of the sex offender, but the rights of the sex offender should not be overlooked to obtain this objective.

The easiest way to take care of this issue is to change section 114 (b) (6) to read that all sex crimes that a person is convicted of, from this date forward will require the submitting of DNA samples. The SORNA will note the fact that DNA sample is available or is not available in the narrative section of each sex offenders details.

**Rogers, Laura**

**From:** Laney, Ron
**Sent:** Wednesday, August 08, 2007 1:58 PM
**To:** Rogers, Laura
Darke Schmitt, Katherine; O'Reilly, Jacqueline
**Subject:** Comment from me on AWCPSA

It is not in the Adam Walsh Child Protection Act that a convicted sex offender "NEVER" be allowed to change their name in any way shape or form in their life time. The potential for the victims to be severely re-victimized by the fact the sex offender could change his/her name and re insert themselves into the victim's environment is something that should not be allowed. I would like to see this become federal law in the AWCPSA.

**Rogers, Laura**

**From:** [redacted]

**Sent:** Sunday, May 20, 2007 1:45 PM

**To:** GetSMART

**Subject:** LEVEL 3 SEX OFFENDERS HAVING THEIR COMMERCIAL DRIVERS LICENSE

I FIRMLY BELIEVE THAT LEVEL THREE SEX OFFENDERS SHOULD NOT BE ABLE TO TRAVEL FROM COAST TO COAST DRIVING FOR A TRUCKING COMPANY, WHERE THEY ARE NOT BEING TRACKED. THEY COULD BE DOING ANYTHING AND THE CRIMES THEY COMMIT WOULD THEREFOR BE HARDER TO SOLVE, I HAVE A FILE ON A LEVEL 3 INVOLVING CHILDREN THAT DOES HAVE HIS C.D.L. AND WORKS FOR A LONG HAUL TRUCKING COMPANY

**Rogers, Laura** NCb

**From:** [redacted]
**Sent:** Monday, May 21, 2007 10:25 AM
**To:** GetSMART
**Subject:** DOB Information needs to be searchable on the website.

http://www.ojp.usdoj.gov/smart/pdfs/sorna_faqs.pdf

Section 17. What information must be available to the public through public websites? Date of Birth needs to be added. If I go to the site right now, and put in John Smith, 233 results come up. We need to be able to search with a DOB to figure out if the John Smith I am looking for is registered.

Thank you,
Amanda Maddox

[redacted]

www.criminalbackground.com
www.safe-schools.com
www.safecamps.net
www.safechurches.com
www.safevolunteers.com
www.fadv.com

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Req'd info

**Rogers, Laura**

**From:** Ian Horlock [redacted]
**Sent:** Tuesday, July 17, 2007 5:56 PM
**To:** GetSMART
**Subject:** SORNA comments: TRAVEL AND IMMIGRATION DOCUMENTS (§ 114(a)(7))

Ref. the "TRAVEL AND IMMIGRATION DOCUMENTS (§ 114(a)(7))" section for the proposed guidelines for SORNA, has consideration been given to registrants who hold additional non-USA citizenship(s), and who may also possess foreign passport(s)? I would like to suggest the collection of information regarding other citizenships a registrant may hold, including foreign passport(s) information.

Sincerely,

Ian Horlock
[redacted]

**Rogers, Laura**

reg reqmts

**From:** [redacted]
**Sent:** Wednesday, June 20, 2007 12:41 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

I would like the following requirment added to the SORNA. Each state shall be required to set up a toll free phone number that willl assist registrants with compliance. This resurce should be available to answer questions regarding the Sex Offender related laws and the specific registration requirements. Because the SORNA will be hard to interpret and because Law Enforcement agencies and municipalities will misinterpret and misapply the law. This location will also be used should a registrant with compliance should an emergancy such as hospitalaztion or alike takes place the registrant will be required to call this number and a case number will be assigned to the registrant. If truly you are interested in compliance with the SORNA you will include this in the mix of the law.

**Rogers, Laura** Web

**From:** [redacted]
**Sent:** Thursday, June 28, 2007 2:55 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Under the SORNA as your office has them written you have covered about everything with the exception of how to remove a sex offender from the SONRA should they die before they have served the full number of years as required by the SONRA. Given that the SONRA will have over 600,000 names on it, no quesiton this will be an issue that needs to be addressed.

My suggestion so that the family of a sex offender does not have to be unduly burden with the requirement that they go to all the different jurisdictions the offender would have to go to if, they were still alive, that the family of the offender be able to mail a death certificate to the jurisdiction in which the sex offender registered as were they lived. The jurisdiction receiving this information would then be required to notify the other jurisdictions the sex offender had been required to register in that the offender is no longer required to register because they are dead. If you fail to add this provision many people will be listed on the SORNA that are of no danger any longer to the public. Also Law Enforcement will be using resources to track down offenders who are dead.

**Rogers, Laura** comment/web

**From:** Tim Poxson [redacted]
**Sent:** Monday, July 16, 2007 2:46 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SNORA as written includes no way to remove a sex offender upon the offenders death. Valuable Law Enforcement time will be wasted trying to track these offenders down and bringing them to justice. The SNORA should include that if a death certificate is mailed to any of the jurisdictions the sex offender had to appear at, that jurisdiction shall cause the sex offenders information to be removed from the sex offender registry.

**Rogers, Laura** reg process

**From:** [redacted]
**Sent:** Monday, July 09, 2007 2:55 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Sec 117A of the SONRA does not require the agency notifying the sex offender of the sex offenders responsibility's to make sure that the offender understands all of the new rules and responsibilities they have under the SORNA. This should be done by going into depth on each responsibility and making sure the offender understands the rule. The offender should not be required to sign anything until such time as each issue has been talked about with the registering official and the offender understands. Furthermore on the form that the offender signs an area should be provided that the offender may write down any comments the offender has about the rules as to their understanding of them and other issues the offender may have. It should also be required that a copy of this form be given to the offender at no cost to the registering offender.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, July 11, 2007 10:46 AM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SNORA should include some of the following rules;

1. States and local government are prohibited from charging extra fees to people who are required to register as sex offenders.

The reasoning is that if extra fees are charged some of those required to register will be not only a hardship, but it will be looked upon as a punitive action on the part of the state charging the fee. I am aware that some states are now charging fees, some just one time and others every time the sex offender comes in to the mandated visits. This practice is causing some sex offenders to go underground and stop registering. This is in direct conflict with what the SNORA is trying to do and that is to protect the public by posting the information on sex offenders on a sight that is available to the public. Further more a fee added is a form of punishment that the offender must continue to be subject to. If the SNORA is followed by a state, the state is not getting less in funding from the federal government, so the additional moneys needed to run the SNORA should come from the federal money coming for the program. And if the SNORA is truly for the public safety then any funds that are need beyond what is provided for from the federal government, should come from the taxes imposed by the states on its citizens.

The other area that states are taking money from sex offenders is to require that they get new drivers licenses every year. One such state is Oklahoma under SB35 requires a renewal of drivers license by sex offenders every year. I understand the need to keep up with the most currant photo of a sex offender, however the point that is being missed is that this group of people have already served the time in jail or on probation that was required of them. To impose on them any additional cost out of their pocket is paramount of adding fines and imposing more punishment on them. So the SNORA should at all cost stop this type of action from taking place. The reasoning should be that as stated many times the SNORA and sex offender registry's are not punitive and are a tool to be used to help protect the public. However by adding these fees and other punitive measures by the states or local government, the SNORA will be viewed by many as Punitive and will cause sex offenders to go underground, defeating the purpose of the SNORA.

**Rogers, Laura** hartnett

**From:** [redacted]
**Sent:** Friday, July 13, 2007 11:59 AM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SNORA as written will without question cause much confusion and misunderstanding by both the police and the sex offenders. The SNORA should add a section to it that will require each state to set up a toll free phone number staffed by a personnel that are well versed in the SNORA and that states laws on sex offenders. By establishing a central location and agency to assist registrants with compliance, this in its self will increase compliance. This definitive resource should be available to answer questions about the SNORA (Adam Walsh Act) and specific registration requirements. This location could also act as an emergency contact should say a sex offender be in the hospital and unable to come in person when required to register or confirm registration in the time frame set up under the SNORA. This would be very limited in use for emergencies and would require some type of verification of the call and the offenders emergency. The other area this central location could help with is assisting law enforcement agencies and municipalities with the SNORA rules because they will also misinterpret and misapply the law, if they have no one to turn to answer the questions they will also have about the SNORA.

**Rogers, Laura** harimt

**From:** [redacted]
**Sent:** Monday, June 18, 2007 1:23 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

Section 118 Subsection (f) section on injure or harass or comit crime against person on SONRA. This section now reads in part "could result in civil or criminal penalties. The wording should be changed to *will result* in civil *and or* criminal penalties.

Reasoning. Since the goverment is mandating the SONRA it should also mandate protection for the people that it is requireing place a lot of personel information on a web sight that is open form anyone in the public to review. Futhermore the Federal goverment should mandate that local units of goverment or state goverment is mandated to proscute anyone who is found to vilate the law when using the SOR in the state of jursdiction.

**Rogers, Laura**

harmt

**From:** [redacted]
**Sent:** Thursday, June 21, 2007 4:19 PM
**To:** GetSMART
**Subject:** OAG docket No 121

If the SONRA is truly a non punitive act, then the act should include the requirement that each state be required to set up a central location were vigilante acts and other crimes against sex offenders would be recorded and that information should then be forwarded to the US. Dept. Of Justice Bureau of Justice. This information should include sex offenders who commit suicide, or are murdered by a vigilante or by any other person. This information would be helpful to see the non punitive nature of the Adam Walsh act.

**Rogers, Laura** harm

**From:** [redacted]
**Sent:** Thursday, July 05, 2007 5:05 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Section 118 (f) of the SONRA states that all sex offender registries should have a section in them that says; To injure, harass or commit a crime against a person listed on the sex offender registry **could** result in civil or criminal penalties.

This section should be changed to read on every sex offender registry; To injure, harass or commit a crime against a person listed on a sex offender registry **will** result in civil **and** criminal penalties.

The reason for the change in wording is that since it is mandatory that the sex offender have their name and other information on the public web sight, which will without question result in some harassment or crimes committed against them; it is incumbent on the government to protect the sex offenders from these types of activities. This will of course require the law enforcement agency in the jurisdiction the crime or harassment took place to write a report and investigate it. Furthermore the KKK has added sex offenders to their list of targeted groups and is openly meeting and talking about what they have added sex offenders to the people they are going to "do something about."

You may go to this web sight to see that the KKK has posted on the web a meeting date and time about this subject. http://www.youtube.com/user/fredbear1483

**Rogers, Laura**

**From:** Tim Poxson [redacted]
**Sent:** Thursday, July 19, 2007 1:10 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

This is what the non punitive sex offender is doing to just one sex offender in OHIO. I hope you will take the time to read it.

I pleaded guilty to sexual battery in 1996, and was sentenced to 10 days in jail. During my jail time I was attacked and beaten by a gang, and ended up in the hospital with a broke jaw, five broken ribs,
and both arms broken.

I lost my $75k a year job, my house, my car, and was forced by the law
to be separated from my wife and kids. My wife and kids had to go on
public assistance.

Was forced to move out of my house, and out of the city because some
vigilantes set it on fire, and lived in a car for several months

Have not been able to secure steady employment since my conviction,
and have been denied numerous employment opportunities inspite of
having a Masters degree.

Was fired from one job after only a month when a government official
showed up at my place of employment and spoke to my employer, even
though I had told them employer of my criminal record.

Was forced to lie about my criminal record to get employment, which
later resulted in being fired by several employers.

This led to me falsifying a Social Security document to obtain a new
number so that I could get a job, which ultimately led to being arrested for possession of a false ID.

Recent Activity

1

Was legally allowed to regain my family, but my children have been
outcasts in the neighborhoods that we have lived in, because their parents don't want them hanging around my house. This has had a negative impact on their lives, and has caused my son to be antisocial.

On several occasions being pulled over by the police for traffic infractions, I was handcuffed and placed in the back of a cruiser only
because I was with my children. I spent nearly two hours handcuffed
in the back of a State Troopers car while they tried to contact my wife to verify that I was allowed to be with my children.

A couple of weeks ago my daughter came home with a flyer that was
being passed throughtout our neighborhood that was printed off of someones home couputer, which was a copy of my picture on the county
sex registration site. Since then my tires on my car have been flattened, a large rock was thrown through the front window of my house, and I have received a dozen hate letters in my mailbox. One letter said that if I don't leave the neighborhood something terrible is going to happen to me and my family. (I don't ever want to repeat
what some of the letters said, because they were so vulgar)

I have become a prisoner in my own home, for fear of conflict with the outside world. These laws are just crazy. I think that I would have had more freedom under Adolf Hitlers government.

The list goes on and on. The legal system says that the sex registry is a civil remedy to protect the citizens, but as I am living it, it is a form of punishment for me and my family, and I have become a
virtual recluse, trying to avoid any contact with other human beings,
but no matter how hard I try I cannot avoid the stigma attached to being a registered sex offender.

My registry requirements were supposed to end on July 21, 2007, which
up until now had given me hope that maybe my life and that of my family would revert to some form of normalcy, but my hopes were dashed
when I received a letter from the Attorney General saying that they passed SB-10 in accordance with the Adam Walsh Act that was enacted by

Congress in 2006. The letter from Marc Dann says that in spite of the
previous court judgement that said that I would no longer have to register as a sex offender after 10 years, that my duties will NOT. end, but that the people on the registry will receive a letter that indicates a TIER level from 1-3 and that the registration will go on for at least 5 more years, and in some cases, for life. Again my life is filled with uncertainty, and has aggravated my bi-polar disorder that had been in remission for several years.

That the state would send such an informal letter to me in this manner
was just another form of harassment, in that it created an air of uncertainty in those individuals who made a mistake, and have been
trying to go back to some type of normal life.

**Rogers, Laura**

**From:** Phoenix [redacted]
**Sent:** Wednesday, July 18, 2007 1:25 PM
**To:** GetSMART
**Subject:** OAG DOCKET NO 121

Are you really promoting vigilantism?

By enacting a law such as this you are not only putting the addresses of offenders out there but that of their families and their loved ones...

I thought this was to protect the children, how is that protecting the children?

Please don't say "If it saves just one child...." for if the child that is killed is one that was forced to live amongst true predators because their parents are forced to register and live there due to all the other laws, HOW is this protecting that child?

Or are you saying that as long as they aren't children of EX-offenders then they are WORTH being saved? For that is what YOUR potential law IS doing.

Also, what about the 88% of offenders that are friends or relatives of the child, where those cases don't EVER get reported? How does this law protect THEM?

**Rosengarten, Clark** harmful

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:34 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No 121

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**From:** Tim Poxson [redacted]
**Sent:** Monday, July 23, 2007 5:09 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Sec 118 (f) This is the section in the SORNA that says each state will have a statement that says to injure, harassment or commit a crime against a peron on the sex offender register could result in civil or criminal penalties. Since sex offender registers are required by law, then every effort on the part of the criminal justice system should be used to make sure we protect those we are requiring to do something. I think the mandatory wording should be; to injure, harassment or commit a crime against a peron on the sex offender registry **will** result in civil **and** criminal penalties.

**Rogers, Laura**

**From:** Tim Poxson [redacted]
**Sent:** Thursday, July 26, 2007 1:20 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

Since about the time of the spread of sex offender registries in the United States in 1994; sex offenders have been Murdered or committed Suicide at a total of about 418 dead. (Taken from News and Noteworthy data) The effects of the SORNA will push these numbers even higher.

The effects of the SORNA will of course be far reaching and for that reason I am asking that the SORNA include a provision that each state will be required to keep numbers on how many new convictions for sex offenses are committed by registered sex offenders, and make that number available on the opening pages of the sex offender registry. Further that each state be required to keep track of all assaults or threats against registered sex offenders, and any property damage done to a sex offenders property or rental property. All of these numbers should be reported yearly in the states report to the FBI on crime (the basic report is already done yearly as required by federal mandate to be able to get federal crime funding, but it would require the additional information be added to it in a category covering registered sex offenders.)

Now I know that probably the office of the A.G. is not to concerned with the death of a sex offender in any way. The problem is that in many cases the death has been at the hands of a police officer, because the sex offender forced the officer to use deadly force. This is what is known as suicide by cop. This action on the part of the officer will have an effect on the officer for the rest of the time they stay in law enforcement. Further the SORNA would be the ideal time to gather such information as suggested above, so the public and the government will have some idea as to the real number of re- offenses this group of criminals is convicted of. Given that the US Dept. of Justice Bureau of Justice Statistics on Recidivism puts this currently at 3.5.% are re-convicted of a sex crime within three years of release from prison. This may also give some future idea as were the most resources should go to cut down the number of sexual assaults committed by registered sex offenders. But given the low number the Dept. of Justice is reporting now and the fact the Dept. of Justice also says that over 90% of sexual assaults are committed by a person well known and trusted by the victim, with over 50% of those being done by a family member,any justification will need a lot of data. Given the above numbers the SORNA is going to need to be able to justify the use of all the resources it is will now be calling in to use. So the way to do that will be to gather as much data as can be done. And of course with the resources that the SORNA will be using up at the state and local level, justification will need to made to stay the course the SORNA is on now or redirect those resources to those sex offenders that are the most danger to the public. And this could possibly be done by adopting a tiered approach to identify "high risk" offenders founded on empirically based risk factors. The SORNA is so broad that law enforcement will be more hampered than it is now in its efforts to protect the citizens from the high risk offenders. Law Enforcement will be forced to use more precious resources tracking low risk offenders rather than monitoring high risk predators.

## Rogers, Laura

**From:** Rosengarten, Clark
**Sent:** Monday, June 25, 2007 9:49 AM
**To:** Rogers, Laura; Hagen, Leslie
**Subject:** Foreign Convictions and retroactivity
**Follow Up Flag:** Follow up
**Flag Status:** Red

I was perusing the SORNA guidelines regarding foreign convictions who enter the United States on P. 52 of the SORNA guidelines, and I found that the guidelines seemed unclear about how the retroactivity clause of SORNA would apply to them. The retroactivity clause states that if an individual was convicted of a sex offense and was released from the supervision of the criminal justice system prior to his/her jurisdiction's implementation of SORNA, that individual would not be required to register unless that individual entered the criminal justice system due to committing another crime. However, the guidelines state that an individual convicted of a sex offense in a foreign country must register in the jurisdiction into which he/she enters when coming to the United States. However, that individual's foreign location of conviction may not have required registration when that individual was released from prison in that country. So, I was curious as to how the retroactivity clause would fit in with the registration of those with foreign convictions and whether, if convicted abroad they must always register in the US or how those two regulations could be reconciled. Perhaps, this is an issue that will need to be dealt with in creating the final guidelines. Thanks

Best,

Clark

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:44 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121 Comments in Opposition to SORNA and the Proposed Guidelines (The Adam Walsh Child Protection and Safety Act)

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**From:** Andrew N. [redacted]
**Sent:** Monday, July 30, 2007 10:41 AM
**To:** GetSMART
**Subject:** OAG Docket No. 121 Comments in Opposition to SORNA and the Proposed Guidelines (The Adam Walsh Child Protection and Safety Act)

Dear Attorney General:

I am opposed to making the application of SORNA retroactive. The Adam Walsh Act expands the definition of sex offender, lengthens the time people must be on the registry, and increases the amount of information the registrant must submit. This alone makes the sex offender registry punitive, but there are other reasons. It's language speaks to criminality. It creates harsh sentences for non-compliance. It restricts interstate movement. Registrants stand to lose significant rights and privileges, such as federal housing. States and local governments use the sex offender registry as a basis to impose civil restrictions and additional fees for normal government services.

Because SORNA is punitive, it's retroactive application is a direct violation of the *ex post facto* clause of the United States Constitution, and state constitutions. Punishment for crimes should be handled by the judiciary at the time of sentencing. Laws that lengthen the sentence, or enlarge the penalty, when applied to people already sentenced, are simply illegal because they violate the ex post facto clause.

As this retroactive application of SORNA is violative of the Constitution, many people who are now obliged to register will go to the court instead. This retroactive application will end up disrupting thousands of lives, tying up the courts, and wasting millions of dollars in litigation.

**It is my request that the new application of SORNA, as directed by the Adam Walsh Act, not be made retroactive, but start at the date when the rules are finalized.** This will avoid a lot of legal challenges to the rule because of its unconstitutionality.

Portions of SORNA, as modified under the Adam Walsh Act, will undoubtedly be prohibited by some state constitutions. **It is my request that the Attorney General find states substantially compliant who ratify the new SORNA changes, but cannot, on constitutional grounds, make the changes retroactive.** This would unfairly penalize states for upholding their own law.

Thank you for your attention to this matter.

incerely,

Andrew Nicholson, M.D., J.D.
[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:40 PM
**To:** Rosengarten, Clark
**Subject:** FW: SONRA Issues

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**From:** John [redacted]
**Sent:** Tuesday, July 24, 2007 3:32 PM
**To:** GetSMART
**Subject:** RE: SONRA Issues

Only one problem, these proposed laws are ex post facto as well as an invasion of one's privacy and cruel and unusual, which is illegal and unconstitutional. So long as these things keep happening to our nation, anywhere from the wiretapping to any number of things..and so long as our constitution continues to be ignored the way it is now, there will be no hope for OUR nation. Many people claim that the safety of the public is more important, but there is NO evidence that say these laws protect the public...even if there were, the constitution do not allow for what is more important, the law is the law and the constitution is the law of all laws, which is now being broken everyday in vein, all these laws do is provoke fear in our society and are used for nothing more than to get votes. I thought the Justice Department was supposed to be non-bias and not favor any political agenda...which is all these laws do. 'm just worried that right now, people use offenses made by these offenders to justify depriving them of .nier rights and violate the constitution in doing so, i'm just afraid tomorrow might include everyone else in the nation as well. These laws do not protect the kids, in many cases, the children suffer from them...at times, they even fall under these laws and are ruined for life due to a mistake. Not to mention the families of the offenders who have done thier time, they suffer as well and are stripped of thier rights when they have not done anything wrong. It's time we close pandora's box before its too late.

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**Rogers, Laura**

Ex post facto

**From:** [redacted]

**Sent:** Tuesday, July 10, 2007 11:05 AM

**To:** GetSMART

**Subject:** OAG Docket No. 121

I am writing to you concerning the Sex Offender Registration and Notification Act (SORNA) recently passed by the Senate. I have grave concerns regarding this act as it puts further restrictions on a group of individuals who have served their time and should be given a chance at redeeming themselves and to be productive citizens.

One part that deeply concerns me is the part that clearly violates the ex post factor clause of our Constitution. You are taking individuals who have been convicted (or as in most cases taken a plea agreement), given a sentence and completed that time. Now you are proposing to add additional "punishment" to this individual. This is unconstitutional!!!!!!!!!!!!!!!!!!!! When public shame and humiliation are part of this act, it goes beyond the scope of mere "regulatory". GETTING A DRIVERS LICENSE IS REGULATORY!!!!!! SORNA is punative. It is detrimental to the efforts of sex offenders to establish stability in their lives and maintain a non-offending lifestyle. To claim that this law is strictly "regulatory" is preposterous. By all accounts, the act meets the criteria for "punative"

We do not need more laws, nor does our government need to be bigger. What has been proposed in SORNA will cost millions and millions of tax dollars. Many more police will have to be added at every level to try to make sure the sex offender does not "violate" any of these "regulations". This will assure that we become a police state. The resources required to carry out this act could better be used to educate familites and provide help for the offenders. This is basically a family problem since 90 to 95% of the victims know the offender; i.e. family member or trusted family friend or acquaintence. The "stranger danger" is the exception, not the rule.

When you pass laws based on the "worst case scenario" and apply it to all offenders, IT IS WRONG. The punishment should fit the crime. You have lumped sex offenders for the most part into one category. That category is "John Couey", who kidnaps a child, molests and kills. This man has many, many problems but had previously asked for help and received none. Now Jessica Lungsford is dead and John Couey is where he should be. It is highly probably that Jessice would be alive today had John Couey received treatment and assessment he needed to prove whether or not it was safe for him to be in the general population. We will never know !!!!!!!!!!!!!!!!!!!

What saddens me most is that the law is "construed" to be constitutional on the "regulatory" basis. "Punative" by any other name is "punative". If this law is not repealed, this means that our constitution no longer means anything. If such laws can be "construed" to be consitutional for one group of Americans, other such laws can also be "construed" as constitutional of any group of Americans. This law will make a mockery of our Constitution and put every American at risk for the same unjust treatment.

Our resources and goals should be on preventing and correcting this problem. Instead we are trying to "punish" it away. IT WON'T WORK. You are willing to spend millions and millions of tax dollars to further punish individuals who have paid for their crime because you THINK they will commit this crime again.

As an American citizen truly concerned for the future of our country, I strongly ask that SORNA be repealed for the sake of the integrity of our Constitution. We cannot punish this problem away. In the meantime, you have violated the civil rights of a group of Americans who are guartanteed these rights in our Constitution. You have said that laws can be "construed" to be constitutional even though they are not. We are at a crossroads and we must decide where the truth lies.

Sandra Johnson

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:03 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No 121

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**From:** Tim P[redacted]
**Sent:** Monday, July 30, 2007 3:15 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

In the SORNA section II (C) the O.A.G. sights the Smith Vs Doe, 538 US84 (2003) supreme court case in regards to retroactivity of the SORNA. The AG has not however taken into consideration that the Smith Vs Doe case does state that "Contrary to the Ninth Circuit's assertion, the record contains no evidence that the Act has led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred ."

This issue could be addressed in the SORNA by prohibiting any jurisdiction from using the sex offender registry or a persons status and Tier level on any sex offender registry as a means to prohibit them from iving or working at any location within the USA. The problem is that by not having this restriction on the SORNA you are opening up the court to look at the SORNA as a tool to used to punish sex offenders punitively and retroactively. As you know many local jurisdictions are using the sex offender registries to prohibit were some sex offenders may live. The inaction of your office on this issue, will open this up to supreme court review. Given that now it can be proven that inclusion on a sex offender registry has led to substantial occupational or housing disadvantages for former sex offenders, and these would not have occurred if the sex offender registries were not in place. (see sex offenders living under bridge Floridia, or many other laws past by local units of goverment.) Because the OAG has failed to consider this issue the whole house of cards may fall. I suggest you add a statement to the SORNA that reads as follows; Sex offender registry's may not be used as a bases in anyway for restricting were sex offenders may or may not live.

Contrary to the Ninth Circuit's assertion, the record contains no evidence that the Act has led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 12:04 PM
**To:** Rosengarten, Clark
**Subject:** FW: Commentary on SORNA Guidelines

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**From:** John [redacted]
**Sent:** Monday, July 30, 2007 11:58 AM
**To:** GetSMART
**Subject:** Commentary on SORNA Guidelines

COMMENTARY ON THE PROPOSED GUIDELINES July 2007
Section II through X of the Proposed Guidelines
Retroactivity, Registration, & Tier Levels

Reference: DEPARTMENT OF JUSTICE
[Docket No. OAG 121; A.G. Order No. 2880–2007].
RIN 1105–AB28

Comments may be submitted to GetSMART@usdoj. gov

Introduction: The proposed guidelines represented by SORNA and the Adam Walsh Act, like many of the laws that have been passed on sex offender registration and public notification, are based on myths and stereotypes. These include, but are not limited to, the notion that "all sex offenders are predators", that "all sex offenders will inevitably reoffend", and that "all sex offenders are dangerous." In truth, only a very small percentage of ex-offenders ever commit another offense. Most simply want to get on with their lives. To presume a former offender will sexually re-offend is unfounded by true research. Moreover, it is repugnant and intended to lead to further punishment.

The Constitution clearly prohibits any ex-post-facto law, and makes no provision for the passage of such laws "for public safety." The founders knew that to allow such exceptions would open the door for abuses such as those that have occurred in the area of sex offender laws.

Information regarding previous convictions has always been available for those with a genuine need. A child care center or school, for example, can and should be able to run a background check to determine whether an applicant has a history of abusing children, sexually or otherwise. By the same token, a bank should be able to determine whether a job applicant has a history of committing fraud. The public at large has no need for unfettered access to such information.

At the very least, the public websites should be shut down, and those requiring information on sex offenders' whereabouts should be required to physically go to a local law enforcement office and give their identifying information and reasons for asking.

This is counter to current public sentiment, but public sentiment has been enflamed by sensational media coverage of rare, but terrible crimes, and by false and misleading "information" posing as "statistics."

f we are to have national sex offender laws, the passage of such laws should be preceded by a national debate in which bona fide experts are consulted and their expertise used to fashion reasonable, effective laws. The current laws are based on hysteria and anger.

Executive Summary

Retroactivity

To enforce retroactivity, is not about public safety. The US Attorney General, the SMART office, and Legislators in Congress, are deliberately reaching back in time to punish people who have long since paid their legal dues to society and to the State, as required by law, at the time of a person's conviction.

The stated intent of public safety, does not agree with the intended consequences that occur when people are deliberately destabilized en mass, by the use of umbrella laws. Umbrella laws testify to the fact that enforcement of retroactivity is intended to do harm, on a large scale, without recourse or redress.

Repeal the retroactivity. It is not in the best interest of the States, society, or of law enforcement, to deliberately destabilize people making them jobless and homeless. For, this has been the intended consequences of other umbrella laws.

Places of Employment

The original intent of Megan's Law, and those that followed was to promote child safety by allowing the public to have access to the addresses of those who might pose a danger to children. To include the offender's place of employment on sex offender websites, is not in the interest of public safety, nor that of child safety. The posting of a Registrant's place of employment on public websites, for easy and unfettered access by the public, will result in the mass unemployment of people who have not offended since their first conviction. It will also punish employers whose only crime was to allow someone on the Registry to be a tax paying, productive citizen.

Remove from SORNA the publication of a Registrant's place of employment on publicly accessible websites. It has nothing to do with public safety and everything to do with ex post facto punishment.

Umbrella Laws, Rules, and Regulations

Stop the umbrella mentality and focus on people who are known to be high risk individuals. Get back to the original intent of Meagan's Law, the Jacob Wetterling Act, and other laws named for children. Allow law enforcement to focus on people who are the most dangerous to society.

Registered Sex Offenders

Only a small percentage, 5-6% of those who are forced to register, are repeat or predatory offenders. Sex offender registries are umbrella registries sucking in people who do not belong on public registries, but who may belong on registries that are for law enforcement only. Public sex offender registries are not for law enforcement. They are for harassment, vigilante and revenge actions from people in the public domain. Individuals who access such registration sites often do so to cause harm, physical or otherwise, to the person listed and their family. The incidence of vigilantism is well documented.

Cease and desist the passing of unjust laws. Cease and desist the coercing and threatening States, to

conform to the emotion based portions of SORNA's retroactivity and umbrella sex offender registries. Cease and desist from efforts to weaken the United States Constitution and the Constitutions of individual states.

Public Sex Offender Registries (if they exist at all) Should Contain only Basic Information

There is no sound reason to publish anything other than basic information about a person on a sex offender website. The public has no Constitutional right to be allowed to easily access personal information about another citizen. Those wishing to know who is on a sex offender registry, they must be required to apply for that information with law enforcement. They should not have anonymously access via the Internet.

Follow Colorado's lead. Colorado currently posts only high risk individuals on its public sex offender websites. Low to no-risk individuals register for law enforcement access only registry. This is as it should be. Colorado stopped the umbrella effect and recognized it needed to separate the high risk from the low to no-risk individuals.

Restructure the SORNA registration requirements to a Multi-Tier system that all States must follow and eliminate the retroactivity for all sex offenders. They are not a homogenous population and ought not to be treated as such.

Eliminate the registration of all low to no risk persons. At the very least, the fact that a person may have a history of years of an offense free, productive life must be taken into account. Multiple convictions suggest a propensity to reoffend. Multiple counts, which may stem from a single conviction, or from acts committed over a short period of time, do not. Provide registries and notification for person's who had a predatory offense against a child, bringing back the original intent of Meagan's Law, the Pam Lynchner Act, the Jacob Wetterling Act, and all the other Acts and laws named for children. All of the aforementioned Acts and laws originally attempted to focus on child molesters of the predatory type. The adulteration of all these Acts and laws that has since occurred has severely hampered and reduced the effectiveness of sex offender registration and notification and law enforcement's ability to effectively do their job.

Lastly;

Respect the Constitution.
Remove emotion and the need for revenge from the passage and enforcement of laws.
Use accredited studies and sources as a basis for laws.
Commission studies to actually review the efficacy of current laws.
Realize that over 90% of offenders are first and only time offenders destined to never repeat their crime.
Be Smart on Crime, as the name of your office says you should be.
Restorative not revenge based Justice is the key.

Detailed Commentary

I. The ex post facto clause of the Sex Offender Registration and Notification Act must be redacted it has no case law as authority for its use. Smith v. Doe is not that authority as it is referenced to in the Interim Rules. For, SORNA goes beyond the ruling in Smith v. Doe. The NACDL has agreed with this in their comment of 04/30/07 as follows.

II. Re: NACDL Comments on OAG Docket No. 117; the Attorney General's Interim Rule Applying the

Provisions of the Adam Walsh Act (Pub. L. 109-248) Retrospectively to Offenders Whose Convictions Pre-Date The Enactment of the Legislation

III. The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide, non-profit, voluntary association of criminal defense lawyers founded in 1958 to improve the quality of representation of the accused and to advocate for the preservation of constitutional rights in criminal cases.

IV. The NACDL has a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

V. In these comments NACDL urges the Attorney General to repeal 28 CFR Part 72 because the regulation, as promulgated, violates the ex post facto clause of the United States Constitution, and will cause widespread confusion and instability in the efforts of many convicted sex offenders to comply with the law and maintain a non-offending lifestyle. http://www.nacdl. org/

VI. "As described in Adam Walsh II at 38-43, the registration and notification requirements of SORNA alone (aside from the criminal provision) are far more punitive than the Alaska law at issue in Smith v. Doe. Most importantly, the issue before the Court in Smith v. Doe was whether the registration requirement was a retroactive punishment prohibited by the Ex Post Facto Clause, not, as here, a criminal statute that in some cases subjects people to federal prosecution based on conduct that was not formerly a crime at all, and in other cases increases the federal penalty for their conduct from one to ten years". See United States v. Bobby Smith, __ F.Supp.2d __, 2007 WL 735001 (E.D. Mich., Mar. 8, 2007). (See http://www.fd. org/odstb_ AdamWalsh. htm).

VII. SORNA will add new tier levels to the punishment of old [past] offenses that have been served prior to enactment of SORNA or the Adam Walsh Act. Retroactive application of the change would likely violate the Ex Post Facto Clause. See William P. Wade, A Treatise on the Operation and Construction of Retroactive Laws, as Affected by Constitutional Limitations and Judicial Interpretations § 273, at 318-19.

VIII. SORNA raises the tier level (risk level) on sex offenders convicted prior to the enactment of the Adam Walsh Act, and the enactment of SORNA. This, in essence, makes the assumption that many sex offenders likely to reoffend, even though they may not have done so for years. SORNA cites no authority for justification of increasing the risk level on past and/or present sex offenders other than an inaccurate belief that sex offenders as a whole have a higher sexual recidivism rate than other offender types. This is not born out by the government's own Department of Justice Statistics, and other well known statistical findings that support the Department of Justice's findings. Increasing the dangerousness level on persons who have served their time prior to the enactment of SORNA without a hearing or due process assumes that sex offenders regardless of the severity of past crimes, are all the same, yet another violation of the "ex post facto "clause of the US Constitution.

IX. "Every law, which makes criminal an act that was not criminal when actually committed, or which inflicts a greater punishment than the law attached to the crime at the time of conviction, is an ex post facto law within the prohibition of the Constitution. There is no Constitutional provision made for purported "public safety" laws. Raising tier levels long after the original conviction, requiring retroactive registration, and dramatically increasing registration times all represent a severe impact on individual liberties, for which there is no justification in fact, and are clearly covered by the Article 1 ex

post facto prohibition of the United States Constitution.

X. Changing the rules of procedure in force at the time an offense was committed and adjudicated in a way substantially disadvantageous to people so labeled as sex offender, is a prohibition of the United States Constitution, Article 1.

XI. The US Supreme Court has affirmed that when the range of available prison terms is legislatively enhanced, the change in sentencing guidelines cannot be applied retroactively. This same reasoning must be applied when the retroactivity guidelines of SORNA legislatively enhances the risk tier on sex offenders adjudicated prior to enactment of SORNA.

XII. The SORNA Guidelines change the conditions that were applicable to an offender's past crime or offense, and therefore may not be applied retroactively. These changes furthermore are not regulatory in intent or application for a burden is enhanced upon people who otherwise had their prior burdens to the state satisfied. They are, therefore, punitive.

XIII. There are constitutional concerns about retroactively in implementing the SORNA Guidelines. The SORNA Guidelines would disadvantage persons who committed their offense prior to the enactment of SORNA by subjecting the offender to higher criminal penalties, and a higher risk of civil loses that otherwise would not or may not have been suffered prior to the enactment of SORNA. The risk of enhanced punishment effects for such offenders is significant.

XIV. SORNA Guidelines as they relate to retroactivity would disadvantage persons who committed their offense post-SORNA by eliminating any lower risk levels available in a previous registration and notification system pre SORNA. This possibility, again, is significant, and must not be considered speculative.

XV. Legislators from the local level to the US Congress have made public statements of indicating that the recognize that these laws are intended to be vengeance and punishment. These are directly contrary to their statements that the laws are intended for "public safety." You can't have it both ways. Either the laws are intended to be punishment, or they aren't. Having stated just once that you are punishing, you cannot then pretend to be "promoting safety.

XVI. These laws are clearly forged out of anger and a desire to punish. These laws far exceed a purpose of civil regulation, and lawmakers make no reasonable or honest effort to devise accurate categories of dangerousness or recidivism risk. The lack of due diligence to ensure that those former offenders posing little or no risk are not included with the high risk multiple offenders makes these laws, rules, and regulations nothing more than instruments of punishment. SORNA is such a set of rules and regulations that far exceed what is necessary to control the one-time, former offender.

XVII. I will refer the US Attorney General to an analysis of Supplement to Adam Walsh Act - Part II (May 2006) from the office of Defender Services.

XVIII. The National Association of Criminal Defense Lawyers with a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges states that use of Smith v. Doe as the authority for imposing ex post facto is clearly wrong. It does not stand in the face of the judicial reasoning applied in Smith v. Doe, a civil case, not a criminal case.

XIX. Many people over years and decades have successfully reintegrated into the general population after having served their prison, parole, or probation periods. Some are still on one or more registries as required by current law in individual jurisdictions. The proposed guidelines relating to registration requirements, tiers, and notification will uproot people's lives. To put them on public registries and to subject them to federal penalties is absurd and is not for the public safety as SORNA so boldly asserts by referencing Smith v. Doe.

XX. There is no doubt whatsoever that a former offender who is allowed to live his life, reintegrate into the community, and hold a steady job poses far less risk of recidivism than does an ex offender who is constantly scrutinized, harassed, and uprooted.

XXI The rules and regulations of SORNA, and the proposed guidelines are not keeping in good faith with Executive Order 13132, section 2, where it " ...discourages one-size-fits- all approaches to public policy problems." It urges maximum State administrative discretion to carry out federal laws and regulations. It suggests deference to the States when making recommendations that affect State policymaking authority or when there are uncertainties regarding the Federal Government's Constitutional or statutory authority.

XXII. States must not be pressured by the US Attorney General, or his office, to put aside the provisions of their state constitutions regarding retroactivity, and states must not be pressured by the US Attorney General to put aside due process of law. This is done when a person is given no means to contest an unlawfully applied federal regulation, rule, or law that is in conflict with state laws or the Constitution.

XXIII. Paragraph XVI,, part E of the Guidelines concerning implementation states "Beyond the general standard of substantial implementation, SORNA § 125(b) includes special provisions for cases in which the highest Court of a Jurisdiction has held that the Jurisdiction' s Constitution is in some respect in conflict with the SORNA requirements. If a Jurisdiction believes that it faces such a situation, it should inform the SMART Office. The SMART Office will then work with the Jurisdiction to see whether the problem can be overcome, as the statute provides".
This is a clear case of a Federal attempt to control over state's right to abide by its own Constitution.

XXIV. In paragraph XVII, one can readily see where the US Attorney General, in conjunction with the SMART Office, will attempt to pressure States to set aside any conflict a State Constitution may have with the implementation requirements of SORNA. This is achieved by threatening States with financial sanctions and is also in violation of the spirit of Executive Order 13132.

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**Rogers, Laura**

**From:** [redacted]
**Sent:** Saturday, June 09, 2007 10:24 PM
**To:** GetSMART
**Subject:** Repeal SORNA

SORNA's retroactivity is unconstitutional and wrongly uses Smith v. Doe as the authority for the retroactivity. This commentary describes why SORNA's retroactivity is an ex post facto. SORNA will be challenged.

**COMMENTARY ON THE PROPOSED GUIDELINES May 2007**
**Section II through X of the Proposed Guidelines**
**Specifically relating to Retroactivity, Registration, & Tier Levels**

**Reference: DEPARTMENT OF JUSTICE**
**[Docket No. OAG 121; A.G. Order No. 2880–2007].**
**RIN 1105–AB28**

I. **The ex post facto clause of the Sex Offender Registration and Notification Act must be redacted it has no case law as authority for its use. Smith v. Doe is not that authority as is referenced to in the Interim Rules for SORNA goes beyond the ruling in Smith v. Doe.**

II. **Re: NACDL Comments on OAG Docket No. 117; the Attorney General's Interim Rule Applying the Provisions of the Adam Walsh Act (Pub. L. 109-248) Retrospectively to Offenders Whose Convictions Pre-Date The Enactment of the Legislation**

III. The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide, non-profit, voluntary association of criminal defense lawyers founded in 1958 to improve the quality of representation of the accused and to advocate for the preservation of constitutional rights in criminal cases.

IV. The NACDL has a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

V. In these comments NACDL urges the Attorney General to **repeal 28 CFR Part 72** because the regulation, as promulgated, violates the ex post facto clause of the United States Constitution, and will cause widespread confusion and instability in the efforts of many convicted sex offenders to comply with the law and maintain a non-offending lifestyle. ***http://www.nacdl.org/***

VI. "As described in Adam Walsh II at 38-43, the registration and notification requirements of SORNA alone (aside from the criminal provision) are far more punitive than the Alaska law at issue in *Smith v. Doe*. Most importantly, the issue before the Court in *Smith v. Doe* was whether the registration requirement was a retroactive punishment prohibited by the *Ex Post Facto* Clause, not, as here, a criminal statute that in some cases subjects people to federal prosecution based on conduct that was not formerly a crime at all, and in other cases increases the federal penalty for their conduct from one to ten years". *See United States v. Bobby Smith*, __ F.Supp.2d __, 2007 WL 735001 (E.D. Mich., Mar. 8, 2007). (See http://www.fd.org/odstb_AdamWalsh.htm).

VII. The SORNA would add new tier levels to the punishment of old [past] offenses that have been served prior to enactment of SORNA [Adam Walsh Act]. Retroactive application of the change would

likely violate the Ex Post Facto Clause. See William P. Wade, A Treatise on the Operation and Construction of Retroactive Laws, as Affected by Constitutional Limitations and Judicial Interpretations § 273, at 318-19.

**VIII.** SORNA furthermore increases the [dangerousness] tier level on a sex offender, who's crime was prior to the enactment of the SORNA [Adam Walsh Act], and the enactment of SORNA [Sex Offender Registration and Notification Act], and upon those sex offenders who are still required to register. Through the assumption or presumption of a sex offenders likelihood of [repeat] sexual recidivism, SORNA cites no authority for justification of increasing the [dangerousness] level on past and[or] present sex offenders other than an imprecise belief that sex offenders in Toto suffer a higher sexual recidivism rate than other offender types, which is not born out by the governments own Department of Justice Statistics, and other well known statistics [findings] that support the Department of Justice own findings. Increasing the [dangerousness] level on person's who have served their times prior to the enactment of SORNA [Adam Walsh Act] without a hearing or due process assumes in the application of dangerousness level changes, that sex offenders regardless of the severity of past crime[s] are all the same, drawing concerns of ex post facto violation of the US Constitution relating to ex post facto.

**IX.** "Every law, which makes criminal an act that was innocent when done, or which inflicts a greater punishment than the law annexed to the crime when committed, is an ex post facto law within the prohibition of the Constitution". Increasing dangerousness of a person retroactively is an ex post facto prohibition. By providing for registration retroactivity along with the increase of a person's dangerousness level [tier], and adding or extending the amount of registration time a person would not have otherwise had, in Toto is an Article 1 ex post facto prohibition of the United States Constitution.

**X.** Also by changing the rules of procedure in force at the time an offense was committed and adjudicated in a way substantially disadvantageous to people so labeled as sex offender is a prohibition of the United States Constitution, Article 1.

**XI.** Through various cases, the US Supreme Court has affirmed that when the range of available prison terms is legislatively enhanced, the change in sentencing guidelines cannot be applied retroactively. This same reasoning can be applied when the retroactivity guidelines of SORNA [Adam Walsh Act] legislatively enhances the [dangerousness] tier on sex offenders adjudicated prior to enactment of SORNA [Adam Walsh Act].

**XII.** The SORNA Guidelines changes the conditions that were applicable to an offender's past crime or offense, and therefore may not be applied retroactively. These changes furthermore are not regulatory in intent or application for a burden is enhanced upon people who otherwise had their prior burdens to the state satisfied.

**XIII.** Given the Supreme Court's Ex Post Facto jurisprudence, there are constitutional concerns about retroactively implementing the SORNA Guidelines. The SORNA Guidelines would disadvantage person's who committed their offense prior to the Adam Walsh Act [SORNA] by subjecting the offender to higher criminal penalties, and a higher risk of civil loses that otherwise would not or may not have been suffered prior to the enactment of SORNA [Adam Walsh Act]. The risk of enhanced detrimental effects for such offenders is sufficient and is not merely speculative.

**XIV.** Likewise, SORNA Guidelines as they relate to retroactivity would disadvantage person's who committed their offense post-SORNA by eliminating any lower risk levels available in a previous registration and notification system pre SORNA. This possibility, again, is sufficient and should not be described as most speculative. While the issue of what constitutes an Ex Post Facto violation is often a difficult one retroactive application of the SORNA Guidelines as they relate to retroactivity will likely violate the Constitution's prohibition on Ex Post Facto laws.

**XV.** We the people have the documented statements of legislators from local levels to the US Congress, statements of vengeance and punishment contrary to their falsely applied statements of intent for public safety in Bills they sponsor or support. We the people know the effects of punishment, and are not inclined to believe in US Supreme Court Justices who have no high regard for the United States Constitution and its human rights, liberties, and protections.

**XVI.** We the people know when laws are made out of a desire to punish, when laws far exceed a purpose of civil regulation, and lawmakers make no reasonable or honest effort to device categories of dangerousness regarding people labeled as sex offender. The lack of due diligence to ensure that the low to no risk are not included with the high risk makes these laws, rules, and regulations nothing more than instruments of punishment. SORNA is such a set of rules and regulations that far exceed what is necessary to control the high risk sex offender.

**XVII.** I will refer the US Attorney General to an analysis of Supplement to Adam Walsh Act - Part II (May 2006) from the office of Defender Services.

**XVIII.** The National Association of Criminal Defense Lawyers with a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges also say your use of Smith v. Doe as the authority for imposing ex post facto is clearly wrong, and does not stand in the face of the judicial reasoning applied in Smith v. Doe which was a civil case, not a criminal case. SORNA clearly puts emphasis on criminal penalties rather than civil penalties or civil regulations.

**XIX.** I further find a statement in the Interim Rules concerning persuading states that have ex an post facto provision in their state constitutions to ignore [implied by wording] their state constitutions and case law that have developed for more than 100 years, as is the case in Colorado.

**XX.** Many people over years and decades have successfully reintegrated into the general population after having served their prison, parole, or probation periods. Some are still on one or more registries as required by current laws in individual jurisdictions. The proposed guidelines relating to registration requirements, tiers, and notification will uproot peoples lives, to put them on public registries and to subject them to federal penalties that they otherwise would not have suffered is absurd and is not for the public safety as SORNA so boldly asserts by referencing Smith v. Doe. Antidotal and factual data clearly imposes a clear understanding that public safety is not served, as is clearly demonstrated respecting residency restrictions upon [ALL] sex offenders.

**XXI.** The application of ex post facto is arbitrary and capricious for [ex] sex offenders are not allowed or given recourse to set matters straight. Furthermore the government in SORNA presumes an unreasonable presumption of a high likelihood of committing another sex offense as a group or population, a presumption that is clearly false based on reports and data of the highest sources of judicial, legal, and academic integrity. On these facts alone the assertion of retroactivity as valid not only is misapplied but unlawful. To assert justification for ex post facto based on Smith v. Doe authority falls flat on its face as the sole authority.

**XXII.** Where is public safety served when stable lives are uprooted without due cause, based on a wrongfully perceived notion that all persons labeled as sex offender need be controlled. The uprooting of lives, making private and sensitive information such as where one works open to the public for public abuse, and abuse from fraudsters, identity thieves, and vigilantes, does not serve the public safety but sets conditions for mass trauma, misinformation, disinformation, myths, and outright lies against people who are living stable constructive lives. There are no other crime or offense types that enjoy such ready and easy access to public information.

**XXIII.** Furthermore the collaboration with John Walsh who for decades have re-victimized his dead son, and who has a vested business interest again demonstrates the arbitrary method of applying ex post facto. There is no factual basis that his son's death was caused by an act of sexual assault or sexual abuse by any known sex offender, let alone a registered sex offender. Information derived and used by the Federal Government in the making of the Adam Walsh Act clearly keeps silent facts that negate, and hold deliberately harmful information[s] from the John Walsh Organization.

**XXIV.** I further find the rules and regulations of SORNA, and the proposed guidelines are not keeping in good faith with Executive Order 13132, section 2, where it " ...discourages one-size-fits-all approaches to public policy problems. It urges maximum state administrative discretion to carry out federal laws and regulations. It suggests deference to states when making recommendations that affect state policymaking authority or when there are uncertainties regarding the federal government's constitutional or statutory authority".

**XXV.** States ought not be pressured by the US Attorney General or his office to put aside any or all provisions of its state constitution regarding retroactivity, and states ought not be pressured by the US Attorney General or his office, or the SMART Office to put aside due process of law whereby a person is given no means to contest an unlawfully applied federal regulation, rule, or law that is in conflict with a state and its laws, rules, regulations, and/or constitution.

**XXVI.** Further considering paragraph XVI to part E of the Guidelines concerning Implementation, part E states "Beyond the general standard of substantial implementation, SORNA § 125(b) includes special provisions for cases in which the highest court of a jurisdiction has held that the jurisdiction's constitution is in some respect in conflict with the SORNA requirements. If a jurisdiction believes that it faces such a situation, it should inform the SMART Office. The SMART Office will then work with the jurisdiction to see whether the problem can be overcome, as the statute provides".

**XXVII.** In paragraph XVII one can readily see where the US Attorney General in conjunction with the SMART Office will attempt to pressure states to set aside any conflict a state constitution may have with the implementation requirements of SORNA [clearly directed at implementation of retroactivity]. Threatening states with financial sanctions is also in violation of the spirit of Executive Order 13132.

**Summary**

**Retroactivity**

To enforce retroactivity is not about public safety for in its effect the US Attorney General, the SMART office, and mostly republican legislators and some democrats in Congress are deliberately reaching back in time to ruin lives of people who have long since paid their legal dues to society and to the state as was required by laws current at the time of a person's conviction.

Enforcing retroactivity is not about child safety as it destabilizes people who have paid their dues to society as was required by current laws at the time of a person's conviction.

Reaching back in time to punish, yes punish, for the stated intent of public safety does not agree with the intended consequences that are now known when people are deliberately destabilized in mass, using umbrella laws. Umbrella laws testify to the fact that enforcement of retroactivity is intended to do harm on a large scale without recourse or redress.

Repeal the retroactivity it is not in the best interest of the states, society, or of law enforcement to deliberately destabilize people, to make them jobless and homeless, for these have been the intended consequences of other umbrella laws. We know what happens with umbrella laws.

**Places of Employment**

To publicly post on sex offender websites the place where a person works is not in the interest of public safety, nor that of child safety. Posting people's place of employment on a public sex offender websites for easy and unfettered access regardless of the stated intent is intended to generate mass unemployment of people who have not offended since their last conviction. To presume an [ex] offender will sexually reoffend is repugnant and insufficient.

Remove from SORNA the publishing of a person's place of employment from being posted on public sex offender websites; it has nothing to do with the regulation of public safety.

**Umbrella Laws, Rules, and Regulations**

Stop the umbrella mentality. Focus on people who are known to be high risk individuals. Get back to the original intents of Meagan's Law, the Jacob Wetterling Act, and other child named laws focusing on people who are the most dangerous to society.

**Registered Sex Offender**

Not everyone who has to register is a felon. Not everyone who has to register ever molested a child or other person. Most sex offender registries are umbrella registries sucking in people who do not belong on public registries but who may belong on registries that are for law enforcement only. Public sex offender registries are not for law enforcement, they are for all types of vigilante and revenge actions from certain types of people in the public domain. Individuals who access such registration sites do so to cause harm, physical or otherwise. Vigilantism is well documented and can be supplied at a moments notice.

Stop and desist the unjust laws, rules, and regulations. Stop and desist from threatening states to conform to the emotionally inspired rules and regulations of SORNA's retroactivity and umbrella sex offender registries. Stop and desist from efforts to weaken the United States Constitution and the Constitutions of individual states.

**Sex Offender Registry Suggestion**

There is no sound reason to publish other than basic information about a person on a sex offender website. The public has no constitutional right to be handed on a platter information about another Human Being. If people want to know who is on a sex offender registry they should have to apply for that knowledge as was done before publishing on the Internet. Follow Colorado's lead. Colorado post only high risk individuals on its public sex offender websites. Low to no-risk individuals register on a for law enforcement registry only internal registry just as it should be done. Colorado stopped the umbrella effect and recognized it needed to separate the high risk from the low to no-risk individuals.

Restructure the SORNA registration requirements to reflect that of Colorado's two level registration systems.

Eliminate the retroactivity for all sex offenders, they are not a homogenous population and ought not to be treated as such.

Eliminate the registration of all low to no risk person's. Provide the registries and notification for person's who had a predatory offense against a child, bringing back the original intent of Meagan's Law, the Pam Lychner Act, the Jacob Wetterling Act, and all the other child named Acts and laws. All of the aforementioned Acts and laws originally attempted to focus on child molesters of the predatory type. The adulteration of all these Acts and laws that occurred since their enactments have severely hampered and reduced the effectiveness of sex offender registration and notification.

Written by:

Bennie O Walton
[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, July 09, 2007 5:15 PM
**To:** GetSMART
**Subject:** DEPARTMENT OF JUSTICE [Docket No. OAG 121;A.G. Order No. 2880-2007]

Senator Ted Kennedy:

Thank you so much for wanting input from the general populace on this very volitile subject. I am not a sex-offender, nor have I ever been.

I. The ex post facto clause of the Sex Offender Registration and Notification Act must be redacted it has no case law as authority for its use. Smith v. Doe is not that authority as is referenced to in the Interim Rules for SORNA goes beyond the ruling in Smith v. Doe.

II. Re: NACDL Comments on OAG Docket No. 117; the Attorney General's Interim Rule Applying the Provisions of the Adam Walsh Act (Pub. L. 109-248) Retrospectively to Offenders Whose Convictions Pre-Date The Enactment of the Legislation

III. The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide, non-profit, voluntary association of criminal defense lawyers founded in 1958 to improve the quality of representation of the accused and to advocate for the preservation of constitutional rights in criminal cases.

IV. The NACDL has a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

V. In these comments NACDL urges the Attorney General to repeal 28 CFR Part 72 because the regulation, as promulgated, violates the ex post facto clause of the United States Constitution, and will cause widespread confusion and instability in the efforts of many convicted sex offenders to comply with the law and maintain a non-offending lifestyle. http://www.nacdl. org/

VI. "As described in Adam Walsh II at 38-43, the registration and notification requirements of SORNA alone (aside from the criminal provision) are far more punitive than the Alaska law at issue in Smith v. Doe. Most importantly, the issue before the Court in Smith v. Doe was whether the registration requirement was a retroactive

punishment prohibited by the Ex Post Facto Clause, not, as here, a criminal statute that in some cases subjects people to federal prosecution based on conduct that was not formerly a crime at all, and in other cases increases the federal penalty for their conduct from one to ten years". See United States v. Bobby Smith, __ F.Supp.2d __, 2007 WL 735001 (E.D. Mich., Mar. 8, 2007). (See http://www.fd. org/odstb_ AdamWalsh. htm).

VII. The SORNA would add new tier levels to the punishment of old [past] offenses that have been served prior to enactment of SORNA or the Adam Walsh Act. Retroactive application of the change would likely violate the Ex Post Facto Clause. See William P. Wade, A Treatise on the Operation and Construction of Retroactive Laws, as Affected by Constitutional Limitations and Judicial Interpretations § 273, at 318-19.

VIII. SORNA furthermore increases the [dangerousness] tier level on a sex offender, who's crime was prior to the enactment of the Adam Walsh Act, and the enactment of SORNA [Sex Offender Registration and Notification Act], and upon those sex offenders who are still required to register. Through the assumption or presumption of a sex offenders likelihood of [repeat] sexual recidivism, SORNA cites no authority for justification of increasing the [dangerousness] level on past and[or] present sex offenders other than an imprecise belief that sex offenders in Toto suffer a higher sexual recidivism rate than other offender types, which is not born out by the governments own Department of Justice Statistics, and other well known statistics [findings] that support the Department of Justice own findings. Increasing the [dangerousness] level on person's who have served their times prior to the enactment of SORNA [Adam Walsh Act] without a hearing or due process assumes in the application of dangerousness level changes, that sex offenders regardless of the severity of past crime(s) are all the same, drawing concerns of ex post facto violation of the US Constitution relating to ex post facto.

IX. "Every law, which makes criminal an act that was innocent when done, or which inflicts a greater punishment than the law annexed to the crime when committed, is an ex post facto law within the prohibition of the Constitution" . Increasing dangerousness of a person retroactively is an ex post facto prohibition. By providing for registration retroactivity along with the increase of a person's dangerousness level [tier], and adding or extending the amount of registration time a person would not have otherwise had, in Toto is an Article 1 ex post facto prohibition of the United States Constitution.

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XI. Through various cases, the US Supreme Court has affirmed that when the range of available prison terms is legislatively enhanced, the change in sentencing guidelines cannot be applied retroactively. This same reasoning can be applied when the retroactivity guidelines of SORNA [Adam Walsh Act] legislatively enhances the [dangerousness] tier on sex offenders adjudicated prior to enactment of SORNA [Adam Walsh Act].

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XIII. Given the Supreme Court's Ex Post Facto jurisprudence, there are constitutional concerns about retroactively implementing the SORNA Guidelines. The SORNA Guidelines would disadvantage person's who committed their offense prior to the Adam Walsh Act [SORNA] by subjecting the offender to higher criminal penalties, and a higher risk of civil loses that otherwise would not or may not have been suffered prior to the enactment of SORNA [Adam Walsh Act]. The risk of enhanced detrimental effects for such offenders is sufficient and is not merely speculative.

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facto.

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XXVII. In paragraph XVII one can readily see where the US Attorney General in conjunction with the SMART Office will attempt to pressure states to set aside any conflict a state constitution may have with the implementation requirements of SORNA. Threatening states with financial sanctions is also in violation of the spirit of Executive Order 13132.

Summary

Retroactivity

To enforce retroactivity is not about public safety for in its effect the US Attorney General, the SMART office, and mostly republican legislators and some democrats in Congress are deliberately reaching back in time to ruin the lives of people who have long since paid there legal dues to society and to the state as was required by laws current at the time of a person's conviction.

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Registered Sex Offender

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Stop and desist the unjust laws, rules, and regulations. Stop and desist from threatening states to conform to the emotionally inspired

rules and regulations of SORNA's retroactivity and umbrella sex offender registries. Stop and desist from efforts to weaken the United States Constitution and the Constitutions of individual states.

Sex Offender Registry Suggestion

There is no sound reason to publish other than basic information about a person on a sex offender website. The public has no constitutional right to be handed on a platter information about another Human Being. If people want to know who is on a sex offender registry they should have to apply for that knowledge as was done before publishing on the Internet. Follow Colorado's lead. Colorado post only high risk individuals on its public sex offender websites. Low to no-risk individuals register on a for law enforcement registry only internal registry just as it should be done. Colorado stopped the umbrella effect and recognized it needed to separate the high risk from the low to no-risk individuals.

Restructure the SORNA registration requirements to reflect that of Colorado's two level registration systems.

Eliminate the retroactivity for all sex offenders, they are not a homogenous population and ought not to be treated as such.

Eliminate the registration of all low to no risk person's. Provide the registries and notification for person's who had a predatory offense against a child, bringing back the original intent of Meagan's Law, the Pam Lychner Act, the Jacob Wetterling Act, and all the other child named Acts and laws. All of the aforementioned Acts and laws originally attempted to focus on child molesters of the predatory type. The adulteration of all these Acts and laws that occurred since their enactments have severely hampered and reduced the effectiveness of sex offender registration and notification.

I. The ex post facto clause of the Sex Offender Registration and Notification Act must be redacted it has no case law as authority for its use. Smith v. Doe is not that authority as is referenced to in the Interim Rules for SORNA goes beyond the ruling in Smith v. Doe.

II. Re: NACDL Comments on OAG Docket No. 117; the Attorney General's Interim Rule Applying the Provisions of the Adam Walsh Act (Pub. L. 109-248) Retrospectively to Offenders Whose Convictions Pre-Date The Enactment of the Legislation

III. The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide, non-profit, voluntary association of criminal defense lawyers founded in 1958 to improve the quality of representation of the accused and to advocate for the preservation of constitutional rights in criminal cases.

IV. The NACDL has a membership of more than 12,800 attorneys and

92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

V. In these comments NACDL urges the Attorney General to repeal 28 CFR Part 72 because the regulation, as promulgated, violates the ex post facto clause of the United States Constitution, and will cause widespread confusion and instability in the efforts of many convicted sex offenders to comply with the law and maintain a non-offending lifestyle. http://www.nacdl. org/

VI. "As described in Adam Walsh II at 38-43, the registration and notification requirements of SORNA alone (aside from the criminal provision) are far more punitive than the Alaska law at issue in Smith v. Doe. Most importantly, the issue before the Court in Smith v. Doe was whether the registration requirement was a retroactive punishment prohibited by the Ex Post Facto Clause, not, as here, a criminal statute that in some cases subjects people to federal prosecution based on conduct that was not formerly a crime at all, and in other cases increases the federal penalty for their conduct from one to ten years". See United States v. Bobby Smith, __ F.Supp.2d __, 2007 WL 735001 (E.D. Mich., Mar. 8, 2007). (See http://www.fd. org/odstb_ AdamWalsh. htm).

VII. The SORNA would add new tier levels to the punishment of old [past] offenses that have been served prior to enactment of SORNA or the Adam Walsh Act. Retroactive application of the change would likely violate the Ex Post Facto Clause. See William P. Wade, A Treatise on the Operation and Construction of Retroactive Laws, as Affected by Constitutional Limitations and Judicial Interpretations § 273, at 318-19.

VIII. SORNA furthermore increases the [dangerousness] tier level on a sex offender, who's crime was prior to the enactment of the Adam Walsh Act, and the enactment of SORNA [Sex Offender Registration and Notification Act], and upon those sex offenders who are still required to register. Through the assumption or presumption of a sex offenders likelihood of [repeat] sexual recidivism, SORNA cites no authority for justification of increasing the [dangerousness] level on past and[or] present sex offenders other than an imprecise belief that sex offenders in Toto suffer a higher sexual recidivism rate than other offender types, which is not born out by the governments own Department of Justice Statistics, and other well known statistics [findings] that support the Department of Justice own findings. Increasing the [dangerousness] level on person's who have served their times prior to the enactment of SORNA [Adam Walsh Act] without a hearing or due process assumes in the application of dangerousness level changes, that sex offenders regardless of the severity of past crime(s) are all the same, drawing concerns of ex post facto

violation of the US Constitution relating to ex post facto.

IX. "Every law, which makes criminal an act that was innocent when done, or which inflicts a greater punishment than the law annexed to the crime when committed, is an ex post facto law within the prohibition of the Constitution" . Increasing dangerousness of a person retroactively is an ex post facto prohibition. By providing for registration retroactivity along with the increase of a person's dangerousness level [tier], and adding or extending the amount of registration time a person would not have otherwise had, in Toto is an Article 1 ex post facto prohibition of the United States Constitution.

X. Also by changing the rules of procedure in force at the time an offense was committed and adjudicated in a way substantially disadvantageous to people so labeled as sex offender is a prohibition of the United States Constitution, Article 1.

XI. Through various cases, the US Supreme Court has affirmed that when the range of available prison terms is legislatively enhanced, the change in sentencing guidelines cannot be applied retroactively. This same reasoning can be applied when the retroactivity guidelines of SORNA [Adam Walsh Act] legislatively enhances the [dangerousness] tier on sex offenders adjudicated prior to enactment of SORNA [Adam Walsh Act].

XII. The SORNA Guidelines changes the conditions that were applicable to an offender's past crime or offense, and therefore may not be applied retroactively. These changes furthermore are not regulatory in intent or application for a burden is enhanced upon people who otherwise had their prior burdens to the state satisfied.

XIII. Given the Supreme Court's Ex Post Facto jurisprudence, there are constitutional concerns about retroactively implementing the SORNA Guidelines. The SORNA Guidelines would disadvantage person's who committed their offense prior to the Adam Walsh Act [SORNA] by subjecting the offender to higher criminal penalties, and a higher risk of civil loses that otherwise would not or may not have been suffered prior to the enactment of SORNA [Adam Walsh Act]. The risk of enhanced detrimental effects for such offenders is sufficient and is not merely speculative.

XIV. Likewise, SORNA Guidelines as they relate to retroactivity would disadvantage person's who committed their offense post-SORNA by eliminating any lower risk levels available in a previous registration and notification system pre SORNA. This possibility, again, is sufficient and should not be described as most speculative. While the issue of what constitutes an Ex Post Facto violation is often a difficult one retroactive application of the SORNA Guidelines as they relate to retroactivity will likely violate the Constitution' s prohibition on Ex Post Facto laws.

XV. We the people have the documented statements of legislators from local levels to the US Congress, statements of vengeance and punishment contrary to their falsely applied statements of intent for public safety in Bills they sponsor or support. We the people know the effects of punishment, and are not inclined to believe in US Supreme Court Justices who have no high regard for the United States Constitution and its human rights, liberties, and protections.

XVI. We the people know when laws are made out of a desire to punish, when laws far exceed a purpose of civil regulation, and lawmakers make no reasonable or honest effort to device categories of dangerousness egarding people labeled as sex offender. The lack of due diligence to ensure that the low to no risk are not included with the high risk makes these laws, rules, and regulations nothing more than instruments of punishment. SORNA is such a set of rules and regulations that far exceed what is necessary to control the high risk sex offender.

XVII. I will refer the US Attorney General to an analysis of Supplement to Adam Walsh Act - Part II (May 2006) from the office of Defender Services.

XVIII. The National Association of Criminal Defense Lawyers with a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges also say your use of Smith v. Doe as the authority for imposing ex post facto is clearly wrong, and does not stand in the face of the judicial reasoning applied in Smith v. Doe which was a civil case, not a criminal case.

XIX. I further find a statement in the Interim Rules concerning persuading states that have ex an post facto provision in their state constitutions to ignore (implied) their state constitutions and case law that have developed for more than 100 years, as is the case in Colorado.

XX. Many people over years and decades have successfully reintegrated into the general population after having served their prison, parole, or probation periods. Some are still on one or more registries as required by current laws in individual jurisdictions. The proposed guidelines relating to registration requirements, tiers, and notification will uproot peoples lives, to put them on public registries and to subject them to federal penalties is absurd and is not for the public safety as SORNA so boldly asserts by referencing Smith v. Doe.

XXI. The application of ex post facto is arbitrary and capricious. On these two facts alone the assertion of retroactivity as valid not

only is misapplied but unlawful. To assert justification for ex post facto based on Smith v. Doe authority falls flat on its face as the sole authority.

XXII. Where is public safety served when stable lives are uprooted without due cause, based on a wrongfully perceived notion that all persons labeled as sex offender need be controlled. The uprooting of lives, making private and sensitive information such as where one works open to the public for public abuse, and abuse from fraudsters, identity thieves, and vigilantes, does not serve the public safety but sets conditions for mass trauma, misinformation, disinformation, myths, and outright lies against people who are living stable constructive lives. There are no other crime or offense types that enjoy such ready and easy access to personal information.

XXIII. Furthermore the collaboration with John Walsh who for decades have re-victimized his dead son, and who has a vested business interest again demonstrates the arbitrary method of applying ex post facto.

XXIV. I further find the rules and regulations of SORNA, and the proposed guidelines are not keeping in good faith with Executive Order 13132, section 2, where it " ...discourages one-size-fits- all approaches to public policy problems. It urges maximum state administrative discretion to carry out federal laws and regulations. It suggests deference to states when making recommendations that affect state policymaking authority or when there are uncertainties regarding the federal government's constitutional or statutory authority".

XXV. States ought not be pressured by the US Attorney General or his office to put aside any or all provisions of its state constitution regarding retroactivity, and states ought not be pressured by the US Attorney General or his office, or the SMART Office to put aside due process of law whereby a person is given no means to contest an unlawfully applied federal regulation, rule, or law that is in conflict with a state and its laws, rules, regulations, and/or constitution.

XXVI. Further considering paragraph XVI to part E of the Guidelines concerning Implementation, part E states "Beyond the general standard of substantial implementation, SORNA § 125(b) includes special provisions for cases in which the highest court of a jurisdiction has held that the jurisdiction' s constitution is in some respect in conflict with the SORNA requirements. If a jurisdiction believes that it faces such a situation, it should inform the SMART Office. The SMART Office will then work with the jurisdiction to see whether the problem can be overcome, as the statute provides".

XXVII. In paragraph XVII one can readily see where the US Attorney General in conjunction with the SMART Office will attempt to pressure

states to set aside any conflict a state constitution may have with the implementation requirements of SORNA. Threatening states with financial sanctions is also in violation of the spirit of Executive Order 13132.

Summary

Retroactivity

To enforce retroactivity is not about public safety for in its effect the US Attorney General, the SMART office, and mostly republican legislators and some democrats in Congress are deliberately reaching back in time to ruin the lives of people who have long since paid there legal dues to society and to the state as was required by laws current at the time of a person's conviction.

Enforcing retroactivity is not about child safety as it destabilizes people who have paid their dues to society as was required by current laws at the time of a person's conviction.

Reaching back in time to punish, yes punish, for the stated intent of public safety does not agree with the intended consequences that are now known when people are deliberately destabilized in mass, using umbrella laws. Umbrella laws testify to the fact that enforcement of retroactivity is intended to do harm on a large scale without recourse or redress.

Repeal the retroactivity it is not in the best interest of the states, society, or of law enforcement to deliberately destabilize people, to make them jobless and homeless, for these have been the intended consequences of other umbrella laws. We know what happens with umbrella laws.

Places of Employment

To publicly post on sex offender websites the place where a person works is not in the interest of public safety, nor that of child safety. Posting people's place of employment on a public sex offender websites for easy and unfettered access regardless of the stated intent is intended to generate mass unemployment of people who have not offended since their last conviction. To presume an ex offender will sexually reoffend is repugnant and insufficient.

Remove from SORNA the publishing of a person's place of employment from being posted on public sex offender websites; it has nothing to do with public safety.

Umbrella Laws, Rules, and Regulations

Stop the umbrella mentality. Focus on people who are known to be high risk individuals. Get back to the original intents of Meagan's Law,

the Jacob Wetterling Act, and other child named laws focusing on people who are the most dangerous to society.

Registered Sex Offender

Not everyone who has to register is a felon. Not everyone who has to register ever molested a child or other person. Most sex offender registries are umbrella registries sucking in people who do not belong on public registries but who may belong on registries that are for law enforcement only. Public sex offender registries are not for law enforcement, they are for all types of vigilante and revenge actions from certain types of people in the public domain. Individuals who access such registration sites do so to cause harm, physical or otherwise. Vigilantism is well documented and can be supplied at a moments notice.

Stop and desist the unjust laws, rules, and regulations. Stop and desist from threatening states to conform to the emotionally inspired rules and regulations of SORNA's retroactivity and umbrella sex offender registries. Stop and desist from efforts to weaken the United States Constitution and the Constitutions of individual states.

Sex Offender Registry Suggestion

There is no sound reason to publish other than basic information about a person on a sex offender website. The public has no constitutional right to be handed on a platter information about another Human Being. If people want to know who is on a sex offender registry they should have to apply for that knowledge as was done before publishing on the Internet. Follow Colorado's lead. Colorado post only high risk individuals on its public sex offender websites. Low to no-risk individuals register on a for law enforcement registry only internal registry just as it should be done. Colorado stopped the umbrella effect and recognized it needed to separate the high risk from the low to no-risk individuals.

Restructure the SORNA registration requirements to reflect that of Colorado's two level registration systems.

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Thank you once again,

Mrs. Margaret R. Jenkins

[redacted]

[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Sunday, June 10, 2007 1:13 AM
**To:** GetSMART
**Subject:** Comments on SMART

COMMENTARY ON THE PROPOSED GUIDELINES May 2007

Section II through X of the Proposed Guidelines

Specifically relating to Retroactivity, Registration, & Tier Levels

Reference: DEPARTMENT OF JUSTICE

[Docket No. OAG 121; A.G. Order No. 2880?2007].

RIN 1105?AB28

The ex post facto clause of the Sex Offender Registration and Notification Act must be redacted it has no case law as authority for its use. Smith v. Doe is not that authority as is referenced to in the Interim Rules for SORNA goes beyond the ruling in Smith v. Doe.

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IV. The NACDL has a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America?s criminal justice system.

In these comments NACDL urges the Attorney General to repeal 28 CFR Part 72 because the regulation, as promulgated, violates the ex post facto clause of the United States Constitution, and will cause widespread confusion and instability in the efforts of many convicted sex offenders to comply with the law and

maintain a non-offending lifestyle. http://www.naedi.org/

VI. ?As described in Adam Walsh II at 38-43, the registration and notification requirements of SORNA alone (aside from the criminal provision) are far more punitive than the Alaska law at issue in Smith v. Doe. Most importantly, the issue before the Court in Smith v. Doe was whether the registration requirement was a retroactive punishment prohibited by the Ex Post Facto Clause, not, as here, a criminal statute that in some cases subjects people to federal prosecution based on conduct that was not formerly a crime at all, and in other cases increases the federal penalty for their conduct from one to ten years?. See United States v. Bobby Smith, __ F.Supp.2d __, 2007 WL 735001 (E.D. Mich., Mar. 8, 2007). (See http://www.fd.org/odstb_AdamWalsh.htm).

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VIII. SORNA furthermore increases the [dangerousness] tier level on a sex offender, who's crime was prior to the enactment of the SORNA [Adam Walsh Act], and the enactment of SORNA [Sex Offender Registration and Notification Act], and upon those sex offenders who are still required to register. Through the assumption or presumption of a sex offenders likelihood of [repeat] sexual recidivism, SORNA cites no authority for justification of increasing the [dangerousness] level on past and[or] present sex offenders other than an imprecise belief that sex offenders in Toto suffer a higher sexual recidivism rate than other offender types, which is not born out by the governments own Department of Justice Statistics, and other well known statistics findings] that support the Department of Justice own findings. Increasing the dangerousness] level on person's who have served their times prior to the enactment of SORNA [Adam Walsh Act] without a hearing or due process assumes in the application of dangerousness level changes, that sex offenders regardless of the severity of past crime[s] are all the same, drawing concerns of ex post facto violation of the US Constitution relating to ex post facto.

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XIX. I further find a statement in the Interim Rules concerning persuading states that have ex an post facto provision in their state constitutions to ignore [implied by wording] their state institutions and case law that have developed for more than 100 years, is the case in Colorado.

XX. Many people over years and decades have successfully reintegrated into the general population after having served their prison, parole, or probation periods. Some are still on one or more registries as required by current laws in individual jurisdictions. The proposed guidelines relating to registration requirements, tiers, and notification will uproot peoples lives, to put them on public registries and to subject them to federal penalties that they otherwise would not have suffered is absurd and is not for the public safety as SORNA so boldly asserts by referencing Smith v. Doe. Antidotal and factual data clearly imposes a clear understanding that public safety is not served, as is clearly demonstrated respecting residency restrictions upon [ALL] sex offenders.

XXI. The application of ex post facto is arbitrary and capricious for [ex] sex offenders are not allowed or given recourse to set matters straight. Furthermore the government in SORNA presumes an unreasonable presumption of a high likelihood of committing another sex offense as a group or population, a presumption that is clearly false based on reports and data of the highest sources of judicial, legal, and academic integrity. On these facts alone the assertion of retroactivity as valid not only is misapplied but unlawful. To assert justification for ex post facto based on Smith v. Doe authority falls flat on its face the sole authority.

XXII. Where is public safety served when stable lives are uprooted without due cause, based on a wrongfully perceived notion that all persons labeled as sex offender need be controlled. The uprooting of lives, making private and sensitive information such as where one works open to the public for public abuse, and abuse from fraudsters, identity thieves, and vigilantes, does not serve the public safety but sets conditions for mass trauma, misinformation, disinformation, myths, and outright lies against people who are living stable constructive lives. There are no other crime or offense types that enjoy such ready and easy access to public information.

XXIII. Furthermore the collaboration with John Walsh who for decades have re-victimized his dead son, and who has a vested business interest again demonstrates the arbitrary method of applying ex post facto. There is no factual basis that his son?s death was caused by an act of sexual assault or sexual abuse by any known sex offender, let alone a registered sex offender. Information derived and used by the Federal Government in the making of the Adam Walsh Act clearly keeps silent facts that negate, and hold deliberately harmful information[s] from the John Walsh Organization.

XV. I further find the rules and regulations of SORNA, and the proposed guidelines are not keeping in good faith with Executive Order 13132, section 2, where it ? ?discourages one-size-fits-all approaches to public policy problems. It urges maximum state administrative

discretion to carry out federal laws and regulations. It suggests deference to states when making recommendations that affect state policymaking authority or when there are uncertainties regarding the federal government's constitutional or statutory authority?.

XXV. States ought not be pressured by the US Attorney General or his office to put aside any or all provisions of its state constitution regarding retroactivity, and states ought not be pressured by the US Attorney General or his office, or the SMART Office to put aside due process of law whereby a person is given no means to contest an unlawfully applied federal regulation, rule, or law that is in conflict with a state and its laws, rules, regulations, and/or constitution.

XXVI. Further considering paragraph XVI to part E of the Guidelines concerning Implementation, part E states ?Beyond the general standard of substantial implementation, SORNA § 125(b) includes special provisions for cases in which the highest court of a jurisdiction has held that the jurisdiction?s constitution is in some respect in conflict with the SORNA requirements. If a jurisdiction believes that it faces such a situation, it should inform the SMART Office. The SMART Office will then work with the jurisdiction to see whether the problem can be overcome, as the statute provides?.

XXVII. In paragraph XVII one can readily see where the US Attorney General in conjunction with the SMART Office will attempt to pressure states to set aside any conflict a state constitution may have with the implementation requirements of SORNA [clearly directed at implementation of retroactivity]. Threatening states with financial sanctions is also violation of the spirit of Executive Order 13132.

Summary

Retroactivity

To enforce retroactivity is not about public safety for in its effect the US Attorney General, the SMART office, and mostly republican legislators and some democrats in Congress are deliberately reaching back in time to ruin lives of people who have long since paid their legal dues to society and to the state as was required by laws current at the time of a person?s conviction.

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Stop and desist the unjust laws, rules, and regulations. Stop and desist from threatening states to conform to the emotionally inspired rules and regulations of SORNA?s retroactivity and umbrella sex offender gistries. Stop and desist from efforts to weaken the United States nstitution and the Constitutions of individual states.

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**Rosengarten, Clark**

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**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:48 AM
**To:** Rosengarten, Clark
**Subject:** FW: Reference: DEPARTMENT OF JUSTICE [Docket No. OAG 121; A.G. Order No. 2880-2007 RIN 1105-AB28
**Attachments:** SORNA Proposed Guidelines Comments.doc

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**From:** Rich[redacted]
**Sent:** Sunday, July 29, 2007 3:15 PM
**To:** GetSMART
**Subject:** Reference: DEPARTMENT OF JUSTICE [Docket No. OAG 121; A.G. Order No. 2880-2007 RIN 1105-AB28

Richard H. Schalich
[redacted]

**COMMENTARY ON THE PROPOSED GUIDELINES May 2007**
**Section II through X of the Proposed Guidelines**
**Specifically relating to Retroactivity, Registration, & Tier Levels**

**Reference: DEPARTMENT OF JUSTICE**
**[Docket No. OAG 121; A.G. Order No. 2880–2007].**
**RIN 1105–AB28**

Comments may be submitted to GetSMART@usdoj.gov

## Executive Summary

### Retroactivity

To enforce retroactivity, is not about public safety. For, in its effect, the US Attorney General, the SMART office, and Legislators in Congress, are deliberately reaching back in time to ruin the lives of people who have long since paid their legal dues to society and to the State, as required by law, at the time of a person's conviction.

Reaching back in time to punish, yes, I said punish, for the stated intent of public safety, does not agree with the intended consequences that occur when people are deliberately destabilized en mass, by the use of umbrella laws. Umbrella laws testify to the fact that enforcement of retroactivity is intended to do harm, on a large scale, without recourse or redress.

Repeal the retroactivity. It is not in the best interest of the States, society, or of law enforcement, to deliberately destabilize people making them jobless and homeless. For, this has been the intended consequences of other umbrella laws.

### Places of Employment

To publicly post on sex offender websites, the place where a person works is not in the interest of public safety,

nor that of child safety. The posting of a Registrant's place of employment on public websites, for easy and unfettered access by the public, will result in the mass unemployment of people who have not offended since their first conviction. It will also punish employers whose only crime was to allow someone on the Registry to be a tax paying, productive citizen. To presume a former offender will sexually re-offend is ridiculous, unfounded by true research, repugnant and intended to be further punishment.

Remove from SORNA the publication of a Registrant's place of employment on publicly accessible websites. It has nothing to do with public safety and everything to do with ex post facto punishment.

**Umbrella Laws, Rules, and Regulations**

Stop the umbrella mentality and focus on people who are known to be high risk individuals. Get back to the original intent of Meagan's Law, the Jacob Wetterling Act, and other laws named for children. Allow law enforcement to focus on people who are the most dangerous to society.

**Registered Sex Offenders**

Only a small percentage, 5-6% of those who are forced to register, are repeat or predatory offenders. Not everyone who has to register has molested a child or adult. Sex offender registries are umbrella registries sucking in people who do not belong on public registries, but who may belong on registries that are for law enforcement only. Public sex offender registries are not for law enforcement. They are for harassment, vigilante and revenge actions from people in the public domain. Individuals who access such registration sites often do so to cause harm, physical or otherwise, to the person listed and their family. Vigilantism is well documented and can be supplied easily.

Cease and desist the passing of unjust laws. Cease and desist the coercing and threatening States, to conform to the emotion based portions of SORNA's retroactivity and umbrella sex offender registries. Cease and desist from efforts to weaken the United States Constitution and the Constitutions of individual states.

**Sex Offender Registry Suggestion**

There is no sound reason to publish anything other than basic information about a person on a sex offender website. The public has no Constitutional right to be allowed to easily access personal information about another citizen. If people want to know who is on a sex offender registry, they must be required to apply for that information with law enforcement. Do not publish this on the Internet so that anyone can anonymously access it.

Follow Colorado's lead. Colorado currently posts only high risk individuals on its public sex offender websites. Low to no-risk individuals register for law enforcement access only registry. This is as it should be. Colorado stopped the umbrella effect and recognized it needed to separate the high risk from the low to no-risk individuals.

Restructure the SORNA registration requirements to a Multi-Tier system that all States must follow and eliminate the retroactivity for all sex offenders. They are not a homogenous population and ought not to be treated as such.

Eliminate the registration of all low to no risk person's. Or, at least, take years of an offense free, productive life into account. Provide registries and notification for person's who had a predatory offense against a child, bringing back the original intent of Meagan's Law, the Pam Lynchner Act, the Jacob Wetterling Act, and all the other Acts and laws named for children. All of the aforementioned Acts and laws originally attempted to focus on child molesters of the predatory type. The adulteration of all these Acts and laws that has since occurred has severely hampered and reduced the effectiveness of sex offender registration and notification and law enforcement's ability to effectively do their job.

**Lastly;**

*Respect* the Constitution.
*Remove* emotion and the need for revenge from the passage and enforcement of laws.
*Use* accredited studies and sources as a basis for laws.
*Commission* studies to actually review the efficacy of current laws.
*Realize* that over 90% of offenders are first and only time offenders destined to never repeat their crime.
Be Smart on Crime, as the name of your office says you should be.
*Restorative* not revenge based Justice is the key.

**Detailed Commentary**

I. The ex post facto clause of the Sex Offender Registration and Notification Act must be redacted it has no case law as authority for its use. Smith v. Doe is not that authority as it is referenced to in the Interim Rules. For, SORNA goes beyond the ruling in Smith v. Doe. The NACDL has agreed with this in their comment of 04/30/07 as follows.

II. Re: NACDL Comments on OAG Docket No. 117; the Attorney General's Interim Rule Applying the Provisions of the Adam Walsh Act (Pub. L. 109-248) Retrospectively to Offenders Whose Convictions Pre-Date The Enactment of the Legislation

III. The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide, non-profit, voluntary association of criminal defense lawyers founded in 1958 to improve the quality of representation of the accused and to advocate for the preservation of constitutional rights in criminal cases.

IV. The NACDL has a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

V. In these comments NACDL urges the Attorney General to **repeal 28 CFR Part 72** because the regulation, as promulgated, violates the ex post facto clause of the United States Constitution, and will cause widespread confusion and instability in the efforts of many convicted sex offenders to comply with the law and maintain a non-offending lifestyle. ***http://www.nacdl.org/***

VI. "As described in Adam Walsh II at 38-43, the registration and notification requirements of SORNA alone (aside from the criminal provision) are far more punitive than the Alaska law at issue in *Smith v. Doe.* Most importantly, the issue before the Court in *Smith v. Doe* was whether the registration requirement was a retroactive punishment prohibited by the *Ex Post Facto* Clause, not, as here, a criminal statute that in some cases subjects people to federal prosecution based on conduct that was not formerly a crime at all, and in other cases increases the federal penalty for their conduct from one to ten years". *See United States v. Bobby Smith*, __ F.Supp.2d __, 2007 WL 735001 (E.D. Mich., Mar. 8, 2007). (See http://www.fd.org/odstb_AdamWalsh.htm).

VII. The SORNA would add new tier levels to the punishment of old [past] offenses that have been served prior to enactment of SORNA or the Adam Walsh Act. Retroactive application of the change would likely violate the Ex Post Facto Clause. See William P. Wade, A Treatise on the Operation and Construction of Retroactive Laws, as Affected by Constitutional Limitations and Judicial Interpretations § 273, at 318-19.

VIII. SORNA furthermore increases the [dangerousness] tier level on a sex offender, who's crime was prior to the enactment of the Adam Walsh Act, and the enactment of SORNA [Sex Offender Registration and Notification Act], and upon those sex offenders who are still required to register. Through the assumption or presumption of a sex offenders likelihood of [repeat] sexual recidivism, SORNA cites no authority for justification of increasing the [dangerousness] level on past and[or] present sex offenders other than an inaccurate belief that sex offenders "in Toto" suffer a higher sexual recidivism rate than other offender types. This is not born out by the governments own Department of Justice Statistics, and other well known statistical findings that support the Department of Justice's findings. Increasing the dangerousness level on person's who have served their time prior to the enactment of SORNA [Adam Walsh Act] without a hearing or due process assumes in the application of dangerousness level changes, that sex offenders regardless of the severity of past crime(s), are all the same, yet another violation of the "ex post facto "clause of the US Constitution.

IX. "Every law, which makes criminal an act that was innocent when done, or which inflicts a greater punishment than the law annexed to the crime when committed, is an ex post facto law within the prohibition of the Constitution". Increasing dangerousness of a person retroactively is an ex post facto

prohibition. By providing for registration retroactivity along with the increase of a person's dangerousness level [tier], and adding or extending the amount of registration time a person would not have otherwise had, in Toto is an Article 1 ex post facto prohibition of the United States Constitution.

X. By changing the rules of procedure in force at the time an offense was committed and adjudicated in a way substantially disadvantageous to people so labeled as sex offender, is a prohibition of the United States Constitution, Article 1.

XI. Through various cases, the US Supreme Court has affirmed that when the range of available prison terms is legislatively enhanced, the change in sentencing guidelines cannot be applied retroactively. This same reasoning must be applied when the retroactivity guidelines of SORNA [Adam Walsh Act] legislatively enhances the dangerousness tier on sex offenders adjudicated prior to enactment of SORNA [Adam Walsh Act].

XII. The SORNA Guidelines change the conditions that were applicable to an offender's past crime or offense, and therefore may not be applied retroactively. These changes furthermore are not regulatory in intent or application for a burden is enhanced upon people who otherwise had their prior burdens to the state satisfied. Therefore, they are putative.

XIII. Given the Supreme Court's Ex Post Facto jurisprudence, there are constitutional concerns about retroactively in implementing the SORNA Guidelines. The SORNA Guidelines would disadvantage person's who committed their offense prior to the Adam Walsh Act [SORNA] by subjecting the offender to higher criminal penalties, and a higher risk of civil loses that otherwise would not or may not have been suffered prior to the enactment of SORNA [Adam Walsh Act]. The risk of enhanced punishment effects for such offenders is sufficient and is not merely speculative.

XIV. Likewise, SORNA Guidelines as they relate to retroactivity would disadvantage person's who committed their offense post-SORNA by eliminating any lower risk levels available in a previous registration and notification system pre SORNA. This possibility, again, is sufficient and must not be described as speculative. While the issue of what constitutes an Ex Post Facto violation is often a difficult one, retroactive application of the SORNA Guidelines will violate the Constitution's prohibition on Ex Post Facto laws.

XV. We, the people, have the documented statements from legislators at the local level to the US Congress. Statements of vengeance and punishment contrary to their falsely applied statements of intent for public safety in Bills they sponsor or support. We, the people, know the effects of punishment, and are not inclined to believe in US Supreme Court Justices which have no regard for the United States Constitution and its human rights and protection of liberty.

XVI. We, the people, know when laws are forged out of a desire to punish. When laws far exceed a purpose of civil regulation, and lawmakers make no reasonable or honest effort to devise categories of dangerousness. The lack of due diligence to ensure that the low to no risk former offenders are not included with the high risk multiple offenders makes these laws, rules, and regulations nothing more than instruments of punishment. SORNA is such a set of rules and regulations that far exceed what is necessary to control the one time, former offender.

XVII. I will refer the US Attorney General to an analysis of Supplement to Adam Walsh Act - Part II (May 2006) from the office of Defender Services.

XVIII. The National Association of Criminal Defense Lawyers with a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges state that use of Smith v. Doe as the authority for imposing ex post facto is clearly wrong. It does not stand in the face of the judicial reasoning applied in Smith v. Doe, a civil case, not a criminal case.

XIX. I further find a statement in the Interim Rules concerning coercion of states that have ex an post facto provision in their State Constitution to ignore (implied) the "ex post facto" clause and case law that has developed for many years.

XX. Many people over years and decades have successfully reintegrated into the general population after having served their prison, parole, or probation periods. Some are still on one or more registries as required by current law in individual jurisdictions. The proposed guidelines relating to registration requirements, tiers, and notification will uproot people's lives. To put them on public registries and to subject them to federal penalties is absurd and is not for the public safety as SORNA so boldly asserts by referencing Smith v. Doe.

XXI. The application of ex post facto is arbitrary and capricious. On these two facts alone, the assertion of retroactivity as valid not only is misapplied but unlawful. To assert justification for ex post facto based on Smith v. Doe authority falls flat on its face.

XXII. Where is public safety served when stable lives are uprooted without due cause. An action based on a wrongfully perceived notion that all persons labeled as sex offenders need be controlled. The uprooting of lives and making private and sensitive information, such as where one works, creates a clear case of for government sanctioned abuse. Abuse from fraudsters, identity thieves, and vigilantes, does not serve the public safety but sets conditions for mass trauma, misinformation, disinformation, myths, and outright lies against people who are living stable constructive lives. There are no other persons who committed a crime or offense type that have all of their private and personal information readily available to everyone and anyone. This is a government created discrimination.

XXIII. Furthermore the collaboration with John Walsh, who for decades has re-victimized his dead son, and who has a vested business interest in doing so, again, in my and other's opinion, demonstrates the arbitrary method of applying ex post facto.

XXIV. I further find the rules and regulations of SORNA, and the proposed guidelines are not keeping in good faith with Executive Order 13132, section 2, where it " ... discourages one-size-fits-all approaches to public policy problems." It urges maximum State administrative discretion to carry out federal laws and regulations. It suggests deference to the States when making recommendations that affect State policymaking authority or when there are uncertainties regarding the Federal Government's Constitutional or statutory authority.

XXV. States must not be pressured by the US Attorney General, or his Office, to put aside any or all provisions of its' State Constitution regarding retroactivity, and States must not be pressured by the US Attorney General, his Office or the SMART Office to put aside due process of law whereby a person is given no means to contest an unlawfully applied federal regulation, rule, or law that is in conflict with a State and its laws, rules, regulations, and/or Constitution, let alone true Judicial sense.

XXVI. Further, considering paragraph XVI to part E of the Guidelines concerning implementation, part E states "Beyond the general standard of substantial implementation, SORNA § 125(b) includes special provisions for cases in which the highest Court of a Jurisdiction has held that the Jurisdiction's Constitution is in some respect in conflict with the SORNA requirements. If a Jurisdiction believes that it faces such a situation, it should inform the SMART Office. The SMART Office will then work with the Jurisdiction to see whether the problem can be overcome, as the statute provides".
This is a clear case of Federal control over a State's right to abide by its' own Constitution.

XXVII. In paragraph XVII, one can readily see where the US Attorney General, in conjunction with the SMART Office, will attempt to pressure States to set aside any conflict a State Constitution may have with the implementation requirements of SORNA. This is achieved by threatening States with financial sanctions and is also in violation of the spirit of Executive Order 13132. It is also coercion by the Federal Government of the worst sort.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:42 PM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121; A.G. Order No. 28802007].

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**From:** [redacted]
**Sent:** Tuesday, July 24, 2007 10:44 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121; A.G. Order No. 28802007].

**COMMENTARY ON THE PROPOSED GUIDELINES May 2007**
**Section II through X of the Proposed Guidelines**
**Specifically relating to Retroactivity, Registration, & Tier Levels**

**Reference: DEPARTMENT OF JUSTICE**
**[Docket No. OAG 121; A.G. Order No. 2880□2007].**
**RIN 1105□AB28**

I. **The ex post facto clause of the Sex Offender Registration and Notification Act must be redacted it has no case law as authority for its use. Smith v. Doe is not that authority as is referenced to in the Interim Rules for SORNA goes beyond the ruling in Smith v. Doe.**

II. **Re: NACDL Comments on OAG Docket No. 117; the Attorney General□s Interim Rule Applying the Provisions of the Adam Walsh Act (Pub. L. 109-248) Retrospectively to Offenders Whose Convictions Pre-Date The Enactment of the Legislation**

III. The National Association of Criminal Defense Lawyers (□NACDL□) is a nationwide, non-profit, voluntary association of criminal defense lawyers founded in 1958 to improve the quality of representation of the accused and to advocate for the preservation of constitutional rights in criminal cases.

IV. The NACDL has a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America□s criminal justice system.

V. In these comments NACDL urges the Attorney General to **repeal 28 CFR Part 72** because the regulation, as promulgated, violates the ex post facto clause of the United States Constitution, and will cause widespread confusion and instability in the efforts of many convicted sex offenders to comply with the law and maintain a non-offending lifestyle. ***http://www.nacdl.org/***

VI. □As described in Adam Walsh II at 38-43, the registration and notification requirements of SORNA alone (aside from the criminal provision) are far more punitive than the Alaska law at issue in *Smith v. Doe.* Most importantly, the issue before the Court in *Smith v. Doe* was whether the registration requirement was a retroactive punishment prohibited by the *Ex Post Facto* Clause, not, as here, a criminal statute that in some cases subjects people to federal prosecution based on conduct that was not formerly a crime at all, and in other cases increases the federal penalty for their conduct from one to ten years□. *See United States v. Bobby Smith*, __ F.Supp.2d __, 2007 WL 735001 (E.D. Mich., Mar. 8, 2007). (See http://www.fd.org/odstb_AdamWalsh.htm).

VII. The SORNA would add new tier levels to the punishment of old [past] offenses that have been served prior to enactment of SORNA or the Adam Walsh Act. Retroactive application of the change would likely violate the Ex Post Facto Clause. See William P. Wade, A Treatise on the Operation and Construction of Retroactive Laws, as Affected by Constitutional Limitations and Judicial Interpretations ' 273, at 318-19.

VIII. SORNA furthermore increases the [dangerousness] tier level on a sex offender, who's crime was prior to the enactment of the Adam Walsh Act, and the enactment of SORNA [Sex Offender Registration and Notification Act], and upon those sex offenders who are still required to register. Through the assumption or presumption of a sex offenders likelihood of [repeat] sexual recidivism, SORNA cites no authority for justification of increasing the [dangerousness] level on past and[or] present sex offenders other than an imprecise belief that sex offenders in Toto suffer a higher sexual recidivism rate than other offender types, which is not born out by the governments own Department of Justice Statistics, and other well known statistics [findings] that support the Department of Justice own findings. Increasing the [dangerousness] level on person's who have served their times prior to the enactment of SORNA [Adam Walsh Act] without a hearing or due process assumes in the application of dangerousness level changes, that sex offenders regardless of the severity of past crime(s) are all the same, drawing concerns of ex post facto violation of the US Constitution relating to ex post facto.

IX. □Every law, which makes criminal an act that was innocent when done, or which inflicts a greater punishment than the law annexed to the crime when committed, is an ex post facto law within the prohibition of the Constitution□. Increasing dangerousness of a person retroactively is an ex post facto prohibition. By providing for registration retroactivity along with the increase of a person□s dangerousness level [tier], and adding or extending the amount of registration time a person would not have otherwise had, in Toto is an Article 1 ex post facto prohibition of the United States Constitution.

X. Also by changing the rules of procedure in force at the time an offense was committed and adjudicated in a way substantially disadvantageous to people so labeled as sex offender is a prohibition of the United States Constitution, Article 1.

XI. Through various cases, the US Supreme Court has affirmed that when the range of available prison terms is legislatively enhanced, the change in sentencing guidelines cannot be applied retroactively. This same reasoning can be applied when the retroactivity guidelines of SORNA [Adam Walsh Act] legislatively enhances the [dangerousness] tier on sex offenders adjudicated prior to enactment of SORNA [Adam Walsh Act].

XII. The SORNA Guidelines changes the conditions that were applicable to an offender□s past crime or offense, and therefore may not be applied retroactively. These changes furthermore are not regulatory in intent or application for a burden is enhanced upon people who otherwise had their prior burdens to the state satisfied.

XIII. Given the Supreme Court□s Ex Post Facto jurisprudence, there are constitutional concerns about retroactively implementing the SORNA Guidelines. The SORNA Guidelines would disadvantage person's who committed their offense prior to the Adam Walsh Act [SORNA] by subjecting the offender to higher criminal penalties, and a higher risk of civil loses that otherwise would not or may not have been suffered prior to the enactment of SORNA [Adam Walsh Act]. The risk of enhanced detrimental effects for such offenders is sufficient and is not merely speculative.

XIV. Likewise, SORNA Guidelines as they relate to retroactivity would disadvantage person's who committed their offense post-SORNA by eliminating any lower risk levels available in a previous registration and notification system pre SORNA. This possibility, again, is sufficient and should not be described as most speculative. While the issue of what constitutes an Ex Post Facto violation is often a difficult one retroactive application of the SORNA Guidelines as they relate to retroactivity will likely violate the Constitution□s prohibition on Ex Post Facto laws.

XV. We the people have the documented statements of legislators from local levels to the US Congress, statements of vengeance and punishment contrary to their falsely applied statements of intent for public safety in Bills they sponsor or support. We the people know the effects of punishment, and are

not inclined to believe in US Supreme Court Justices who have no high regard for the United States Constitution and its human rights, liberties, and protections.

**XVI.** We the people know when laws are made out of a desire to punish, when laws far exceed a purpose of civil regulation, and lawmakers make no reasonable or honest effort to device categories of dangerousness egarding people labeled as sex offender. The lack of due diligence to ensure that the low to no risk are not included with the high risk makes these laws, rules, and regulations nothing more than instruments of punishment. SORNA is such a set of rules and regulations that far exceed what is necessary to control the high risk sex offender.

**XVII.** I will refer the US Attorney General to an analysis of Supplement to Adam Walsh Act - Part II (May 2006) from the office of Defender Services.

**XVIII.** The National Association of Criminal Defense Lawyers with a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges also say your use of Smith v. Doe as the authority for imposing ex post facto is clearly wrong, and does not stand in the face of the judicial reasoning applied in Smith v. Doe which was a civil case, not a criminal case.

**XIX.** I further find a statement in the Interim Rules concerning persuading states that have ex an post facto provision in their state constitutions to ignore (implied) their state constitutions and case law that have developed for more than 100 years, as is the case in Colorado.

**XX.** Many people over years and decades have successfully reintegrated into the general population after having served their prison, parole, or probation periods. Some are still on one or more registries as required by current laws in individual jurisdictions. The proposed guidelines relating to registration requirements, tiers, and notification will uproot peoples lives, to put them on public registries and to subject them to federal penalties is absurd and is not for the public safety as SORNA so boldly asserts by referencing Smith v. Doe.

**XXI.** The application of ex post facto is arbitrary and capricious. On these two facts alone the assertion of retroactivity as valid not only is misapplied but unlawful. To assert justification for ex post facto based on Smith v. Doe authority falls flat on its face as the sole authority.

**XXII.** Where is public safety served when stable lives are uprooted without due cause, based on a wrongfully perceived notion that all persons labeled as sex offender need be controlled. The uprooting of lives, making private and sensitive information such as where one works open to the public for public abuse, and abuse from fraudsters, identity thieves, and vigilantes, does not serve the public safety but sets conditions for mass trauma, misinformation, disinformation, myths, and outright lies against people who are living stable constructive lives. There are no other crime or offense types that enjoy such ready and easy access to personal information.

**XXIII.** Furthermore the collaboration with John Walsh who for decades have re-victimized his dead son, and who has a vested business interest again demonstrates the arbitrary method of applying ex post facto.

**XXIV.** I further find the rules and regulations of SORNA, and the proposed guidelines are not keeping in good faith with Executive Order 13132, section 2, where it □ □discourages one-size-fits-all approaches to public policy problems. It urges maximum state administrative discretion to carry out federal laws and regulations. It suggests deference to states when making recommendations that affect state policymaking authority or when there are uncertainties regarding the federal government's constitutional or statutory authority□.

**XXV.** States ought not be pressured by the US Attorney General or his office to put aside any or all provisions of its state constitution regarding retroactivity, and states ought not be pressured by the US Attorney General or his office, or the SMART Office to put aside due process of law whereby a person is given no means to contest an unlawfully applied federal regulation, rule, or law that is in conflict with a state and its laws, rules, regulations, and/or constitution.

**XXVI.** Further considering paragraph XVI to part E of the Guidelines concerning Implementation, part E

states ||Beyond the general standard of substantial implementation, SORNA ' 125(b) includes special provisions for cases in which the highest court of a jurisdiction has held that the jurisdiction[]s constitution is in some respect in conflict with the SORNA requirements. If a jurisdiction believes that it faces such a situation, it should inform the SMART Office. The SMART Office will then work with the jurisdiction to see whether the problem can be overcome, as the statute provides[].

**XXVII.** In paragraph XVII one can readily see where the US Attorney General in conjunction with the SMART Office will attempt to pressure states to set aside any conflict a state constitution may have with the implementation requirements of SORNA. Threatening states with financial sanctions is also in violation of the spirit of Executive Order 13132.

**Summary**

**Retroactivity**

To enforce retroactivity is not about public safety for in its effect the US Attorney General, the SMART office, and mostly republican legislators and some democrats in Congress are deliberately reaching back in time to ruin the lives of people who have long since paid there legal dues to society and to the state as was required by laws current at the time of a person[]s conviction.

Enforcing retroactivity is not about child safety as it destabilizes people who have paid their dues to society as was required by current laws at the time of a person[]s conviction.

Reaching back in time to punish, yes punish, for the stated intent of public safety does not agree with the intended consequences that are now known when people are deliberately destabilized in mass, using umbrella laws. Umbrella laws testify to the fact that enforcement of retroactivity is intended to do harm on a large scale without recourse or redress.

Repeal the retroactivity it is not in the best interest of the states, society, or of law enforcement to deliberately destabilize people, to make them jobless and homeless, for these have been the intended consequences of other umbrella laws. We know what happens with umbrella laws.

**Places of Employment**

To publicly post on sex offender websites the place where a person works is not in the interest of public safety, nor that of child safety. Posting people[]s place of employment on a public sex offender websites for easy and unfettered access regardless of the stated intent is intended to generate mass unemployment of people who have not offended since their last conviction. To presume an ex offender will sexually reoffend is repugnant and insufficient.

Remove from SORNA the publishing of a person[]s place of employment from being posted on public sex offender websites; it has nothing to do with public safety.

**Umbrella Laws, Rules, and Regulations**

Stop the umbrella mentality. Focus on people who are known to be high risk individuals. Get back to the original intents of Meagan[]s Law, the Jacob Wetterling Act, and other child named laws focusing on people who are the most dangerous to society.

**Registered Sex Offender**

Not everyone who has to register is a felon. Not everyone who has to register ever molested a child or other person. Most sex offender registries are umbrella registries sucking in people who do not belong on public registries but who may belong on registries that are for law enforcement only. Public sex offender registries are not for law enforcement, they are for all types of vigilante and revenge actions from certain types of people in the public domain. Individuals who access such registration sites do so to cause harm, physical or otherwise. Vigilantism is well documented and can be supplied at a moments notice.

Stop and desist the unjust laws, rules, and regulations. Stop and desist from threatening states to conform to the emotionally inspired rules and regulations of SORNA□s retroactivity and umbrella sex offender registries. Stop and desist from efforts to weaken the United States Constitution and the Constitutions of individual states.

**Sex Offender Registry Suggestion**

There is no sound reason to publish other than basic information about a person on a sex offender website. The public has no constitutional right to be handed on a platter information about another Human Being. If people want to know who is on a sex offender registry they should have to apply for that knowledge as was done before publishing on the Internet. Follow Colorado□s lead. Colorado post only high risk individuals on its public sex offender websites. Low to no-risk individuals register on a for law enforcement registry only internal registry just as it should be done. Colorado stopped the umbrella effect and recognized it needed to separate the high risk from the low to no-risk individuals.

Restructure the SORNA registration requirements to reflect that of Colorado□s two level registration systems.

Eliminate the retroactivity for all sex offenders, they are not a homogenous population and ought not to be treated as such.

Eliminate the registration of all low to no risk person□s. Provide the registries and notification for person□s who had a predatory offense against a child, bringing back the original intent of Meagan□s Law, the Pam Lychner Act, the Jacob Wetterling Act, and all the other child named Acts and laws. All of the aforementioned Acts and laws originally attempted to focus on child molesters of the predatory type. The adulteration of all these Acts and laws that occurred since their enactments have severely hampered and reduced the effectiveness of sex offender registration and notification.

Thank You

Linda Pehrson

**Rogers, Laura**

**From:** [redacted]
**Sent:** Friday, July 13, 2007 1:59 PM
**To:** GetSMART
**Subject:** OAG DOCKET NO 121

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Stop the umbrella mentality. Focus on people who are known to be high risk individuals. Get back to the original intents of Meagan?s Law, the Jacob Wetterling Act, and other child named laws focusing on people who are the most dangerous to society.

Registered Sex Offender

Not everyone who has to register is a felon. Not everyone who has to register ever molested a child or other person. Most sex offender registries are umbrella registries sucking in people who do not belong on public registries but who may belong on registries that are for law enforcement only. Public sex offender registries are not for law enforcement, they are for all types of vigilante and revenge actions from certain types of people in the public domain. Individuals who access such registration sites do so to cause harm, physical or otherwise.
Vigilantism is well documented and can be supplied at a moments notice.

Stop and desist the unjust laws, rules, and regulations. Stop and desist from threatening states to conform to the emotionally inspired rules and regulations of SORNA?s retroactivity and umbrella sex offender registries. Stop and desist from efforts to weaken the United States Constitution and the Constitutions of individual states.

Sex Offender Registry Suggestion

There is no sound reason to publish other than basic information about a person on a sex offender website.
The public has no constitutional right to be handed on a platter information about another man Being. If people want to know who is on a sex offender registry they should have to apply for that knowledge as was done before publishing on the Internet. Follow Colorado?s lead. Colorado post only high risk individuals on its public sex offender websites. Low to no-risk individuals register on a for law enforcement registry only internal registry just as it should be done. Colorado stopped the umbrella effect and recognized it needed to separate the high risk from the low to no-risk individuals.

Restructure the SORNA registration requirements to reflect that of Colorado?s two level registration systems.

Eliminate the retroactivity for all sex offenders, they are not a homogenous population and ought not to be treated as such.

Eliminate the registration of all low to no risk person?s. Provide the registries and notification for person?s who had a predatory offense against a child, bringing back the original intent of Meagan?s Law, the Pam Lychner Act, the Jacob Wetterling Act, and all the other child named Acts and laws. All of the aforementioned Acts and laws originally attempted to focus on child molesters of the predatory type. The adulteration of all these Acts and laws that occurred since their enactments have severely hampered and reduced the effectiveness of sex offender registration and notification.

**Rogers, Laura**

Comp

**From:** Matt Stanton [redacted]
**nt:** Monday, July 30, 2007 12:02 PM
**:** GetSMART
**ubject:** SORNA

How did you ever come up with the phrase "SMART" in anything that pertains to SORNA? It is obvious our legislators and Attorney General are not "smart" enough to spell Constitution, let alone understand it.
Every portion of this new "feel good" law reeks of violations of our Constitution. Please get this correct and stop this nonsense before we spend billions of dollars on the worthless, grandstanding and supposedly 'tough on crime laws". These ex-offenders have paid their debt to
society; so leave them alone. Is this America or Nazi Germany? The
government I once loved makes me sick. Please reply with other than your standard, worthless form letter.

Thanks, Matt

**Rogers, Laura**

Should Contact Chad

**From:** [redacted]
**Sent:** Wednesday, June 13, 2007 9:15 PM
**To:** GetSMART
**Subject:** Re: sorna rules

Dear Ms Rogers,

The Supreme court has never heard a loss of liberty challenge to this law. your law would deny me the right to hear supreme court judges to speak in other states, unless I have an address to send a letter to. Your law gives me less time to fill out state forms than elected officials. Your law denies me the equal Liberty to run for office. The only thing that the supreme court allowed you to do is make us register retroactive, it has never said your means were legal. I feel if you can't convict a homeless person for failure to verify there address, since they have no home, Then how can you convict someone thats on a road trip. If teir 1 can be taken off the list, then so can teir 3, remember this law is solely based on having a record, and not the contents. Email addresses are not public record. I feel this law will be in court for the rest of both of our lives.

[redacted]

----- Original Message -----
**From:** GetSMART
**To:** [redacted]
**Sent:** Wednesday, June 13, 2007 8:35 AM
**Subject:** RE: sorna rules

Dear [redacted]

Thank you for taking the time to comment on the proposed Guidelines. If you would like to read more about the areas that you express concern about, specifically the fundamental fairness issue, the Supreme Court's decision that SORNA does not violate due process and the retroactivity of SORNA, I would suggest that you read the SORNA retroactivity rule which can be found at 72 FR 8894.

Best regards,

Laura Rogers
Director
SMART Office

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**From:** [redacted]
**Sent:** Thursday, May 31, 2007 6:50 PM
**To:** GetSMART
**Subject:** sorna rules

Dear Ms rogers,

I see a lack of due process for teir 3 people to be taking off the list. I also see a lack of due process when people are forced to carry the goverments mail box when they travel. this I feel can not be made retroactive.

[redacted]

**Rogers, Laura** Const. Chall.

**From:** [redacted]
**Sent:** Monday, June 25, 2007 9:09 AM
**To:** GetSMART
**Subject:** OAG Docket 121

This should be something that is left to the states to take care of, this is not a federal issue, this is a state issue. And if you are going to do this for RSOs then why aren't you doing it with the drug dealers and peddlers? Or the drunk drivers, drunk drivers kill more people and children in a year than any RSO.

The Federal government needs to focus on putting the checks and balances back in to the structure, for over the past 7 years they have been erroded to the point that we are heading into Socialist territory.

**Rogers, Laura** Const. Chall

**From:** [redacted]
**Sent:** Monday, June 25, 2007 9:38 AM
**To:** GetSMART
**Subject:** OAGDocket No 121

This law infringes on basic rights allowed by the constitution of this United States. For while you think that you are just providing laws for RSOs anyone that they are with, their families will ALL be affected. Not only that, but the offender has done their time, their rehab and have served their debt to society. They are allowed to become productive members of society again. This will only cause discrimination against them, vigilante crimes against them and their families. By allowing all of those things to go on, you are now going against our Bill of Rights which prohibits cruel and unusual punishment. Which to me anything where you are punished AFTER you have done your time and debt to society is cruel and unusual.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:45 PM
Rosengarten, Clark
**Subject:** FW: OAJ Docket No. 121

**Attachments:** SORNA.doc

SORNA.doc (26 KB)

-----Original Message-----
From: [redacted]
Sent: Wednesday, July 25, 2007 3:09 PM
To: GetSMART
Subject: OAJ Docket No. 121

I am attaching my response to SORNA legislation.

I am writing to you concerning the Sex Offender Registration and Notification Act (SORNA) recently passed by the Senate. This legislation needs to be sent back for corrections that are in my opinion unconstitutional and gives the American people the feeling that all these "harsh punishments" and "regulations" will prevent another sex offense. Preventing and correcting this problem should be our goal. SORNA will not give us that. It is an illusion that we are safer from such crimes.

First, I see this law as clearly "unconstitutional" because it violates the ex post factor clause of our Constitution. You are taking ex-offenders who have been through the justice system, completed their sentence, completed the required therapy and saying "We think some of you will do this again, so therefore here is your additional punishment" It is against all reasoning to further punish and isolate these ex-offenders because you believe some of them will re-offend. All the resources you are willing to spend to carry out these punishments would be better spent on preventing by education for families and therapy for the offender as well as the victim. The right therapy for the victim could help him or her NOT remain a victim for the rest of their life. We know that most child molestation is committed by either family members or friends or neighbors of the victim. The "stranger" is the exception , however, that is what we mostly hear about and that is what these laws are based on.

It concerns me that the law is "construed" to be "regulatory" and not punative. Getting a marriage license or drivers license is regulatory. This law is purely further punishment to ex-offenders who have done their time in prison and completed all therapy required and living their life the best they can with all the "retrictions" on them by the states as to where they can live and work. If this law remains as it is today, then no one is safe. Any law can now be "construed" to be something it is not.

As an American citizen, I am truly concerned for the direction our country is heading. I urge that SORNA be repealed for the sake of the integrity of our Constitution. You are violating the civil rights of one group of Americans and if you are able to accommlish this now, no one will be safe. Any American that goes along with SORNA does so not knowing that tomorrow could be the day when their "group" will be targeted and they too will lose their civil rights.

I urge that SORNA by appealed and that any new legislation be geared to prevention and correcting this problem.

Richard Johnson

July 12, 2007

Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW.
Washington, DC 20531

RE: OAG Docket NO. 121

To Whom It may Concern:

What has happened to the Constitution of the United States of America? Has it been down graded to a mere piece of paper with worthless writing on it? Have we forgotten the famous words "dedicated to the proposition that all men are created equal"? Perhaps, we have gone back to the days of slaves or the lepers in the Bible where we isolate and discriminate against one group of people. Is that the basis of our great nation? Or maybe its just prejudices and, or, a means to earn votes.

In my recent experiences, I have found that this so called government run by the people is no more than foolish words used to deceive and advance oneself in power and finance. I firmly believe that politicians use, pass, or endorse laws that will only benefit themselves. Yes, we have a voice, but no one is listening. Go to the capital and talk, and if one of our elected has not stepped out of his seat for coffee or a donut, he may hear your argument. But rest assured, when its time to vote, he will be in his chair and he will vote his predetermined way .

A prime example is the sex offenders. As I do not condone sex crimes, I do believe they should be treated the same as murderers, arsonists, burglars, and even the habitual DWI offenders. While it is a hideous act when a child or anyone is sexually violated, it is also a hideous act when the drunk kills a child , or the murderer kills that same child. How about when the arsonists burns down a home with an entire family in it, including children? Is any crime less or more hideous and repulsive? Yet, do the murderers, arsonists, burglars, or DWI offenders register? Do they pay fine, after fine, after fine? Do they register every 4 months and join a list with police department to show where they are in case a similar crime is committed? And, last but not least, do they walk around with drivers licenses stamped MURDERER, ARSONISTS, BURGLAR, OR DWI? The sex offenders do. Where are the equal rights? Do we not have anything to fear from the murderer, arsonists, etc..? Are you stating, only fear the SEX OFFENDER? Do we need less protection from the murderer?

Again, another point I wish to make, I assumed that the purpose of our judicial system after a criminal has served his due, was to rehabilitate that individual. Again, I do believe that

habitual offenders of the same crime should be dealt with severely, however, where is the SECOND CHANCE for a normal life of a sex offender? He has no chance for a normal life. He usually has no financial means to meet the requirements of his release. He has no chance of getting a decent job with SEX OFFENDER stamped in red ink on his drivers license. He has to rely on his family for support and finance to meet your regulations and avoid parole violation. This can sometimes be a great hardship, not only for the sex offender, but, for the family itself who has to struggle to meet these stringent guidelines. But, do the murderer of that child carry the same scrutinizing requirements?

Tell me, please, where is it in our government that " ALL MEN ARE CREATED EQUAL"?

Appalled At the Prejudice,

Alice Benoit

Regina R. DeHart

**Rosengarten, Clark**

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**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:47 PM
**To:** Rosengarten, Clark
**Subject:** FW: Subject: OAG Docket No. 121
**Attachments:** The ADAM WALSH ACT offends the Constitution in two areas.doc

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**From:** [redacted]
**Sent:** Wednesday, July 25, 2007 6:26 PM
**To:** GetSMART
**Subject:** Subject: OAG Docket No. 121

Ms. Smart:

I am attaching my comments for the Adam Walsh Act. I appreciate the opportunity to forward my comments.

Kenneth J. Bond

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Laura L. Rogers, Director, SMART Office,

Office of Justice Programs,

United States Department of Justice,

810 7th Street NW., Washington, DC 20531.

Subject: OAG Docket No. 121

Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) of the Justice Department's Office of Justice Programs at

Dear Ms. Rogers:

I am greatly concerned about many provisions of the Adam Walsh ACT.

The ADAM WALSH ACT offends the Constitution in two areas.

First: Article I, Section 9, paragraph 3 provides: "No Bill of Attainder or ex post facto Law will be passed." "The Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function or more simply - trial by legislature." U.S. v. Brown, 381 U.S. 437, 440 (1965).

"These clauses of the Constitution are not of the broad, general nature of the Due Process Clause, but refer to rather precise legal terms which had a meaning under English law at the time the Constitution was adopted. A bill of attainder was a legislative act that singled out one or more persons and imposed punishment on them, without benefit of trial. Such actions were regarded as odious by the framers of the Constitution because it was the traditional role of a court, judging an individual case, to impose punishment." **William H. Rehnquist**, The Supreme Court, page 166.

The above is a very apt description of the Adam Walsh Act as it singles out one or more persons and imposes punishment on them without due process.

Ask, does the ADAM WALSH ACT as currently enacted qualify as Bill of Attainder or ex post facto? The simple straight forward answer is yes.

How can it be otherwise? It imposes punishment without trial. Those who endeavor justification will say it acts as regulatory and not punishment. That argument is flawed on its face. Any person who followed the hearings can readily show that the intent was not just to record names, it was to punish by debilitating those impacted pushed by political expediency.

Those advocating the AWA stated sex offenders have a high recidivism rate. Valid and reliable research documents that to be a total falsehood.

By passing such an act and ignoring the facts, thousands of citizens have been subjected to the impact of the AWA which is in fact a Bill of Attainder. The intent was to punish even after the offender has paid their debt to society. To quote Madison, relative to ex post factor,

"Bills of attainder, ex post facto laws, and laws impairing the obligations of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. ... The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community." **James Madison**, Federalist Number 44, 1788.

In a dissent, Justice Ruth Bader Ginsburg said that "however plain it may be that a former sex offender currently poses no threat of recidivism, he will remain subject to long-term monitoring and inescapable humiliation." Also opposing the court's ruling were Justices John Paul Stevens and Stephen Breyer. How can any description be plainer?

The court also ruled 9-0 that Connecticut did not have to hold separate hearings to determine the risk posed by sex criminals who have completed their prison sentences before putting them in a registry. But Chief Justice William H. Rehnquist, writing that decision, said the case did not give the court the appropriate avenue to decide whether Connecticut's law violates substantive due process rights. As is noted here, the court has not decided the issue.

"The court has made a very powerful and compelling statement about the need for objective, accurate information being as available as possible," Connecticut Attorney General Richard Blumenthal said.

Justice David Souter noted in a separate opinion that the court's decision does not affect future constitutional challenges to Megan's laws.

Stevens said that in both rulings his colleagues "fail to decide whether the statutes deprive the registrants of a constitutionally protected interest in liberty." The cases are *Connecticut Department of Public Safety v. John Doe*, 01-1231, and *Otte v. Doe*, 01-729. Again, the issue has not been decided.

**Bill of Attainder**

Definition: A legislative act that singles out an individual or group for punishment without a trial. After punishment, these individuals are punished again and again. That is certainly the definition of Bill of Attainder.

The supplementary information provided by the Attorney General broadly states that
applying SORNA to sex offenders whose convictions pre-dated the enactment of the Adam Walsh Act does not offend the ex post facto provision of the Constitution because it creates "registration and notification provisions that are intended to be non-punitive, regulatory measures adopted for public safety reasons." 72 Fed. Reg. Vol. 39, 8896. The Attorney General relies on Smith v. Doe, 538 U.S. 84 (2003) for this proposition. In Smith the Supreme Court upheld the provisions of the Alaska Sex Offender Registration Act (ASORA) against an ex post facto challenge. In fact SORNA is a federal statute that is punitive and therefore the ex post facto provision of Article I Section 9 of the Constitution does apply. SORNA goes well beyond the Alaska Sex Offender Registration Act that was considered by the Court in Smith.

How can it not be a Bill of Attainder when:

a. The Extensive Community Notification Provisions of SORNA Publicly Disgrace and Humiliate the Registered Offender in His or Her Community. One consideration in determining whether a law is punitive is whether it is the type of law that our history and traditions consider to be punishment because it publicly disgraces the offender. Although ASORA and SORNA are similar in some respects, SORNA goes considerably beyond ASORA in its community notification requirements. SORNA requires that NACDL Comments OAG Docket No. 117 an appropriate state official provide an offender's registration information to the Attorney General (for inclusion in the federal list) and to appropriate law enforcement and probation agencies. However, SORNA also requires the state to notify 1) "each school and public

housing authority in the area in which the individual resides, is employed or is a student;" 2) "each jurisdiction where the sex offender resides, is an employee, or is a student and each jurisdiction from or to which a change of residence, employment, or student status occurs;" 3) "any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a);" 4) "social service entities responsible for protecting minors in the child welfare system;" and, 5) "volunteer organizations in which contact with minors or other vulnerable individuals might occur." See, SORNA, § 121. These additional community notification measures render SORNA a punitive statute subject to ex post facto constitutional prohibition. In Smith the Court specifically addressed the shaming aspects of publication of registration information on the Internet. The Court described Internet publication as "analogous to a visit to an official archive of criminal records".

As the provisions that qualify the AWA a Bill of Attainder as well as ex post facto thus should not be instituted, your department should require only those who have not paid their debt to society to be required to register. Many individuals have paid their debt to society, made new lives for themselves including families and new employment. To require them to be posted on the registry is destructive to them and their families. Such a requirement will be like a boil on the buttocks of our nation.

Very truly yours

Kenneth J. Bond

P. S. No, I am not a sex offender, just a private citizen that knows that such provisions as the above violate the principles of liberty and freedom supposedly guaranteed in this land.

**Rogers, Laura** Ken 2250

**From:** [redacted]
**Sent:** Tuesday, June 19, 2007 3:47 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

18 USC 2250 states that a sex offender can get up to ten years for knowingly failing to register. This should read a sex offender who fails to knowingly fails to register can get up to the same amount of time they could have been in prison for the original offense if they fail to register. My reasoning is that it will be hard for the courts to uphold a law that makes the failed to register a stricter crime and punishment then the original crime committed by the sex offender.

**Rogers, Laura** 2250

**From:** [redacted]
**Sent:** Friday, July 06, 2007 11:05 AM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No121

Section 18 USC 2250 States that knowingly failing to register can get the accused up to ten years in prison.

It is hard for me to think that the government is placing more prison time on the offender than they could get for the original crime that got the person placed on the registry. That is saying to the victims, well we understand that the crime done to you is bad so the law says this offender can get say 5 years in prison. But we really think that not registering is more of a serious crime and we will impose up to 10 years if the offender fails to register. The other issue with this line of thinking is that sex offender registries are so important and have cut down on sex crimes so much that they need to make sure sex offenders register and stay registered. When in fact no study to date shows that the any sex offender registry has stopped a sex crime from taking place in the, furthermore no study shows that sex offender registries have aided the police in finding a sex offender sooner than they would have without the registry. The studies do say that over 90% of sexual assaults are committed by a person well known and trusted by the victim, be that victim an adult or child. For that matter over 50% of sexual assaults on children are committed by a family member. Now look at your own official record keeper on statistics on recidivism, US Dept of Justice Bureau of Justice Statistics on Recidivism who reports that within 3 years of release from prison 3.5% of sex offenders will be reconvicted of a sex crime. This is one of the lowest recidivism rates among all criminals.

This section should read that the offense of failing to register may get the offender prison time up to and equal the amount of time they could get in prison for the sex offense the offender did to get them placed on the sex offender registry. Further it should read that prosecution shall only take place after the state has proven that the offender was given positive notification and explanations of their duties to register and all of the continued obligations the sex offender has under the Adam Walsh act.

**Rosengarten, Clark**

2250

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:34 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No 121

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**From:** Tim Poxson [redacted]
**Sent:** Monday, July 23, 2007 5:00 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SORNA as written under section 18 USC 2250 states that a person who knowingly failing to register will get up to ten years in prison. So a person can get more time for failing to register than the original crime? I would think this should read a person can get up to the same amount of time for this as the original sex crime they were convicted of. IE if convicted of a 1 year crime than the time they should get is up to 1 year. The other issue I have with this is that the SORNA is very detailed and can be misunderstood by even law enforcement. Each state should have a central phone number to call to ask questions about the sex offender law in that state. This number could be used by law enforcement and sex offenders. This may help take care of some of these issues. If truly you are trying to get all sex ffenders to comply states will do everything they can to help the compliance take place. Tim P.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, July 23, 2007 5:39 PM
**To:** GetSMART

My husband is a registered sex offender. As a family we have ridden waves of uncertainty and despair. We have two children. My husband is not a bad person, he made a mistake. Life is different for us. We have restrictions that are placed on us because of what he did in the past. Yes, I know I chose to be with him and accept those restrictions also. We are on a roller coaster ride never knowing if we will be able to stay at our house. You see a little backwoods chruch that only meets one Sunday a month is going to make us leave the only place my children have ever known. We live next to a network of family. His sister lives next door and parents right up the street. He has lived here his whole life and it just seems unfair to make us move because the church is 400 ft. He never denied his guilt and paid all his fines served his time. So for the rest of our lives we will suffer because he is a registered sex offender. We rack our brains to find a way to be safe and secure in our existence. We just want to raise our kids the best possible way like any good parents and live in peace. Why can't there be classifications for sex offenders? My husband is not a predator and pedophile.
Thanks,[redacted]

**Rogers, Laura** Residency restrictions

**From:** [redacted]
**Sent:** Wednesday, July 04, 2007 11:52 AM
**To:** GetSMART
**Subject:** Sex Offender registries

Where are ALL of the people convicted of sex offenses going to live? I am married to someone convicted of a sex offense. He was just evicted from his apartment.
Mind you he broke no law he just turned up on the registry. He is complying with the law by registering.
Are we going to create cities and towns for just people convicted of a sex offense? We have a system of justice in this country which has been drastically altered. people serve their sentences and come out of prisons only to be punished for the rest of their lives. They may never break another law but they must still be punished further. They are not the only ones being punished either. These registries do not take into account all of the varying degrees of sex offenses. Not every sex offense involves a child or a minor. But anyone convicted of a sex offense is automatically lumped into a category with child predators. When are we going to take circumstance into consideration? These days public urination qualifies some people as a sex offender. Do these individuals deserve to be punished for the rest of their lives for a lapse in judgment. Of course not. But none the less they are. What about the currently 202 individuals who over the last several years have been exonerated? Can you remove their names from every data base in existence? I think not. People whose convictions are questionable at best are continuing to be punished after they have paid their debt to society. The laws need to be revamped to protect the privacy we all hold dear. These laws should apply only the the absolute worst in our society. Not once have I heard of any government official taking the varying degree of circumstance into consideration. If it were allowed my husband would never have been evicted from his apartment. His offense did not involve a child, yet he is prohibited from seeing his own children unsupervised for the next 4 months. Why? My husband walked out of prison after serving his sentence with a job. He took the initiative to secure his employment while still incarcerated. Throughout the last 10 years in spite of maintaining his innocence he has complied with every request from law enforcement. Why is he still being punished? I will never understand how the basic principals that this country was founded upon could be thrown to the wayside like this.

[redacted]

restrictions.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Tuesday, May 29, 2007 10:16 AM
**To:** GetSMART
**Subject:** Comments:SORNA - Sex Offender Ghettos

Comments concening SORNA Sex Offender Registration and Notification Act of the Adam Walsh Act -- and the unconstutional rise of Sex Offender Ghettos.

Registered sex offenders are prosecuted locally for living at their registered address,
There is a rise of **Sex Offender Ghettos** where registered sex offenders are required to live and work by local and state laws. This is unconstituional.

There is a constitutional conflict in compelling sex offenders to register and then prosecuting sex offenders for violating of local regulations concerning the location of where the registered sex offender may live or work.

**What can be done to stop local and state governments from "regulating" where registered sex offenders may live by forcing them to live outside of most urban areas and residential communities -- concentrated in dangerous sex offender ghettos?**

The regulations by local and state governnents are counter productive to the intent of registering sex offenders. It is forcing many of them to not register in order to live in cities and towns. These local regulations forces them to live in sex offender ghettos on the edges of society placing them and/or their families in dangerous and undesirable situations (see the newspaper article "Living in Fear" 5/20/2007 from the Tulsa World below).

It is unconstitutional to compel disclosure of the address of sex offenderes when it will result in local arrest and criminal prosecution for living or working at the address disclosed. Tulsa will not accept registration of a sex offender when the address is red lined in an area prohibiting sex offenders. More than ninty percent of Tulsa is red lined against registered sex offenders. The must live in the designated tiny concentrated, dangerous, and, most undesireable sex offender ghettos in order for the sex offender registration to be acceptable by the city.

I think that registered sex offenders and any other class of society that are publically identified by name and address should be protected by the government as a protected class. These citizens should be protected from being the victims of hate crimes, harassment, banishment, and ongoing public redicule.

I support the registering of sex offenders for the purposes of law enforcement and for citizens to know who is living and working in their neighborhoods. I do not support prosecution for their living or working at the registered address which may be red lined by local or state law and regulations.

I do not support local and state government harassing, regulating, and criminalizing the registration process concerning the location of where sex offenderes live or work. It is emptyiing the cities by banishing them out of their communities into sex offender ghettos, or is driving sex offenders to live underground in violation of the registration requirements. Let's protect all of our citizens.

Bil Franz
[redacted]

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# Living in fear

by: NICOLE MARSHALL Tulsa World Staff Writer
5/20/2007

# Sex offender risked arrest to move daughter to a safer place

For nearly two months, Nancy Phipps and her 16-year-old daughter lived in fear at a Sapulpa motel surrounded by dozens of violent sex offenders.

That was the only way Phipps could find to comply with Oklahoma law.

**Phipps, a working mother, is a registered sex offender. She received a deferred sentence for flashing and soliciting an undercover officer in 2002, court records show. She was battling a drug problem with Xanax at the time and it was her only sex-related offense, she said.**

**She said that she was not prostituting herself and she does not remember what happened because of the prescription drugs.**

"It was not acceptable what I did, but I am not dangerous, and there was no victim. The rest of my life I should not be labeled. I can't even find a home for my daughter or myself, so we have to stay in a dangerous motel or a shelter," Phipps said.

"It is affecting my daughter's life to the point, what is her future going to be like?"

Phipps used to live near her office job in Tulsa, but then police told her she was breaking the law and risked being arrested. More than 90 percent of Tulsa is off-limits to sex offenders due to a restrictive state law that bans them from living near parks, schools and day-care centers.

She tried several times to find an affordable place to live, but each time she was told that the residence was in an area that was off-limits to her.

Phipps then moved to one of several motels along Interstate 44 west of Tulsa. Paying $200 a week, the mother and daughter were the only females living among many rapists and pedophiles who live at the motels.

"I am a citizen, too, and I lived out there amongst them -- real sex offenders," Phipps said. "We had gotten to the point where they were coming to our room. There was a guy with a forcible sodomy conviction who lived two doors down. He was calling our room. He was knocking on our door. We were just so scared all the time."

When the danger proved too great at the motel, they moved into a Tulsa shelter on Tuesday.

"When we moved out, my daughter said, 'Mamma I feel safe now,' " Phipps said.

She was told that a warrant could be issued for her arrest, but Phipps said she had no other option.

"What other choice do I have? I don't have another choice. I am not going to put my daughter in that situation ever again," Phipps said. "I don't know how many other people are in my situation, but I know a couple of times I felt like going underground, too."

## Difficult to comply

Phipps' story has touched many in the legal community who believe that her plight proves why state

law needs to change.

Police records show that about two years ago there were 540 sex offenders in Tulsa. Since the more restrictive spacing law took effect last year, there are just over 370 sex offenders registered in Tulsa. Police say the decrease is because many offenders are not registering due to the residency restrictions.

Since the shelter is in an area that is off-limits to her, Phipps is trying to find another home quickly. She spoke with Tulsa police Friday about her dilemma, and they showed her a map of places where she could and could not live.

"Unfortunately, there are not many places where she can live," Sgt. Gary Stansill said. "Here is a perfect example of someone who wants to comply and is having a difficult time doing so. There are probably hundreds of cases like that."

Special Judge Sarah Day Smith said she first heard Phipps' story when she entered the Drug Court program, over which Smith presides.

"It is one of the saddest stories that I have seen. She is trying to earn an honest living, get treatment and raise her daughter. Instead, she has had to live with her daughter in the midst of other people who have been identified as sexual predators," Smith said.

Phipps said that it has helped to have many supporters who believe in her sincere desire to turn her life around, including her boss, John Stephenson, at Mega Internet Tournaments. Stephenson said that she has worked there since February.

"I interviewed her, and she went to work that afternoon. She has been working here ever since," he said. "She is very dedicated. I don't know how she keeps her spirits up as much as she does."

Phipps was living at an apartment within walking distance of her job, he said. But a few weeks after she was hired, the police told her that she would have to move.

That's when she moved to the motel on Skelly Drive. With limited resources, she was forced to buy a car to get to work.

"It looks to me like the system is trying to force failure," Stephenson said. "If you push a person beyond what financial capabilities they have, that sets them up to fail."

## Classifying crimes

Both Smith and Stansill said that they believe that the residency restrictions of the state sex offender law apply to too many people who are not threats to society.

"I don't believe in being soft on crime or sexual predators, but I think this law is too broad," the judge said.

Legislators are considering changes to the law. Rep. Gus Blackwell, R-Goodwell, has proposed passing a three-tiered bill based on the classification of crimes.

If the bill is passed into law, he said that a person who urinated in public would not have the same supervision as someone who had been convicted of a sex crime against someone younger than 12.

The state Legislature's regular session ends Friday.

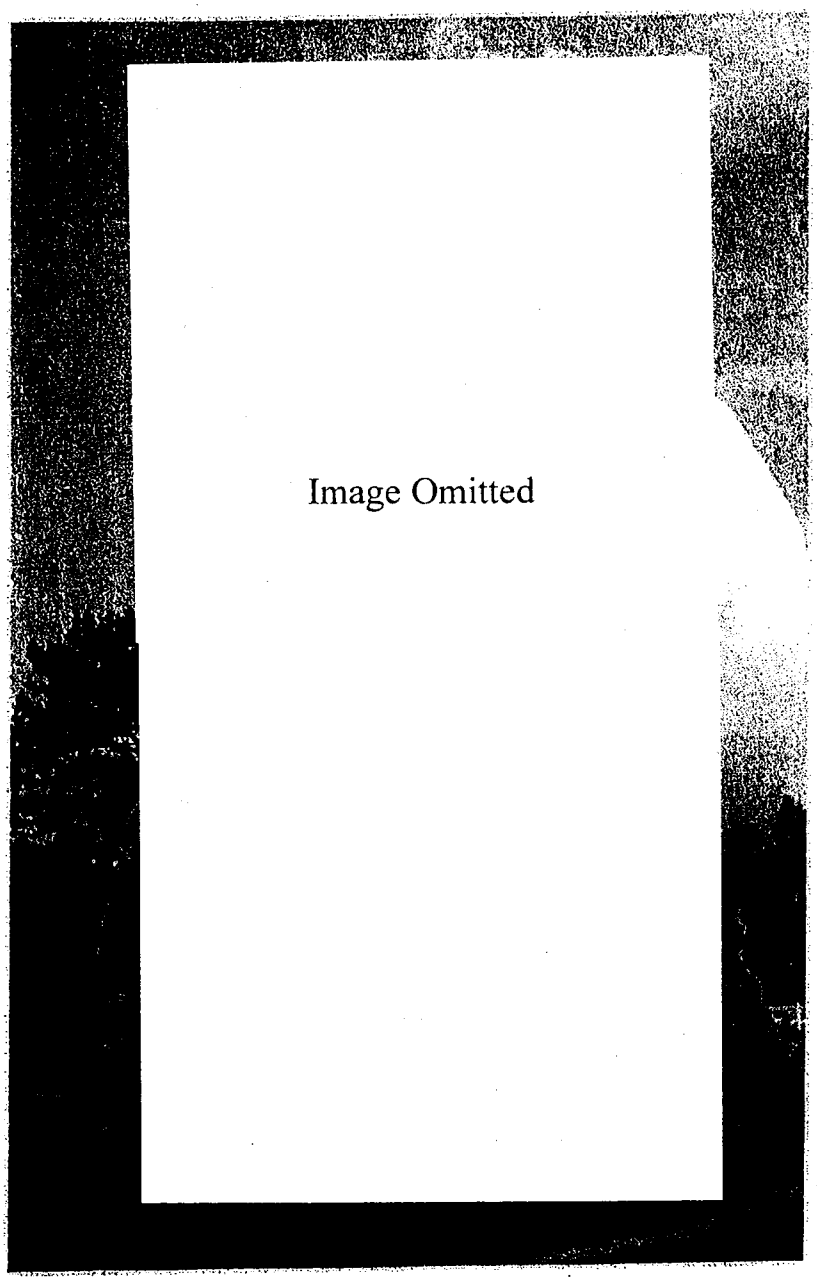
Police say research has shown that where sex offenders live is not a factor -- that most of them know their victims and that attacks occur in the victims' own homes.

Phipps said it is difficult, but she is telling her story in hopes that she can help to get the law changed.

"We need a tiered system so everyone is not treated the same, especially in a situation like mine," Phipps said. "The law does need to be changed."

**Nicole Marshall** [redacted]

**Associate Images:**



**To comply with Oklahoma law, Nancy Phipps and her 16-year-old daughter lived at a Sapulpa motel surrounded by dozens of violent sex offenders. Phipps and her daughter have since moved to a shelter.**

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, June 21, 2007 4:38 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

The SONRA should include a requirement that only the States in conjunction with the Federal Government have the authority and jurisdiction to set laws and rules based on the SONRA. And that it would be unlawful for a local jurisdiction to set a law or rule using the SONRA or a State Sex Offender Registry as the grounds for setting such rule or law. Furthermore no jurisdiction other than the State or Federal Government may keep a sex offender registry of their own. This should include but not be limited to setting restrictions for the locations sex offenders can live, work, travel or go to school.

Reasoning: Many local jurisdictions are setting boundaries were sex offenders can live, travel, work or go to school. Study after study has shown that these types of restrictions are counter productive to Sex Offender Registries. In that they cause some sex offenders to go underground, or report a false address. One only needs to look to the state of Iowa who has a state wide sex offender boundary and even the police and prosecutors are working to get this law taken off the books. The other issue this causes is that it makes for a patch work of laws that are not the same from location to location. This in its self is what the SNORA is trying to correct. The other issue is that it drives convicted sex offenders from one jurisdiction to the next trying to find a jurisdiction that is "easier" on sex offenders. This is not the intent of the SONRA or sex offender registry laws. As stated the intent is not to be punitive. If because of the SONRA or sex offender registries these types of laws are permitted the higher courts are going to look at these types of ACTs as punitive and will at some point over turn the SNORA in full.

**Rogers, Laura** res. rest.

**From:** [redacted]
**Sent:** Friday, July 13, 2007 1:24 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SNORA should include in it that only States in conjunction with the Federal Government have the authority and right under the SNORA or any other sex offender laws to enact laws and rules governing were sex offender can and can not live including but not limited to how far they must live from a school or places were children gather.

The reasoning is that if as is the case now some local jurisdictions set up boundaries were sex offenders can not live, this causes a patch work of sex offender laws. It also causes sex offenders to move from one area to another putting undue burdens on the areas that do not have boundary's were they may live. This further causes many sex offenders to go "underground" as is proven by the state of Iowa; that has most trying to get the 2,000 ft law removed from the books. If the objective of the SNORA is for public protection from sex offenders, then the SNORA should insure that no laws or rules are put in place that will hinder the SNORA from compliance on the part of sex offenders. Furthermore no study to date has proven that limiting were sex offenders can live will protect any child or adult. It is worthy to note that studies have shown it is just that these types of laws do in fact make it more dangerous for children and adults in that many sex offenders go underground, or report false address were they are living. Law Enforcement with it limited resources is unable to check all addresses as reported or locate all of the sex offenders who go underground.

**Rogers, Laura**

jw/letter

**From:** Jim Rensel [redacted]
**Sent:** Wednesday, July 25, 2007 6:25 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121 - COMMENTS ON PROPOSED GUIDELINES

Laura L. Rogers, Director, SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW., Washington, DC 20531

Dear Ms. Rogers:

I wish to express my deep concern over the **retroactivity provisions** of the Proposed Adam Walsh Guidelines, particularly they would affects **youthful sex offenders**. Your proposal to retroactively include juveniles age 14 and older in the national registry is ill-conceived and if allowed to proceed will cause irreparable harm to ten of thousands of children and young adults who pose absolutely no danger to the community.

In states like Arizona there are many hundreds of young people who have been caught up in Arizona's draconian sex offender laws who would not even have been prosecuted or be required to register in other states. We have hundreds upon hundreds of first time offenders who were forced to plead to unreasonable charges under threat of Arizona's mandatory sentencing law that could lock up two teens for life for having consensual sex. Forcing these kids to register under Adam Walsh is a travesty beyond words.

There are many other ridiculous aspects to both the Adam Walsh Act and your proposed guidelines, but harming young people is intolerable. I implore you to take out the retroactivity portions of the guidelines, at least for youthful offenders.

For your information, I am a registered Republican and a Christian and no one in my family is a registered Sex Offender. I am simply a member of the community that is appalled by the way youth have been unfairly persecuted under Arizona's poorly written sex offender laws.

Thank you.

Sincerely,

Jim

James P. Rensel
[redacted]

JANET NAPOLITANO
GOVERNOR
STATE OF ARIZONA

FACSIMILE TRANSMITTAL SHEET

| | | | |
|---|---|---|---|
| TO: | Laura L. Rogers, Esq.<br>Director, SMART Office | FROM: | MARNIE HODAHKWEN<br>POLICY ADVISOR, TRIBAL AFFAIRS |
| | | ASSIST: | SANDY CHISMARK |
| FAX #: | 202-616-2906 | FAX #: | (602) 542-7601 |
| DATE: | AUGUST 1, 2007 | | |
| RE: | Letter from Governor Janet Napolitano re Adam Walsh Act | TOTAL # OF PAGES INCLUDING COVER | THREE (3) |

NOTES/COMMENTS:

Please see attached letter.

Marnie Hodahkwen
Policy Advisor, Tribal Affairs
Office Phone: (602) 542-1442
E-Mail: mhodahkwen@az.gov
Office Fax:: (602) 542-7601

Sandy Chismark
Executive Assistant
Office Phone: (602) 542-1340
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Office Fax: (602) 542-7601

STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
FACSIMILE: 602-542-7601

July 31, 2007

United States Attorney General Alberto Gonzales
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C. 20530-0001

Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 Seventh Street, NW
Washington D.C. 20531

Dear Attorney General Gonzales and Ms. Rogers:

On behalf of Arizona's twenty-two tribal nations, I would like to submit comments to the proposed National Guidelines for Sex Offender Registration and Notification that are being developed pursuant to the Sex Offender Registration and Notification Act ("SORNA") which is incorporated into Title I of Public Law 109-248 also known as the "Adam Walsh Act." Tribal, state, and federal officials agree that the goals of the Adam Walsh Act are both admirable and necessary to keep our communities safe from sexual offenders. However, I believe that Arizona's tribal leaders have some legitimate concerns with the proposed implementation of this law.

Today many of Arizona's tribal leaders are attending the Tribal Justice and Safety session here in Phoenix. This meeting is the first opportunity many of these tribal leaders have had to discuss these guidelines with federal officials. My understanding is that today is also the deadline for submitting formal comments on the proposed guidelines for SORNA implementation. Holding a consultation session on the final day comments will be accepted does not, in my view, amount to meaningful government-to-government consultation as contemplated by Executive Order 13175 signed by President Clinton in 2000. I encourage you to carefully consider the comments you receive from tribal leaders and undertake additional consultation before these guidelines are finalized.

I also share tribal leaders concerns relating to the absence of a bright line rule for determining whether a tribe has undertaken "substantial implementation" of SORNA. Under Section 127(a)(2) of the Adam Walsh Act, if the Attorney General determines that a tribe has not substantially implemented the Act and is unlikely to be capable of doing so in a reasonable amount of time, the tribe is presumed to have delegated this function to the state. Without a bright line rule for establishing substantial implementation, authority to delegate functions under the Adam Walsh Act can be exercised arbitrarily. This is an affront to tribal sovereignty and a deviation from generally accepted principles of federal Indian law, which hold that limitations on tribal sovereignty cannot be implied. A bright line rule would also promote cooperative partnerships between states and tribes because each government would have a clearer understanding of their duties under the Act.

Arizona's tribal leaders also have concerns regarding the use of traditional cultural names and genetic material in the implementation of the Adam Walsh Act. I will not attempt to articulate those concerns because I believe it is more appropriate for tribal leaders to express these concerns themselves. I do however support their efforts to have these concerns addressed.

Thank you for the opportunity to raise these important issues. If you have any questions please contact Marnie Hodahkwen, my Policy Advisor for Tribal Affairs, at 602 542 1442.

Yours very truly,

Janet Napolitano
Governor

c: Senator Jon Kyl

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:40 AM
**To:** Hagen, Leslie; Rosengarten, Clark
**Subject:** FW: adam walsh comments

**Attachments:** NCAI Adam Walsh Comments.pdf; NCAI Adam Walsh Comments.doc


NCAI Adam Walsh Comments.pdf (...


NCAI Adam Walsh Comments.doc (...

-----Original Message-----
From: Virginia Davis [redacted]
Sent: Wednesday, August 01, 2007 8:10 PM
To: Hagen, Leslie
Cc: GetSMART
Subject: adam walsh comments

Hi Leslie- Attached are NCAI's comments to the proposed Guidelines for implementation of the Adam Walsh Act. Thank you!

Virginia

August 1, 2007

Laura L. Rogers, Director,
SMART Office, Office of Justice Programs,
United States Department of Justice, Suite 810
7th Street NW.,
Washington, DC 20531

RE: OAG Docket No. 121

Dear Ms. Rogers:

I am writing on behalf of the National Congress of American Indians (NCAI), the nation's oldest and largest organization of American Indian and Alaska Native tribal governments, to provide comments regarding the proposed National Guidelines for Sex Offender Registration and Notification ("the Guidelines"). NCAI and our member tribes feel strongly that portions of the Guidelines must be revisited if the Adam Walsh Child Protection and Safety Act of 2006 ("the Act") is to achieve its stated purpose of creating a seamless national sex offender tracking system.

NCAI would like to state for the record that the legislation underlying the proposed Guidelines is an affront to tribal sovereignty and represents a dramatic departure from the way that criminal and civil jurisdiction is currently distributed among state, federal, and tribal sovereigns. Unfortunately, the underlying law is structured in a way that will also undermine its overall public safety effectiveness and create unnecessary challenges for the tribal and state officials charged with implementing the law on the ground. In addition, without the appropriations of funds authorized in the new law, the Act represents a substantial unfunded mandate for tribes, many of whom already suffer from a severe shortage of resources for public safety. The proposed Guidelines do little to mitigate the structural deficiencies of the underlying Act. Our specific comments and concerns are summarized below.

## 1. The Federal Government has Failed to Adequately Consult with Tribal Governments.

NCAI and our member tribes are gravely concerned by the federal government's insistence on developing laws for tribal communities without the appropriate inclusion and deference to tribal leaders and tribal members in the decision-making process. Section 127 of the Adam Walsh Act was included without any hearings, consultation or consideration of the views of tribal governments and current tribal practices. The unique government-to-government relationship between the Indian nations and the United States requires that tribal decision-makers have a meaningful role in the development of policies that will impact Indian tribes. Despite a clear mandate to this effect in Executive Order No. 13175, the Department of Justice has continually refused to engage in meaningful government-to-government consultation about the monitoring and tracking of sex offenders on Indian lands.

Thus far, consultation has been inadequate. First, tribes were not given enough time to plan for the first scheduled consultation session. Secondly, the scheduling of the second consultation on July 31, 2007 was one day before the deadline for written comment submission, August 1, 2007. This one day is not adequate time for tribes to provide meaningful written comments that may reflect any new information or issues that could arise during the session in Phoenix. NCAI strongly supports the request from tribal leaders at the July 31st consultation session that the deadline for comments be extended to allow tribal representatives to augment the record from the July 31st consultation with additional written statements.

NCAI also echoes the recommendation made by tribal leaders assembled at the July 31, 2007 consultation session in Phoenix, AZ that the Department of Justice immediately establish a Tribal Advisory Group to offer expert advice and guidance as the Adam Walsh Act implementation process moves forward. This Advisory Group should be composed of tribal leaders and should be vested with the necessary authority to have meaningful input into the Department of Justice decision-making process.

Additionally, we recommend that the Guidelines reflect the Department of Justice's intention to continue consulting with Indian tribes in an ongoing way. Consultation sessions should be more conveniently and frequently scheduled at locations convenient to Indian Country.

**2. Due Process for Determining Tribal Compliance Must Be Addressed.**

Under Section 127(2)(C) of the Act, the Attorney General has 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' decision to vest the Attorney General with this power is unprecedented.

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 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 No. 13175 that the federal government "shall grant Indian tribal governments the maximum administrative discretion possible," require the Attorney General to provide adequate notice to tribes of their noncompliance 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 the EO No. 13175 and the DOJ Consultation Policy.

The complexity and importance of this particular issue requires a more formal and lengthy process for consultation than has been used by the Department of Justice thus far. As always, NCAI is willing to assist with such a consultation in any way that would be helpful. We urge the Department of Justice to state in the Guidelines that a consultation process with tribes will begin immediately to develop a process for assessing tribal compliance under the Adam Walsh Act, which will be the subject of future Guidelines.

**3. Federal Prisons Must Be Held to the Same Standards as State and Tribal Prisons.**

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. The Act requires that all corrections facilities "ensure" registration of sex offenders prior to their release. 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 are often the worst of the worst. It would be extremely 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.

In addition to severely undermining public safety, this provision in the Guidelines will substantially shift the cost burden of initial registration from the federal government to the states and 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 the consultation session on July 31, 2007 federal representatives stated that the federal prisons could not register offenders because there is no federal registry. Many tribes, 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. We strongly recommend that the Guidelines be changed so that federal corrections facilities, like state and tribal facilities, are required to ensure that offenders are entered into the registry before their release.

**4. All Tribal Governments Must Be Included in the National Sex Offender Registration System.**

Even in those places where tribal governments do not have the option of participating as a registration jurisdiction under Section 127 of the Act, or in cases where the tribe opts-out, the

tribal government will play an important role in the successful implementation of the national sex offender registration system. Tribes and states are not interchangeable, and 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 to include in the registry the text of the law violated by the offender. Most importantly, the tribal or BIA law enforcement officers will still 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.

The proposed Guidelines do not sufficiently address how tribal governments will be included in the system if they are not registration jurisdictions. 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" 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. We encourage the DOJ to include all tribal governments and law enforcement agencies throughout the Guidelines in all appropriate places.

In addition, the Guidelines are silent as to how registration will occur for offenders being released from tribal detention facilities where the tribe is not a registration jurisdiction. This issue should be addressed before the Guidelines are finalized. It is also unclear from the Guidelines whether registry information about an offender's criminal history will include tribal court convictions from a tribe that is not participating as a registration jurisdiction.

**5. The Guidelines Should Support Cross-Jurisdictional Coordination.**

In every state where Indian tribes are located, regardless of whether the tribe is a registration jurisdiction, successful implementation of the Act will require coordination between state, local, and tribal governments. We urge the Department of Justice to make facilitating state-tribal and inter-tribal coordination through technical assistance a priority, and to include language in the Guidelines requiring states to document their coordination efforts with tribal governments in their compliance submissions. Similarly, we urge the Department of Justice to review the issues Indian tribes experience in accessing the NCIC database and address this issue in the Guidelines. In addition, where states are exercising expanded authority in Indian Country under the Adam Walsh Act, the Guidelines should require that state officials comply with all tribal procedures, particularly with regard to making arrests within tribal jurisdictions.

**6. Tribal Court Convictions Must Be Respected.**

Despite the language in the statute requiring registration for offenders convicted in tribal court, Section IV(A) of the proposed Guidelines permits states and other jurisdictions to choose not to require registration for these offenders if the jurisdiction determines that the defendant was denied the right to assistance of counsel in the tribal court proceeding. This proposal was sharply criticized by many tribal leaders at the July 31, 2007 consultation. The Indian Civil Rights Act

(ICRA) requires that all persons appearing in tribal court be afforded due process, including the right to counsel. Although this right is not identical to that afforded by the United States Constitution, in passing the Indian Civil Rights Act the Congress saw the wisdom in giving tribal courts the flexibility to provide due process in their own way. Rather than giving the states the unilateral authority to disregard tribal court convictions, the Guidelines should require any state with a due process concern to meet with the tribe to resolve the concern and determine together whether the conviction or convictions in question should be included in the registry.

**7. Cultural and Religious Concerns**

Section 114(a)(1) of the Act requires that the registry must include all names and aliases used by the offender. The Guidelines expand this requirement to include "traditional names given by family or clan pursuant to ethnic or tribal tradition." This requirement is deeply offensive to the religious and cultural traditions in some Native communities. Some tribal communities may give tribal members a traditional name that is never used or spoken aloud except in religious ceremonies. In some communities, a person will never share their traditional name and even members of a family may not know one another's ceremonial name. Given the secrecy that surrounds these traditional ceremonial names, there is no sound public safety reason that they be shared. We recommend that this provision be redrafted so that it is limited to names by which the individual may be known publicly.

**Conclusion**

The tribal governments represented by NCAI share the federal government's commitment to protecting our communities and citizens from sexual predators. In fact, prior to the Adam Walsh Act, many Indian tribes had adopted sex offender registry codes. NCAI and our tribal members also worked successfully to include a provision in the Violence Against Women Act of 2005 to create a National Tribal Sex Offender Registry so that Indian tribes could share information with one another and improve our ability to track dangerous offenders. 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. The system simply will not work if the federal government continues to develop law in this area in a bureaucratic vacuum. Please contact me or NCAI Associate Counsel Virginia Davis, 202-466-7767, with any questions.

Sincerely,

Joe Garcia
President

The Native Village of Napakiak
Indian Reorganization Act Council
P.O. Box 34069
Napakiak, Alaska 99634
Ph:(907)589-2135 Fax:(907)589-2136

# Fax Cover Sheet

To: Smart office From: June Ayagalria - Tribal Admin

Fax: (202) 616-2906 Pages: 2 w/ cover page

Phone: Date: Aug. 2, 2007

Re: Adam Walsh Child Protection + Safety Act CC:

Urgent ✓ For Review Please Reply Please Comment

Comments:

**Napakiak, AK 99634**
**Phone: (907) 589-2135 Fax: (907) 589-2136**

August 2, 2007

Dear Congressman Kildee:

I am writing on behalf of the Napakiak Tribe to urge you to amen the Adam Walsh Act to extend the July 27, 2007 deadline it imposes upon tribal governments. We share the federal government's commitment to protecting our communities from sexual predators. However, the Adam Walsh Act, which was passed without consulting with tribes, is written in a way that will undermine the ability of tribal governments to keep our communities safe.

The July 27, 2007 deadline established in the Act is unnecessary, arbitrary, and unfair. The deadline is fast approaching, and yet, the Department of Justice will not have completed the process of promulgating guidelines before July 27th, nor will grant funds be made available to participating jurisdictions. As a result, tribal governments are being forced to make an important decision with incomplete information. At the very least, the deadline should be extended to give tribes the opportunity to meaningfully participate in the development of the guidelines before making their election under section 127.

Even if one accepts the idea of requiring tribes to affirmatively opt-in to preserve their authority (which we do not), there is no sound reason why a tribe should have only one year to make that election. There are many self-determination programs that permit tribes to take on responsibilities as they develop the capacity to do so. We see no reason why this statue could not have been similarly structured. As the law is currently written, it may well force tribes to make this important election before they have the capacity required to fulfill the responsibilities of the Act in order to preserve their governmental authority. We urge you to extend, or remove entirely, the deadline for tribal election set out in the statute.

In addition to extending the deadline in the short term, there are a number of structural issues with the Adam Walsh Act that we believe will undermine its effectiveness for Indian and non-Indian communities alike. We have no doubt that there are solutions to all of these issues, and we urge you to support additional amendments to the law that we will be seeking in the months to come. I thank you in advance for your timely consideration of these issues. For more information, please contact myself, or the National Congress of American Indians at 202-466-7767.

Sincerely,

Jane C. Ayagalria

cc.file
Senator Dorgan

**INTER TRIBAL COUNCIL OF ARIZONA, INC.**
**2214 N. CENTRAL AVENUE, SUITE 100**
**PHOENIX, ARIZONA 85004**
**(602) 258-4822/ITCA Business**
**(602) 258-4825 FAX**

*FASIMILE TRANSMITTAL*

DATE: 7/31/07

NUMBER OF PAGES: (Including this page): 9

TO Laura L. Rogers, Director FAX NUMBER: 202.514.7805

FROM: John Lewis, Executive Director

SUBJECT: Comments to the proposed National Guidelines for sex offender registration and notification. May 2007. DAG Docket No. 121

COMMENTS:

If problems arise concerning the transmission of this fax, please call the Inter Tribal Council of Arizona, Inc., at (602) 258-4822. Thank you and have a nice day.

rge to Account#:

20 TRIBES

# INTER TRIBAL COUNCIL of ARIZONA, INC.

IBE TRIBE
IN INDIAN COMMUNITY
PAH TRIBE
UDO RIVER INDIAN TRIBES
MDOWELL YAVAPAI NATION
HAVE TRIBE
VER INDIAN COMMUNITY
LPAI TRIBE
RIBE
PAI TRIBE
I-PAIUTE TRIBE
A YAQUI TRIBE
O OF ZUNI
AN TRIBE
VER PIMA-MARICOPA
N COMMUNITY
ALOS APACHE TRIBE
IO O'ODHAM NATION
APACHE TRIBE
MOUNTAIN APACHE TRIBE
J APACHE NATION
J PRESCOTT INDIAN TRIBE

July 30, 2007

U.S. Attorney General, Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Laura L. Rogers, Director
SMART Office, Office of Justice Programs
United States Department of Justice, Suite 810
7th Street, NW
Washington, DC 20531

**Re: Comments to the Proposed *National Guidelines for Sex Offender Registration and Notification*, May 2007, OAG Docket No. 121**

Dear Attorney General Gonzales and Ms. Rogers:

This letter is submitted by the **Inter Tribal Council of Arizona, Inc.** ("ITCA") as comments to the proposed National Guidelines for Sex Offender Registration and Notification ("National Guidelines" or "Guidelines") which are being proposed by the United States Department of Justice ("DOJ") to provide guidance to jurisdictions responsible for implementing the Sex Offender Registration and Notification Act ("SORNA"), which is incorporated into Title I of P.L. 109-248 (the "Adam Walsh Act" or "Act").

ITCA was formally established in 1952 to provide a united voice for Tribes located within the State of Arizona to address common Tribal issues and concerns. ITCA is an Arizona non-profit corporation, the members of which are comprised of the highest elected Tribal officials of 20 Tribes within the State of Arizona, including Tribal chairpersons, presidents and governors.

The Adam Walsh Act and SORNA place very ominous requirements upon Tribes and Tribal governments. Many of the Tribes in Arizona have concerns regarding the language and requirements of the Adam Walsh Act and how Tribal and state jurisdictions will interrelate to each other in the implementation of the Act. However, these comments do not address the concerns with the Act itself, but are limited to comments regarding the proposed National Guidelines and a request that the proposed National Guidelines be changed to remedy the concerns stated below. Upon request, ITCA would be glad to submit additional comments regarding the problems with the Act and the unique challenges it places upon Tribes.

2214 North Central Ave. • Suite 100 • Phoenix, Arizona 85004 • (602) 258-4822 • Fax (602) 258-4825

**The Department of Justice Did Not Properly Consult With Tribes in Promulgating and Releasing the Guidelines Applicable to Tribes**

Despite the fact that the inclusion of Indian Tribes in SORNA was a key objective of the Adam Walsh Act, Section 127 was included in the Act without consultation with Indian Tribes. As a result, Tribal participation is structured in a way that creates unnecessary challenges for the effective implementation of the Act. It is critically important that the Department of Justice conduct meaningful government-to-government consultation with Indian Tribes if these challenges are to be successfully addressed. Thus far, consultation efforts by the Department of Justice have been inadequate.

Tribes were not given adequate time to plan for the *first* scheduled consultation session. Now, the scheduling of the *second* consultation, on July 31, 2007, is only one day before the *deadline* for written comment submission, August 1, 2007. This one day is not adequate time for Tribes to provide meaningful written comments that may reflect any new information or issues that could arise during the second consultation session. In addition, it is more economically feasible for Tribes in the southwest to attend the second consultation session in Phoenix, and therefore, several Tribes have likely not had the benefit of the first session and will only have one day to prepare comments as a result of consultation. Due to the problematic scheduling of these sessions, this is a request that the comment period regarding the proposed National Guidelines be extended to allow *all* Tribes the opportunity to meaningfully comment.

We also request that the Guidelines reflect the Department of Justice's intention to continue consulting with Indian Tribes in an ongoing way throughout the implementation phase of the Act. Consultation sessions should be more conveniently and frequently scheduled at multiple locations convenient to Indian Country.

Additionally, ITCA requests the creation of a Tribal advisory group to offer expertise and guidance to the Department of Justice as the Adam Walsh Act is implemented in Indian Country. The ITCA has already formed its own Adam Walsh Working Group comprised of several Tribal leaders and Tribal attorneys in Arizona, who have been analyzing many issues and concerns regarding the implementation of the Act. The Department of Justice should have the benefit of a similar group to assist it in the implementation of the Act in Indian Country.

**The Guidelines Must Define "Substantial Implementation" and Provide Guidance as to How a Determination of "Substantial Implementation" Will be Made by the United States Attorney General and Provide Due Process for Determining Such Tribal Compliance**

The proposed Guidelines include a number of references to the term "substantial implementation," which is used throughout the SORNA. However, the proposed Guidelines do not clearly define the term, and there is no indication given as to what criteria will be used to determine whether a jurisdiction has substantially implemented the provisions of SORNA. The failure to provide guidance regarding the interpretation of that term is a fatal shortcoming of the Guidelines and must be remedied prior to its final implementation.

Under Section 127(2)(C) of the Act, the Attorney General has the authority to assess the compliance of those Tribes who have elected to participate as a registration jurisdiction under SORNA. The Act contemplates that the Attorney General has the authority to "delegate" to a state, on behalf of a tribe, authority to implement the Act within Tribal jurisdictions, if the Attorney General determines that the Tribe is not in compliance with the provisions of SORNA. The power that appears to have been vested in the Attorney General, to allow a state to act within a Tribal jurisdiction upon a finding by the Attorney General that a Tribe has not substantially implemented the Act, is an infringement on Tribal

sovereignty. Such power also cannot be vested without providing particularized and explicit guidance as to how a determination regarding "substantial implementation" will be made by the Attorney General. It is simply unconstitutional. It is of dire consequence to tribes that the Attorney General appears to have been given authority to delegate to a state the authority to implement the requirements of SORNA within a Tribal jurisdiction. Without a clear definition of substantial implementation, the Attorney General's decisions will be arbitrary. Objective criteria and procedures regarding this determination must be adopted by the Attorney General's office to be effective and lawful.

While Section II (E) of the Guidelines (p.10) attempts to provide some semblance of guidance as to how a jurisdiction's compliance (or lack thereof) will be assessed with regard to its implementation of the SORNA, its still falls far short of any meaningful guidance. The Guidelines simply state that such determinations will be made by the SMART Office on a "case-by-case basis.

Subjective determinations regarding whether a jurisdiction's departure from the SORNA requirements "will or will not substantially disserve the objectives of the requirement" are vague, ineffective, and simply unworkable. The lack of any objective criteria that will be used to determine whether a Tribe is "capable" of implementation within a "reasonable time" is impracticable, fails to provide meaningful assistance to Indian Tribes, and is unconstitutional.

Furthermore, if the Attorney General chooses to use this authority, it will represent a significant departure from the way civil and criminal jurisdiction is currently distributed among state, Tribal, and federal sovereigns. As a practical matter, should a state be given jurisdiction to implement SORNA within Tribal jurisdictions, it will undoubtedly create a great deal of confusion among various law enforcement agencies 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 proposed Guidelines provide no indication of the process that will be used by the Attorney General to assess Tribal compliance or a process that will be used by the Attorney General to work with a Tribe to cure deficiencies in advance of a determination by the Attorney General that a Tribe is non-compliant. Given the federal government's unique trust responsibility to Indian nations and the policy of promoting and supporting Tribal self-determination, any action that would interfere with or abridge a Tribal government's sovereign authority on its own lands should not be taken, and all efforts should be made to remedy DOJ's concern by providing assistance to a Tribe with difficulty in implementing the requirements of the Act.

The proposed Guidelines simply do not address whether a Tribe will be given an opportunity to cure a deficiency, what efforts the DOJ will take to provide technical assistance, or how a Tribe can appeal an adverse decision by the Attorney General. ITCA strongly recommends that the Department of Justice consult with Tribal governments to develop a detailed and transparent process for assessing Tribal compliance which provides due process protections to the Tribes, and the highest level of technical and financial assistance to Tribes in the implementation process. Any assessment and determination by the Attorney General of Tribal compliance with the Act should, consistent with the trust responsibility and the canons of Indian Law and statutory interpretation, provide the greatest deference to Tribal governments.

The complexity and importance of this particular issue requires a more formal and lengthy process for consultation than the process that is currently underway. We request the Department of

Justice provide a written statement in the National Guidelines that a consultation process with Tribes will begin immediately to develop a written process for assessing Tribal compliance under the Adam Walsh Act which will be the subject of additional guidelines, and that the Attorney General will not make a finding of non-compliance as to any Tribe prior to the publication of such additional guidelines.

**Cultural and Religious Concerns Are Not Adequately Addressed**

Section 114(a)(1) of the Act requires that the sex offender registry must include all names and aliases used by the offender. The Guidelines expand this requirement to include "traditional names given by family or clan pursuant to ethnic or Tribal tradition." This requirement is deeply offensive to the religious and cultural traditions in many Native communities. Many Tribal communities give Tribal members a traditional name that is never used or spoken aloud except in religious ceremonies. In some communities, a person will *never* share their traditional name and even members of a family may not know one another's ceremonial name. Given the degree of importance placed upon the non-use of such names except for specific religious purposes, and the negative consequences to the person, the Tribal community or others, of speaking or knowing such a name, there is no sound public safety reason that this type of name be shared. We recommend that this provision be redrafted so that it is limited to names by which the individual may be known publicly and not explicitly for religious purposes.

**Additional Guidance on Appropriate Use of DNA Evidence is Needed**

Arizona Tribes are especially concerned with the collection and storage of DNA evidence. Recently, an Arizona Tribe brought suit against a university due to misuse of DNA evidence collected from Tribal members. Tribal members gave DNA evidence believing that they were participating in a study on diabetes. Instead their DNA was analyzed to find genes related to inbreeding, schizophrenia, and other sensitive topics. Understandably, Tribes are now wary about releasing any DNA information. The Guidelines (on page 34) indicate that any DNA sample collected must be entered into the Combined DNA Index System (CODIS). CODIS, which was formally established through the DNA Identification Act of 1994 (Public Law 103-322), is a DNA index, the use of which is limited to law enforcement purposes.

Section 210304 of the DNA Identification Act limits information contained in CODIS to, among other limitations, only that DNA evidence maintained by federal, state, and local criminal justice agencies pursuant to rules that allow disclosure of stored DNA samples and DNA analyses for express, limited purposes. The limited purposes include:

- By criminal justice agencies for law enforcement identification purposes;
- In judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules; and
- For criminal defense purposes, when a defendant seeks access to samples and analyses performed in connection with the case in which such defendant is charged.

However, the DNA Identification Act also allows the information to be used for a population statistics database, for identification research and protocol development purposes, or for quality control purposes *if personally identifiable information is removed.* Public Law 103-322(b)(3)(D). "Personally identifiable" information is not defined, but is assumed *not* to include the ethnicity of the offender.

To be clear, the Department should create an additional paragraph, under the bullet point describing DNA, as used in §114(b)(6), that clarifies that the race of an offender is considered personally identifiable information and any use of DNA evidence contained in the CODIS cannot be used to create population statistics or other statistics that would use race as an identifier or category. Such a limitation is consistent with the other restrictions placed on use of DNA evidence and would assist in eliminating the

concerns of several Tribes that DNA evidence would be used in a manner that is inconsistent with the traditional and cultural practices of a Tribe.

Further, language should be included that discusses the unique cultural sensitivity of Native Americans' DNA information and the corresponding need to treat all DNA evidence, Native Americans or otherwise, with the utmost sensitivity and respect.

**The Proposed Guidelines Must Be Clarified to State That Tribes Can Enter Into Cooperative Agreements With Tribes, in Addition to States, to Fulfill the Mandates of the Act**

The Adam Walsh Act contemplates that Tribes may enter into cooperative agreements with "other jurisdictions" to implement the Act. These "other jurisdictions" certainly include other Indian Tribes in addition to state, county and municipal authorities. While the Act is clear, the proposed Guidelines are silent about cooperative agreements between Tribes. Several Arizona Tribes have discussed the possibility of entering into inter-Tribal cooperative agreements to implement the requirements of the Act. Some Arizona Tribes, such as the Tohono O'odham Nation, already have a wealth of experience managing sex offender registries that could be shared. Other Tribes, such as the Havasupai, which is located at the bottom of the Grand Canyon and lacks reliable Internet access, have seemingly insurmountable barriers to implementing the Act independent of a cooperative agreement. Language should be added to the Guidelines to clarify and confirm that Tribes may enter into cooperative agreements with other Tribes as well as a state or other jurisdiction, as permitted by the Act.

**Resources, or Lack Thereof, Will Be the Biggest Obstacle Facing Tribes**

Availability of resources is one of the biggest obstacles faced by Tribes in implementing the requirements of SORNA. While states have been under an obligation to maintain sex offender registries since 1994, Tribes were not subject to the same requirement until passage of the Act in 2006. Essentially, Tribes will start from nothing, and must build a functioning registry system in less than three years from enactment of the Act (by July 27, 2009) or risk having the states intrude into Tribal jurisdictions. While states have the benefit of taxation to offset the financial burdens arising from the Act, most Tribes do not have such a system. Tribes represent some of the economically poorest populations in the United States, yet they will bear the greatest burden in implementing the requirements of the Act.

It is a clear failure of Congress that the Act, which authorized grants to implement the Act, was not passed with an accompanying appropriations bill. In order to mitigate for this failure, ITCA recommends that any funds made available for grants to jurisdictions to implement SORNA be directed to Tribes due to significant Tribal needs, which far exceed the needs of the states.

**State-Tribal Coordination**

In every state where Indian Tribes are located, regardless of whether the Tribe is a registration jurisdiction, successful implementation of the Act will require coordination between state, local, and Tribal governments. We urge the Department of Justice to make facilitating state and Tribal coordination through technical assistance a priority, and to include language in the Guidelines requiring states to document their coordination efforts with Tribal governments in their compliance submissions.

**Federal Prisons Must Be Required to Register Offenders**

Many Tribes have significant concerns about the provisions in the proposed Guidelines exempting federal corrections facilities from the Act's requirement that offenders be registered prior to release from incarceration. The Act requires that *all* corrections facilities "ensure" registration of sex

offenders prior to their release. However, under the proposed Guidelines all federal corrections facilities will not ensure registration; instead, they would merely provide the sex offender with a notice that the individual must register within three days. In addition to violating the Act, it would be extremely irresponsible to release these prisoners without making sure 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 as a result of federal prosecution under the Major Crimes Act.

In addition to severely undermining public safety, this provision in the proposed Guidelines will attempt to substantially shift the cost burden of initial registration from the federal government to the states and Tribes. The responsibility of initially registering an incarcerated offender that has been convicted under federal law, including the collection of DNA and fingerprints, is a responsibility that lies with the federal government under the Act. 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. The proposed Guidelines must be changed so that federal corrections facilities, like state and Tribal facilities, are required to ensure that offenders are entered into the registry before or at the time of their release as required by the Act. The federal government is under the same obligation as the states and Tribes, and pursuant to the Act, the Department of Justice cannot attempt to shift this obligation to others.

**The Guidelines Lack Language to Provide States With Guidance for State Actions Taken Pursuant to the Act Within Tribal Jurisdictions**

Arrest authority is one of the key subject matter areas addressed in the proposed Guideline's discussion of cooperative agreements between the states and Tribes. Tribes are greatly concerned about state action when conducting arrests of Tribal members or non-Tribal members that are found within Tribal lands. The Act went into great detail to ensure that Tribal jurisdictions are included under the requirements of the Act, which is evidence that Congress recognized the distinct and separate nature of Tribal and state governments. The Guidelines should better incorporate the Act's recognition of Tribal sovereignty and jurisdiction. Language should be included that instructs states seeking to make arrests within Tribal jurisdictions that Tribal procedures must be complied with when making arrests inside Tribal jurisdictions.

**The Guidelines significantly undermine the effectiveness of SORNA by its failure to provide for equal recognition of Tribal court convictions, on a par with convictions in other jurisdictions**

The proposed Guidelines lack recognition of Tribal sovereignty and authority where it provides that recognition of Tribal court convictions of sex offenses is left up to the individual jurisdiction for purposes of implementing the SORNA. More importantly, perhaps, is that this failure to provide for equal recognition of Tribal court convictions effectively undermines the SORNA's effectiveness in that it permits dangerous sexual offenders to escape from the graduated sanctions imposed under SORNA solely based on the status of the convicting jurisdiction.

Although the proposed Guidelines state that Indian Tribal court convictions for sex offenses are to be given the same effect as convictions by other United States jurisdictions, the actual language of the Guidelines has precisely the opposite effect. The Guidelines state that because Indian Tribal court proceedings may differ from other jurisdictions in that they "do not uniformly guarantee the same rights to counsel," a jurisdiction can choose not to require registration based on a Tribal court conviction. The Guidelines further make clear that if a defendant was denied to right to the assistance of counsel and would have had the right to the assistance of counsel under the United States Constitution in "comparable state proceedings", a jurisdiction can simply choose not to require registration.

By relegating all Tribal court convictions as Tier I offenses simply due to the incarceration limitations placed upon Tribes by Congressional Act, and by failing to provide for the recognition (by a State) of the most severe and reprehensible sex offenses *merely because they happen on a Reservation*, the Guidelines significantly hinder the heart of the SORNA requirements. The effect is far-reaching: by confining Tribal court convictions to Tier I, the ability of both Tribes and states to implement the SORNA for the protection of the general public (both on and off-reservation) is curtailed significantly, instead a dual standard is created with regard to the requirements imposed on offenders.

Effectively, the proposed Guidelines hamper the efficacy of the entire SORNA, solely based on the location of conviction, by permitting some sexual offenders to have the lesser restrictions placed on them. Any final Guidelines issued by the DOJ, therefore, must take into account this loophole and provide a mechanism by which Tribal court convictions are placed on an equal footing with convictions handed down in other jurisdictions.

**The Conflict Between the Guidelines and the Frequently Asked Questions Must be Resolved**

Conflict between the Guidelines and the Frequently Asked Questions (FAQ) must be resolved. Under FAQ, question #36, the table of contents reads, "How are foreign convictions treated under SORNA?" In the FAQ text, the question reads "How are foreign convictions and *Tribal* convictions treated under SORNA?" The answer proceeds to discuss convictions that were not "obtained with sufficient safeguards for fundamental fairness." This language conflicts with the language contained in the Guidelines, which indicates that Tribal convictions may differ from those in other states' jurisdictions because there is no guaranteed right to counsel in Tribal courts. Lumping Tribal convictions with foreign convictions and implying Tribal convictions were obtained without sufficient safeguards for fundamental fairness is offensive and disrespectful to Tribes and their courts. Accordingly, either 1) the word "Tribes" must be removed from FAQ #36, or 2) the FAQ answer should include a more lengthy explanation, such as the language found on page 16 of the Guidelines.

**Tribal Governments not Functioning as Registration Jurisdictions**

Even in those places where Tribal governments do not have the option of participating as a registration jurisdiction under Section 127 of the Act, or in cases where a Tribe opts-out, the Tribal government will play an important role in the successful implementation of the national sex offender registration system. Tribes and states are not interchangeable. Even if the Tribe is not a registration jurisdiction, the state simply cannot fulfill all of the responsibilities of Tribal governments. For example, 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 to include in the registry the text of the law violated by the offender, and the Tribal or Bureau of Indian Affairs ("BIA") law enforcement officers will still 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.

The proposed Guidelines do not sufficiently address how Tribal governments will be included in the system if they are not registration jurisdictions. 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" 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. We encourage the DOJ to include <u>all</u> Tribal governments and law enforcement agencies throughout the Guidelines in all appropriate places.

In addition, the Guidelines are silent as to how registration will occur for offenders being released from Tribal detention facilities where the Tribe is not a registration jurisdiction. This issue should be addressed before the Guidelines are finalized. It is also unclear from the Guidelines whether registry information about an offender's criminal history will include Tribal court convictions from a Tribe that is not participating as a registration jurisdiction.

**Conclusion**

The proposed Guidelines for the Adam Walsh Act do not resolve several important issues that are crucial to the successful implementation of the Act. If the Department of Justice is going to require substantial implementation by the Tribes, the Guidelines must reflect the unique status of Tribes and resolve any question as to how these differences will be dealt with.

ITCA shares the federal government's commitment to protecting our communities and citizens from sexual predators. In fact, prior to the Adam Walsh Act, many Tribes in Arizona had already adopted sex offender registry codes. With the careful consideration by the Department of Justice of the comments that are submitted by the Tribes regarding the proposed Guidelines, ITCA is hopeful that the sex offender registry and its implementing guidelines will help to provide the same level of safety and security for Tribal communities as it will provide for the rest of nation.

ITCA would welcome an opportunity to meet with you to discuss these issues further at your convenience.

Sincerely,

John R. Lewis

John R. Lewis
Executive Director

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# Fax Transmission Cover Page

**Date:** July 30, 2007

**To:** Leslie Hagen
SMART OFFICE, Office of Justice Programs

**FAX:** (202) 616-2906

**From:** Susan C. Landers for Howard G. Arnett

**RE:** The Confederated Tribes of the Warm Springs Reservation's Comments regarding National Guidelines for Sex Offender Registration and Notification

**File No.** W1091.07(b)

**No. of pages** (Including this cover page): 4

(Please contact Susan C. Landers at the above number if you had any trouble receiving this transmission.)

KARNOPP PETERSEN LLP
ATTORNEYS AT LAW

July 30, 2007

Laura L. Rogers, Director,
SMART Office, Office of Justice Programs,
United States Department of Justice
810 7th Street, N.W.
Washington, D.C. 20531

**Re: Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act. OAG Docket No. 121.**

Dear Ms. Rogers:

This office serves as general counsel to the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe" or "Warm Springs"). We are submitting this letter as Warm Springs Tribal Attorneys to convey the Tribe comments on the proposed National Guidelines for Sex Offender Registration and Notification ("Guidelines"). Our comments are as follows:

First, Warm Springs joins in and adopts as its own the comments of the National Congress of American Indians ("NCAI") on the proposed Guidelines. Warm Springs is a longtime member of NCAI and we played an active role in the development of the NCAI comments. Accordingly, we strongly support NCAI's comments.

In adopting the NCAI comments, the Tribe especially wishes to emphasize its support for the NCAI comment regarding the need for a "due process" mechanism for determining tribal compliance with the requirements of the Act. It is highly objectionable to Warm Springs that the Attorney General is allowed to unilaterally determine that a tribe has failed to comply with the Act and, as a penalty, delegate jurisdiction over the tribe's reservation to the state. Clearly, such an administrative delegation of state jurisdiction over Indian Country is not only offensive to tribal sovereignty, it appears to be unprecedented in the more than two centuries of Federal-Tribal relations. Certainly, such a grave decision by the Attorney General, with such serious consequences for tribal sovereignty and jurisdiction, should be undertaken with great reluctance. Moreover, such a decision must, at a minimum, be subject to judicial challenge by the affected tribe under procedures that are consistent with the due process requirements of the United States Constitution.



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Second, we strongly object to the provisions of the Guidelines regarding initial registration of convicted sex offenders incarcerated in the federal prison system. Under the draft Guidelines (p. 51-52), unlike prisoners incarcerated in state and tribal facilities, federal prisoners are not required to register before they are released to the community. The supposed justification for that glaring omission in the otherwise comprehensive requirement that incarcerated sex offenders must register before release is that there is no federal registration system. That is no excuse for not registering federally incarcerated sex offenders before their release. Certainly, it should be possible for the Federal Bureau of Prisons to arrange for incarcerated sex offenders to register with the State in which the federal correctional facility is located. That is simply a matter of Federal-State coordination and cooperation. The alternative--simply releasing without registering sex offenders convicted of the most serious felonies, many of whom committed their sex crimes in Indian Country--is unacceptable in view of the public safety threat these violators pose. Not only do these incarcerated felony violators pose the greatest threat to the public, but they are also the offenders least likely to voluntarily comply with registration requirements once they are released. For the Adam Walsh Act's goal of a comprehensive, national sex offender registration and notification system to become a reality, sex offenders incarcerated in the federal prison system must be registered before they are released.

Third, the provision of the Guidelines (p. 28-29) requiring the registry to include "traditional names given by family or clan pursuant to ethnic or tribal tradition" is unnecessary as well as offensive to many Native Americans and their cultural traditions. It should be removed from the Guidelines. The Guidelines already require "names," "aliases," "nicknames," and "pseudonyms," which covers the universe of names that a convicted sex offender would be known by in a community. By contrast, the "traditional names" given an individual in a tribal community are generally not known outside of the family or religious group and are often used in only very limited circumstances, usually in a private ceremonial or religious setting. If a "traditional name" should become a name of common usage in the community, it then rises to the level of a "nickname" and must be included in the registry by other provisions in the Guidelines. Again, we urge that the "traditional names" requirement be removed from the Guidelines.

Fourth, we disagree with the statement that all tribal court convictions should be treated as tier I offenses, simply because the maximum sentence is no more than one year in jail (Guidelines p. 25). In fact, many tribal court prosecutions are for sex offenses that would be classified as tier II or tier III offenses if the convictions occurred in state or federal court. The reason for this is many tribes prosecute serious sex offenses after federal prosecutors have declined to take the case to federal court. In our view, if a tribal court conviction is for an offense (in light of the elements of the crime proven at trial) that would be classified as a tier II or tier III offense if the conviction was in state or federal court, then the tribal court conviction should similarly be classified as a tier II or tier III offense.

Finally, we would like to see several additions to the Guidelines. Specifically, we would like to see the Guidelines include a model "Tribal-State Cooperative Agreement" that would meet the requirements of Sec. 127(b)(2) of the Adam Walsh Act. We anticipate that many tribes, and Warm Springs may be one of them, will want to develop a cooperative agreement with their local state government to share some of the registration and notification requirements of the Act. Such agreements are specifically authorized under Sec. 127(b)(2) of the Act. It would be very helpful if the Guidelines included a form or model of such an agreement.

We also would like to see the Guidelines include specific provisions regarding possible grants or funding that may be made available to Tribes to carry out their responsibilities under the Act. We note that the Guidelines (p. 60, 61 and 64) refer to the funding authorization of Section 631 of the Act. The Guidelines, however, do not indicate that a portion of the available funding will be set aside for Tribes. If Congress omits a tribal set aside in appropriations legislation, we believe that the Department of Justice has the administrative discretion to make such a set aside of appropriated funds for Tribes. Moreover, we believe the Department's intent to do so should be indicated in the Guidelines. The Guidelines should also state that grants will be awarded on a non-competitive basis. We are hopeful that the Department of Justice will request from Congress, and Congress will appropriate, sufficient funds to meet the needs of all tribes that have exercised the Section 127 election to assume the responsibilities of a jurisdiction under the Act. Accordingly, grants should be awarded according to the size, population and estimated compliance workload of each tribe.

Thank you for your consideration of these comments on the proposed Guidelines. Please feel free to call me if you have any questions.

Sincerely,

Howard G. Arnett by SCh

HOWARD G. ARNETT

HGA:ldd

cc: Leslie Hagen, SMART Office (via facsimile and first-class mail)

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:43 AM
**To:** Rosengarten, Clark; Hagen, Leslie
**Subject:** FW: Docket No. OAG 121
**Attachments:** Rogers SORNA comments080107FNL.pdf

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**From:** Trent S.W. Crable [redacted]
**Sent:** Wednesday, August 01, 2007 4:26 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

SMART Office:

Please find attached the comments of the Quechan Indian Tribe regarding OAG Docket No. 121, the Proposed Guidelines for Interpreting and Implementing the Sex Offender Registration and Notification Act.

Thank you,

**Trent S.W. Crable**
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August 1, 2007

**Via Email to**
**Subject: Docket No. OAG 121**

Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW.,
Washington, DC 20531
Email: getsmart@usdoj.gov

Re: OAG Docket No. 121 – Comments of the Quechan Indian Tribe on the Proposed Guidelines for Interpreting and Implementing the Sex Offender Registration and Notification Act

Dear Ms. Rogers:

On behalf of the Quechan Indian Tribe, we submit the following comments on the proposed guidelines announced in OAG Docket No. 121 for interpreting and implementing the Sex Offender Registration and Notification Act ("the Act").

1. Part III of the Guidelines Should be Revised to Appropriately Recognize and Uphold Tribal Jurisdiction and Sovereignty.

As the Guidelines recognize, under section 127(a)(1) a federally recognized tribe has the option of "electing to carry out the sex offender registration and notification functions specified in SORNA in relation to sex offenders subject to its jurisdiction, or delegating those functions to a State or States within which the tribe is located."[1] Unfortunately, and unnecessarily, section 127(a)(2) places certain limits and restrictions on that authority. It is the Tribe's view that the Guidelines incorrectly interpret section 127(a)(2)(A) and its effect on a tribe's right to function as a "jurisdiction" under the Act.

[1] Proposed Guidelines at 13.

Section 127(a)(2)(A) provides that "a tribe subject to the law enforcement jurisdiction of a State under section 1162 of title 18, United States Code" will be treated as if it elected to delegate its functions to the State(s) under 127(a)(1)(B). Section 127(a)(2)(A) is very poorly drafted. First, it mischaracterizes the law, as no tribe is "subject to the law enforcement jurisdiction of a State under section 1162 of title 18."[2] Second, it fails to address the fact that tribes maintain jurisdiction over certain offenses, even where 18 U.S.C. § 1162 has granted concurrent jurisdiction to the State.[3] Because of these shortcomings, the Guidelines should be revised to affirmatively reflect that tribes in the states covered by 18 U.S.C. § 1162 may still elect to participate as a "jurisdiction" under the Act, while recognizing that to a certain extent the State would have concurrent authority.

If the Guidelines are not revised to clarify that tribes located within the states covered by 18 U.S.C. § 1162 may participate as a jurisdictions under the Act, there will be uncertainty as to what extent the tribes and states should function as "jurisdictions" over tribal lands.

If it is determined that the Act flatly prohibits tribes located within the states covered by 18 U.S.C. § 1162 from functioning as a jurisdiction under the Act, then the Act would be a gross invasion on tribal sovereignty that goes beyond the provisions of Public Law 280. If the Act is read as essentially prohibiting tribes from acting as a jurisdiction under the Act, ordering them to "delegate"[4] their authority, and requiring them to open their doors and assist the State, then the Act: (1) reaches farther and deeper than Public Law 280; and (2) is an unfunded mandate. In light of the longstanding federal policy of tribal self-government and self-determination, it should be assumed that Congress would require serious and lengthy discussion, and consultation with the affected tribes and states, before passing an act that so grossly and profoundly affects tribal sovereignty.

It is essential that the Guidelines make it clear that tribes located within states covered by 18 U.S.C. § 1162 may elect to function as a jurisdiction under the Act to the extent they have jurisdiction.

2. Part IV of the Guidelines Should be Revised to Provide Full Faith and Credit to All Lawful Tribal Court Prosecutions.

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[2] 18 U.S.C. § 1162 granted to states jurisdiction over "offenses committed by or against Indians in the areas of Indian country listed [in the section] . . . ." While the statute granted to states jurisdiction over certain offenses occurring within a reservation, it in no way subjects *tribes* to State jurisdiction.

[3] "The nearly unanimous view among tribal courts, state courts and lower federal courts, state attorneys general, the Solicitor's Office for the Department of Interior, and legal scholars, is that Public Law 280 left the inherent civil and criminal jurisdiction of Indian nations untouched." Nell J. Newton et al., Cohen's Handbook of Federal Indian Law 560–61 (2005 ed.) (internal footnotes omitted).

[4] While the Act uses the phrase "elect to delegate," in the context of 127(a)(2)(A) the tribe is clearly not "electing" to "delegate."

The Guidelines note that "Indian tribal court convictions for sex offenses are generally to be given the same effect as convictions by other United States jurisdictions," but they go on to provide that:

> a jurisdiction may choose not to require registration based on a tribal court conviction resulting from proceedings in which: (i) the defendant was denied the right to the assistance of counsel, and (ii) the defendant would have had a right to the assistance of counsel under the United States Constitution in comparable state proceedings. A jurisdiction will not be deemed to have failed to substantially implement SORNA based on its adoption of such an exception.[5]

This is, frankly, outrageous. The Act itself does not require, or even suggest, such discriminatory treatment of tribal court convictions.[6] The quoted language should be stricken from the Guidelines. Lawful tribal court convictions should receive full faith and credit.

The Indian Civil Rights Act prohibits tribes from denying "any person in a criminal proceeding the right . . . at his own expense to have the assistance of counsel for his defense."[7] Therefore, if a tribe did deny a defendant the right to the assistance of counsel obtained at the defendant's expense, then the conviction would have been secured in violation of the Indian Civil Rights Act and could be challenged accordingly. While it is most logical to read the language of the Guidelines as permitting other jurisdictions to ignore tribal convictions only where the tribe prohibited the defendant the assistance of counsel, if it is intended to mean that tribal convictions may be ignored if counsel is not provided free of charge, that would still be inappropriate as Congress specifically recognized that tribal courts need not provide free counsel.

The Act does not provide for such disparate treatment of tribal convictions, and such disparate treatment is not justified. The Guidelines note that convictions in Canada, Great Britain, Australia, and New Zealand, are all deemed to have been obtained with sufficient safeguards for fundamental rights, and that convictions of other foreign jurisdictions will be deemed to have provided sufficient safeguards if the State Department "has concluded that an independent judiciary generally (or vigorously) enforced the right to a fair trial . . . ."[8] The Guidelines inappropriately subject tribal court convictions to a higher standard than foreign judgments.

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[5] Proposed Guidelines at 16.

[6] That the Act does provide a basis for discounting or ignoring *foreign* convictions (section 111(5)(B)), while not providing for such treatment of tribal convictions, strongly suggests that Congress did not intend to permit other jurisdictions to discriminate against tribal convictions.

[7] 25 U.S.C. § 1302(6).

[8] As noted in note 6, the Act does permit the discounting, or ignoring of, foreign judgments.

3. Part VII of the Guidelines Should be Revised to Ensure that Tribes and Tribal Agencies Receive Community Notification and Target Disclosures Issued Under Section 121(b).

It is vital that tribes and tribal agencies (particularly police departments, schools, and daycare centers) receive the notifications provided for in section 121(b). The Tribe recommends that Subpart B of Part VII be revised so that it is clear that tribes and tribal agencies are to receive such notification.

4. It is Inappropriate that the Act Creates Burdensome Requirements for Tribes Without Providing Sufficient Guaranteed Funding.

The Act places costly burdens on tribes, but does not guarantee funding to offset the costs of implementing the Act's requirements. Even if a tribe elected to delegate its functions to a state, the Tribe would still be required to provide "cooperation and assistance" to the State. If tribes are to be required to dedicate scarce resources and participate in Congress's national system, Congress should guarantee adequate funding to all tribal participants.

Thank you for your consideration. The Tribe reserves the right to supplement these comments. Please include our office on all future notices and distributions of documents regarding the implementation of these guidelines.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & McGAW

Frank R. Jozwiak
Trent W. Crable
*Attorneys for the Quechan Indian Tribe*

cc: President Mike Jackson Sr.
Vice President Keeny Escalanti Sr.
Members of the Quechan Tribal Council

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mmc:8/1/07

# SAC AND FOX NATION

Route 2 Box 246, Stroud, OK 74079 (918) 968-3526 Fax (918) 968-4837

REQUEST THE ATTACHED NUMBER OF PAGES 4 INCLUDING COVER SHEET TO BE DISPATCHED BY FACSIMILE.

TO:

NAME: Laura Rogers TITLE: Director

OFFICE: SMART DOJ PHONE #: 202-514-1689

CITY/STATE: Washington DC FAX #: 202-616-2906

FROM:

NAME: Rusty Brown TITLE: Policy Analyst

OFFICE: Sac+Fox Nation PHONE #: 918-290-1152

CITY/STATE: Stroud OK FAX #: 918-9684834

MESSAGE: Public Comments For OAG Docket No. 121

DISPATCHED BY: RGB DATE: July 31 2007 TIME: 3:00 PM

# Sac and Fox Nation

Route 2, Box 246 Stroud, OK 74079

*Principal Chief* KAY RHOADS
*Second Chief* DARRELL L. GRAY
*Secretary* GEORGE THURMAN
*Treasurer* MICHAEL W. HACKBARTH
*Committee Member* AUSTIN GRANT


July 30, 2007

Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW
Washington, DC 20531
202.514.4689 (office)
202.616.2906 (fax)
getsmart@usdoj.gov

**RE: OAG Docket Number 121: Office of the Attorney General; The National Guidelines for Sex Offender Registration and Notification**

Ms. Rogers:

As the Principal Chief of the Sac and Fox Nation, I share the federal government's concerns over sex offenders and sexual predators. It is in the best interest of all citizens of the U.S. and the Sac and Fox Nation (the Nation) to enforce sex offender laws, including sex offender registries.

The Nation has "opted-in" as a registry jurisdiction and as such, I submit the following public comments regarding OAG Docket No. 121, U.S. Attorney General's Proposed Guidelines for Sex Offender Registration and Notification under the Adam Walsh Act, published in the Federal Register on Wednesday, May 30, 2007, on behalf of the Sac and Fox Nation and the citizens I represent.

**Comment 1:**

Federal Register, Vol. 72, No. 103, Wednesday, May 30, 2007 pp. 30214-15, III. Covered Jurisdictions.

Throughout this section of the Guidelines, it states that tribes may enter into cooperative agreements with the state(s). For example, page 30215, first column, first paragraph, second sentence states:

> Duplication of registration and notification functions by tribes and States is not required, however, and such tribes may enter into cooperative agreements with the States for the discharge of these functions, as discussed below in connection with section 127(b).

Within this section there are at least, five (5) other references to tribes entering into cooperative agreements with states. The guidelines do not mention tribal nations entering into cooperative agreements with other tribal nations, or forming tribal coalitions for the purposes of



Administration (918) 968-3526 Fax (918) 968-4837 ▫ Office of Government (918) 968-1141 Fax (918) 968-1142

implementing and enforcing SORNA. As written, these Guidelines seem to limit a tribe's ability to enter into a cooperative agreement with only states.

The Nation recommends a modification of this section to clearly affirm tribal nations may enter into cooperative agreements with states, local governments, and other tribal nations while including specific provisions for the formation of tribal coalitions to implement SORNA. It is the Nation's view that as long as the terms of SORNA are legally met and substantially implemented cooperative agreements, with all registry jurisdictions, are appropriate.

**Comment 2:**

Federal Register, Vol. 72, No. 103, Wednesday, May 30, 2007 pg. 30216, first column, second paragraph under A. Convictions Generally, starting with the second sentence states:

> Indian tribal court convictions for sex offenses are generally to be given the same effect as convictions by other United States jurisdictions. It is recognized, however, that Indian tribal court proceedings may differ from those in other United States jurisdictions in that the former do not uniformly guarantee the same rights to counsel that are guaranteed in the latter. Accordingly, a jurisdiction may choose not to require registrations based on a tribal court conviction resulting from proceedings in which: (i) The defendant was denied the right to the assistance of counsel, and (ii) the defendant would have had a right to the assistance of counsel under the United States Constitution in comparable state proceedings. A jurisdiction will not be deemed to have failed to substantially implemented SORNA based on its adoption of such an exception.

The Nation would remind the Department of Justice of the Indian Civil Rights Act of 1968 (ICRA) (25 U.S.C. §§ 1301-03) which clearly states that every party appearing in a tribal court proceeding has the right "to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense." Under ICRA, a tribal nation has no authority to deny any party to a tribal proceeding the right to counsel.

The Guidelines allow other jurisdictions to review tribal court proceedings to ensure a defendant's rights have been guaranteed; tribal jurisdictions should have the same right of review. While going through state courts Native Americans' rights are not always properly guaranteed or protected. The Guidelines either need to ensure full faith and credit applies to and is afforded to all registry jurisdictions or alternatively, each jurisdiction should be granted the right to review each defendant's conviction and have the same opportunity of adopting an exception.

**Comment 3:**

Federal Register, Vol. 72, No. 103, Wednesday, May 30, 2007 pg. 30220, second column, last paragraph, second sentence states:

> The names and aliases required by this provision include, in addition to the registrant's primary or given name, nicknames and pseudonyms generally, regardless of the context in which they are used, any designations or monikers for

self-identification in Internet communications or postings, and traditional names given by family or clan pursuant to ethnic or tribal tradition.

It is the Nation's opinion a clear distinction needs to be made in an individual's use of a traditional or ceremonial name. A blanket statement forcing Native Americans to give up their traditional or ceremonial name is inappropriate and may violate an individual's right to freedom of religion. If the individual publicly uses their traditional name and is known by that name, then it may be reasonable to include the name in the registry. However, in many instances a traditional name is used for religious ceremonial purposes only and not spoken or used outside of the religious ceremonies. If the name is used for the latter purpose the name should not be required for the registry nor should the name be put on the Internet.

**Comment 4:**

The Nation agrees with the National Congress of American Indians (NCAI) comment on OGA Docket Number 117 interim rule on retroactivity submitted to David J. Karp, Senior Counsel, Office of Legal Policy on April 30, 2007.

**Comment 5:**

A general concern the Nation has with the Act and the Guidelines are the numerous unfunded mandates placed on participating tribal jurisdictions. The Act provides for funds to be available to tribes to implement SORNA. It is the Nation's current understanding that neither the financial assistance nor the extent of assistance, for implementation, has yet been appropriated or determined. The Nation believes these issues must be addressed and should require full consultation with tribes.

If you have any questions concerning the Sac and Fox Nation's public comments on OAG Docket Number 121, please contact Mr. Rusty Creed Brown, Policy Analyst at 918.968.2031 or rusty.brown@sacandfoxnation-nsn.gov.

Sincerely,

Kay Rhoads,
Principal Chief
Sac and Fox Nation

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 10:58 AM
**To:** Hagen, Leslie; Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121
**Attachments:** Comments_-_Sex_Offender_Registration[1].pdf

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**From:** OLC Intern [redacted]
**Sent:** Monday, July 30, 2007 7:34 PM
**To:** GetSMART
**Cc:** Darren Williams; OLC Intern
**Subject:** Docket No. OAG 121

Attached are the Nez Perce Tribe's comments on the Proposed Guidelines for the Sex Offender Registration and Notification Act.

---

Morgen Reynolds
Legal Intern
Office of Legal Counsel
Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540
Office: 208-843-7355
ax: 208-843-7377

Nez Perce

TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

July 30, 2007

Leslie A. Hagen
SMART Office/OJP
U.S. Department of Justice
810 Seventh Street, NW
Washington DC 20531

**OAG Docket No. 121**
**Comments on the Attorney General's National Guidelines for the Sex Offender Registration and Notification Act – Proposed Guidelines, May 2007**

Dear Ms. Hagen,

Thank you for the opportunity to comment on The National Guidelines for Sex Offender Registration and Notification – Proposed Guidelines ("Proposed Guidelines"). The Nez Perce Tribe is committed to promoting public safety and to protecting all individuals in Indian Country. However, the Nez Perce Tribe is concerned with the disparate application of the Sex Offender Registration and Notification Act ("SORNA") to state and tribal jurisdictions.

SORNA requires registration jurisdictions to substantially implement and comply with SORNA guidelines by July 27, 2009, although, SORNA provides inconsistent penalties on state and tribal jurisdictions for failure to meet this deadline. A state's failure to comply by the specified date will result in a mandatory ten-percent reduction of federal justice assistance funding under 42 U.S.C. 3750 (Byrne justice Assistance Grant

Funding).[1] Whereas, if the Attorney General determines that a tribe has not substantially implemented the requirements and is not likely to become capable of doing so within a reasonable amount of time, the tribe will be treated as if it has made the election to delegate its functions to another jurisdiction.[2] This treats tribal jurisdictions in such a way that is inconsistent with the treatment of other sovereign entities, i.e. states.

This discrepancy in treatment of tribal jurisdictions in comparison to other jurisdictions will result in the expansion of state jurisdiction on tribal lands, it will be an unprecedented diminishment of tribal sovereignty and will unnecessarily complicate the already confusing system of criminal jurisdiction on tribal lands. If this provision were applied equally, it would provide for the diminishment of state sovereignty. For example, if the Attorney General determines that a state has not substantially carried out the requirements, it would be treated as if it has elected to delegate its functions to a neighboring state or to the federal government. Such a diminishment of state jurisdiction would be extraordinary and unacceptable. Therefore, the Nez Perce Tribe recommends that the provision be amended to apply equivalent consequences for state and tribal jurisdictions that fail to substantially implement SORNA.

In addition, SORNA inadequately applies standards for penalties when sex offenders fail to comply with the registration requirements, by completely neglecting to include penalties in tribal jurisdictions. "Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of

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[1] *Proposed Guidelines*, U.S. Department of Justice, Office of Justice Programs, http://www.ojp.usdoj.gov/smart/proposed.htm at 10 (May 2007); *See also* SORNA § 16925(a).
[2] 42 U.S.C.A. § 16927(a)(2)(C). *See also Proposed Guidelines* at 15; and *U.S. Department of Justice, Office of Justice Programs, Frequently Asked Questions: The Sex Offender Registration and Notification Act (SORNA) Proposed Guidelines* (http://www.ojp.usdoj.gov/smart/pdfs/sorna_faqs.pdf) (These functions are delegated to the State or States if the Attorney General determines that the tribe has not substantially implemented SORNA and is not likely to become capable of doing so within a reasonable amount of time).

imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter."[3] The Proposed Guidelines state that. "Indian tribes are not included in this requirement because tribal jurisdiction does not extend to imposing terms of imprisonment exceeding a year."[4] Tribal jurisdictions are only able to impose terms of imprisonment of up to one year, while SORNA requires states to enforce penalties of no less than one year. This disparity of sentencing authority needs to be addressed and the Guidelines should establish equivalent federal penalties that would apply in tribal jurisdictions and discourage the violation of SORNA.

The lack of tribal sentencing authority adds to the complications faced by law enforcement in tribal jurisdictions, which was recently discussed by the United States Senate Committee on Indian Affairs during the June 21, 2007 oversight hearing on law enforcement in Indian Country. Federal authorities do not prioritize their role in law enforcement in Indian Country and the U.S. Attorneys rarely prosecute any crime when they feel the tribe could impose a remedy. Therefore, the Nez Perce Tribe urges the Department of Justice to include a provision that would expressly impose federal penalties and would direct the U.S. Attorneys in the prosecution of sex offenders who fail to comply with the registration requirements in tribal jurisdictions.

The Nez Perce Tribe seeks to ensure public safety in Indian Country and is thankful for the opportunity to comment on this issue.

Sincerely,

Samuel N. Penney

Samuel N. Penney
Chairman,
Nez Perce Tribal Executive Committee

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[3] SORNA § 16913(c); *See also Proposed Guidelines* at 64.
[4] *Proposed Guidelines* at 64.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:50 PM
**To:** Rosengarten, Clark
**Subject:** FW: Guideline Recommendation
**Importance:** High
**Attachments:** Blank Bkgrd.gif

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**From:** Desiree Allen-Cruz[redacted]
**Sent:** Wednesday, July 25, 2007 9:37 PM
**To:** GetSMART
**Cc:** Desiree Allen-Cruz
**Subject:** Guideline Recommendation
**Importance:** High

We have reviewed the Proposed Guidelines and agree "Notification to Jurisdictions" need to be defined to the greatest extent possible. While we understand that larger more electronically advanced jurisdictions (state, fed) are likely to work closely and quickly, smaller jurisdictions such as rural or frontier areas within the state do not. And, as such, Tribal jurisdictions are not usually a priority especially when we reside in the rural or frontier areas. **Defining an agency within jurisdictions** (residential, school, employment) **that must give notification to ensure quick and reliable notification is important for the safety of our communities.**

Example: A sex offender currently a resident of Colorado employed with a construction company within that state, travels to Pendleton, Oregon for a construction project on our Reservation. Will the Colorado SO Registering office contact the state of Oregon? Or will the Colorado SO Registering office be contacting our Tribal agency? Will that notification reach the Tribal agency before the SO arrives or within 3 days after arrival? Or, will the SO Colorado employer have to notify our Tribal Law Enforcement or other Tribal agency upon or prior to arrival? Or will we have to bear the wait of Colorado State notifying Oregon or the Federal jurisdiction who will in turn contact our Tribe?

If racism prevails within jurisdictions (by agency or employee), defining the agency responsible to notify along with timelines is of utmost and imperative importance.

Please detail or further refine, within the proposed Guidelines, which agency within each jurisdiction that must notify which receiving agency of each jurisdiction and timeline for each.

Folks in attendance and in agreement of above include:

Jessie Grow Hodges, Tribal Sexual Assault/Teen Advocate; Desiree Allen-Cruz, Domestic Violence Services Coordinator; Kate Beckwith, Tribal Prosecutor; Ron Harnden, Tribal Chief of Police.

Respectfully,

Desiree Allen-Cruz
CTUIR, Domestic Violence Services Coord.
PO Box 638
Pendleton, OR 97801
Office: 541.276.7011
**Direct: 541.966.2895**
Fax: 541.278.5391
email: desireeallen-cruz@ctuir.com

July 9, 2007

**Comments on proposed Guidelines**
The National Guidelines for Sex Offender Registration and Notification

Submitted by Maureen White Eagle, Attorney, 3868 Heather Drive, Eagan, MN 55122
MWhiteEagle@msn.com

I reviewed the guidelines focusing on the **effects it will have on tribes**, participating and non-participating. The following are comments or questions which may or may not have been considered.

**1. Jurisdiction-wide registration system**: It should be clarified that if a reservation participates, it is responsible for registering non-Indian as well as Indian offenders in Indian country, although agreements could delegate some of that responsibility.

**2. Identify reservations:** Currently **an offender is not required** to **identify whether he will be residing, working, or schooling on an Indian reservation** when he registers. If this question is not asked, and the offender is not required to identify the reservation, other jurisdictions are **not** going to know when notification of a tribal jurisdiction is necessary. Zip codes are not going to accurately help in identifying when the residence, school, employer is on a reservation. Because of the belief that sex offenders migrate to reservations this is particularly important, even when the reservation identified is not a participating reservation. This could be an extremely important way to gather statistical information about sex offenders on Indian Reservations. If the question is not asked, a federal prison in Kansas (or elsewhere), is not going to know if an Indian reservation is one of the jurisdictions that is required to be notified, nor will the offender know where he is required to register. You need another field on the website for reservations. Indicating both state and reservation should be possible.

**3. Notification of non-participating tribal jurisdictions**. Another potential problem which could be solved in the regulations is the need to **insure that non-participating tribal jurisdictions are notified** of offenders residing/working/schooling in their jurisdictions. There are no requirements in your rules that law enforcement on non-participating jurisdictions must be included in the notification system. If this is not a requirement, many states may choose not to include tribal law enforcement in their system. If the state is responsible for a Jurisdiction-wide system which includes non-participating tribal governments, requiring them to provide notification to non-participating tribes provides some respect to tribal governments and also insures that tribes be aware of offenders (working/living/schooling on tribal lands), which should permit tribes to take action they may wish to take to protect their citizens.

**4. Regulation IV. A. Convictions Generally:** Exception for Indian tribal court convictions of sex offenses: This is gong to cause confusion. On one hand you are saying that Indian tribal court convictions for sex offenses should be included in the required offenses and on the other hand you are saying that tribal courts do not provide

attorneys for defendants so no need to require registration for their offenses. I see many states not including tribal convictions at all, rather than individually determining whether the individual had counsel or had a constitutional right to counsel for a tribal offense. In a time where we are trying to encourage tribes to prosecute sexual offenses, since the federal and states don't seem to be doing enough on reservations to hold perpetrators accountable, allowing states to ignore tribal sexual convictions, seems counterproductive. Indeed more and more tribes are providing defense counsel, but I doubt this will be recognized. I think a presumption supporting tribal offenses would be justified. Let the perpetrator demonstrate that he was denied counsel.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:32 AM
**To:** Rosengarten, Clark; Hagen, Leslie
**Subject:** FW: Cayuga Nation of New York

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**From:** Alcott, Lee [redacted]
**Sent:** Friday, August 03, 2007 2:28 PM
**To:** GetSMART
**Cc:** [redacted]
**Subject:** Cayuga Nation of New York

Re: Cayuga Nation of New York
Nation Resolution Re: SORNA Jurisdiction

Dear Sir or Madam:

This firm represents the Cayuga Nation of New York ("Cayuga Nation"). Please be advised that by resolution of the Cayuga Nation's governing body, the Cayuga Nation Council, dated June 21, 2007, a copy of which is attached, the Cayuga Nation has elected to become a Sex Offender Registration and Notification Act (SORNA) jurisdiction, as defined under the Adam Walsh Child Protection and Safety Act.

I believe this resolution was previously transmitted to you; however, my client received an e-mail indicating that it had not been received. I would appreciate if you would kindly acknowledge receipt. Thank you for your attention and assistance.

Very truly yours,

Lee Alcott

Lee Alcott
French-Alcott, PLLC
One Park Place
300 South State Street
Syracuse, NY 13202
Tel: [redacted]
Dir: [redacted]
Fax: [redacted]
Dir: [redacted]

[redacted]

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-WOHEHIV-
Morning Star

# NORTHERN CHEYENNE TRIBE
## ADMINISTRATION
P.O. BOX 128
LAME DEER, MONTANA 59043
(406) 477-6284
FAX (406) 477-6210

-WOHEHIV-
The Morning Star

June 27, 2007

Leslie A. Hagen
SMART Office/OJP
U.S. Department of Justice
810 7th Street, NW
Suite 8241
Washington, DC 20531

Dear Sir:

This is in reference to the letter dated May 25, 2007 to my office from Ms. Regina Schofield, Assistant Attorney General regarding Consultation on Attorney General Guidelines for Sex Offender Registration and Notification Act and our comments to the guidelines.

Our comments to the guidelines are:

1. Northern Cheyenne Tribe has elected to carry out this subtitle, section 127 of P.L. 109-248 as a jurisdiction subject to its provisions.
2. Northern Cheyenne Tribe enacted an Ordinance entitled Sex Offender Registration Program. On final review and approval of the Ordinance a copy will be mailed to your office under separate cover.
3. Review of the guidelines and provisions are technical but comprehensive. We recommend revision for simplicity after a period of time. The guidelines demonstrate compliance to which the tribe recognizes.
4. Northern Cheyenne Tribe has limited automation, electronic databases and software. Tribe requires federal justice assistance funding from the OJP and will file for grant funding. Registering, tracking and sharing information with other jurisdictions in regards to SORNA requires updated automation and funding.
5. Tribe will do everything possible to accomplish the set up of this law within the three year proposed time period effective as of July 27, 2006.

This concludes our comments and as always please be assured of our cooperation in this very important endeavor. For more information pertaining to the Tribe's status please do not hesitate to call the Chief Prosecutor's office at (406) 477-8222.

Sincerely;

Eugene Little Coyote, President
Northern Cheyenne Tribe



8/2/07

QUILEUTE TRIBAL COUNCIL
POST OFFICE BOX 279
LA PUSH, WASHINGTON 98350-0279
TELEPHONE (360) 374-6163
FAX (360) 374-6311

August 1, 2007

Ms. Leslie Hagen
SMART Office
Office of Justice Programs
Department of Justice
810 7th Street NW, Suite 8241
Washington, D.C. 20531

Re: Quileute Indian Nation Comments on
Implementation of the Adam Walsh Act
Sex Offender Registration and Notification

Dear Ms. Hagen:

The Quileute Indian Nation is extremely concerned about the Proposed Guidelines for implementation of the Sex Offender Registration and Notification Act (SORNA), particularly Section III of the Proposed Guidelines issued in May 2007.

The Quileute Indian Nation is situated on the Pacific Ocean, in an isolated location of the Olympic Peninsula in La Push, Washington.

We wish to make clear that the Quileute Nation is very much in support of the purpose and intent of the Adam Walsh Act. Previously, the Quileute Tribal Council passed a resolution to indicate our intent to begin a sexual offender registration process. Historically, our women and children have been, and continue to be, victimized by sexual predators – we estimate that 60 to 80 percent of these sexual offenders are non-Natives. In routine traffic stops over the last six months alone, our tribal police have pulled over three men registered as sex offenders in outside jurisdictions. These men were on our reservation "trolling" for new victims among our women and children. It appears that these sex offenders target victims on reservations – moving from reservation to reservation. Our women and children are very vulnerable to being sexually victimized for many reasons – a major reason being the jurisdictional complexities in our area. We are within 50 miles of seven different jurisdictions – the Olympic National Park (federal), the City of Forks, the Makah Indian Nation, the Hoh Indian Nation (Bureau of Indian Affairs), Clallam County Sheriff's Department and the Washington State Patrol. The Federal Bureau of Investigation handles felonies on the reservations and we are within 50 miles of two state correctional facilities.

With that said, the Quileute Indian Nation is very concerned about the proposed SORNA Guidelines, particularly section III. We were never consulted in the drafting of the Adam Walsh Act (nor to our knowledge were any of the other Tribes in Washington consulted). Washington State is a partial PL 280 state, asserting ***concurrent*** jurisdiction over only eight enumerated areas. The Quileute Indian Tribe, along with a handful of other Washington tribes, lawfully retroceded from Washington's concurrent jurisdiction under PL 280. Our retrocession from state concurrent jurisdiction under PL 280 is codified in the Revised Code of Washington RCW.

Yet, under Section III of SORNA, the federal government appears to be attempting to expand PL 280 so that the State of Washington would now also have jurisdiction over registration of sex offenders convicted in our tribal court. The Quileute Tribal Court would effectively be required to acknowledge Washington's ***exclusive*** jurisdiction over the area, an incredible expansion of the effect of PL 280 over our Tribe. With all due respect, this is an offense to our sovereign right to legislate, prosecute and police to protect our own people.

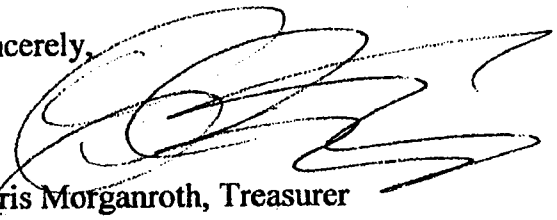
There are very large barriers to the Quileute Nation's ability to comply with the provisions of the Adam Walsh Act. For example, the Quileute Juvenile Code provides that the identity of juvenile offenders convicted of tribal offenses is absolutely confidential. A retroactive change to that law would be a potential violation of the *ex post facto* provision of the Indian Civil Rights Act. We could and would consider a possible change to the Juvenile Code to comply with the provisions of the Adam Walsh Act in the future, but we would need time to bring this very sensitive issue before our people. Additionally, we would need time to make tribal code revisions to give full faith and credit to conditions of probation in court orders for sex offenders from outside jurisdictions. We will need a mechanism to ensure that outside jurisdictions notify the Tribe when a person who has either been convicted of an offense which was committed upon our reservation, or where one of our tribal members was a victim, or where the perpetrator either resides on our reservation or is a tribal member, so that we can track compliance with conditions of probation and registration.

In conclusion, the Quileute Tribe respectfully respects clarification of the jurisdictional authority under partial PL 280 states such as Washington, particularly where a tribe (such as the Quileute Nation) has retroceded from the ***limited, concurrent*** (***not*** exclusive) jurisdiction set forth in this State's version of PL 280.

Additionally, the Quileute Tribe expresses its strong support of the Joint Statement of the Tribal Leadership present at the July 31, 2007 Consultation Session between federal agencies, including the Department of Justice, and the Tribes. The Quileute Tribe joins in that statement. Although we unfortunately were unable to have a tribal leader present at this conference, our tribal prosecutor was present and we are fully informed of the discussion.

We do remain distressed and condemn the fact that we have such little time to fully consider all ramifications of this matter. Frankly, it appears that the federal government has acted in a most cavalier fashion regarding a matter which is so critical to the welfare and safety of our women and children and which is so critical to the sovereignty which has been our legacy from our ancestors, and a legacy of self-governance which we are committed to preserve for future generations.

Sincerely,



Chris Morganroth, Treasurer
Quileute Tribal Council

cc: National Congress of American Indians

# Walker River Paiute Tribe

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Jul[illegible], 2007

U.S. Attorney General, Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Laura L. Rogers, Director
SMART Office, Office of Justice Programs
United States Department of Justice, Suite 810
7th Street, NW
Washington, D.C. 20531

**Re: Comments to the Proposed *National Guidelines for Sex Offender Registration and Notification*, May 2007 OAG Docket No. 121**

Dear Attorney General Gonzalez and Mrs. Rogers

I am writing on behalf of the Walker River Paiute Tribe of Nevada in which a federally recognized Indian Tribe and provide comments to the proposed national guidelines for the Sex Offender Registration and Notification. (the Guidelines) which is being proposed by the United States Department of Justice that will provide guidance to jurisdictions responsible for implementing the Sex Offender Registration and Notification Act, ("SORNA") which is incorporated into Title-1of P.L. 109-248 (the "Adam Walsh Act")

I would like to state for the record that the Legislation underline the proposed Guidelines is and affront to tribal sovereignty and represents a dramatic departure from the way criminal and civil jurisdictions is currently distributed among state, federal and tribal sovereign. Unfortunately, the underline law is structured in a way that will also undermine its overall public safety, effectiveness and create unnecessary challenges for tribal and state officials charged with implementing the law on the ground and addition the act represents an substantial unfunded mandate for tribes, many of whom already suffer from a severe shortage of resources for public safety.

The act allows the Attorney General 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 give authority under the act to the state such delegation would represent a major infringement on tribal sovereign authority, and congress decision to vest the Attorney General with this power is unprecedented. This delegation of authority will dramatically impact civil and criminal jurisdiction in Indian Country. This could undermine carefully negotiate cross-jurisdictional collaborative agreements that exist between tribe and states.

We strongly recommend the Department of Justice consult tribal governments to develop a detailed, process for assessing tribal compliance. This complex issue requires a more formal and lengthy process for consultation that has been used by the Department of Justice in the past.

Tribal governments will play an important role in the successful implementation of the National Sex Offender System. Tribes and states are unique and the state simply can not fulfill all the responsibilities of the tribal government. The state will need to have access to tribal codes to include in the registry the text of the law violated by the offender. Tribal and BIA law enforcement officers will still be in need of

information about the whereabouts of registered offenders for investigation purposes and best positioned to assist registration personnel with tracking down offenders. In addition, the Guidelines are silent as to how registration will occur for offenders from being released from tribal detention facilities for the tribe is not a registration jurisdiction. It is unclear if an offender's criminal history will include tribal court convictions from a tribe that is not participating as a registration jurisdiction.

Most importantly, the Indian tribes and state will require coordination, we request that the Department of Justice to facilitate state and tribal coordination through technical assistance. The Guidelines should require states to document their coordination efforts with tribal governments and their compliance submission. We are also requesting for the Department of Justice to review the issues Indian tribes experience in accessing the National Criminal Information Center (NCIC) or through participating state Criminal Information System database and address this issue in the guidelines.

In conclusion, this one day consultation is inadequate for tribes to provide meaningful written comments that may reflect any new information or issues that may arise in this session in Phoenix, Arizona. We recommend that the guidelines reflect the Department of Justice to continue consulting with Indian Tribes in an ongoing way throughout the implementation phase of the act. Additionally, a creation of a Tribal Advisory group to offer expertise and guidance to the Department of Justice as the Adam Walsh Act is implemented in Indian country.

Respectfully Submitted,

Genia Williams, Chairman
Walker River Paiute Tribe
Schurz, Nevada

Dated this **31st** day of **July, 2007**

# AK-CHIN INDIAN COMMUNITY

## Community Government

507 W. Peters & Nall Road • Maricopa, Arizona 85238 • Telephone: (520) 568-1000 • Fax: (520) 568-4566


August 2, 2007

Leslie Hagen
SMART Office
Office of Justice Programs
810 7th Street, NW, Suite 8240
Washington, DC 20531

RE: Supplemental Comments to the Ak-Chin Indian Community's Initial Comments on "The National Guidelines for Sex Offender Registration and Notification."

Dear Ms. Hagen:

As anticipated, after the Department of Justice (DOJ) tribal consultation, on July 31, 2007 in Phoenix, Arizona, the Ak-Chin Indian Community (the "Community") has additional comments to submit for your consideration. Therefore, we respectfully submit, for your further consideration, these supplemental comments to our original comments. In addition, we request that you fully consider the issues raised by the Inter-tribal Council of Arizona and the issue statement prepared by NCAI, which was provided to you at the consultation.

To begin with, we thank you for the opportunity to dialogue with you during the July 31 consultation. While you were able to provide only some answers at that time, the information you did provide brings to light additional issues and considerations for the Community with regards to implementing the Adam Walsh Act (the "Act"). We look forward to working with the DOJ, other tribes, and, where applicable, the states to resolve all issues pertaining to implementing the Act.

**Tribes Need an Opportunity to Apply for Sex Offender Management Training and Technical Assistance Grants**

As mentioned in our previous comment, resources, including financial resources, will pose large obstacles for many tribes, such as the Community. At the consultation, you informed meeting participants of a grant funding opportunity that would help jurisdictions implement the Act. You also acknowledged that this was not the first grant

that was available for this purpose. Considering that tribes have the most work to do to in developing their respective sex offender registries, it is disappointing to learn that the Sex Offender Management Training and Technical Assistance grant opportunity has already closed.

Tribes have been so occupied with trying to understand the Act and the requirements imposed upon tribes that the opportunity to apply for the Sex Offender Management Training and Technical Assistance grant was missed. Considering that tribes had until July 27 to make a decision on whether or not to implement the Act themselves, it is unreasonable to assume that tribes were in a position to apply for training and technical assistance grants at any time prior to July 27, 2007. Accordingly, we respectfully request that additional funding be made available to provide similar grant opportunities to tribes.

**Determinations that a Jurisdiction Has Substantially Implemented the Act Should Not Be Made on a Case-By-Case Basis**

During the consultation, many tribal leaders expressed concern about the case-by-case nature of the determinations of whether or not a jurisdiction has substantially implemented the Act. It was not reassuring to hear that no more specific guidelines are likely to be forthcoming. You had indicated that states are submitting information on legislation passed to implement the Act; however, you did not indicate whether or not merely submitting information was sufficient to deem a jurisdiction is compliant. Further, you did not indicate what legislative information was being submitted. Without additional guidance, tribes are at a loss on how to determine what to submit to make the necessary showings. All jurisdictions must be given more definitive guidance on how to "substantially implement" the Act.

In addition to greater clarity on how to obtain substantial implementation, jurisdictions must be given an appeal process or remedial period to correct any perceived deficiencies. Because there is no formula for ensuring compliance, it is reasonable to assume some jurisdictions won't successfully obtain substantial implementation on the first try. The Department of Justice must be willing to work with a jurisdiction before penalizing them.

**Tribes, Above All Others, Must Be Afforded Opportunities to Remedy Perceived Deficiencies in Substantially Implementing the Act.**

The need for an opportunity to correct deficiencies is especially crucial for tribes. While states that fail to substantially implement the Act only lose funding, tribes lose sovereignty to implement the Act at all. Understandably this disparate treatment is embodied within the Act itself; however, DOJ and the SMART Office have a role in making substantial implementation determinations. Accordingly, the DOJ and the SMART Office must make every effort possible to guide a tribe into obtaining substantial implementation before stripping away that tribe's jurisdiction.

**If the Guidelines are Only Minimum Requirements, Confusion Will Result When Jurisdictions Go Beyond the Minimum**

Tribal leaders were concerned that all tribal convictions will be deemed tier I convictions due to the sentencing limitations placed on tribal courts by the Indian Civil Rights Act. You responded that a tribe can pass laws that alters the tiers within the tribe's jurisdiction. While this seemed to provide a solution, it will ultimately only create more confusion.

Assume that Tribe X does alter its registration classification tiers. Subsequent to this change, Tribe X convicts Offender for a sex offense that, despite the one-year sentencing limitation, will require a tier III registration under Tribe X's revised tiers. How does Tribe X explain the registration requirements to Offender, who may live, work, or attend school outside of Tribe X's jurisdiction? The confusion will only be further compounded if the jurisdiction in which Offender lives, works, or attends school refuses to acknowledge the tribal conviction. If explaining such a situation in a hypothetical is confusing, just imagine how complicated this will become in the real world.

**The Proposed Tribal/State Symposium to Discuss Implementation in Indian Country is Good... in Theory**

While the concept of a tribal/state symposium to discuss implementation of the Act in Indian Country sounds good in theory, certain logistical considerations must be taken into account. Such a symposium could likely not address all of the situations nation-wide. Arizona tribes have a very different relationship with Arizona than the State of Wyoming has with its tribes. Further, each tribe will implement the Act differently. Some tribes have not opted to implement the Act at all. Others will implement only portions. While the symposium could address various hypothetical situations, ultimately each individual state will need to meet with each individual tribe within that state to discuss implementation logistics.

As you mentioned, much of what states have sought so far regarding implementation of the Act in Indian country is "Indian Law 101." Although it is disheartening that states still have not figured this out, such a basic topic could be a good symposium topic. A general topic symposium could both remind states that tribes are separate, sovereign governments that must be treated accordingly, and lay the foundation for further government-to-government discussions between each tribe and its respective state.

**The Federal Government Needs to Take Responsibility for Offenders Released from the Federal Prison System.**

If the federal government can impose a registry requirement upon states and tribes, it should subject itself to the same burden. Considering that the United States

Attorney General is responsible for developing the software for the uniform registry, it makes the most sense that the federal government be the pilot project for implementing the system. Claims that the federal system does not have a registry do not respond to tribal objections. Many tribes are situated identically to the federal government, yet the tribes are being forced to act with no resources.

Even if the registration obligation is not placed on the federal prisons, it is insufficient to simply have an offender sign a notice that the offender will register within three days of arriving within a jurisdiction upon release. The federal prisons must provide notice to the receiving jurisdiction. Considering that jurisdictions are free to adopt laws and regulations that are more stringent than those proposed in the guidelines, simply faxing a notice to the receiving jurisdiction is insufficient. The federal prisons must work with the receiving jurisdiction so that each offender understands the offender's unique registration obligations.

**Conclusion**

There is still much work to be done to implement the Act, especially within Indian country. Tribes have raised many issues that must be resolved in order for the Act to be implemented successfully. States are only beginning to realize the issues arising from Indian country that will have an impact. The DOJ must be willing to dedicate the time and the resources necessary to address each issue.

Again, thank you for the opportunity to submit these additional comments. If you have questions or would like additional information, please contact me at 520.568.1000.

Sincerely.

AK-CHIN INDIAN COMMUNITY

Delia M. Carlyle, Chairman

CC: Manuel Garcia, Acting Chief of Police
Gary LaRance, Ak-Chin Indian Community Prosecutor

The Confederated Tribes of the Colville Reservation
Colville Business Council
P.O. Box 150, Nespelem, WA 99155
(509) 634-2200
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August 1, 2007

Laura L. Rogers
Director, SMART Office
United States Department of Justice
810 7th Street, NW
Suite 8241
Washington, D.C. 20531

August 1, 2007

RE: OAG Docket No. 121

Dear Ms. Rogers:

On behalf of the Confederated Tribes of the Colville Reservation ("Colville Tribes"), a federally recognized Indian tribe, I provide the following comments regarding the proposed National Guidelines for Sex Offender Registration and Notification ("the Guidelines"). Like the United States, the Colville Tribes is committed to protecting our community from sex offenders. The Colville Tribes sincerely hope that the final version of the Guidelines will help to protect our community. As an Indian tribe which has elected to retain jurisdiction under Section 127 of the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. §16911 et. seq ("the Act"),[1] the Colville Tribes feel strongly that portions of the Guidelines must be revisited if is to achieve its stated purpose of creating a seamless national sex offender tracking system.

**1) Inadequate Government-to-Government Consultation**

The Colville Tribes is concerned about consultation regarding the Guidelines. We believe that the Department of Justice (DOJ) has thus far failed to adequately engage tribes in government-to-government consultation concerning the Guidelines in accordance with the mandates of the President's Memorandum for the Heads of Executive Departments and Agencies, dated September 23, 2004, Executive Order 13175, and the Department's own Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes.[2] Particularly, we are convinced that the notice and scheduling of government-to-government consultation meetings have not provided the tribes with a fair opportunity to fully engage and comment on the guidelines with full information.

Two one-day consultation meetings do not provide nearly enough time for adequate consultation between the Department of Justice and over 560 sovereign tribal governments. As individual sovereigns with particular geographic, demographic, and socio-economic conditions, each tribe requires one-on-one consultation with the Department. The two days scheduled will not accommodate such consultation.

[1] Colville Business Counsel Resolution 2007-149, March 15, 2007.
[2] Available at: http://www.usdoj.gov/ag/readingroom/sovereignty.htm

Notice of the consultation sessions to the Colville Tribes has also been inadequate. All letters concerning this matter have been addressed to "Chairman Harvey Moses, Jr.," the former chairman of the Colville Tribes.[3] A May 4, 2007 letter about the Act's July 27, 2007 tribal-opt-in deadline buries notice of the first, June 4, 2007, consultation in Shelton, WA in the last paragraph on the third page of the wrongly-addressed letter. Thus, the Tribes missed out on this meeting because of the poor notice.

More troubling, the second, July 31, 2007 consultation session in Phoenix was scheduled *one day* prior to the deadline for submission of these written comments. This does not provide tribes with adequate time to fully digest and consider the dialog that occurred at the Phoenix session and properly include it within these written comments. As a matter of courtesy, the DOJ should have provided at least a week between the session and deadline. This would be useful to tribes and DOJ, alike—providing better informed and more thoughtful comments.

**2) No Legal Obligation to Provide Notice of Exercising the Section 127 Tribal Election**

The DOJ's insistence on demanding that tribes provide notice and copies of the adoption of a tribal resolution opting into the Act's registry scheme is not founded on the law and offends the mutual respect required for effective government-to-government relations. As sovereigns recognized under the Article I of the U.S. Constitution, only Congress has authority (or delegate authority) to compel tribes to act—not the Executive. *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 56, 98 S.Ct. 1670, 1677, 56 L.Ed.2d 106 (1978). Despite DOJ letters stating that tribes must "communicate the tribal election to SORNA prior to July 27, 2007," the Colville Tribes have found no law that grants DOJ the authority to compel tribes to communicate the tribal election to the DOJ. Moreover, citing no provision of law, the DOJ has stated that a copy of the tribal government's election resolution must be received by Leslie Hagen at the SMART office by close of business on July 27, 2007. Again, nothing in the law supports this assertion.

Still, despite these patent affronts to tribal sovereignty, the Colville Tribes intends to work cooperatively and in the interests of comity, with DOJ. The Colville Tribes are happy to present copies of our public laws, such as the Adam Walsh election, to other governments and the general public. However, like other governments, we grant these requests when we are respectfully asked. As part of the government-to-government relationship between the Tribes and the United States, the Tribes expect to be treated with the respect granted to other sovereigns.

**3) Attorney General Determining Tribal Compliance**

The Attorney General has the authority to assess the compliance of those tribes who have elected to participate as a registration jurisdiction under Section 127(2)(C) of the Act. The Act contemplates that the Attorney General will have the power to give authority under the Act to the state where the Tribe is located if the Attorney General determines that the Tribe is not in

[3] A quick look at the Tribes' website (or a call to the Tribes) would reveal the current Chairman, Mike Marchand—who has been in office since July 2006.

compliance. This delegation represents a major infringement on tribal sovereign authority and an unprecedented delegation of authority to the Executive.

If the Attorney General chooses to exercise this provision, it will represent a significant departure from the current distribution of authority over civil and criminal matters of the states, tribes, and the federal government. As a practical matter, such a delegation will undoubtedly create a great deal of confusion among law enforcement agencies on and near the Colville Reservation and will require significant adjustments in the state plan for implementation of the Act. It will also have the potential to destabilize the carefully negotiated cross-jurisdictional collaborative agreements that currently exist between the Colville Tribes, State of Washington, and local governments in North Central Washington. This confusion and destabilization could easily undermine the effectiveness of the Act and the protection of both Native and non-Native communities.

Despite these potentially serious consequences, the Guidelines provide no indication of the process that will be used by the Attorney General to assess tribal compliance and make this delegation. Given the federal government's unique trust responsibility to Indian tribes, and its policy of promoting and supporting tribal self-determination, any action that would abridge the Colville Tribes' sovereign authority on its own lands should be only an action of absolute last resort. Yet, the Guidelines do not address whether the Colville Tribes will be given an opportunity to cure, what efforts the DOJ will make to provide technical assistance, how the state will be included in the conversations, nor how a tribe can appeal an adverse decision by the Attorney General. Through consultation with the Colville Tribes and other tribes, the DOJ would be able to develop a detailed, transparent process for assessing tribal compliance. Consistent with the trust responsibility and the canons of Indian Law statutory interpretation, such a process should provide the greatest deference to tribal governments. Moreover, without clear standards in the Guidelines, cooperative agreements among jurisdictions will be more difficult to achieve because of the uncertainty as to when, and with what criteria, the Attorney General will make a tribal non-compliance determination. The complexity and importance of this particular issue requires a more formal and extensive consultation process. The Colville Tribes urges the DOJ to provide a consultation process in the Guidelines for developing a process for assessing tribal compliance.

**4) The Role of Federal Prisons**

The Colville Tribes also has significant concerns about the provisions in the Guidelines exempting federal corrections facilities from pre-release registration. The Act requires that state and tribal corrections facilities "ensure" registration of sex offenders prior to their release. Though this is not a requirement for federal facilities, seamless integration will not be possible under this exemption. However, under the Guidelines all federal corrections facilities will not ensure registration; instead, they will merely provide the sex offender with a notice that the individual must register within three days. This provision leaves Indian tribes particularly vulnerable because a high proportion of offenders whose crimes arose in Indian Country and are likely to return there are incarcerated in federal prisons as a result of federal prosecution under the Major Crimes Act.

In addition to severely undermining public safety, this provision in the Guidelines will substantially shift the burden of initial registration from the federal government to the states and 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. 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. Clearly, this also falls within the DOJ's trust responsibility to tribes. The Colville Tribes recommends that the Guidelines be changed to require federal corrections facilities to enter all sex offenders into the registry before their release.

**5) State-Tribal Coordination**

The Colville Tribes will need to coordinate with the state of Washington for successful implementation of the Act. However, the Guidelines provide no direction as to how such coordination will occur. The Colville Tribes urges the DOJ to make state and tribal coordination a priority, and to provide sufficient assistance to achieve their goal. Additionally, federal regulators should require states to document their coordination efforts with tribal governments in their compliance submissions.

**6) Cultural and Religious Concerns**

Section 114(a)(1) of the Act requires that the registry must include all names and aliases used by the offender. The Guidelines expand this requirement to include "traditional names given by family or clan pursuant to ethnic or tribal tradition." This requirement is deeply offensive to the religious and cultural traditions in native communities. Some tribal communities may give tribal members a traditional name that is never used or spoken aloud except in religious ceremonies. In some communities, a person will *never* share their traditional name and even members of a family may not know one another's ceremonial name. Given the secrecy that surrounds these traditional ceremonial names, there is no sound public safety reason that they be shared. As part of the trust responsibility, religious freedom, and mutual respect of government-to-government relations, the Guidelines should account for this. The Colville Tribes recommend that this provision be redrafted so that it is limited to names by which the individual may be known publicly.

Additionally, the Guidelines lack any guidance on how DNA information will be taken, stored, and distributed. The Colville Tribes is convinced that the DOJ needs to have clear standards that will protect tribal concerns about cataloging genetic data, as required under the Act. The DOJ needs to engage all of Indian Country on this issue, because values vary from tribe to tribe. The Colville Tribes also request that the DOJ fully assess how this requirement may be impact privacy laws like the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The Colville Tribes is committed to protecting our community and citizens from sexual predators. In fact, prior to the Adam Walsh Act, the Colville Tribes had adopted and implemented its own sex offender registry.[4] The Colville Tribes also joined other tribes to work

[4] Colville Tribal Code § 3-1-265.

successfully to include a provision in the Violence Against Women Act of 2005 to create a National Tribal Sex Offender Registry, so that Indian tribes could share information with one another and improve our ability to track dangerous offenders. It is unfortunate that the federal government has chosen to challenge tribal sovereignty through these ill-conceived provisions of the Adam Walsh Act. The Colville Tribes welcomes the opportunity to work with the DOJ to appropriately and fully protect our reservation from sex offenders.

Sincerely,

Michael Marchand for
Chairman
Colville Business Council

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW.
Washington, DC 20531

RE: OAG Docket No. 121

Dear Ms. Rogers:

The National Guidelines for Sex Offender Registration and Notification that were published on May 30, 2007 are lengthy and informative. The Yakama Nation has passed a Tribal Council Resolution to be a registration jurisdiction under the Adam Walsh Law and these guidelines will assist us as a registration jurisdiction.

At this time, there is at least one part of the published Guidelines deserves comment and it is the second full paragraph under IV A: Convictions Generally. This paragraph provides as follows:

> The convictions for which SORNA requires registration include convictions for sex offenses by any United States jurisdiction, including convictions for sex offenses under federal, military, state, territorial, or local law. Indian tribal court convictions for sex offenses are generally to be given the same effect as convictions by other United States jurisdictions. It is recognized, however, that Indian tribal court proceedings may differ from those in other United States jurisdictions in that the former do not uniformly guarantee the same rights to counsel that are guaranteed in the latter. Accordingly, a jurisdiction may choose not to require registration based on a tribal court conviction resulting from proceedings in which: (i) The defendant was denied the right to the ***assistance of counsel***, and (ii) the defendant would have had a right to the ***assistance of counsel*** under the United States Constitution in comparable state proceedings. A jurisdiction will not be deemed to have failed to substantially implement SORNA based on its adoption of such an exception.

In fact, this paragraph is a concern to the Yakama Nation for several reasons. (1) The assertion that 'a jurisdiction may choose not to register a tribal court conviction when a defendant was denied assistance of counsel and the defendant would have had a right to the assistance of counsel under the United Stated Constitution in comparable state proceedings' is a misstatement of applicable law. Under the United States Constitution, state and federal jurisdictions are required to appoint counsel for indigent defendants in certain circumstances. This is not the law that is applicable to tribal governments. The Indian Civil Rights Act (ICRA) was passed in 1968 and it defines civil rights of defendants in tribal courts, including the Yakama Nation Tribal Court. 25 U.S.C. § 1302 (6) provides that "No Indian tribe in exercising powers of self-government shall – deny

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to any person in a criminal proceeding the right . . . at his own expense to have the assistance of counsel for his defense". The right of assistance of counsel in tribal courts should not be compared to the right of assistance of counsel under the United States Constitution. This paragraph should be redrafted. (2) Although tribal governments are not required to provide assistance of counsel to defendants in tribal courts, tribal governments, like the Yakama Nation, have Public Defender Programs. These Public Defender Programs provide 'assistance of counsel' for defendants in tribal courts. Public defenders in tribal courts are trained and hired under tribal policies and procedures, and they are not necessarily 'attorneys'. For purposes of this discussion, these individuals will be described as 'lay public defenders'. 'Assistance of counsel' is not defined in the published Guidelines. Defining 'assistance of counsel' as the assistance of an 'attorney' will have a detrimental effect on Tribal Public Defender Programs, like the program at Yakama Nation, because 'lay public defenders' are not attorneys. The Yakama Nation recommends that 'assistance of counsel' be broadly defined so that 'lay public defenders' will be included in the definition, and tribal court convictions will be recognized. (3) As stated above, the Yakama Nation has passed a Tribal Council Resolution to be a registration jurisdiction under the Adams Walsh Act. It would seem to be a logical conclusion that substantial implementation of SORNA would also mean that convictions will be recognized. Allowing a jurisdiction may choose not to require registration based on a tribal court conviction in certain circumstances is counter intuitive to substantial implementation of SORNA. The Yakama Nation recommends that substantial compliance of SORNA by a tribal government also means that tribal court convictions will be recognized by other jurisdictions.

Your favorable consideration of these comments is appreciated.

Sincerely,

Lavina Washines

Lavina Washines, Chairperson
Yakama Tribal Council

the Chickasaw Nation HEADQUARTERS
Arlington at Mississippi / Box 1548 / Ada, OK 74821-1548 / (580) 436-2603

Bill Anoatubby
Governor

Jefferson Keel
Lieutenant
Governor

August 2, 2007

Ms. Leslie Hagen, Director
SMART Office
Office of Justice Programs
810 Seventh Street, N.W. – Suite 8240
Washington, DC 20531

Dear Ms. Hagen:

The Chickasaw Nation agrees that the Sexual Offender Registration and Notification Act (SORNA) has enormous potential to address the safety needs of the Indian population related to providing protections against sexual offenders. However, we remain concerned about how the SORNA will be implemented, and offer the following comments in response to the May 2007 proposed *National Guidelines for Sex Offender Registration and Notification*:

1. We are very concerned about tribal courts being given a second-class status related to criminal convictions. The proposed guidelines indicate that perpetrators of sexual offenses convicted in tribal courts will be classified only under Tier I criteria. We strongly urge that tribal court convictions be given the full faith and credit status as a conviction in any other court.
2. We strongly urge that the U.S. Department of Justice (DOJ) mandate state and local jurisdictional cooperation and consultation with tribes. Many states, counties and local governmental entities already have effective working relationships with tribes, but many actively resist tribal cooperation. We are concerned that without a clear mandate from DOJ, tribal consultation and jurisdictional cooperation may not occur, resulting in reduced ability to monitor and track sexual offenders.
3. We are concerned about DOJ's capacity to effectively handle the potential outcomes of the SORNA requirements. As many as 70% of offenders in Indian country are non-Native. There are currently 5,386 registered sex offenders in Oklahoma, and 21% of Indian offenders and 17% of all offenders are in non-compliance with existing registration requirements. Under the SORNA, felony charges are required for violators of the registration requirements, but tribes are unable to prosecute non-Natives or criminal felony cases in general. In this regard, we have these questions: Does DOJ have the manpower to prosecute potentially hundreds of additional cases per year in our region? Will DOJ cooperate with the Chickasaw Nation by giving "commissions" to tribal attorneys as special assistant U.S. attorneys, to assist in prosecutions?

God Bless America!

4. There are many uncertainties associated with cross-jurisdictional monitoring, tracking and potential prosecutions, and there is no clear assurance that tribal law enforcement and courts will not be held liable for good faith efforts. Penalties for non-compliance are specified in the proposed guidelines, but equivalent specifications for good faith efforts to develop cooperation among surrounding jurisdictions should be taken into account when DOJ determines the tribal level of compliance. Additionally, adequate protection for tribes and tribal personnel should be specified (e.g., Federal Tort Claims Act protection) when acting in good faith to assure compliance with the requirements of the SORNA.

We appreciate your consideration of our comments in this matter. If you have any questions about these comments, please contact Mr. Thomas John, administrator of self governance, at (580) 436-7214.

Sincerely,

Bill Anoatubby

Bill Anoatubby, Governor
The Chickasaw Nation

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:44 AM
**To:** Rosengarten, Clark; Hagen, Leslie
**Subject:** FW: Docket No. OAG 121

**Attachments:** 20070801144216983.pdf

20070801144216983.pdf (398 KB)...

-----Original Message-----
From: Marcia Shahab [redacted]
Sent: Wednesday, August 01, 2007 3:49 PM
To: GetSMART
Cc: [redacted] Dione Carroll
Subject: Docket No. OAG 121

Attached, please find the comments of the Miccosukee Tribe. Should you have any difficulty opening the attached, please do not hesitate to contact [redacted].
Thank you.

Marcia Shahab
Paralegal to the General Counsel
Phone: (305) 894-5213 - direct
Fax: (305) 894-5212
Miccosukee Tribe of Indians of Florida
P.O. Box 440021, Tamiami Station
Miami, Florida 33144

>>> "MarciaS" <marcias@miccosukeetribe.com> 08/01/07 3:42 PM >>>
This E-mail was sent from "ADMIN_R2045eSP" (Aficio 2045e).

Scan Date: 01.08.2007 14:42:16 (-0500)

# Miccosukee Tribe of Indians
## of Florida

**Business Council Members**
Billy Cypress, Chairman

Jasper Nelson, Ass't Chairman
Max Billie, Treasurer
Andrew Bert Sr., Secretary
William M. Osceola, Lawmaker


August 1, 2007

Laura L. Rogers
Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW
Washington, DC 20531

**Re: Comments on the National Guidelines for Sex Offender Registration and Notification**
**Docket No. OAG 121**

Dear Ms. Rogers:

I am writing on behalf of the Miccosukee Tribe of Indians of Florida ("Miccosukee Tribe"), a federally-recognized Indian Tribe, to comment on the proposed National Guidelines for Sex Offender Registration and Notification set-forth at Docket No. OAG 121.

On July 27, 2006, Congress passed the Adam Walsh Child Protection and Safety Act, Public Law 109-248, hereinafter referred to as "AWA". The stated purpose of AWA is to protect children from sexual exploitation and violent crime; to prevent child abuse and child pornography; to promote internet safety; and to honor the memory of child crime victims. Title I of AWA, the Sex Offender Registration and Notification Act, hereafter referred to as "SORNA", endeavors to promote the purpose of AWA through a comprehensive revision of registration and notification requirements.

The Miccosukee Tribe shares the federal government's goals to protect the public from sex offenders and offenses against children, and remains committed to protecting its community members and promoting public safety on tribal lands.

Generally, the AWA represents a positive step towards the protection of the public from sex offenders. However, the effective implementation and enforcement of the AWA has been severely compromised as a result of the flawed provisions affecting Indian Tribes and Indian Country, caused largely by

a failure to consult with Tribes during the drafting. In that regard, we offer the following comments

Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, was issued in part:

> in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; . . .

Executive Order 13175, (November 6, 2000)

For purposes of this order, "policies that have tribal implications" refers to:

> Regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Executive Order 13175, Section 1 (a).

Indian tribal governments were not consulted in the development of the AWA and SORNA. At the time the AWA-SORNA was drafted there was no coordination with tribal governments and no consideration given to tribal sovereignty concerns, tribal customs and practices, or the unique circumstances arising in Indian Country. Similarly, there was no meaningful tribal consultation[1] in the development of the proposed National Guidelines for Sex Offender Registration and Notification, hereinafter referred to as "Guidelines".

The tribal provisions of the AWA-SORNA legislation and proposed Guidelines, do not adequately take into consideration the respective roles and interaction between federal, state and tribal governments with respect to law

[1] The U.S. Department of Justice has recently initiated a consultation process with tribal governments. However, given that the AWA has already been enacted into law, and given that the proposed Guidelines have already been drafted, this "after-the-fact" consultation belies the unique relationship between the federal government and Indian tribes as set-forth in the U.S. Constitution, treaties, statutes, court decisions, executive orders, and federal trust responsibilities to Indian tribes.

enforcement issues arising in Indian Country. While Section 127 purports to grant Indian tribes authority to enforce the provisions of the AWA-SORNA, within tribal lands, tribes already have that authority pursuant to their inherent powers of self-governance. Therefore, the effect of Section 127 is to attempt to diminish or abrogate tribal sovereignty and transfer tribal authority to the states and place specific financial burdens on tribes.

Generally, the federal government has possessed and exercised primary responsibility for law enforcement in Indian Country, except when sovereignty has been asserted by tribes. However, it now appears that responsibility has been relinquished to the states as a result of the AWA-SORNA legislation. Given that this apparent relinquishment adversely impacts tribal sovereignty, it is fatally flawed. Therefore, we strongly urge appropriate amendments to maintain and preserve tribal sovereignty and tribal authority in Indian Country.

Section 127 (a) (1) and the corresponding Guidelines, provide that only federally-recognized Indian tribes may elect to carry out SORNA authority or delegate that authority to the states. This provision does not give any consideration to those Indian tribes that have pending applications for federal recognition or may do so in the future. This provision also does not take into consideration circumstances where a federally-recognized Indian tribe may not have an interest, capacity, or funding to exercise SORNA authority, at the present time, but may wish to do so in the future. This oversight would permanently deprive such tribes the right to exercise SORNA authority within their tribal lands.

Therefore, we recommend that the SORNA election provisions be amended to provide an opportunity to those tribes that will be federally-recognized in the future, and these federally-recognized tribes which do not have the funding or capacity at the present time, but may do so in the future, to exercise SORNA authority. The amendment should include a process within which to accomplish the foregoing.

Also, cultural and religious concerns are not adequately addressed by the Guidelines. Section 114(a)(1) of the AWA requires that the sex offender registry must include all names and aliases used by the offender. The Guidelines expand this requirement to include "traditional names given by family or clan pursuant to ethnic or Tribal tradition." This requirement is offensive to the religious and cultural traditions in many Native communities. The provision should be redrafted so that it is limited to names by which the individual may be known publicly. And, measures should be taken to assure there is no misuse of DNA evidence in connection with this program. It would be appropriate to do further research to understand the cultural limitations on use of DNA evidence with the various tribes to assist in articulating the Guidelines in a manner to be protective of tribal cultural values.

The "imputed election" provisions of Section 127 and the corresponding proposed Guidelines provide that if the Attorney General determines that an Indian tribe has not "substantially implemented" the SORNA requirements, and is not likely to do so within a "reasonable amount of time", that tribe will be treated as having delegated its SORNA authority to the state wherein tribal lands are situated. See Section 127 (a) (1) (B) and (2) (c), and corresponding Guidelines.

Neither the SORNA provisions nor the Guidelines define what is "substantial" implementation or "reasonable time" to implement, therefore, both are impermissibly vague. Neither SORNA or the Guidelines provide any objective criteria to evaluate whether an Indian tribe has "substantially implemented" the SORNA requirements. Moreover, there is no process to challenge such a determination, nor the opportunity to be heard before a final determination is made.

Moreover, even though the Guidelines may not cure the defect in the SORNA provisions, nevertheless, the Guidelines should contain definitions as to the meaning of "substantially implement" and "reasonable time" and also objective criteria that can be evaluated in making a determination of whether a particular Indian tribe has "substantially implemented" the SORNA requirements. Also, the proposed Guidelines fail to provide a process to enable tribal governments to cure any deficiencies prior to a determination of non-compliance by the Attorney General. Additionally, the Guidelines should provide for proceedings, consistent with due process rights, including a hearing, to challenge the Attorney General's determination, and a right to appeal any such adverse determination. In any event, automatic reversion to the state is an inappropriate impingement on tribal sovereignty.

It should be noted also that it appears from a reading of SORNA and the corresponding proposed Guidelines, that there is a disparate treatment between states and Indian tribes Section II, A of the Guidelines describes a mandatory 10% reduction in certain federal assistance funding for jurisdictions that fail to "substantially implement" the SORNA requirements. Therefore, it appears that the only penalty imposed on states for non-compliance is a reduction of federal funding. On the other hand, Indian tribes that similarly fail to "substantially implement" are penalized by not only a reduction in federal funding, but also having their sovereignty diminished by automatically delegating SORNA authority to the states and granting state access to tribal lands. It is clear that non-complaint Indian tribes will be treated more severely than other jurisdictions. *See* SORNA, 125 (1) and 127 (a) (2) (c).

SORNA, Section 125 (b), referring to state constitutional issues, and the corresponding Guidelines provide that if the (state) jurisdiction is unable to "substantially implement" SORNA, because of a limitation imposed by the (state) jurisdiction's constitution, then the Attorney General may determine if the (state) jurisdiction has made, or is in the process of making, "reasonable alternative procedures" which are consistent with the purposes of the AWA. It

does not appear that the proposed Guidelines provide for similar accommodations, vis-à-vis tribal constitutions, tribal laws, and tribal customs and practices. Therefore, SORNA and the Guidelines should be amended accordingly.

Another troubling aspect of the AWA-SORNA legislation and corresponding Guidelines, is the federal government's inadequate funding to help Indian tribes implement the SORNA requirements. Along with funding, the federal government should also provide the hardware and other equipment as well as, technical assistance and sufficient support, to implement the "nuts and bolts" of the registration and notification requirements. This is, essentially, an unfunded mandate.

Neither the AWA-SORNA nor the Guidelines adequately address the funding and technical assistance issues. The funding issue is critical because Indian tribes that do not have the financial means to implement this program would be forced under the SORNA Section 127, to relinquish their sovereign powers and involuntarily delegate tribal authority to the states.

With respect to technical assistance, it is widely recognized that information stored in data bases have integrity issues, and may be subject to "hacking", "viruses" or alteration by malicious individuals. A system must be developed and implemented by the federal government to ensure that the integrity of the stored information will be safeguarded. The federal government should bear the full cost of implementing such safeguards.

States already have sex offender data bases and thus may be more experienced in maintaining the registration and notification requirements of SORNA, than some Indian tribes. Many Indian tribes, however, must create registration and notification systems. Therefore, to the extent funding and technical assistance is to be provided by the federal government to fulfill the mandates of SORNA, Indian tribes should be given priority over other jurisdictions as recipients of such aid.

Section 127 (b) (2) of SORNA and the corresponding proposed Guidelines provide for cooperative agreements with other jurisdictions "within which the territory of the tribe is located." This reference is vague but may be construed as mandating that Indian tribes may only enter into such agreements with states. This provision is flawed because it does not appear to provide for cooperative agreements with, and among, Indian tribes. Therefore, this provision should be amended to give tribal governments the option to enter into such agreements, with one another.

While the AWA-SORNA is necessary to promote public safety, it is evident that by failing to consult with tribal governments in the development of this legislation and the Guidelines, the federal government has compromised the effectiveness of its implementation and the authority of tribal governments within their own lands. We urge the Department of Justice to give serious

consideration to the comments submitted by tribal governments and use its best efforts to amend the flawed provisions of the AWA-SORNA and the Guidelines, in order to fulfill its trust responsibilities and maintain the sovereignty and territorial integrity of Indian tribes.

Sincerely,

Dionè C Carroll, Esq.
General Counsel

cc: Business Council

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:43 AM
**To:** Hagen, Leslie; Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121
**Attachments:** Rogers_SORNAComments080107FNL.pdf

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**From:** Trent S.W. Crable [redacted]
**Sent:** Wednesday, August 01, 2007 4:35 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

SMART Office:

Please find attached the comments of the Makah Indian Tribe regarding OAG Docket No. 121, the Proposed Guidelines for Interpreting and Implementing the Sex Offender Registration and Notification Act.

Thank you,

**Trent S.W. Crable**
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August 1, 2007

**Via Email to**
**Subject: Docket No. OAG 121**

Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW.,
Washington, DC 20531
Email: getsmart@usdoj.gov

Re: OAG Docket No. 121 – Comments of the Makah Indian Tribe on the Proposed Guidelines for Interpreting and Implementing the Sex Offender Registration and Notification Act

Dear Ms. Rogers:

On behalf of the Makah Indian Tribe, we submit the following comments on the proposed guidelines announced in OAG Docket No. 121 for interpreting and implementing the Sex Offender Registration and Notification Act ("the Act").

1. Part III of the Guidelines Should be Revised to Make it Clear that Section 127(a)(2)(A) Does Not Apply to Tribes Located Outside of the States Currently Listed in 18 U.S.C. § 1162.

As the Guidelines recognize, under section 127(a)(1) a federally recognized tribe has the option of "electing to carry out the sex offender registration and notification functions specified in SORNA in relation to sex offenders subject to its jurisdiction, or delegating those functions to a State or States within which the tribe is located."[1] Unfortunately, and unnecessarily, section 127(a)(2) places certain limits and restrictions on that authority. The Tribe recommends that the Guidelines be revised to make it clear that section 127(a)(2)(A) does not apply to Tribes located in states other than those currently listed in 18 U.S.C. § 1162.

[1] Proposed Guidelines at 13.

Section 127(a)(2)(A) provides that "a tribe subject to the law enforcement jurisdiction of a State under section 1162 of title 18, United States Code" will be treated as if it elected to delegate its functions to the State(s) under 127(a)(1)(B). Since 18 U.S.C. § 1162 only covers California, Nebraska, Wisconsin, and parts of Alaska, Oregon, and Minnesota, it is clear that the Act does not prohibit a tribe located in a state other than those listed from electing to participate as a jurisdiction under the Act, even if the state in which the tribe is located previously assumed some degree of jurisdiction over tribal lands under other provisions in Public Law 280.

As the states that did opt to assert some degree of jurisdiction under other provisions in Public Law 280 assumed varying degrees of jurisdiction over varying offenses, section 127(a)(2)(A) would be extremely difficult to implement, and would be a source of confusion and animosity, if it were determined to apply to such "optional" states. Section 127(a)(2)(A) also fails to address the fact that tribes maintain jurisdiction over certain offenses, even where a state has assumed some concurrent jurisdiction under 18 U.S.C. § 1162.[2] For these reasons, the Guidelines should be revised to make it clear that tribes in states not currently included in 18 U.S.C. § 1162 may elect to participate as a "jurisdiction" under the Act.

2. Part IV of the Guidelines Should be Revised to Provide Full Faith and Credit to All Lawful Tribal Court Prosecutions.

The Guidelines note that "Indian tribal court convictions for sex offenses are generally to be given the same effect as convictions by other United States jurisdictions," but they go on to provide that:

> a jurisdiction may choose not to require registration based on a tribal court conviction resulting from proceedings in which: (i) the defendant was denied the right to the assistance of counsel, and (ii) the defendant would have had a right to the assistance of counsel under the United States Constitution in comparable state proceedings. A jurisdiction will not be deemed to have failed to substantially implement SORNA based on its adoption of such an exception.[3]

This is, frankly, outrageous. The Act itself does not require, or even suggest, such discriminatory treatment of tribal court convictions.[4] The quoted language should be stricken from the Guidelines. Lawful tribal court convictions should receive full faith and credit.

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[2] "The nearly unanimous view among tribal courts, state courts and lower federal courts, state attorneys general, the Solicitor's Office for the Department of Interior, and legal scholars, is that Public Law 280 left the inherent civil and criminal jurisdiction of Indian nations untouched." Nell J. Newton et al., Cohen's Handbook of Federal Indian Law 560–61 (2005 ed.) (internal footnotes omitted).

[3] Proposed Guidelines at 16.

[4] That the Act does provide a basis for discounting or ignoring *foreign* convictions (section 111(5)(B)), while not providing for such treatment of tribal convictions, strongly

The Indian Civil Rights Act prohibits tribes from denying "any person in a criminal proceeding the right . . . at his own expense to have the assistance of counsel for his defense."[5] Therefore, if a tribe did deny a defendant the right to the assistance of counsel obtained at the defendant's expense, then the conviction would have been secured in violation of the Indian Civil Rights Act and could be challenged accordingly. While it is most logical to read the language of the Guidelines as permitting other jurisdictions to ignore tribal convictions only where the tribe prohibited the defendant the assistance of counsel, if it is intended to mean that tribal convictions may be ignored if counsel is not provided free of charge, that would still be inappropriate as Congress specifically recognized that tribal courts need not provide free counsel.

The Act does not provide for such disparate treatment of tribal convictions, and such disparate treatment is not justified. The Guidelines note that convictions in Canada, Great Britain, Australia, and New Zealand, are all deemed to have been obtained with sufficient safeguards for fundamental rights, and that convictions of other foreign jurisdictions will be deemed to have provided sufficient safeguards if the State Department "has concluded that an independent judiciary generally (or vigorously) enforced the right to a fair trial . . . ."[6] The Guidelines inappropriately subject tribal court convictions to a higher standard than foreign judgments.

3. Part VII of the Guidelines Should be Revised to Ensure that Tribes and Tribal Agencies Receive Community Notification and Target Disclosures Issued Under Section 121(b).

It is vital that tribes and tribal agencies (particularly police deparments, schools, and daycare centers) receive the notifications provided for in section 121(b). The Tribe recommends that Subpart B of Part VII be revised so that it is clear that tribes and tribal agencies are to receive such notification.

4. It is Inappropriate that the Act Creates Burdensome Requirements for Tribes Without Providing Sufficient Guaranteed Funding.

The Act places costly burdens on tribes, but does not guarantee funding to offset the costs of implementing the Act's requirements. Even if a tribe elected to delegate its functions to a state, the Tribe would still be required to provide "cooperation and assistance" to the State. If tribes are to be required to dedicate scarce resources and participate in Congress's national system, Congress should guarantee adequate funding to all tribal participants.

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suggests that Congress did not intend to permit other jurisdictions to discriminate against tribal convictions.

[5] 25 U.S.C. § 1302(6).

[6] As noted in note 6, the Act does permit the discounting, or ignoring of, foreign judgments.

Thank you for your consideration. The Tribe reserves the right to supplement these comments. Please include our office on all future notices and distributions of documents regarding the implementation of these guidelines.

Sincerely,

MORISSET, SCHLOSSER, JOZWIAK & McGAW

Frank R. Jozwiak
Trent W. Crable
*Attorneys for Makah Indian Tribe*

cc: Chairman Ben Johnson Jr.
Vice Chair Debbie Wachendorf
Members of the Makah Tribal Council

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rmc:8/1/07

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:42 AM
**To:** Rosengarten, Clark; Hagen, Leslie
**Subject:** FW:
**Attachments:** Res07-498.pdf; Comments.pdf

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**From:** Pete Delgado [redacted]
**Sent:** Wednesday, August 01, 2007 5:04 PM
**To:** GetSMART
**Subject:**

Attached are the Tohono O'odham Nation's comments on the proposed guidelines for Sex Offender Registration and Notification.

**Pete Delgado**
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& Vice Chairman
Tohono O'odham Nation
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We:sij T-we:m
All of Us Together

**Office of the Chairman**
**& Vice-Chairman**
**Tohono O'odham Nation**
Ned Norris, Jr., Chairman
Isidro B. Lopez, Vice-Chairman

**Tohono O'odham Nation**
**Comments on Proposed National Guidelines**
**for Sex Offender Registration and Notification**

## Introduction

While Arizona is the sixth-largest state in the United States, more that one-quarter of Arizona consists of lands governed by tribal nations. In order to achieve the goal of providing a truly integrated and comprehensive sex offender registration and notification system in Arizona and across the United States, Indian tribes, tribal courts, and tribal court judgments must be accorded the same level of respect as those of any state jurisdiction. If not, the Adam Walsh Act's central goal will be defeated and, contrary to the Act's intent, sex offenders will be able to disguise their criminal histories simply by crossing invisible political boundaries to another jurisdiction.

The Tohono O'odham Nation is the second-largest reservation in the United States and the Nation's government has formed long-standing partnerships with state and federal law enforcement officials to protect public safety on the Nation's 75 miles of international border. Despite this great burden on the Nation's law enforcement resources, we are at the forefront of sex offender registration and notification in Indian County.

Many years before the Adam Walsh Act was enacted by Congress, the Tohono O'odham Legislative Council enacted a stringent registration and notification law. The Tohono O'odham Police Department implemented a rigorous registration and notification program staffed by a full-time, certified police detective. As a result, the Nation has a current database listing more than 150 registered sex offenders on a reservation with a resident population of 14,000. We understand the dangers posed by sex offenders whose identities remain hidden.

While the Nation and other Indian tribes are essential law enforcement allies and partners in the effort to protect the public from sex offenders, the **proposed National Guidelines for Sex Offender Registration and Notification Guidelines ("Guidelines")** undermine tribes' law enforcement role in a way that exposes both the on- and off-reservation public to convicted



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offenders. This is the case because offenders convicted in tribal courts will not all be registered and their criminal records will remain unavailable in the communities where they reside.

If tribal court sex offense convictions can be ignored, if tribal court proceedings are given less weight than those of foreign countries, and if even the most serious sex crimes are relegated to the least serious tier of offenses because those convictions are gained in tribal courts, the entire premise of the Adam Walsh Act-one comprehensive system, one safety net without gaps-is undermined.

The Tohono O'odham Nation therefore calls on the Attorney General of the United States to make a strong system stronger, and to provide the greatest measure of safety nationwide by fully recognizing tribal governments as equal partners in the mission we all already share.

**I. Jurisdictions should not be permitted to ignore tribal court convictions if they determine a convicted sex offender was "denied the right to counsel" in tribal proceedings. Federal law mandates that *all* tribes guarantee the right to counsel at the defendant's expense in all criminal cases.**

One of the central features of the Adam Walsh Act is the inclusion of Indian tribes in the national system of sex offender registration and notification. The Guidelines in fact require registration for convictions of sex offenses by any United States jurisdiction, noting that "Indian tribal court convictions for sex offenses are generally to be given the same effect as convictions by other United States jurisdictions."[1]

Despite this provision, the Guidelines permit jurisdictions to ignore tribal sex offense convictions if the registering jurisdiction believes the relevant tribal court denied the defendant the right to counsel.[2] This provision is contrary to the reality of federal law as tribes *cannot* deny this right. The Indian Civil Rights Act expressly mandates that all tribes guarantee the right to counsel at the defendant's expense in all criminal cases. (25 U.S.C. § 1302(6))

While the right to counsel in tribal court is not necessarily identical to that provided in state or federal criminal proceedings, this is because Indian tribal governments are separate sovereign nations with justice systems predating the United States Constitution. Even still, the Congress has enacted a minimum standard for the right to counsel in tribal criminal cases that many tribes exceed. The Nation, for example, funds and staffs an Advocate Program providing free legal counsel to criminal defendants. The Nation also uses tribal funds to employ licensed

[1] 72 Fed. Reg. 30216 (May 30, 2007); Guidelines, IV.A.

[2] 72 Fed. Reg. 30216 (May 30, 2007); Guidelines, IV.A.

attorneys on contract to represent defendants in the event the Advocate Program has a conflict of interest precluding its representation. In this way, criminal defendants are guaranteed the right to counsel as required under federal and tribal law.

It is therefore illogical and demeaning for jurisdictions to recognize certain foreign proceedings which may, for example, lack a jury system and whose proceedings may vary substantially from state and federal court systems, while tribal proceedings that guarantee fundamental rights and fairness may be ignored. In contrast to the implicit perception that tribal criminal proceedings inadequately protect defendants' rights, tribal, like state and federal criminal justice systems, guarantee the right against self-incrimination, excessive bail, and double jeopardy, while guaranteeing the right to trial by jury, equal protection, due process, confrontation, and the right to speedy and public trial. (25 U.S.C. § 1302(4), (7), (3), (10), (8), and (6))

The Guidelines require that foreign proceedings provide only fundamental fairness and due process; they do not require that all convictions result from proceedings identical to those of state and federal courts.[3] This same standard can be applied to Indian tribes by recognizing that the Congress has mandated guarantees of fundamental fairness and due process for all Indian tribal courts within the Indian Civil Rights Act. This is the state of existing federal law. It is unnecessary for states to be given a role in evaluating the fairness of validity of independent tribal proceedings over which the states have no jurisdiction or control.

Tribal sex offender convictions should be recognized on par with state convictions. Whether the tribal conviction results in a maximum one year sentence-a restriction imposed on tribes by the United States-is irrelevant in assessing the danger of the offense or offender. All children and other sex crime victims suffer equally. All members of the public, whether Indian or non-Indian, are equally at risk. Minimizing the danger posed by tribally-convicted sex offenders is illogical and dangerous and the Guidelines must be amended accordingly.

## II. The Department of Justice must work closely with tribes to develop a clear standard for measuring tribal compliance with the Adam Walsh Act.

Like other executive department heads, the Attorney General has a duty to "continue to ensure to the greatest extent practicable and as permitted by United States law that the agency's working relationship with federally recognized tribal governments fully respects the rights of self-government and self-determination due tribal governments."[4]

[3] 72 Fed. Reg. 30216,30217 (May 30,2007); Guidelines, IV.A. and B.

[4] Executive Memorandum for the Heads of Executive Departments and Agencies, Government-to-Government Relationship with Tribal Governments, dated September 23, 2004.

Under Section 127(2)(C) of the Act, the Attorney General is vested with the authority to assess the compliance of tribes that have elected to participate as registration jurisdictions. The Act also contemplates that the Attorney General will have the power to transfer authority under the Act to the state where the tribe is located if the Attorney General determines that the tribe is not in compliance. Such a delegation would significantly infringe upon sovereign tribal law enforcement authority and would undermine the federal policy of promoting tribal self-determination.

If the Attorney General exercises this authority, it will represent a significant departure from the current distribution of civil and criminal jurisdiction among state, tribal, and federal sovereigns. 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 would undermine the Act's goal of protecting Native and non-Native communities alike.

Despite these serious consequences, the Guidelines fail to provide a clear standard or process that the Attorney General will use to assess tribal compliance before delegating away tribal powers. Given the federal government's unique trust responsibility to Indian nations and policy of promoting and supporting tribal self-determination, any action that would abridge a tribal government's sovereign authority on its own lands should be seen only as an action of last resort. Yet, the Guidelines do not provide an apparently noncompliant tribe with an opportunity to cure, do not identify any Department of Justice technical assistance that will offered such tribes, explain how the state will be included in a proposed delegation, or how a tribe can appeal an adverse decision by the Attorney General.

The Nation strongly recommends that the Department of Justice consult with tribal governments to develop a detailed, transparent process for assessing tribal compliance. Because any delegation of tribal authority to a state would drastically undermine tribal sovereignty, the assessment and determination of tribal compliance should, consistent with the trust responsibility and the canons of Indian Law statutory interpretation, provide the greatest deference to tribal governments.

We therefore join the National Congress of American Indians in urging the Department of Justice to amend the Guidelines to include a meaningful consultation process with tribes that will allow us to cooperatively develop a standard and process for assessing tribal compliance.

**III. Federal corrections facilities should not be exempt from the duty to register sex offenders prior to release.**

The Nation also shares the National Congress of American Indians' concern that the Guidelines exempt federal corrections facilities from the Act's requirement that offenders be registered prior to release from incarceration. The Act requires that *all* corrections facilities "ensure" registration of sex offenders prior to their release. In contrast, the Guidelines merely provide that federal facilities give a sex offender notice that he or she must register in the jurisdictions in which they reside.[5]

This provision leaves Indian tribes particularly vulnerable because of the structure of federal criminal statutes, where felony-level penalties for on-reservation sex offenses may only be imposed in federal but not tribal prosecutions. The most severe sentences for these crimes are therefore served in federal facilities. It would be irresponsible to release these prisoners without making sure that they are registered and their home jurisdictions are notified of their release.

In addition to undermining public safety, this provision will shift the cost of initial registration from the federal government to the states and tribes. The responsibility of initially registering a federally incarcerated offender is clearly a federal responsibility under the Act.

We strongly recommend that the Guidelines be changed so that federal corrections facilities, like state and tribal facilities, are required to ensure that offenders are entered into the registry before their release.

## Conclusion

The Tohono O'odham Nation is a proven law enforcement partner dedicated to public safety nationwide. The Nation therefore calls upon the Attorney General to include the Nation as an active participant in developing a process that fully included Indian tribes in the system Congress envisioned when it enacted the Adam Walsh Act.

For its part, the Nation is eager to commit its time and resources, as it already has, to ensure that the national sex offender registration and notification system is truly comprehensive and protects all Americans. This will only be true in a system recognizing that tribal sex offense convictions are no less serious and should be accorded no less weight than those gained off-reservation.

We are your partners in this effort. We ask that you treat us as equals.

[5] 72 Fed. Reg. 30229 (May 30, 2007); Guidelines, IX.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, June 27, 2007 3:01 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

Under the SONRA; Indian tribes will be required to set up sex offender registries or turn that power over to another unit of government outside the Indian tribe. This is a clear removal of power from the Indian tribal units of government and may be a violation of treaties signed by the US Government. It will also be the first time in history that the US Government is forcing the Indian Nations of sovereign governments to conform to a standard set by an outside unit of government. Clearly this should be corrected to ask the Indian Tribal unit of government for their cooperation; but if they refuse the requirement that another unit of government take over the responsibility of registering sex offenders from the tribal unit should be removed from the SONRA.

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:03 AM
**To:** Rosengarten, Clark
**Subject:** FW: The National Conference of State Legislatures' Comments to Proposed National Guidelines
**Attachments:** rule comments(sex offender)7.30.07.doc

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**From:** Hirsh Kravitz [redacted]
**Sent:** Monday, July 30, 2007 2:44 PM
**To:** GetSMART
**Subject:** The National Conference of State Legislatures' Comments to Proposed National Guidelines

Hirsh Kravitz
Policy Associate
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July 30, 2007

Ms. Laura L. Rogers
Director, SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street, NW
Washington, DC 20531

Proposed Guidelines to interpret and implement the **Sex Offender** Registration and Notification Act.

Docket ID: OAG Docket No. 121

Dear Ms. Rogers:

I am submitting the following comments to the proposed guidelines to Public Law 109-248 for the record on behalf of The National Conference of State Legislatures (NCSL). NCSL is the nation's oldest and largest organization representing the 50 state legislatures, the District of Columbia and the U.S. Territories.

The national sex offender registration standards were first created by the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act of 1994. However, with the passage of the Adam Walsh Child Protection and Safety Act of 2006, Congress imposed new requirements on the states in an area which had been traditionally regulated by the states. P.L. 109-248 therefore, placed additional burdens on the 50 state legislatures, the District of Columbia and the U.S. Territories in order to comply with the new mandates.

NCSL states for the record that the proposed guidelines compound the burdensome, preemptive scheme of the underlying law they seek to clarify. As such, the guidelines promote a burdensome, preemptive scheme for the states. In addition, without the appropriations of funds authorized, the act and its implementation guidelines represent a large unfunded mandate for states. Further, the additional amounts and kinds of information on each registered sex offender that states are required to collect are imposed under the authority of the Attorney General, thus representing a regulatory expansion of what is already a legislative preemption of state law. It is NCSL's assessment that each and every state legislature will have to undergo detailed and extensive review of its laws against the provisions of the Act and implementation requirements of the guidelines. Required changes to state policy in areas traditionally within the purview of states will be likely in all states and extensive in some.

NCSL expresses concern that guidelines implementing the minimum sex offender registration standards being imposed on states were prepared absent any current federally funded analysis as to what extent each jurisdiction has policies and procedures that comply with Title I of Public Law 109-248, and the amount and kinds of adjustments to

state policy and practice that will be required in order to comply and avoid a 10 percent reduction to Byrne law enforcement assistance grants. Additionally, NCSL, as a representative of the entities for which these guidelines apply to, is deeply concerned by the refusal of the SMART office to include them in the drafting and decision-making process. The drafting process should be a dialogue between the SMART office personnel and the impacted stakeholders, such as NCSL, and not the product of unelected government officials' unilateral decisions. NCSL believes a group of advisors, consisting of those entities and organizations with a stake in the outcome of the drafting process, should be in place to assist the SMART office in determining the best and least preemptive impact on the 50 state legislatures, the District of Columbia and the U.S. Territories.

NCSL's specific concerns about the guidelines as drafted are: 1. the retroactivity of offender registration, 2. the definitions of the offenses for which offenders are required to register and in-person reporting requirements, 3. the penalties for failing to register, 4. the registration and publication requirements, 5. the collection of information detailing foreign convictions, 6. the requirements for the registration of juveniles, 7. the feasibility of the Indian tribes' compliance with the national registration requirements, 8. the requirements regarding digitized information, 9. the shifting of responsibility for offenders from federal or military custody to the states and 10. the issue of the sealing of criminal records. Each of these will now be discussed individually.

1. NCSL is deeply concerned about the effects that will be caused by several of the Sex Offender Registration and Notification Act (SORNA) mandates including the retroactivity of offender registration. In addition to the different state laws defining the elements of the crimes for which registration is required for offenders, states have rules in place governing the process, length and information that needs to be obtained from the offenders. Furthermore, states have differing rules in place for how long they must maintain the information on each offender who registered. The new federal registration requirement is said to <u>not</u> include offenders who were convicted pre-SORNA and who are no longer under state supervision, but if such a person ever reenters the state criminal justice system, states would be required to enter this person into the sex offender registry at that time. The National Conference of State Legislatures is firm in our belief that the retroactivity provision should only apply to currently registered sex offenders in the states and not to those no longer registered so as to respect state sovereignty over the treatment of sex offenders as laid out in each state's respective sex offender registry provisions.

2. Another troubling provision focuses on the definitions of the offenses for which offenders are required to register and the offender in-person reporting requirements. Crime classifications and definitions differ widely in each state's criminal code. For example, Idaho is struggling with how to comply with the new classification system while maintaining their current laws. Under Idaho's current law, the most serious offenders are classified as Violent Sexual Predators. Violent Sexual Predators are subject to increased supervision and a greater duty to report and keep their registration information current. However, the Idaho-specific law will be preempted by a federally mandated tier system that will classify the offenders according to different criteria. It is

unclear in the guidelines how these differences will be reconciled in determining state compliance, and in Idaho's situation, how the Violent Sexual Predator status can be maintained. Similarly, with regard to the tiers called for in the Act, the guidelines state the tiers are provided for substance, not form. However, in substantively meeting the requirements of the act in state sex offender registration law, there is little room for state flexibility in determining which offenses and categories of offenders are suitable for various requirements.

The requirements regarding immediate and in-person reporting of sex offenders are particularly burdensome for states and localities, with no flexibility built into the guidelines or funding provided for law enforcement agencies to develop this capacity.

3. Penalties for non-compliance with the registration requirements also vary by jurisdiction. For example, in North Carolina, an offender currently faces only a low-level felony for failing to register. However, under SORNA, jurisdictions are required to provide a criminal penalty that includes a maximum term of imprisonment greater than one year.

4. The registration and publication requirements mandated create a concern because every jurisdiction has laws in place detailing how offenders are to register and to what extent the registration is to be made public. For example, in New Jersey, registered sex offenders may petition court to terminate their registration and in Massachusetts, the law requires a hearing to determine whether the individual must register. In Hawaii, there is a constitutional right for notice and an opportunity to be heard prior to public notice of sex offender status, and in Iowa, an offender is entitled to an evidentiary hearing as part of the risk assessment process. SORNA would not only conflict with the constitutional provisions mentioned here but numerous others. The proposed guidelines make no attempt to account for the vast differences in registration and publication requirements in the states, and do not "guide" states in how best to reconcile their differences with the required federal scheme.

5. According to SORNA, another piece of information that must be collected is information detailing any foreign convictions if the information was not obtained with sufficient safeguards for fundamental fairness and due process for the accused. The federal government is the entity best equipped to make this determination. However, states are the ones expected to shoulder the burden of determining the validity of foreign convictions which is clearly out of the realm of their expertise. How can the Department of Justice expect states to become experts in analyzing the due process standards of other nations?

6. SORNA also does not require registration for juveniles adjudicated delinquent for all sex offenses for which an adult sex offender would be required to register, but rather requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes or child molestation offenses. This provision would create a problem for the states as many jurisdictions have statutes in place that mandate the same treatment for juveniles as they

do for adults and states would have to substantially alter their statutes in order to comply. The guidelines fail to adequately address how states should comply with this mandate when their state laws authorize similar treatment for juvenile and adult offenders. For example, the provision will have a great impact on how Ohio manages and safely supports adjudicated juvenile sex offenders in its communities. In Ohio, under their proposed new child welfare laws, the addresses, locations and other information of foster homes are not public record. Ohio's implementation of the SORNA provisions will require that the juveniles' information must be placed on the state and national registry if the juvenile offender goes back in to the child welfare system. Requiring that this information is accessible to the public will create substantial confidentiality and constitutional concerns as Ohio has privacy laws in place which would be preempted by a national registry mandating what states must make available to the public.

7. State-tribal relations issues are also raised in the guidelines, without adequate clarity. The Indian Tribes will be affected by SORNA as they must either comply with its sex offender registration by July 27, 2007 and notifications or delegate that function to the state in which it their tribe located. This would create an unfair burden on the Indian tribes by requiring them to either fully implement and fund a federal requirement in which they do not have the funds or expertise to implement, or delegate their sovereignty to the state in which they reside. Upon delegation, the state would become fully responsible for carrying out the SORNA notification and registration functions and states would have the permission, and obligation, to oversee tribal court rulings and to perform full law enforcement functions on tribal lands (for purposes of this Act.) Not only will this shift to the states the long-standing law enforcement role of the federal government on tribal lands, but it promises to be a large unfunded mandate as well.

The Act says that if the tribes do not make one of the above choices or do not comply, the state becomes responsible. The guidelines are unclear as to how adding such responsibility to states affects state compliance (or non-compliance and loss of Byrne Grant funding, as the case may be) and funding. The burden on the states in this situation would be great. Investigative caseloads could increase markedly and the costs and complications of developing and integrating the tribal electronic tracking system into the state system promises to be considerable. Even for those states not required to accept the delegation of enforcement authority, the tribes can – and most likely will – elect to join the states registries rather than create their own. Under the requirements of the Act, this means states will have to integrate into their registries the tribal offenders' physical descriptions, current photographs, criminal histories, fingerprints, palm prints, and DNA sample. In addition, many tribal lands transverse several state borders. How do the states determine which jurisdiction will be responsible for the enforcement functions on tribal lands? The challenges will be many and will, of necessity, be borne at least in part by the states.

8. The requirement regarding digitized information, the immediate transmittal of information to specified individuals and entities and the requirement regarding the search capabilities of sex offender web sites will also substantially burden the states in their attempt to comply. The National Conference of State Legislatures is concerned that

requiring the implementation of this provision necessitates adequate funding for which no money has been given. States cannot be expected to revamp their current systems to comply with a national registry if they do not have the additional funds in place to help pay for the costs of compliance. In addition, if the states do not comply with this requirement, they will be forced to use substandard equipment or possible use their Byrne Grant funds which would reduce the funding for other vital state programs.

9. NCSL also opposes the requirement in the act and the lack of clarification in the guidelines regarding the provision that sex offenders released from federal or military custody become the responsibility of states to which they are released for purposes of all of the onerous sex offender registration requirements under the Adam Walsh Act.

10. Further, the issues created by mandating the sealing of criminal records are raised in the act, indicating that an expungement of a criminal record under state law does not exclude the individual from the requirements of the Adam Walsh Act. However, the guidelines fail to address how a crime record sealed by a state at the same time is to be made available for the public, including on the internet and as part of the national sex offender registry.

The National Conference of State Legislatures believes that Congress must allow the states flexibility to shape public policy. Creative solutions to public problems can be achieved more readily when state laws are accorded due respect. State legislators believe that state laws should never be preempted without substantial justification. Preemption may be warranted in specific instances when it is clearly based upon provisions of the U.S. Constitution authorizing such preemption and only when it is clearly shown (1) that the exercise of authority in a particular area by individual states has resulted in widespread and serious conflicts imposing a severe burden on national economic activity or other national goals; (2) that solving the problem is not merely desirable, but necessary to achieve a compelling national objective; and (3) that preemption of state laws is the only reasonable means of correcting the problem.

The exercise of authority by the individual states in determining the configurations of their independent registries would not impose a severe burden on national economic activity or goals. Further, requiring all jurisdictions to comply with the national registry standard is not necessary to achieve the national objective. The important public safety purposes for which the Act is trying to achieve could still be met by allowing states more flexibility in the design of their individual registries and thus the preemption of state laws is not the only reasonable means of correcting this problem. Thus, preemption is not warranted and the state laws should be accorded due respect.

The SMART office has a duty and obligation to discuss the implementation with every impacted jurisdiction through a notice and consultation process in which all parties are equal partners. In addition, each affected jurisdiction should be provided additional notices and assurances that they have complied and the process by which compliance is determined should be made public so the jurisdiction will be able to accurately access whether they have substantially implemented SORNA. To reiterate, the process should be

a give and take and not a decision made in a bureaucratic vacuum without the knowledge and expertise of those who would be impacted the most by such an obtrusive and overtly preemptive requirement. If you have any questions or require additional information, please contact NCSL staff Susan Parnas Frederick(202)624-3566, susan.frederick@ncsl.org. Thank you.

Sincerely,

Carl Tubbesing
Deputy Executive Director
NCSL

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 5:06 PM
**To:** Rosengarten, Clark
**Subject:** FW: SMART office comments on reg for Adam Walsh letter

**Attachments:** smartoffice letter.doc

smartoffice letter.doc (25 KB)...

-----Original Message-----
From: Jeanne.Smith@cdps.state.co.us [redacted]
Sent: Tuesday, July 31, 2007 2:07 PM
To: GetSMART
Subject: Fw: SMART office comments on reg for Adam Walsh letter

Attention: Laura Rogers

Please open the attachment which is Colorado's comment letter. Feel free to ignore the remaining body of this e-mail which I would normally delete except my Blackberry is not cooperating.
Thank you,
Jeanne Smith
Director, Division of Criminal Justice
Colorado Department of Public Safety

----- [redacted] -----

[redacted]

July 16, 2007

Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW
Washington, D.C. 20531

Re: OAG Docket No. 121

Ms. Rogers:

Thank you for the opportunity to comment on the National Guidelines for Sex Offender Registration and Notification (SORNA). In Colorado we have held meetings to study SORNA implementation issues with a group of representatives from the courts, law enforcement, social services, corrections, and other state and local agencies. Colorado is committed to the protection of the public from sex offenders and the public's right to gain knowledge of where sex offenders may be residing. While there are a number of concerns surrounding the major statutory revisions and related costs of implementing the SORNA, we believe two issues may be appropriate for your consideration at this point that warrant review without harming public safety.

First, we would like to comment on Section V (Classes of Sex Offenders) and more specifically, "The corresponding offense coverage specifications for "tier III" in section 111(4)(A)-(B) cover offenses punishable by more than one year of imprisonment in the following categories: Offenses comparable to or more severe than aggravated sexual abuse or sexual abuse as described in 18 U.S.C. 2241 and 2242, or an attempt or conspiracy to commit such an offense. Considering the definitions of the cited federal offenses, comparable offenses under the laws of other jurisdictions would be those that cover...engaging in a sexual act with a child under the age of 12 (see 18 U.S.C. 2241(c))." (Page 26).

The combination of definitions/criteria for aggravated sexual abuse and the inclusion of juveniles of the age of fourteen leads to juvenile offenders in certain situations being treated more harshly than their similarly situated adult counterparts. Specifically, a fourteen year old who has sexual contact over the clothing (per the definition of "abusive sexual contact") against an 11-year old victim is classified as a Tier III offender and required to register on a quarterly basis for a minimum of 25 years. An adult offender convicted of sexual contact with a victim of comparable age difference would not be considered a Tier III offender. There is ample justification for protecting younger victims from adult perpetrators and recognizing the danger to communities from this type of offender. However, a juvenile offender with a juvenile victim does not necessarily raise the level of risk to the community in the same fashion. Recidivism studies on juvenile sex offenders typically reflect a recidivism rate of 8-14% (Worling, 2000), which is lower than study results for adult sex offenders. Our concern is that requiring a juvenile to register quarterly as a sex offender under these circumstances may hamper rehabilitation for this population.

We recognize that the definitions and classifications that have created this situation are contained in the Act itself, not just the guidelines. The comment is offered to encourage additional review of what may have been unintended consequences of portions of the Act.

Second, we would like to comment on Section VII (Disclosure and Sharing of Information), and more specifically, the required inclusion of offender information related to address of work and school on the public sex offender website (Pages 38-39). The SORNA lists both mandatory and optional exemptions from public disclosure of registration information. On the other hand, the SORNA is silent as to the publication of other information such as criminal histories and employment and school addresses. The SORNA Guidelines extend the required publication of information to employment and school addresses, along with certain other items. This appears to be a discretionary interpretation as criminal histories are not mentioned in any category and would seem to be subject to disclosure at the jurisdiction's discretion. We are asking that school and employment addresses similarly remain at the discretion of each jurisdiction. The publication of school addresses has the potential of creating serious negative reactions focused on juvenile offenders who do not have the coping skills nor the resources to seek alternative arrangements if harassment occurs. Whatever justification existed for protecting the name of the institution should also apply to the address. The successful rehabilitation of any offender is based in significant part on the person's ability to achieve a level of education and maintain stable employment. This guideline may have a negative effect on both needs.

We appreciate your time and attention to what is certainly a complicated issue for many states.

Sincerely,

Jeanne Smith, Director
Division of Criminal Justice/Colorado Department of Public Safety
Co-Chair, Adam Walsh Act Compliance Committee

Ann Terry, Legislative Liaison
Colorado Department of Public Safety
Co-Chair, Adam Walsh Act Compliance Committee

Chris Lobanov-Rostovsky, Program Director
Sex Offender Management Unit/Division of Criminal Justice

**Reference**

Worling, James R. "Adolescent Sexual Offender Recidivism: 10-Year Treatment Follow-Up of Specialized Treatment & Implications for Risk Prediction." Paper

Presented at the 15th Annual Conference of the National Adolescent Perpetrator Network. Denver, CO, February 2000.

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:43 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121
**Attachments:** Federal Register Volume 72 Number 103 Wednesday May 30 2007 Notices - Ms. Laura L. Rogers Director.tif

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**From:** Kemmler, Robert G., Lt. Colonel [redacted]
**Sent:** Wednesday, August 01, 2007 4:17 PM
**To:** GetSMART
**Cc:** Turner, Thomas W., Captain; Reed, Jr., William J., Lt.; Mann, Debbie S.
**Subject:** Docket No. OAG 121

Laura L. Rogers,

Attached is the response from the Virginia Department of State Police.

Bob

Lieutenant Colonel Robert G. Kemmler
Director
Virginia State Police
Bureau of Administrative and Support Services
P. O. Box 27472
Richmond, Virginia 23261
Telephone Number:(804)674-4606

---

Colonel W. S. (Steve) Flaherty
Superintendent

(804) 674-2000

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF STATE POLICE

Lt. Col. Robert B. Northern
Deputy Superintendent

P. O. BOX 27472, RICHMOND, VA 23261-7472

July 31, 2007

Ms. Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street North West
Washington DC 20531

Dear Ms. Rogers:

These comments are made in response to the Federal Register Volume 72, Number 103, Wednesday, May 30, 2007, Notices.

The Department of State Police operates the Sex Offender and Crimes Against Minors Registry for the Commonwealth of Virginia. The Department is responsible for monitoring and tracking sex offenders within Virginia and has operated a Sex Offender Registry since July 1, 1994. Virginia created a sex offender website on January 1, 1999. It has been the goal of the Virginia General Assembly and the Department of State Police to track and monitor sex offenders and inform the general public as to their whereabouts, in order to protect the Commonwealth's population.

I will address some of our concerns and issues as they relate to the aforementioned Federal Register Notices.

**Section IV. Covered Sex Offenses and Sex Offenders**

**A. Convictions Generally**

Comments: Requires that juvenile offenders 14 years of age or older convicted of sexual offenses be required to register. Current Virginia Code calls for the registration of those juvenile offenders that are tried and convicted as adults of serious violent sex offenses in the Virginia Circuit Court. This requirement eliminates the current discretionary provision that Juvenile and Domestic Court judges possess to place juveniles on the public interface. Therefore, the discretion to require a "delinquent offender" being placed on the registry is left to the judiciary who can evaluate these cases on a case-by-case basis. The covered offense, as it relates to juveniles, should be deferred to state law and should only be mandatory if not covered by a specific state statute.

**Section VI. Required Registration Information**

**Telephone Numbers**

Comments: Requires that a Registry maintain the telephone numbers for an offender, both location and cellular. This information changes more frequently than employers and presents a terrific challenge to maintain accurate information. Offenders are required to notify Registries with a number of changes. The requirement invoked under this section will increase the burden on the Registry. The requirement to obtain telephone number for both at fixed location and cell phones is a decision that should be made by the State Registry. The negative side would be that sex offenders would move towards a telephone listed in another person's name or pre-paid cellular telephone, thereby, hindering criminal investigations. The provisions of tracking and monitoring offenders who provided these numbers would be voluminous as well as the collection of evidence for the prosecution for failing to comply with supplying the correct phone number or changes. This should be optional and left to the individual states as well as local agencies that register sex offenders.

**Temporary Lodging Information**

Comments: Registries are maintaining information on an offender's residence location. This requirement will place a heavy burden on Registries across the nation. Registry information is required to be placed on the interface within three days of the change. In theory an offender would only have four days left in a particular jurisdiction. When an offender takes a trip or vacation, registry information would be required to be updated if the trip is seven days or more in duration. Updating registry information would be increased exponentially for an offender that travels frequently or on a contractual basis. By capturing multiple residence information and multiple work addresses an agency already has a good foothold on an offender's location. Registries cannot prevent an offender from re-offending. If a particular offender is the subject of a criminal investigation, there are other methods available for the offender to be tracked during his travel. This requirement should be left to the registry operated by local or state agencies to make determinations concerning residency requirements.

**Travel and Immigration Documents**

Comments: Registries are maintaining information that is available from other sources. Provided that an offender is properly registered this information can be obtained from contacting the State Department or the Department of Homeland Security. This duplication of work effort should not be enacted, since resources for all Registries are limited. Registry information is provided to the Department of Justice and the FBI and they could develop an interface with the aforementioned agencies to acquire and populate the national sex offender databases.

**Professional Licenses**

Comments: Registries are being asked to maintain information that is available from other sources. If an offender becomes the target of an investigation, this information can be obtained from the proper licensing agency. Creating additional databases of existing information does not use resources effectively. This information is obtainable through the requirement of place of employment. If the sex offender allowed the professional license to expire, this information would not be submitted to the registry.

**Vehicle Information**

Comments: Registries are being required to maintain information on vehicles owned or regularly operated by an offender. This is once again a duplication of information that is available from another source. However, maintaining information about vehicles owned by an offender is a relatively easy task, since most state's motor vehicle files contain this information. However, requiring offender to report where they regularly park their vehicle and any vehicle that they regularly operate is not enforceable and relies on a high degree of offender compliance. This requirement will place an undue burden on Registries who will have the task of maintaining the accuracy of this dynamic information. Maintaining information on an offender's watercraft and aircraft serves no useful purpose. This information can be obtained from other sources.

**Criminal History**

Comments: Non-sexual criminal convictions pertaining to the sex offender is available to criminal justice agencies and has no value being collected by the sex offender registry.

**Text of Registration Offense**

Comments: Requiring Registries to maintain the text of an affected section as of the date of conviction is not possible. Research would be too extensive going back decades through a manual search for those sections. This section should be revised to include affected sections since the enactment of the Adam Walsh Act on July 27, 2006. This would allow Registries to begin building a database of offenses from that date forward. Otherwise, the current codified section should be sufficient to satisfy the requirement.

**VII. Disclosure and Sharing of Information**

The local or state website should be required to carry the amount of information necessary to identify a sex offender, his place of employment, and school of attendance.

**Discretionary Exemptions and Required Inclusions**

**Vehicles**

Comments: Regarding the requirement to include the license plate number of any vehicle owned or operated by the defendant: If this information is provided to the general public, it will establish a false sense of security that a particular sex offender operates a specific vehicle. This process may hinder investigations rather than helping. Sex offenders may resort to licensing vehicles in someone else's name. The information is not going to substantially provide the public with information that is usable as well as it is going to create numerous complaints about vehicles being in locations where they may have a lawful right to be. Law enforcement agencies are going to find the number of suspicious vehicle calls growing drastically due to the publication of this information. Vehicle information should remain for law enforcement purposes only and not visible on the public interface.

**Community Notification and Targeted Disclosure**

Comments: Currently, Virginia law enforcement agencies process the paperwork associated with registration of an offender at the local law enforcement level. Once that paperwork is completed, it is mailed to the Registry for entry into the database. At times, the mail coming from the western part of the state cannot be entered in accordance with the defined three day "immediate" deadline. Additionally, many of these cases require research to determine if the offender is required to register based on an out of state conviction. Three days is not enough time to perform this function. It is recommended that the term "immediately" be defined to be seven days. The requirement for posting this information within three days is not a problem for local agencies that support a website, but it is not realistic for State agencies that operate a site. A realistic time should be considered.

**Geographic Radius**

Comments: To allow the general public to decide what radius should be established for searches is not a workable solution, this should be a decision left to the Registry. Limiting or expanding the community notification process is a Registry function.

**X. Keeping the Registration Current**

Comments: The task of electronic submission by local agencies to a central repository to include in the registry is not available to local agencies.

**Verification/Appearance Requirements**

Comments: To require the offender to appear at the local agency every 90 days will not serve a useful purpose if agencies physically check on the offender more frequently at his place of employment or his residence. This should be left to the discretion of the Registry. A recommendation is to physically check on the Tier III offender at least twice a year and annually for Tier I and II offenders.

**XIII. Enforcement of Registration Requirements**

Comments: If the registry determines that the individual sex offender has absconded or is unable to locate the offender, a notice that a warrant has been obtained or the offender is wanted should be sufficient.

The Department of State Police has always taken a proactive approach in the registration and tracking of sex offenders in the Commonwealth. The approach has been developed by a task force, within the Commonwealth, which has implemented certain provisions which we feel give the greatest benefit to the citizens. We believe that the aforementioned proposed regulations would be extremely cumbersome to implement and cause Virginia to devote significant resources to the collection of information which would be of limited use. Those states with strong registration programs should have the options of implementing the proposed regulations.

I ask that you take our outlined comments into consideration when developing final regulations. If you should have any questions, please contact my office.

Sincerely,

W S Flaherty

Superintendent

WSF/TWT/vs

## Rosengarten, Clark

**From:** Rogers, Laura
**Sent:** Wednesday, August 01, 2007 8:24 PM
**To:** Rosengarten, Clark
**Subject:** Fw: Comments/Questions ref Proposed Guidelines for SORNA

**Attachments:** SORNA Guidelines_Comments.doc

More comments

----- Original Message -----
From: Terry Gibbons <Terry.Gibbons@gbi.state.ga.us>
To: Rogers, Laura
Cc: Terry Gibbons <Terry.Gibbons@gbi.state.ga.us>; Marsha O'Neal <Marsha.Oneal@gbi.state.ga.us>; Paul Heppner <Paul.Heppner@gbi.state.ga.us>
Sent: Wed Aug 01 12:30:31 2007
Subject: Comments/Questions ref Proposed Guidelines for SORNA

SORNA
elines_Comments.d

Hi Lau a,

First I would like to thank you for the opportunity to attend both the Registry Workshop and National Symposium on Sex Offender Management and Accountability last week. The cussions were very informative and I appreciate that both the SMART Office and DOJ were to questions and discussion on a number of issues. I know you took a lot of the estions and requests for clarification back with you, but there were several omments/questions that I specifically wanted to forward to you from Georgia. These are attached as our comments to the Attorney General's Proposed Guidelines.

If you have any questions or need additional information, please let me know.

Thanks again,

Terry Gibbons

Assistant Deputy Director
Georgia Bureau of Investigation

Comments/Questions Regarding Attorney General's Proposed Guidelines for Implementation of SORNA

**Georgia Bureau of Investigation/Sex Offender Registry**

1. Page 8 (Retroactivity) – Reference offenders who are required to register when they re-enter the justice system because of conviction for ***some other crime*** (whether or not a sex offense). Recommend consideration to change the requirement from ***some other crime*** to convictions for any sex offense, felony offense or specified misdemeanor offenses. As currently indicated, a conviction for a charge such as DUI would trigger the requirement to register as a sex offender ***regardless*** of when the sex offense conviction occurred.

2. Page 8 (Retroactivity) – Request confirmation that the three instances indicated for registration of offenders whose predicate sex offense conviction predates SORNA applies to both juvenile and adult offenders

3. Page 8 (Retroactivity) – Reference "credit" for sex offense convictions which predate SORNA. The example provided in the guidelines provides that a jurisdiction can give "credit" to an offender who was released from imprisonment in 1980 and met "tier II" criteria requiring him to register for 25 years. Since it has been more than 25 years from the offender's release, the jurisdiction may credit the offender with the time elapsed and not require the sex offender to register. How would "credit" (or would it) be provided to such an offender whose release occurred in 1984 and they have now "re-entered" the judicial system because of a conviction for an offense other than a sex offense. Their requirement to register under "tier II" criteria is 25 years, of which only 23 has elapsed. Does this offender, upon re-entry into the judicial system, now register for the full 25 years? Can a jurisdiction require him to register for only the remaining two years? Recommend clarification regarding jurisdictions providing "credit" to offenders. Additionally, recommend consideration that how/if credit is allowed be mandated so that it is consistent among jurisdictions.

4. Page 30 (Residence address) – How should addresses for safe houses, foster homes (juvenile offenders), drug rehabilitation centers, etc. be listed?

5. Page 31 (Travel and Immigration Documents) - How is "critical information" for passports and immigration documents defined? And is it sufficient to key that information in to the register (vs. capturing a digitized image)? Is there a link that can be provided to any federal database?

6. Pages 31 and 46 (Employment) – Request confirmation that if an offender does not have a fixed place of employment, information should be obtained and included in the registry with whatever definitiveness is possible (normal travel routes, etc.) BUT the offender is *not* required to register in each jurisdiction through which he travels, unless the jurisdiction makes that requirement.

7. Page 32 (Professional Licenses) – What type of information regarding professional licenses should be captured and included in the registry?

8. Page 33 (Date of Birth) – is the full date of birth to be disclosed to the public or just the year of birth?

9. Page 34 (Criminal History and Criminal Justice Information) – with regards to providing criminal history record information and warrants for law enforcement, is an actual link to the appropriate state or FBI database required or is the entry of the State Identification Number (SID) or FBI Number (FNU) sufficient? If an actual link is required, how will this be handled by the FBI?

10. Page 34 (Fingerprints and Palm Prints) – Has there been any consideration for storing them on the FBI's IAFIS so that they can also be searched? Or within the NCIC National Sex Offender Registry (NSOR) for sharing across jurisdictions? If states only collect digitized images – they can be used for verification purposes, but not necessarily for identification purposes. Again, if an identifying number is sufficient, does this refer to the SID or FNU?

11. Page 34 (DNA) – As with fingerprints and palm prints, has there been any consideration for how this information can be shared among jurisdictions, especially if an offender moves from jurisdiction A to B? For example, if the offender initially registers in Georgia, but 5 years later decides to move to Montana, will Montana need to collect fingerprints, palm prints and DNA again? Can/should that information be provided by Georgia? If states enter their offenders in to the NCIC's NSOR, could not that file include images of fingerprints, palm prints and a pointer to the DNA that all state registries could reference and/or point to?

12. Page 35 (Driver's License or Identification Card) - Request confirmation that including the information from a driver's license or identification card is a sufficient alternative to providing a digitized photocopy of the card.

13. Page 37 (Discretionary Exemptions and Required Inclusions) – With regards to the requirement to include information on the public site on the sex offense for which the offender is registered and any other sex offense for which the offender has been convicted, does that include a requirement to include sex offense convictions that occurred outside the registering jurisdiction? If so, is it envisioned that the registering jurisdiction(s) would collect that (via self disclosure from offender and a criminal history records check) and populate registry? If so, presumably an FBI criminal history record query utilizing Purpose Code "C" for criminal justice administration would be appropriate. If purpose code C is not permitted, will the FBI establish a new and specific purpose code? How often would the registering jurisdiction be required to update this portion of the registry? During re-registration? Or could there be a real time query (to state and FBI criminal history

files) generated based on the request of the public at the time the offender record is reviewed? If so, again would the FBI establish a new and specific purpose code? A real time query would ensure that any new convictions received after the point of registration would be captured. Likewise, if there are any changes to previously reported convictions, these too would be accurate at the time of inquiry.

14. Page 37 (Discretionary Exemptions and Required Inclusions) - What is the minimum information to be posted on the public view reference the sex offense convictions – offense, date of conviction, agency of conviction, case number, etc.?

15. Pages 45 and 55 (Where Registration is Required) – An offender is required to register and keep registration current in each jurisdiction where sex offender resides, is employed or is a student. Request clarification that the offender must report initially and periodically to each jurisdiction, but it is the responsibility of the residence jurisdiction to maintain the employment and school address.

16. (Other) Regarding "Keeping the Registration Current" per H.R. 4472 SEX 113. (3) A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction involved pursuant to (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall provide that information to all other jurisdictions in which the offender is required to register. Could "3 business days" or just "business days "be defined in the guidelines" "Business days are generally thought to be Monday through Friday, but tin the criminal justice/law enforcement community it is 24 x 7.

17. (Other) – As SORNA is understood, jurisdictions will need to create electronic databases to assist with tracking offenders from one jurisdiction to another. Additionally, information collected should be immediately available to the public. Certain components of the required registration information are intended for law enforcement view only. But much of this information will be maintained only on the state registry and not necessarily within the NCIC's National Sex Offender Registry (NSOR), even though records entered on the registry should be forwarded to the NCIC NSOR. Is there any contemplation to increase the utility of the NSOR so that all information collected by the registering jurisdiction is available through the NCIC file so that an officer on the street completing a person's query will receive the full amount of information on a registered sex offender? Or will there need to be secondary checks – the initial "hit" from NCIC NSOR and then the need to query either the NSOPR or the individual jurisdiction's registry?

## Rosengarten, Clark

**From:** Rogers, Laura
**Sent:** Wednesday, August 01, 2007 8:55 PM
**To:** Rosengarten, Clark
**Subject:** Fw: Comments

**Attachments:** SORNA Guidelines Comment.doc

More comments

----- Original Message -----
From: Jill Rockey <jrockey@safety.state.nh.us>
To: Rogers, Laura
Cc: jrockey@safety.state.nh.us <jrockey@safety.state.nh.us>
Sent: Wed Aug 01 20:54:26 2007
Subject: Comments

SORNA Guidelines Comment.doc (...

Please see attached.

# State of New Hampshire

DEPARTMENT OF SAFETY
Richard M. Flynn, Commissioner of Safety
***Division of State Police***
James H. Hayes Safety Building, 10 Hazen Drive, Concord, NH 03305

271-2575

Speech/Hearing Impaired
TDD Access: Relay NH
1-800-735-2964

**Colonel Frederick H. Booth**



Trooper First Class Jill C. Rockey
New Hampshire State Police/HQ
SOR
33 Hazen Drive
Concord, New Hampshire 03305


August 1, 2007

Director Laura L. Rogers
SMART Office
810 7th Street, NW
Washington, DC 20531

RE: Comments regarding the National Guidelines for Sex Offender Registration and Notification

Dear Director Rogers,

I apologize that you are receiving these comments at this hour. This was the first opportunity I had to work on them. After the symposium last week Denise Perry and I are playing catch up. I would like to thank you on behalf of the New Hampshire SOR. Denise and I found the symposium both informative and inspiring, particularly when listening to Mr. Smart and Mr. Walsh. It is also nice to get to meet people you have worked with in the past, face to face. We also made several new contacts who we will be able to use as resources in the future.

Regarding the guidelines, overall, I found them to be very straightforward. I just had a few areas of concern:

- **II. General Principles, C. Retroactivity** (p. 8) – I am concerned about implementing the portion that states we can register someone once they re-enter the criminal justice system. While my con□erns aren't necessarily legal, it's a question of being able to capture these individuals within the system. I was hoping the Attorney General would give us an effective date (ex. convictions after January 1, 1970) to fall back on. While this would have been more difficult initially, in the long run I feel it would have been easier for us to implement. By requiring the re-entry, we will have to rely on courts, prosecutors or prisons to be vigilant in checking every criminal convicted of an offense for a prior sexual assault or other registerable conviction. I am not sure as a state we can guarantee this will happen in every instance. However we will strive to put procedures in place to come into compliance with this guideline.
- **V. Classes of Sex Offenders** (p. 26) – Regarding kidnapping of a minor, someone stated during the symposium parents/guardians who kidnap a child shouldn't be excluded from registering if the child is taken for the purposes of a sexual assault, prostitution, etc. This should be added to the guidelines to clarify that point.

# State of New Hampshire

DEPARTMENT OF SAFETY
Richard M. Flynn, Commissioner of Safety
***Division of State Police***
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1-800-735-2964

**Colonel Frederick H. Booth**


- **VI. Required Registration Information, Temporary Lodging Information** (p. 30 – 31) – it references any place an offender is staying for seven days or more. I suggest you put parameters on the 7 day period. Is it seven days in a row? Seven days in a 30 day period? Seven days or more in a year? Right now in New Hampshire it's 5 days in a 30 day period. Some examples of why this is important. You have a registered sex offender who lives and works in Massachusetts. His girlfriend resides in New Hampshire. He stays at her residence 2 nights a week. Another example is an offender who lives in Maine but has a camp in New Hampshire. He spends every weekend there in the summer. Under the proposed guidelines would they have to register in New Hampshire? Our state statute reads:

> **"RSA 651-B:1 VIII.** Notwithstanding RSA 21:6-a, ""residence" means a place where a person is living or temporarily staying for more than a total of 5 days during a one-month period, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles."

While this guideline doesn't impact us directly in New Hampshire it does indirectly. By clarifying it in the guidelines it will require bordering jurisdictions to adequately define temporary lodging and inform us if an offender is coming into our jurisdiction.

I appreciate the opportunity to comment on the guidelines. I hope you find my input useful.

Sincerely,
Jill C. Rockey

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:40 AM
**To:** Rosengarten, Clark
**Subject:** FW: Comments on Proposed Guidelines
**Attachments:** FL SORNA Guidelines Comments.doc

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**From:** Coffee, Mary [mailto:MaryCoffee@fdle.state.fl.us]
**Sent:** Wednesday, August 01, 2007 11:44 PM
**To:** GetSMART
**Cc:** Rogers, Laura; Uzzell, Donna; Zadra, Mark
**Subject:** Comments on Proposed Guidelines

Please find attached the Florida Department of Law Enforcement comments and suggestions regarding the proposed SORNA Guidelines. Thanks for all you are doing to assist and coordinate the nation on these issues!

Take care,
Mary

**Mary Coffee**
Planning and Policy Administrator
Career Offender and Sexual Offender/Predator Registration
Florida Department of Law Enforcement
www.fdle.state.fl.us
marycoffee@fdle.state.fl.us
(850) 410-8572

SORNA Proposed Guidelines Comments
Florida Department of Law Enforcement
August 1, 2007

Many of the questions and concerns previously noted by FDLE were addressed during the symposium in Indianapolis the week of July 23rd. The attached list represents official documentation of several discussion points made during the symposium that are requested to be addressed in the updated guidelines. In addition, as requested at the symposium, it is requested that specific and ready access and updates to the election status of the Indian Tribal Authorities for each State be made available to the states and registries in order to navigate the intricacies of adding the new responsibilities involved in registering those on tribal lands and/or interacting with tribal registries as required.

It is recognized that:

1. the numbers of individuals required to register will grow faster than they might ever be expected to decrease and,
2. the general trend over the past decade has consistently been towards increasing both the amount of information required as well as the frequency of updates required to complete and keep a registration current.

Therefore it is suggested that serious consideration be given to allow the flexibility of applying technology such as two-form-factor authentication or other acceptable alternatives to the "in person" registration requirements where it seems reasonable to allow such flexibility. This will allow for fiscally efficient, appropriate and feasible application solutions to this ever growing task. Specifically it is suggested that this alternative be applied to the reporting of employment and intended employment changes and locations in addition to various other reporting and updating requirements as determined practical and reasonable.

The two issues of retroactively applied registration requirements and juvenile registration were discussed within the guidelines. It is requested that consideration be given to minimize any overbroad application of retroactivity or registration in general and specifically in regards to juveniles. Delinquents who have a sexual offense in their history and are convicted of some other, non-sexual offense later in life, perhaps much later, do not necessarily pose a significant danger to society nor merit the extra time and expense of registration and monitoring as those who recidivate sexually or commit sexual offenses as adults.

Beyond the current guidance offered in the guidelines, it is requested that clarity in a simplified format (i.e. table, chart etc.) be given regarding the specific items that must be published and available to the public via the Internet or other means and those items that are to be available, gathered, linkable etc. for law enforcement and registry use only.

In regards to the collection of palm prints, it would be useful if the collection of palm prints be in accordance with the NIST standards as referenced by the FBI. This will allow for palm prints to be stored in a consistent and accessible manner, allowing them to be searched upon in the future. It is important to know that implementation of such collection and storage systems are not an overnight fix. As such, collection of palm

prints should be one of the areas that are not required for substantial implementation until the last year of SORNA as well as an allowable basis for the two one-year extensions. However, to be of most benefit, palm prints should be collected and stored according to the NIST standard which should be referenced and outlined within the guidelines with the allowable extensions for proper acquisition and implementation.

Local agencies will need to collect several additional fields as part of the requirements. Areas of concern include the places where vehicles are parked, the route that the offender drives if in a mobile job, the volunteer information treated the same as employment. While all potentially useful information to be collected, the SMART office should consider the benefits of collecting this information and the ability to retrieve it, against the cost of time and resources to collect it. One option regarding vehicles would be to only require such additional information regarding where a vehicle is parked under the following special circumstances: boats, trailers or aircraft; or any other vehicle that is not normally parked at or around the location where the offender resides.

Please include in the guidelines an expanded definition and basis for intent for the phrase regarding registration where the offender "is a student or will be a student, or will be employed." While it is agreed that the term "will be" is for those being released from incarceration, the guidelines should specify that for clarity.

In regards to offenders who go on vacation or travel and are required to provide information about any place in which the offender is staying for seven or more days, including identifying the place and the period of time the sex offender is staying there. While certainly having merit in concept, it must be recognized that fulfillment of this will be resource intensive for local agencies and/or registries that must capture and maintain the information. It might be equally effective and more feasible to require registrants to report any temporary address of a certain number of days where they are located consecutively or cumulatively in a certain month period. (i.e. 5 or more consecutive or nonconsecutive days in a calendar month) If registrants intend to leave the state during that set amount of days, they should be required to notify the registry of their intention to leave the state and identify the state(s) to which they will be going and when they plan to return.

**Rogers, Laura**

**From:** Conlon, Steve [DPS] [conlon@dps.state.ia.us]
**Sent:** Wednesday, August 01, 2007 6:08 PM
**To:** Rogers, Laura
**Subject:** Comments on Adam Walsh Guidelines

Director Rodgers:
I would like to first express my appreciation to you for conducting the SMART conference in Indianapolis. It was extremely beneficial and all of our staff came away from the conference with a much better understanding of the Adam Walsh Act. It was a pleasure having an opportunity to meet yourself as well as the entire staff at the conference.

We would like to offer the following brief comments regarding the Adam Walsh Act for your consideration.

1. The Tier system has the ability to provide standardized criteria for all states to use and follow. Having a standardized tier system would be beneficial to the states to use as the registrant moves from state to state the tier classification "could" follow them and save time in the determination of which tier the person will be in the new state. This "national" tier category will be more effective if mandatory use is required by all states and determined by the offense of conviction and not individual state laws that determine duration of registration. I would encourage use of the tier system by all states.
2. There may be some additional comment from your office regarding the reduction of registration time and if other states are required to honor the reduction if the registrant moves into a new state that does not offer or provide for a reduction of registration time from 15 years. When a state decides to reduce the time period (from 15 to 10 years) for not re-offending and removes a registrant as they have now completed the registration period (for that state) then the registrant moves into a state that does not provide for a reduction of registration period, does the registrant now "owe" the new state 5 years of registration or since they completed the registration period for the first state does this satisfy the requirement?
3. The capture of information concerning the vehicles "operated by" will need criteria either by the states or the SMART office to identify any time periods that constitute "operated by" and the time in which a registrant has to report these vehicles to registry officials.

We had many more comments and questions but felt you did a great job in answering them at the conference. Thank you again for your efforts and we look forward to working with you in the future. Please do not hesitate to contact this office if we can be of any assistance.

Steven R. Conlon
Assistant Director
Iowa Division of Criminal Investigation
215 East 7th Street
Des Moines, Iowa 50319

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
Monday, August 06, 2007 10:35 AM
Rosengarten, Clark
**Subject:** FW: Michigan Rule Comments

**Attachments:** Rule comments.doc

Rule comments.doc
(26 KB)

-----Original Message-----
From: Diane Sherman [mailto:ShermaDL@michigan.gov]
Sent: Thursday, August 02, 2007 5:52 PM
To: GetSMART
Cc: Katie Bower; Karen Johnson; Charlotte Kilvington; Edward Pitts
Subject: Michigan Rule Comments

See attached.

Diane Sherman
Criminal Justice Information Center
(517) 322-5511

UD-40 (2/90)
MEMORANDUM

STATE OF MICHIGAN

# DEPARTMENT OF STATE POLICE

Comments on SORNA Proposed Guidelines

1. Must a search function on the public website include a **radius** search as long as we have a search option by zip code, county, city, offender, and school?

2. How do we address HIPPA issues on the public website with offenders who are in treatment facilities?

3. Do we have to honor the "clean records" provision for other states if Michigan decides not to implement the "clean records' provision clause?

4. The catch-all provision wording for covered offenses was changed and now focuses on the "conduct" of the sex offender rather than the sexual offense that predicated arrest. Does this now include the registration of non-covered offenses based on the court documents and the pre-sentence investigation report?

5. Many states do not collect electronic palm prints. The required link to palm prints should be required only for electronic palm prints.

6. More detail is needed regarding duration begin dates since each state is different, or is the final decision to be left up to the states? Many states are very concerned about this as it would affect registration requirements if the offender moved substantially from state to state.

7. Is Michigan required to enact legislation for civil commitment of dangerous sex offenders under the Jimmy Ryce Civil Commitment Act or can the state choose to forgo such an option?

8. Must states require the retroactive submission of DNA samples for sex offenders who have not yet provided such if the DNA requirement standard for the state was enacted January 1, 2000?

9. While the collection of Internet names sounds like a good idea, in reality, because they are self reported, are meaningless.

10. The 3 day change of address requirement is overly restrictive, especially for those who typically do not have identification or the funds to obtain identification. We recommend that it be changed to 5 days. The SORNA should make it easier to register not harder.

11. Retroactivity puts a work load burden on states. Much research will be needed on old laws to determine whether they apply to SOR registration.

# FEEDBACK ON PROPOSED GUIDELINES

**Submitted by:**

**Cpl. Jeff Shimkus**
**Allen County Sheriff's Department**
**Sex Offender Registration and Notification Team**
**101 E. Superior St Room B-25**
**Fort Wayne, In 46802**
**(260) 449-8611 office**
**(260) 449-7985 fax**

After reviewing the proposed guidelines for Adam Walsh I offer the following thoughts:

**Section IV (A) Juveniles** **Page 17**

This section raises some concern in the area of juvenile adjudications. Currently under Indiana law juveniles are required to register as sex offenders if the juvenile is over the age of 14 and is found, by a court, likely to re-offend based on clear and convincing evidence. The fact that Adam Walsh will require registration of juveniles simply based the age of the offender and a crime comparable to aggravated sexual abuse is in stark contrast to our state law. Currently Indiana law protects the community from juvenile sex offenders deemed likely to re-offend by requiring these offenders to register for at least10 years, and the law also protects the juvenile offender from the mistakes of youth

Based on the definition in 18 U.S.C. 2241, engaging in a sexual act with a child under the age of 12 constitutes "aggravated sexual abuse". Therefore, a 14 or 15 year old offender who "engages in a sexual act" with an 11 year old could be guilty of "aggravated sexual abuse," and required to register for 25 years as a tier II offender. In some situations an offender like this should be required to register, however by not allowing the court to review the totality of the circumstances, we could label a 14 year old child as a sex offender based on an exploratory sexual experience with another child only 3 years junior.

The other issue is the confidentiality of juvenile records themselves; for instance a juvenile is adjudicated at the age of 15 for an offense similar to aggravated sexual abuse in 1997. He is not required to register at that time based on Indiana law. 20 years later he is arrested for drunk driving and therefore re-enters the criminal justice system. Based on Adam Walsh, he is a tier II offender and must register for 5 more years. This person has not committed any other sex offense, but now the juvenile record which had been sealed for 20 years is now open to the public and this person labeled as a sex offender.

**Section IV (D) Specified Offenses against Minors Pages 19-22**

There are several issues with the "specified offense against a minor". Most notable are the charges of kidnapping and false imprisonment. In Indiana these charges correspond to kidnapping and criminal confinement.

Under Adam Walsh and Wetterling, a jurisdiction cannot exempt a person convicted of these offenses from the requirement to register as a sex offender. Adam Walsh has given jurisdictions the discretion to exempt parents and guardians from the registry if they were convicted of kidnapping or criminal confinement.

At first glance excluding parents and or guardians in these situations makes sense, and many jurisdictions were pleased with this new change in Adam Walsh because persons convicted of theses offenses as a result of custody disputes could be removed from the registry. In these situations there was no sexual intent and the "victims" involved were in no danger of a sexual assault. Therefore there is no need to label the offender as a "sex offender".

However, automatically protecting an offender from the requirement to register based solely on his or her relationship to the victim is simply bad law. Cases involving parents or guardians may or may not be sexual in nature. In some of these cases there may have been a clear intent to commit a sexual assault but the victim was found or the perpetrator was unable to commit the assault. In these situations the sentencing court should be given the discretion to require these offenders to register as sex offenders based on a conviction for kidnapping or criminal confinement.

The issue of plea agreements is another concern. For instance, a parent or guardian charged with child molesting and criminal confinement would eagerly sign a plea agreement that dismissed the molesting charge for a guilty plea on the confinement charge. Armed with the knowledge that the offender's relationship to the victim will exclude him or her from the sex offender registry, offenders would be eager to plead guilty to kidnapping or criminal confinement so that they could live undetected in the community.

At the other end of the spectrum are cases involving domestic disputes involving persons who are not parents or guardians of the victim. Cases involving burglaries, and even suicidal subjects involved in barricaded subject situations continue to result in persons being required to register as sex offenders. These cases were not sexual nature. However because the offender was convicted of kidnapping or criminal confinement against a minor, this offender is a sex offender by law and in most cases is required to register for life based on the age of the victim and / or the element of force used during the confinement.

Indiana attempted to address this issue in 2006 by changing the language of the law. This issue became moot when it was learned that under Adam Walsh, Indiana could only exempt persons convicted of a "specified offense against a minor" if the person was a parent or guardian. Since Indiana could not address the complete issue of the kidnapping/criminal confinement dilemma, legislators compromised and simply incorporated the poor wording of Adam Walsh into Indiana law.

The original intent was to require ANY person convicted of kidnapping or criminal confinement against a victim who was < 18 to register as a sex offender; **unless the sentencing court finds by clear and convincing evidence that the kidnapping was not for sexual purposes.**

If Indiana and the federal government adopt this or similar language, the following issues could be remedied:

1. Offenders currently on the registry for these charges would be able to petition the court to look at the totality of the circumstances surrounding their convictions. If the court found no sexual intent, these offenders could be removed from the sex offender registry so that they would not be falsely labeled as "sex offenders" for the rest of their lives.

2. By stating that the court must find "by clear and convincing evidence" that the offense was not committed for sexual purposes, we will place the burden on the defendant to prove his or her intent. This will ensure that the community is protected from offenders who kidnap or confine children for questionable or unknown reasons. As it stands now, the law allows us to err on the side of caution and require registration of the offender based simply on a conviction for kidnapping or criminally confining a minor.

3. Parents and guardians will not be automatically exempted from the requirement to register based solely on their relationship to the victim.

**Section VI Required Information; internet identifiers and addresses Page 29**

While having this type of information on registered sex offenders would undoubtedly assist in investigations, this will be nearly impossible to effectively enforce. The internet provides any person the ability become someone other than themselves. Therefore sex offenders often use the internet to find new victims. Law enforcement uses this same aspect of anonymity to successfully locate and prosecute pedophiles by pretending to be either children or other pedophiles hoping to trade pornography.

Offenders could easily provide registry officials with legitimate email addresses to comply with the mandate and create new undetected identifiers under a separate identity. Offenders would not use the disclosed identities for illegal purposes, knowing that law

enforcement would monitor those addresses. An offender could easily create an infinite number of pseudo-identities to use for illegal activities.

I agree that local law enforcement should be encouraged to collect this information for intelligence purposes. However I do not believe that local jurisdictions should be mandated to collect information that would be compromised from the start because of the offender's knowledge that the internet identifiers will be monitored.

**Section VII Mandatory Public Information** **Pages 38 – 39**

I do not believe offender vehicle information and license plate should be placed on the public registry. I believe strongly that information on all vehicles that an offender owns or operates on a regular basis should be required at registration and entered into the database. However I believe this information should be for law enforcement only.

I am afraid that supplying the public with vehicle information could have unintended consequences such as creating panic every time a "green minivan" drives by a playground (because the sex offender on Main Street drives a green minivan...)

I also fear that by providing the license plate information we could actually taint eyewitness accounts by providing them with an entire license plate. Most witnesses would eagerly identify an offender's vehicle as suspect in a missing child case. That fact that they would provide an accurate plate number to police would make the testimony appear to be very credible. However based on the fact that the information was posted on the internet, the "witness" could provide an accurate and seemingly credible description of an offender's vehicle from the comfort of their own home, miles from the alleged abduction site.

**Section VII Disclosure and sharing of information** **Pages 41-42**

I am somewhat confused on this section dealing with the dissemination of offender information to other law enforcement agencies and supervision agencies. If I understand correctly NSOR is the NCIC sex offender file. If this is correct the file will have to be modified to accept employment and school information. Currently we enter offender address, vehicles, descriptors, and conviction information into NCIC. However there are no fields for employment or school addresses.

The other issue to be addressed is ownership of the NCIC record. Take for instance an offender who resides in Allen County Indiana and works in Huntington County. There is an NCIC record showing the offender's registered home address with Allen County. In order for Huntington County to add the employer address to NCIC, they must add a new record. If the offender attends school in a third jurisdiction we must add another record. NCIC would be become cluttered with multiple records on each offender.

This currently happens now to some extent with offenders who move from one state to another. For example an offender registers with State A and is required to register for life. The offender moves to State B where he is required to register for 10 years.

The police officer on the street stops this offender and receives two NCIC hits, each with different information. In some cases the registered addresses are the same and current. In other cases the registered addresses differ because State A has not updated its record with State B's more recent information.

The second issue with dissemination concerns exactly how we will notify other agencies in our jurisdiction. Does this have to be an active notification i.e. "John Smith moved from 123 Main Street to 123 Smith Street"? Or will granting "read only access" to our database suffice?

**Section VIII Registration locations Page 45**

Requiring registration in the county of conviction makes sense in new cases; however it will be very problematic to require offenders already on the registry, or offenders with old convictions that are newly discovered by registration officials, to return to the county of conviction and register.

We must be able to "grandfather" current registered offenders, as well as those offenders whose convictions pre-date the state's adoption of Adam Walsh. These offenders should be required to register in their county of residence as well as employment and schooling locations. The other issue we must address is the issue of requiring "conviction" jurisdictions to supply the court documents free of charge to the registering agency. There are still jurisdictions that will charge law enforcement agencies a fee for those documents required to properly register and classify a sex offender.

**Section IX Initial registration Page 48**

Are local jurisdictions required to inform an offender of his duties under Adam Walsh in addition to informing the offender or his duties under State law? If this is the case then the federal government must provide each jurisdiction with a standardized form outlining the offender duties under Adam Walsh.

**Retroactive cases** **Page 50-51**

This area will be extremely problematic when dealing with offenders who "slip through the cracks". For example an offender convicted of rape in 1975 is arrested in 2007 for robbery. Many times local jurisdictions do not learn of the 1975 rape conviction because it was never entered into the offender's NCIC criminal history. How can a jurisdiction implement and comply with this section of Adam Walsh if the rape occurred in California and the robbery in Ohio? How can California enter the offender's information into NSOR showing the offender as a registered offender without first notifying the offender of his requirement to register? How will Ohio learn of the rape conviction if it does not appear in the criminal history?

**"No Shows"** **Page 51**

This section deals with situations where federal authorities notify a local jurisdiction that an offender is being released to their jurisdiction but the offender fails to appear in person and register. As stated in this section the local jurisdiction must proceed as discussed in Part XIII to file fail to register charges.

This will be problematic in some cases where the local jurisdiction cannot show that the offender is actually in their jurisdiction or if he ever was. How can Indiana file for a warrant for failure to register when we cannot prove that the offender ever actually arrived and stayed in Indiana for more than the allotted three days?

We must add clear language to Adam Walsh and each State's law to clearly state that if an offender changes his plans and does not move to his stated address, the offender must notify the agency with whom his is currently registered with and provide them with a new intended address. For example, an offender is incarcerated in Virginia and prior to his release he registers and states he's moving to Indiana. Virginia notifies Indiana and we wait for the offender to arrive but he never arrives. After being released from Virginia the offender decided to travel to Maine and live with a relative.

In this case how can Indiana file for any warrant when no crime occurred in Indiana? Maine will have jurisdiction, provided they become aware of the offender's presence and they can how he has resided in Maine for more than three days, but Virginia should be responsible for seeking the warrant. However they will not be able to prosecute unless there is clear language stating that it is a crime for an offender to change his mind and not move to the stated destination.

**Section X Keeping registration current** **Page 54**

I expressed my concern with this section earlier in this document; specifically how are local jurisdictions to be expected to notify ALL law enforcement and supervision agencies within the jurisdiction each time n offender moves? Will access to the database

suffice or will the registering agency be required to actively notify each affected agency on each change in employment, residence, vehicle, or schooling information. Registering agencies will be overwhelmed if this is not automated.

**Section XIII Enforcement** **Page** 64

This area has several problems:

1. Establishing jurisdiction - As I stated earlier, jurisdiction can be problematic when offenders change their travel or residency plans and fail to notify the agency with whom they are currently registered. Technically the offender is compliant when he notifies the agency that he is relocating to destination X.

2. Extradition limits and the costs associated with transporting offenders back to the area where a "fail to register" offense occurred must be addressed. Many jurisdictions will only extradite from surrounding states or within a specified mile radius. This has resulted in areas of the country where offenders can live with active warrants knowing that their home state will not extradite them from such a far distance.

3. Many jurisdictions across the country have the attitude that once an offender moves to another state, he is the receiving State's problem; they do not want to bring the offender back to face failure to register charges because by not extraditing him, they have one less sex offender to worry about. At the same time, the new jurisdiction wants to send the offender back to his home state so they don't have a new offender to worry about.

Some of the above issues will be resolved by charging offenders federally if they cross state lines; however there are still issues with federal prosecutors having to prove that the inter-state travel occurred after the passage of Adam Walsh.

I believe all jurisdictions should be encouraged to extradite offenders across the country. However if this were to be done, there must be funding available to local jurisdictions to cover the costs of nationwide extradition.

In summary, there are many issues that need to be addressed and standardized prior to the full adoption of Adam Walsh by all local jurisdictions.

Jeff Shimkus
Allen County Sheriff's Dept.

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:44 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121
**Attachments:** AdamWalsh-comments.doc

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**From:** Beaty, Louis [mailto:Louis.Beaty@txdps.state.tx.us]
**Sent:** Wednesday, August 01, 2007 3:50 PM
**To:** GetSMART
**Cc:** Gavin, David; Lesko, Mike; Castilleja, Vincent; Merchant, Scott; Batten, Randy
**Subject:** Docket No. OAG 121

Docket No. OAG 121

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Comments on Guidelines for implementing the programs of the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office.

submitted by the Texas Department of Public Safety

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**PALM COLLECTION**

1) Standards - Jurisdictions using digitized images to fulfill the palm requirements should be required to capture and store the palms utilizing national standards.

a) Image Capture - The FBI approves scanners in compliance with the image quality standard (IQS) as promulgated in Appendix "F" of the Electronic Biometric Transmission Specification v 8 (EBTS).

A list of approved scanners may be found at http://www.fbi.gov/hq/cjisd/iafis/cert.htm

b) Storage and Transmission - The storage of the palms should be consistent with the ANSI/NIST- ITL 1-2007 standard "Data Format for the Interchange of Fingerprint, Facial & Other Biometric Information".

The FBI's transmission format (EBTS 8.0) is also based upon the ANSI/NIST- ITL 1-2007 standard.

c) Best practices - No best practices are available to guide the user in determining what parts of the palm constitute a "palm" for Walsh purposes. The FBI APB asked the IAFIS Interface Evaluation Task Force (IIETF) to develop these best practices for the criminal justice community. The best practices will probably require a palm transmission to contain, at the very least, a full left and right palm (captured in top and bottom palm halves or a single full palm capture), and left and right writer's palms.

2) Substantial Compliance - There are many factors involved with the capture, transmission and storage of palm images. The guidelines should reflect these factors by allowing for substantial compliance if a jurisdiction can demonstrate a realistic plan for implementation of the palm requirement in a useful manner. Jurisdictions should be able to provide a date for when they would become fully compliant with the palm requirement.

Some of the gates for palm compliance are:

a) Updating capture equipment - All livescan devices do not have palm capabilities. To capture palms, a larger platen is required than that used for finger capture. Many jurisdictions may be required to retro-fit current devices with a palm attachment. Depending on the jurisdiction, this could be a significant project. (For instance, Texas has 254 counties with over 1,100 law enforcement agencies registering sex offenders).

b) Adding palms to transmissions - Software associated with livescans must be modified to include the palm prints.

c) Telecommunications infrastructure – Many jurisdictions must upgrade their telecommunications infrastructure to accommodate the large file size associated with palm prints.

d) Receipt of the images - The receiving entity may or may not have the ability to accept and process the palm transmissions. At the very least, AFIS software must be able to accommodate the images and spin them to an electronic archive if unable to process the palms themselves.

e) Storage of palms - Palms are not generally useful unless they are resident in an AFIS. Not all jurisdictions have palm AFIS devices. The FBI does not have a palm AFIS, but will implement one in conjunction with the Next Generation Identification (NGI) initiative. Currently, the FBI is capturing and storing palm images from only three states (Texas, Oklahoma and Kansas). As a Quick Win for NGI, the FBI will start to pull palms for requesting states beginning in December. After NGI implementation, the FBI will be able to go to their archive and harvest the previously submitted palms, but there is no plan to allow states automated access to the palms submitted prior to NGI implementation.

The goal is to create flexible guidelines to allow jurisdictions to capture and store the palms in a usable manner. This cannot happen overnight, and rushing to enter data just to be compliant could have the unintended consequence of making the data unusable.

**JUVENILES**

The Texas legislature and other jurisdictions are hesitant to pass legislation imposing a lifetime registration for juvenile offenders. A possible compromise would allow for lifetime registration in cases of use of extreme force on the victim and cases involving a very young victim.

**E-MAIL ADDRESSES**

The capture of e-mail addresses creates a significant resource for law enforcement. The Texas Registration Program anticipates the capture of email addresses in the registry, but will not publish the addresses. The public will be allowed to inquire if a particular e-mail address is associated with a registrant and the relevant registration information will then be provided to the inquirer.

**SOCIAL NETWORKING SITES**

Given the prevalence of social networking internet sites such as MySpace.com and Facebook.com, the guidelines should require these ID's to be included in the state's registry.

**VEHICLE INFORMATION**

Vehicle information, specifically, the inclusion of place or places where the registrant's vehicle or vehicles are habitually parked, docked, or otherwise kept could of great benefit to criminal justice agencies. However, entering this type of information in the registry will be a burdensome process considering the limited resources of local law enforcement to verify the reported information. In addition, without guidelines on how to classify the collected information for possible automated searches or investigations, the benefit to law enforcement is greatly reduced.

**TEMPORARY LODGING INFORMATION**

The guidelines require jurisdictions to capture information pertaining to any place the offender stays for seven or more days, including identifying the place and the time period of the stay. The purpose of the registration program is to provide notification of the places where the offender frequents, but the guidelines do not designate whether the stay must be seven or more consecutive days or seven or more days within a specific time period, such as one month, three months or a year.

**Rosengarten, Clark**

**From:** Rogers, Laura
**Sent:** Wednesday, August 01, 2007 8:36 PM
Rosengarten, Clark
**Subject:** Fw: ICJC "Business" Response & Comments to SORNA Guidelines atSMART Office

**Attachments:** ICJC Chair Signed SORNA Guidelines Comment Letter 7-31-07.doc

lore comments.

:an you print a copy of all of these that I am forwarding. Thanks

---- Original Message -----
'rom: Tony Wilkerson <twilkers@idoc.idaho.gov>
'o: Rogers, Laura
'c: stephen.bywater@ag.idaho.gov <stephen.bywater@ag.idaho.gov>; Brent Reinke
:breinke@idoc.idaho.gov>; Rhonda.Morton@isp.idaho.gov <Rhonda.Morton@isp.idaho.gov>
ent: Tue Jul 31 15:36:15 2007
ubject: ICJC "Business" Response & Comments to SORNA Guidelines atSMART Office

ICJC Chair Signed SORNA Guidel...

aura L. Rogers
irector, SMART Office
ffice of Justice Programs,
nited States Department of Justice
7th Street N.W.
ington, DC 20531

eference: OAG Docket No. 121 - Comments to SORNA Guidelines.

s. Rogers,

s an attachment to this email, please find the Response & Comments letter to the SORNA uidelines from Chairman Brent D. Reinke and Idaho Criminal Justice Commission, State of daho. For your convenience this letter is also being sent, to your office via fax number 202) 514-7805, as well as an or originally signed hard copy of your Idaho file.

hank you for your continued assistance and service.

incere thanks,
ony

ony L. Wilkerson, Project Manager
daho Criminal Justice Commission
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# IDAHO CRIMINAL JUSTICE COMMISSION

*"Collaborating for a Safer Idaho"*
*Established 2005*

C.L. "BUTCH" OTTER
Governor



July 31, 2007

Laura L. Rogers
Director, SMART Office
Office of Justice Programs,
United States Department of Justice
810 7th Street NW.
Washington, DC 20531

Reference: OAG Docket No. 121 – Comments to SORNA Guidelines

Dear Ms. Rogers:

I am writing on behalf of the Idaho Criminal Justice Commission with regard to the National Guidelines for Sex Offender Registration and Notification issued on May 30, 2007. The Idaho Criminal Justice Commission is a state-wide commission established in Idaho by executive order with representatives from a broad cross-section of agencies and interests in the criminal justice system of Idaho.

One of the original directives to the Commission was to review the current laws and nationwide "best practices" with regard to sex offender management and regulation and provide guidance and direction to the Governor and the Legislature on this issue. The Commission has devoted a significant amount of time in the past years to a study of this issue and in reviewing the various approaches, both legislative and correctional, that are being implemented around the country.

At the Commission's meeting on July 27, 2007, we reviewed the proposed comments to the guidelines prepared by the sub-committee we have established with regard to SORNA implementation and compliance. Our review of the comments led to considerable discussion among the members of the Commission and consensus on the comments included herein regarding the Guidelines that we want to convey to you.

**Comment (1): Comment on proposed guideline regarding scope of retroactive application.** The state is concerned about the breadth of the duties of the state regarding the scope of retroactive application of the guidelines. More specifically, requiring the state to register all individuals who have been convicted of a sex offense who are not currently incarcerated or otherwise under supervision imposes an onerous and unworkable burden on the state and its limited resources.

the state appreciates the need to know all locations where an offender resides, the breadth of information required for offenders who are homeless or transient poses some difficulties and appears to impose a greater burden on tracking a homeless or transient offender's whereabouts than it imposes upon an offender who has a more permanent residence. Most notably, the guidelines require tracking where a homeless or transient offender "frequents," a requirement that is not applicable to other offenders. Trying to track and verify this information, much less prosecute an offender for failing to comply with the registration requirements pertaining to such will be tremendously difficult. It seems that simply requiring a homeless or transient offender to provide the location(s) where he or she habitually lives, and eliminating the requirement that he or she report places he or she "frequents", should be sufficient.

**Comment (3): Comment on failure to recognize the existence of a separate juvenile registry as substantially complying with SORNA.** Idaho has serious concerns about the approaches taken in the federal law and guidelines relating to registration requirements for juvenile sex offenders. As you know, Idaho Law provides for separate registries for adult and juvenile offenders. It also provides a mechanism for the transfer of a juvenile registrant to the adult system in appropriate cases when the juvenile reaches the age of majority. SORNA mentions only one registry and requires that juvenile sex offenders 14 years of age and older convicted of "Tier III" offenses be included on that registry. The Guidelines do not explicitly recognize that a state may maintain a juvenile registry, and provide a mechanism for the transfer of juveniles to the adult registry. However, we believe that the current Idaho system substantially complies with the requirements of SORNA and meets the stated policy objectives behind the law. We would therefore strongly encourage you to recognize this in the guidelines and consider explicitly acknowledging Idaho's "two registry" approach with a mechanism for the transfer of a juvenile to the adult registry as being in substantial compliance with SORNA. We believe that this approach would be consistent with the research on the effectiveness of registration requirements for juvenile sex offenders and would strike an appropriate balance between the community's right to know and the need to prevent the stigmatization of those juvenile offenders who are highly unlikely to re-offend.

**Comment (4): Need for a comprehensive, federally created and maintained resource reference for the applicable laws in all jurisdictions.** Since the purpose of SORNA is to have all states' sex offender registration relatively the same, it will be essential for the states to have as a reference a matrix of all state statutes corresponding to the federal statute. This would assist the registries in each state by having a source to consult to see how the provisions of different state statutes relate to one another. We believe that the DOJ should prepare a matrix in consultation with each state. The matrix will require updating as new statutes are passed. The matrix that the U.S. Probation Office does on the various state statutes would be a good example to follow.

Thank you for your consideration of the views of the Idaho Criminal Justice Commission on this important issue.

Sincerely,

Brent D. Reinke, Chairman
Idaho Criminal Justice Commission

*Cc: Senator Larry Craig, Senator Mike Crapo, Congressman Mike Simpson, Congressman Bill Sali*

July 30, 2007

Laura L. Rogers, Director
SMART Office
810 7th Street, NW
Washington, D.C. 20531

Re: Adam Walsh Guidelines

Dear Ms. Rogers:

I write as Chairman of the New Mexico Sex Offender Management Board to express my stringent opposition to the proposed inclusion of certain juvenile offenders on the various state and the national sex offender registry. Further, I strongly urge that the U.S. Department of Justice and Congress revisit the Adam Walsh Child Protection and Safety Act of 2006 and reconsider your respective positions with regard to children who have committed sexual offenses.

The New Mexico Sex Offender Management Board is composed of experts from the fields of law enforcement, law, treatment, victims' rights and corrections. We advise the Office of the Governor and the New Mexico Legislature regarding sex offender policy. While the Board has not taken a formal position on the above referenced issue, in Board meetings, our members have consistently expressed unanimous opposition to lifetime and twenty-five year sex offender registration for children who have committed sexual offenses, but who have not been convicted as adults.

I am certain that, based upon the same rationale, our members will likewise oppose your determination that Title I of the Adam Walsh Child Protection and Safety Act of 2006 applies retroactively to all children who have committed sex offenses, regardless of when they were adjudicated.

It is our opinion that the registration provisions of the Act generally should not apply to children adjudicated within the juvenile system. Such application flies in the face of the purpose, function and objective of this system. By deliberate design, our children are adjudicated delinquent and, thus, by definition are considered at least potentially amenable to change. In fact, I am aware of studies that indicate that the recidivism rate among children who have sexually offended is between 5 and 11%. Thus, the vast majority of these children will never commit another sexual offense regardless of registration.

I further believe that registration for children will prove counterproductive. The stigma and perpetual collateral consequences that will no doubt accompany

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aff:
Randall Cherry, Esq.
Julie Frendle
Nancy Gettings
Jennifer Honey
LaDonna LaRan

registration will almost certainly interfere with treatment and the normal socialization experiences critical to addressing these children's needs.

Finally, as a former prosecutor, you know the prospect of registration will unquestionably result in numerous cases being plead down from sexual crimes to nonsexual crimes. This will leave the offender, and probably the victim, with no treatment and might result in an increase in recidivism and collateral consequences for all concerned.

For these reasons, I join with my colleagues on the Juvenile Committee of the New Mexico Sentencing Commission in opposing extending registration to children adjudicated within the juvenile system in general.

Thank you for the opportunity to comment. I trust that my comments will be given serious and thoughtful consideration.

Respectfully,

By: General Counsel

Michael Vigil, Judge, Second Judicial District
Chairman, New Mexico Sex Offender Management Board

# New Mexico Sentencing Commission



July 30, 2007

Laura L. Rogers. Director
SMART Office
810 7th Street, NW
Washington, D.C. 20531

**Re: OAG Docket No. 117**
**Comments in Opposition to Interim Rule RIN 1.105--AB22**

Dear Ms Rogers:

The Juvenile Committee of the New Mexico Sentencing Commission voted unanimously at its regular meeting on April 16, 2007 to express its opposition to the interim rule RIN 1.105--AB22. Further, the Committee strongly urges the U.S. Department of Justice and Congress to revisit the Adam Walsh Child Protection and Safety Act of 2006 and work diligently to strike a more compassionate and productive balance between victims of sexual abuse, particularly children, and child victims of sexual abuse who sadly exhibit abusive behaviors.

The Juvenile Committee of the New Mexico Sentencing Commission is comprised of many of the state's leaders in juvenile justice, including its chairman Robert Cleavall, former deputy director of juvenile justice, Dorian Dodson, Secretary of Children, Youth and Families, Lemuel Martinez, Appointed by District Attorneys Association, Angie Vachio, Appointed by the Governor, Hon. Jerry Ritter District Court Judge, Suellyn Scarnecchia, Dean of University of New Mexico School of Law, David Schmidt, Chairman of New Mexico's Juvenile Justice Advisory Committee as well as citizen members appointed by the Senate President Pro-Tempore.

The New Mexico Sentencing Commission also oversees the state Sex Offender Management Board, which will be sending its input to you under separate letter.

Our Juvenile Committee is opposed to the U.S. Department of Justice's interim determination that Title I of the Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration and Notification Act (SORNA), applies retroactively to all sex offenders as defined by the Act regardless of when they were convicted. The committee also expressed its concern about the applicability of Title I to children who have been adjudicated within the juvenile system and not convicted as adults.

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SORNA as applied to juveniles flies in the face of the purpose, function and objective of our nation's juvenile justice systems in that it strips away the confidentiality that helps form the basis of effective intervention and treatment for youthful offenders.

This stripping away of confidentiality as it applies to children under the age of 18 cannot be taken lightly. It cannot be too strongly emphasized that the children implicated by this provision have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

For all of these reasons, Juvenile Committee of the New Mexico Sentencing Commission asserts that it is poor public policy for SORNA to be applied retroactively to children adjudicated within the juvenile system.

**Conclusion**

In closing, we thank you for the opportunity to comment on the Interim Rule for the Applicability of the Sex Offender Registration and Notification Act of 2006 and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Michael Hall
Executive Director, New Mexico Sentencing Commission

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## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:39 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121
**Attachments:** DNA Forensics Expanding Uses and Information Sharing Published April 30, 2007 to BJS Website.pdf

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**From:** Owen Greenspan [redacted]
**Sent:** Thursday, August 02, 2007 12:01 AM
**To:** GetSMART
**Subject:** OAG Docket No. 121

Thank you for the opportunity to comment on the Proposed National Guidelines for Sex Offender Registration and Notification as required in section 112(b) of Title 1 of the Adam Walsh Child Protection and Safety Act of 2006. Generally, I found the Guidelines to be an effective path to implementation of the Sex Offender Registration and Notification Act (SORNA) requirements. Congratulations on what I believe is a comprehensive effort that will, with some minor modifications, lead to fully workable solutions for the statutorily defined jurisdictions that are either required to implement the SORNA provisions or who may elect to do so.

The comments which follow selectively respond to both the Guidelines and implementation scenarios discussed at the 2007 National Symposium on Sex Offender Management and Accountability, held July 24-27, 2007 in Indianapolis, IN.

Re II General Principles – Terminology and IV Covered Sex Offenses and Offenders

- The provision that allows a tribal jurisdiction to choose not to require registration based on a tribal court conviction resulting from proceedings in which the defendant was denied the right to counsel, etc. may pose problems for all other jurisdictions (and ultimately even the convicting jurisdiction) as well as the convicted person. The Bureau of Justice Statistics Tribal Criminal History Record Improvement Program and various BJA efforts focused on information sharing are encouraging tribes to report (share) information with state criminal record repositories and the FBI. Increasingly tribes are being provided with funds to acquire live scan fingerprint devices to facilitate this process. It is easy to foresee situations in which a criminal history record will show a conviction for a sex offense but their will be no corresponding entry on any sex offender registry. This is sure to cause confusion and additional work. For example a child care agency, authorized under PL92-544 submits a fingerprint based inquiry to the state repository and learns that the applicant has a sex offense conviction in a tribal court. Typically either the state process or an independent query by the agency to the state sex offender registry should also reveal the applicant's conviction information. Is the criminal record in error? Did the applicant fail to satisfy registration requirements? Is there an administrative error here? Investigating these questions will be labor intensive and time consuming unless a way is found to indicate that registration was not required in this instance while still respecting the privacy that this provision affords. I suggest that a potential field or flag be added to the NCIC sex offender registry record – information that is only available to law enforcement (and which already has access to the criminal history record for investigation purposes) – that signifies that under SORNA registration for this conviction was not required.

Re II General Principles – Retroactivity and IX Initial Registration

- The guidelines talk about the potential difficulties of registering sex offenders with pre-SORNA or pre-SORNA-implementation convictions. The guidelines do not appear to recognize the difficulties of identifying these convictions. Clearly there are many instances where states will not be in compliance with SORNA requirements for current registrants and those who have moved to another jurisdiction and were no longer required to register but under SORNA would be required to register again. It seems to me that in the former instance a program will need to be written and run that looks for all state statutory codes that represent sex offenses, including those that have been amended over some reasonable period of time,

against the state's computerized criminal history file and those federal offender files held by the FBI. This may well require some funding. I suggest that this issue be required to be addressed as states develop SORNA implementation plans.

e II General Principles – Automation – Electronic Databases and Software and related provisions in Sections VI, √II, and X

- It was indicated at the Indianapolis Symposium that the software required under Section 123 would be developed in consultation with the jurisdictions. Consequently, rather than speculate about the issues associated with the software I will comment on a related issue – RISS versus LEO. It was suggested at the symposium that the decision as to the data communications network has been made with the Regional Information Sharing System (RISS) being the choice. Several members of the audience expressed a preference for the FBI administered Law Enforcement on Line (LEO). There are probably relative advantages and disadvantages to each with perhaps differing perspectives between the registry agencies and the administrators of the national public sex offender registry. As I understand it the national public registry is not a database but rather accesses the state registry web sites. If that is essentially correct that the bulk of the information that needs to move from the state registry goes to the FBI NCIC file. A lesser amount of information can be expected to move between repositories when a registrant moves between jurisdictions. In most, if not all instances the state repositories already are LEO users while many of them may not be RISS users. I suggest that this remain an open issue until such time as it is discussed with the advisory group that will be empanelled by the SMART Office to address software requirements.

Re II General Principles – Implementation and III Covered Jurisdictions

- Section 124 addresses the circumstances that would cause a 10% reduction in Byrne Justice Assistance funding. I suggest that some clarification would be helpful? As this section refers to funding being withheld from jurisdictions because of noncompliance it should be made clear as to the extent that this penalty may be imposed on tribal jurisdictions. Further, in view of the provision which allows tribal jurisdictions to signify their intention of establishing a registry and then subsequently entering into a cooperative agreement with a state that could include provision of registry services it would be appropriate to indicate awareness or not resolution of the possibility that a state could be deemed not to be in substantial compliance should a tribal jurisdiction fail to meet its obligations under the cooperative agreement. In addition, the Guidelines treat all optional PL 280 States as if they are non PL 280 States. Given the possibility that some tribal jurisdictions in optional PL 280 States may be providing some information to state registries already or that such tribal jurisdictions may already have registries perhaps it would be helpful for the guidelines to discuss the status of tribal jurisdictions in optional PL 280 States.

Re V Classes of Sex Offenders

- At the Indianapolis symposium it was indicated that the SMART Offenses plans to establish a database of state sex offense statute and has invited states to forward this information. Will provision be made and a effort extended to include in the database appropriate federal offenses, military offenses and tribal code violations?

Re VI Required Registration Information

- Re Text of registration offense – see comment under V Classes of Sex Offenders
- Re Fingerprints and Palm Prints – ANSI NIST standards for capture and transmission of this information exists and should be required by the guidelines if this information is to be retained in a usable and transmittable form. The guidelines might also wish to recognize that at this point in time palm print are largely unsearchable in an automated fashion at local, state and federal levels so the utility of the palm print is apt to grow over time.
- Re DNA – this section should be reexamined as most registry agencies do not have access to CODIS to confirm the absence or presence of DNA sample. There are several related issues here. Please see attached report DNA Forensics Expanding Uses and information Sharing which I coauthored.

Re VII Disclosure and Sharing of Information

- Re National Child Protection Act Agencies (Section 121(b)(4)) – the guidelines appear to address the background check that is conducted at the time background check is conducted as part of a fitness determination. I suggest this section discuss and encourage implementation of applicant fingerprint card retention (many states already do this to some extent) and the associated procedure often referred to as "rap back" or "hit notice." This procedure provides a agency with a criminal history record whenever a subject of interest is arrested – in effect a perpetual background check.

Re In-person appearance requirements

- There is a range of purposes and information to be captured during required in-person appearances. These appearances will likely be time consuming and labor intensive (read costly) for the registry personnel. I suggest that jurisdictions be allowed to include in their implementation plans provisions which would allow the use of biometric technologies (e.g., fingerprint, voice, iris scan etc.) to satisfy some of the

conditions for in-person appearance. With this authorization the SMART Office could then assess whether this use of technology was substantially compliant with the intent of SORNA.

Other Thoughts

- It would be helpful if the SMART Office were to develop a set of "FAQs" to address state questions that will arise as tribes and states discuss the possibility of cooperative agreements that would alter the tribes election to create a registry.
- How will "time" for period of registration be calculated when a tribal member registrant moves from a tribal jurisdiction with a registry but remains in the same state and that state has a registration requirement different than the tribal jurisdiction? Same question and the offender moves to a different state?

Again, thank you for the opportunity to comment and please let me know if I can clarify any of the above.


# Owen Greenspan

Owen Greenspan
Director, Law and Policy Program
SEARCH, the National Consortium for Justice
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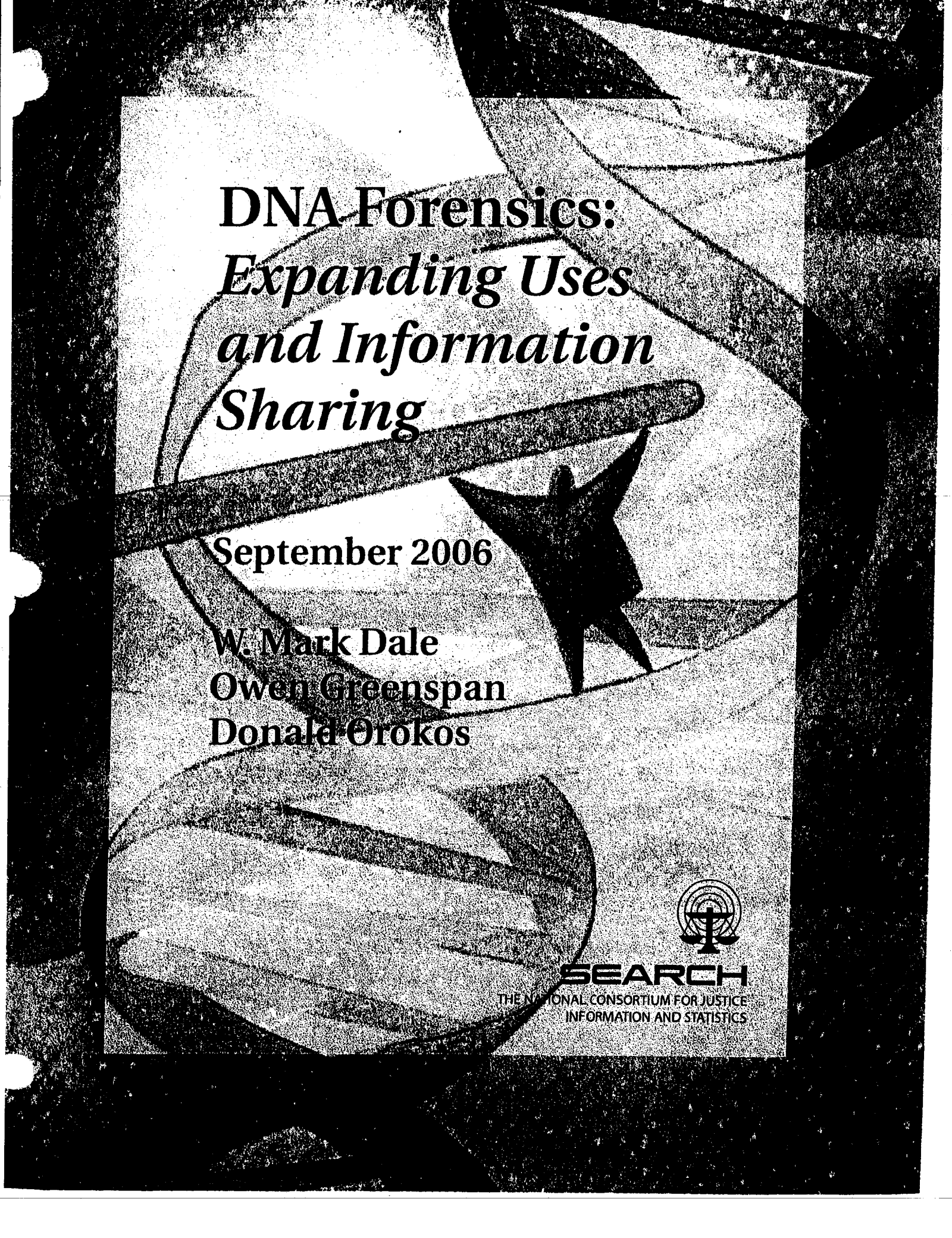

# DNA Forensics: *Expanding Uses and Information Sharing*

**September 2006**

**W. Mark Dale**
**Owen Greenspan**
**Donald Orokos**

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# DNA Forensics: *Expanding Uses and Information Sharing*

September 2006

W. Mark Dale
Owen Greenspan
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**Acknowledgments.** This report was prepared by SEARCH, The National Consortium for Justice Information and Statistics, Francis X. Aumand III, Chairman, and Ronald P. Hawley, Executive Director. Owen M. Greenspan, Director, Law and Policy, of SEARCH, project director and author, W. Mark Dale, Director of the Northeast Regional Forensics Institute (NERFI) at the University at Albany, State University of New York and Donald D. Orokos, Instructor in Biology and Associate Director, Forensic Molecular Biology Program at the University at Albany, State University of New York, authors. Dr. Gerard F. Ramker, Chief, National Criminal History Improvement Programs, Bureau of Justice Statistics, Federal project monitor.

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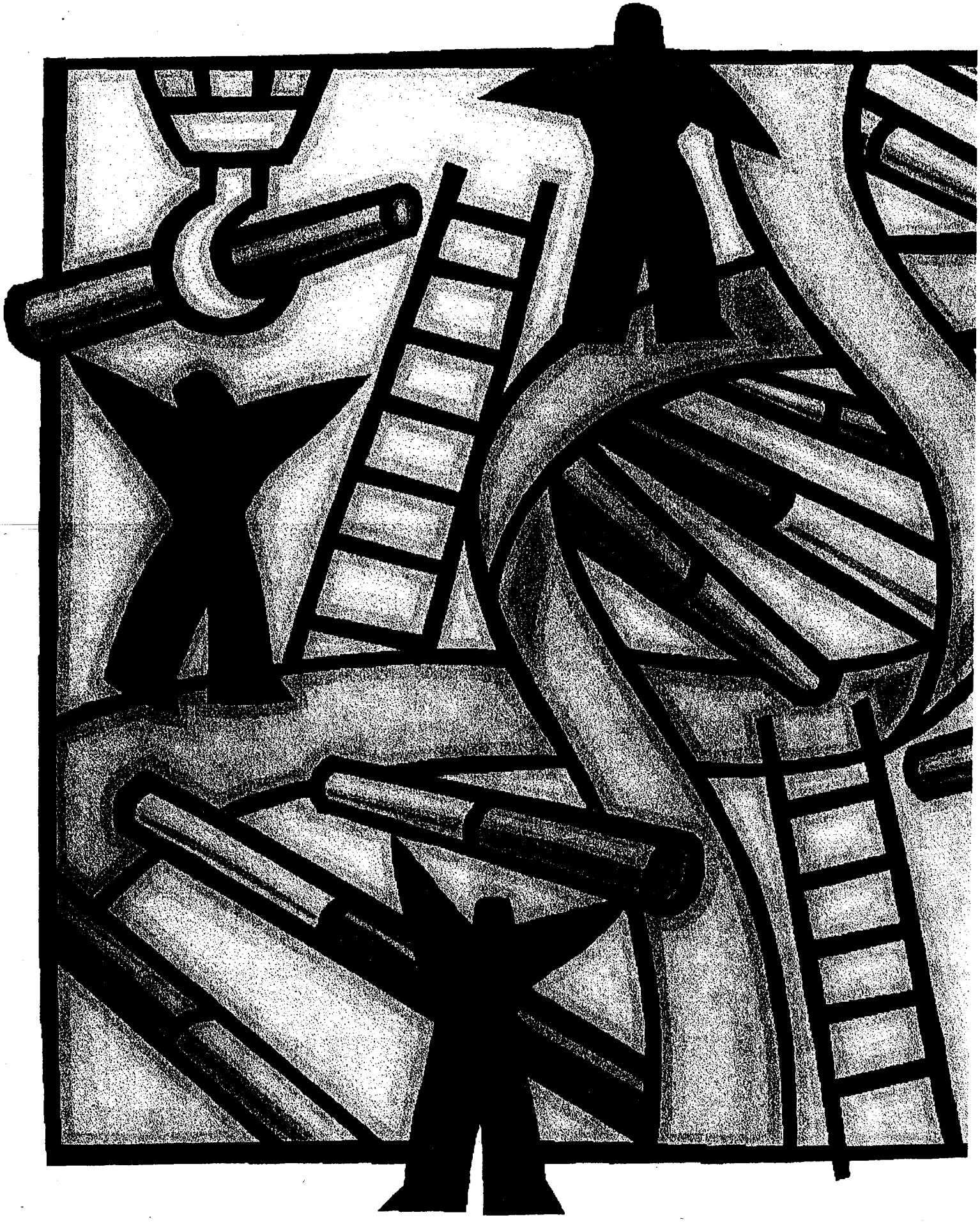
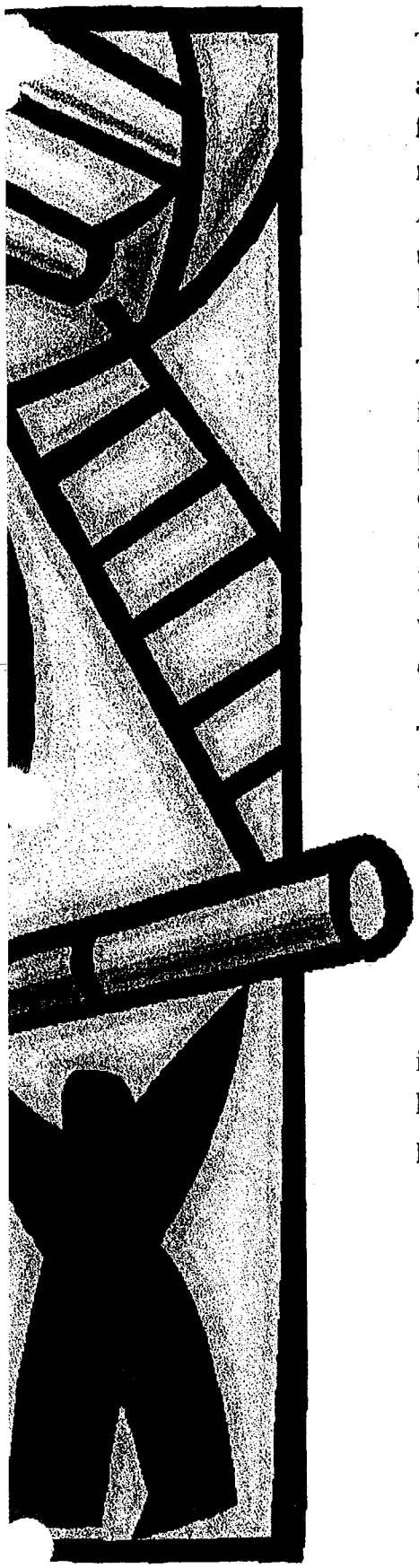


# Preface



The value of DNA in verifying identities, excluding suspects, and solving crimes—particularly those that have gone unsolved for years—has far exceeded the expectations of those who first noticed its forensic potential more than 20 years ago. *DNA Forensics: Expanding Uses and Information Sharing* was prepared to inform the broad justice community about the evolution of DNA identification and its expanding uses.

The report examines the history of DNA use by forensic investigators, considers the economics of DNA use as it relates to public safety, and reviews privacy concerns relating to the release of an individual's genetic information. The report explores issues associated with the coupling of criminal history information with DNA data and recommends that mechanisms be put in place that would make for a more efficient justice system while effectively continuing to address privacy concerns.

The report utilizes some terms that may not be familiar to those not associated with the DNA forensics community. Therefore, this report includes a glossary to assist readers.

Dramatic advances in DNA forensics will continue to propel this once-exotic science into more mainstream criminal justice applications, perhaps even allowing it to someday replace the fingerprint as the primary tool for verifying identities. It is hoped that this report allows readers to understand how these developments have occurred, and to monitor the progress of DNA forensics in a more informed capacity.

# Glossary

While the science of DNA is replete with complicated concepts, components, and procedures, this report was written with the layman in mind; thus, scientific jargon was kept to a minimum. However, it would be difficult, if not impossible, to write a report such as this without including some of the terminology common to forensic DNA use. The following list is provided to assist readers in understanding the processes through which forensic investigators use DNA to identify perpetrators when traditional crime-solving methods have failed.

**ABO blood typing**
A human blood-typing test that uses antibodies from bodily fluids to determine whether an individual has A, B, O, or AB type blood. ABO typing was commonly used in the past, before the implementation of DNA analyses.

**Combined DNA Index System (CODIS)**
An electronic database of DNA profiles obtained from unsolved crimes and from individuals convicted of particular crimes. CODIS contributors include the Local DNA Index System (LDIS), the State DNA Index System (SDIS), and the National DNA Index System (NDIS). CODIS is maintained by the FBI.

**Deoxyribonucleic acid (DNA)**
A nucleic acid that contains genetic instructions for the biological development of all cellular forms of life. DNA is responsible for most inherited traits in humans. Forensic scientists use DNA from blood, semen, skin, saliva, or hair recovered from crime scenes to identify possible suspects through DNA profiling, during which the length of repetitive DNA sections are compared. An individual's DNA is unique except for identical twins.

**DNA polymerase**
An enzyme that assists in DNA replication.

**Electrophoresis**
A process that occurs when molecules placed in an electronic field migrate toward either the positive or negative pole according to their charge. The process is used to separate and sometimes purify macromolecules that differ in size, charge, or conformation. Electrophoresis is one of the most widely used techniques in biochemistry and molecular biology.

**Mitochondrial DNA (MtDNA)**
Differs from nuclear DNA in location, sequence, quantity in the cell, and mode of inheritance. MtDNA is found in a cell's cytoplasm and is present in much greater numbers than nuclear DNA, which is found in a cell's nucleus. In humans, MtDNA is inherited strictly from the mother. It is useful in identifying individuals in areas not conducive to nuclear DNA analyses, such as when nuclear DNA cannot be obtained in sufficient quantities or quality. Also, MtDNA use in identification is less efficient than nuclear DNA analysis in that it cannot differentiate between individuals who share the same mother. The statistical probabilities for identification from MtDNA are not as unique as nuclear DNA.

**Polymerase Chain Reaction (PCR)**
A process through which millions of copies of a single DNA segment are produced in a matter of hours without using living organisms like E. coli or yeast. The process relies on several basic components, including a DNA template, which contains the DNA segment to be amplified; two primers, which determine the beginning and end of the region to be amplified; DNA polymerase, which copies the region to be amplified; Deoxynucleotides-triphosphate, from which the DNA polymerase builds the new DNA; and a buffer, which provides an appropriate chemical environment for the DNA polymerase. PCR occurs when the components are combined in a test tube, which is then heated and cooled to different temperatures to encourage various chemical reactions.

**Restriction Fragment Length Polymorphism (RFLP)**
A process through which DNA is cut by restriction enzymes into restriction fragments. The enzymes only cut when they recognize specific DNA sequences. The distance between the locations cut by restriction enzymes varies between individuals, allowing their genetic identification.

**Single Tandem Repeats (STR)**
Small DNA regions that contain DNA segments that repeat several times in tandem. Repeated sequences are a fundamental feature of genomes, such as DNA, and play an important role in genomic fingerprinting. CODIS uses 13 STR sequences as genetic markers.

**Variable Number of Tandem Repeats (VNTR)**
Short DNA sequences ranging from 14 to 40 nucleotides organized into clusters of tandem repeats of between 4 and 40 repeats per occurrence. VNTRs cut by restriction enzymes reveal a pattern of bands unique to each individual. They play an important role in forensic crime investigations.

# Overview

The application of DNA technology to the biological evidence in criminal casework has revolutionized forensic science. The ability to identify, with a high degree of certainty, a suspect in violent crimes now routinely provides valuable leads to criminal investigators worldwide, often in circumstances where there are no eyewitnesses. Forensic DNA technology is a very sensitive and universally accepted scientific technique. The **Combined DNA Index System** (CODIS), administered by the Federal Bureau of Investigation (FBI), is a distributed database with three hierarchical tiers enabling local, statewide, and national comparisons among convicted offender profiles and with crime scene samples. As of June 2006, it contains more than 3.3 million convicted offender profiles and more than 142,000 profiles from crime scenes, and has produced 36,000 "investigation-aided" matches in 49 States and 2 Federal laboratories.[1] DNA analysis also benefits the innocent. Suspects may be eliminated before arrest or exonerated even after conviction.

Information is the lifeblood of the criminal justice system. Despite the wonders of DNA science and technology, DNA use cannot achieve its full promise in the context of criminal justice applications unless there are efficient means in place for criminal investigators to obtain the criminal history information of a suspect when a match is made between physical evidence collected at the crime scene and a profile stored in a local, State, or national database. Once the crime lab completes its work, should it report a match, the investigator must learn as much as possible about the suspect. Traditionally, the criminal history record (or "rap sheet") is a primary source for learning about the nature of the suspect's past offenses and provides a path to physical description information, a "mugshot" photograph, past modus operandi information, and known associates, and is often of considerable value in locating the suspect.

Privacy advocates have consistently raised concerns about linkages between personal identifying information and an individual's DNA, which can reveal genetic information about the individual and his/her family members. This issue has led to policies and practices whereby there is no formal interface between CODIS and any criminal history record information systems. Further, CODIS does not store criminal history information, nor was it designed to include any personally identifying information about the subject of the DNA sample.[2] States have tended to follow the FBI's lead in this area. In fact, a number of the State laws expressly prohibit the linking of criminal history record information with an offender's DNA profile.[3]

Yet establishing linkages between DNA databases and State and Federal criminal history databases would enable an investigator to know that a suspect's DNA profile is available for comparison. Perhaps just as important, a linkage mechanism could serve as a flag to indicate that an offender's DNA sample has *not* been obtained, although required by law. Consequently, the offender's DNA profile would be unavailable for comparison with material recovered from a crime scene. The challenge for the criminal justice community is to create an environment that efficiently leverages the power of DNA technology, while allowing for sharing (or at least access to) essential information in a manner that respects privacy concerns.

Source: FBI CODIS web site at **http://www.fbi.gov/hq/lab/codis**.

2 Letter from Thomas F. Callaghan, Ph.D., Chief, CODIS Unit, FBI Laboratory, to Owen Greenspan, Director, Law and Policy Program, SEARCH, The National Consortium for Justice Information and Statistics, dated June 16, 2005. Hereafter, Callaghan Letter.

3 Ibid.

# DNA Collection Legislation

The FBI is responsible for the administration and upport of the **National DNA Index System** (NDIS) in accordance with Federal law.[4]

All States have enacted laws requiring the collection of DNA from offenders convicted of specified crimes. Many States are moving to expand the circumstances mandating collection and retention to include more or all convicted felony offenders and some convicted misdemeanor offenders, extending or eliminating the statute of limitations for certain offenses where DNA evidence exists, and even requiring the taking of DNA samples subsequent to arrest but before disposition.

For example, the enactment of California Proposition 69 in November 2004 authorized the collection of DNA samples from adults and juveniles convicted of any felony offense, as well as adults and juveniles arrested for or charged with felony sex offenses, murder, or voluntary manslaughter.

**Table 1**[5]

| Database Criteria | Number of Jurisdictions* |
|---|---|
| Sex Offenses | 55 |
| Murder | 54 |
| Offenses Against Children | 54 |
| Kidnapping | 54 |
| Assault and Battery | 53 |
| Robbery | 53 |
| Burglary | 52 |
| All Felonies | 44 |
| Juveniles | 31 |

* The 55 jurisdictions referenced include the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Federal Offenders under authority of 42 U.S.C. § 14135a, and persons charged by the U.S. Department of Defense under authority of 10 U.S.C. § 1565.

4 42 U.S.C. § 14132.

allaghan Letter.

Effective in 2009, all adults arrested for or charged with any felony offense in California will be subject to DNA sample collection. The trend toward increasing the number and types of designated offenses that require the taking of DNA samples will significantly increase local, State, and national database populations. Table 1 summarizes the frequency with which State laws direct or authorize the taking of DNA samples for certain convictions.

# DNA, Economics, and Public Safety

Recidivism is the fundamental factor that provides the underlying rationale for the DNA database program. As noted in a 2003 report on sex offender recidivism:

- "Within 3 years following their release, 38.6% (3,741) of the 9,691 released sex offenders were returned to prison."[6]
- "The first 12 months following their release from a State prison was the period when 40% of sex crimes were allegedly committed by the released sex offenders."[7]

The *National Forensic DNA Study Report* found that there is a backlog of over one-half million criminal cases containing unanalyzed DNA evidence.[8] These cases either have not been sent to laboratories, or are in laboratories awaiting analyses. A 1996 report, *Victim Costs and Consequences: A New Look,* examines the many tangible and intangible costs of crime as it pertains to victims in the United States.[9] The authors estimate the tangible costs of rape to be approximately $5,000 per assault. When intangible costs that affect the victim's quality of life

6 Patrick A. Langan, Erica L. Schmitt, and Matthew R. Durose, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, November 2003) at p. 2. Hereafter, Langan report.

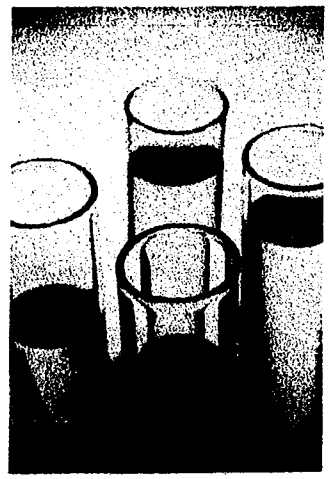
7 Ibid., p. 1.

8 Nicholas P. Lovrich, et al. (Pullman, WA: Washington State University and London: Smith Alling Lane, February 2004) at p. 3.

9 Ted R. Miller, Mark A. Cohen, and Brian Wiersema (Washington, DC: U.S. Department of Justice, National Institute of Justice, January 1996) at p. 1.

are considered, the cost estimate rises to $87,000 per assault. The report also projects that violent crime leads to 3% of all medical spending and 14% of injury-related medical spending. The aggregate tangible costs of medical spending for rape is $7.5 billion per year. When pain, suffering, and lost quality of life are considered as well as out-of-pocket expenses, the aggregate annual cost of rape is estimated to be $127 billion. Personal crime medical costs total $105 billion per year, with total intangible quality of life costs totaling $450 billion per year. There is a clear cost benefit for timely DNA analyses for violent crime cases. For example, a Master of Business Administration thesis, "Business Case for Forensic DNA,"[10] discussed how solving sexual assaults with DNA analyses would eventually lessen recidivism and be cost effective.

DNA technology is expensive, but the potential cost benefits are staggering—given both the tangible (DNA analyses and victim's medical treatment) and intangible (quality of life for victim and community) costs incurred because of crime that can be solved with the aid of DNA technology. The national United Kingdom (UK) DNA database contains 3.5% of its population in the convicted offender index and yields a 40% hit rate. The UK Forensic Science Service's DNA database of 3 million convicted offender samples not only has the probability of delivering a hit 40% of the time, but it solves .8 additional cases per hit and prevents 7.8 crimes for every hit.[11] The UK system operates under a legal system significantly different from that of the United States—it is one that allows DNA collection from arrestees and even in the course of neighborhood sweeps.



The growth in reliance on forensic DNA programs has led to significant casework backlogs in public laboratories. A Bureau of Justice Statistics census of publicly funded forensic crime laboratories, *50 Largest Crime Labs, 2002*, identified compelling data for the ever-increasing caseloads on public DNA laboratories.[12] Only one-third of the DNA cases submitted to public laboratories are analyzed. Most public forensic laboratories can only analyze the most serious cases that are scheduled for court. This leaves potential evidence from many other cases unanalyzed. A study in one State indicated that lesser offense cases provide the majority (81%) of hits in CODIS rather than homicides and rapes.[13] There is a 1.69 ratio of backlogged to completed DNA cases per year. Simply stated, if a laboratory analyzes 1,000 DNA cases, the same laboratory carries a backlog of 1,690 cases, or 1.69 years of work.

## The Science and Evolving Technology of DNA

Comparisons between latent prints left at crime scenes and known fingerprints from suspects had been the traditional method for using physical evidence to place individuals at the scenes of crimes. Manual searching of fingerprint files in the absence of a suspect, known as "cold searching," was a tedious, challenging, and often impractical process. In the 1980s, with the advent of **automated fingerprint identification systems** (AFIS), police departments no longer needed a suspect. Partial fingerprints recovered from a crime scene could be automatically searched against massive databases of arrest fingerprints with greater accuracy and

10 Ray A. Wickenheiser, University of Louisiana, Lafayette (2002).

11 Christopher H. Asplen, *The Application of DNA in England and Wales* (London: 9th Alling Lane, January 2004) at p. 1.

12 Matthew J. Hickman and Joseph L. Peterson (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, September 2004).

13 Virginia Department of Forensic Science, "DNA Database Statistics," (2005).

**James Watson**

speed than previously imaginable.

The scientific technology of DNA profiles has added a new dimension to the melding of crime scene evidence with biometric information. DNA technology uses statistical probabilities to determine the rarity of one random person having a specific genetic profile. This is done using the different sizes of 13 locations (**loci**) found in human DNA. The probabilities of an individual having a unique DNA profile can be one in a billion or more. These probabilities are so rare that they can be used as a statement of identification. Latent fingerprint comparisons rely on the expertise and experience of the latent fingerprint examiner. DNA forensic profiling and comparisons rely on statistical probabilities to determine the uniqueness of the profile.

Over some 20 years, forensic laboratories have evolved from using traditional ABO blood-typing methods to eliminate or include suspects to progressively more efficient methods of forensic DNA analyses. The earlier methods of ABO and electrophoresis could categorically exclude suspects but were of little value as methods for determining positive identification.[14] Today, the newest DNA analysis method—multiplex **polymerase chain reaction single tandem repeat** (PCR STR)—is capable of producing sole-source attribution probability of one in a trillion or more.

In the early 1950s, James Watson and Francis Crick first described the structure and a possible role for the double-stranded DNA molecule. The first DNA typing technology used successfully in forensic laboratories was originally described in 1985 as "DNA fingerprinting" by Dr. Alec Jeffreys.[15] Dr. Jeffreys recognized that certain regions of DNA contained repeats of the same sequences, and that these repeat regions, or **variable number of tandem repeats** (VNTR), vary in length from one individual to the next. Dr. Jeffreys used a molecular biology technique, referred to as **restriction fragment length polymorphism** (RFLP). At that time RFLP, in conjunction with VNTR, provided a powerful tool for forensic DNA typing. However, it was expensive, time-consuming (6–8 weeks), a safety hazard due to the use of radioactive probes, and required a relatively large amount of intact DNA.

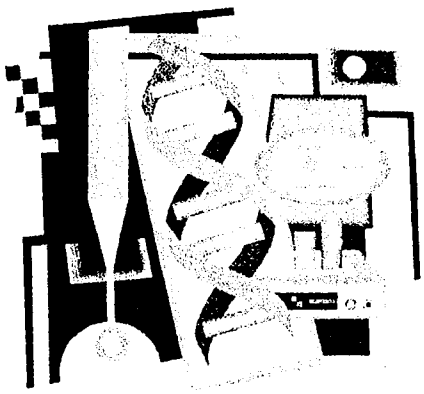
**Francis Crick**

In 1986, a molecular DNA technique known as PCR was developed.[16] PCR helped revolutionize forensic DNA typing by amplifying very small amounts of DNA recovered from crime scenes. In this highly sensitive amplification technique, a DNA molecule is synthesized and replicated. Each newly synthesized DNA molecule can also serve as template DNA in future cycles, thus producing millions of copies of specific target DNA in a three-hour run. Overall, PCR technology is a sensitive, safe, fast, robust, and economical method. The PCR DNA technology relates specifically to the DNA that is located in the nucleus of human cells. Typically, the majority of crime scene evidence suitable for nuclear PCR DNA techniques is blood, saliva, and semen.

**14** J.M. Butler, *Forensic DNA Typing: Biology, Technology, and Genetics of STR Markers*, 2nd ed. (Burlington, MA: Elsevier Academic Press, 2005). Hereafter, Butler report.

**15** Alec J. Jeffreys, V. Wilson, and S.L. Thein, "Individual-specific 'fingerprints' of human DNA," *Nature* 316: 76–79 (July 4–10, 1985).

**16** K. Mullis, et al., "Specific enzymatic amplification in vitro: the polymerase chain reaction," *Cold Spring Harbor Symposium on Quantitative Biology* 51: 263–273 (1986).



A second type of forensic analyses is **mitochondrial** DNA (mtDNA), which is found outside of the cell nucleus in the cytoplasm. MtDNA is present in much higher volumes and is less susceptible to environmental degradation. It is also possible to obtain an mtDNA profile from cells without nuclei, such as hair shafts. This type of DNA is helpful in severely degraded evidence, such as decomposed tissue and bone. However, the statistical probabilities derived from mitochondrial analyses are not as unique or rare as nuclear DNA at present and the technique is costly and time-consuming. It is hoped that automation and efficiencies gained from economies of scale will decrease the cycle time and costs, and increase the uniqueness of the statistical probabilities of this very useful technique.

MtDNA testing has been popularized owing to its ability to provide results when other specimens may not yield typical nuclear DNA results. For example, with highly charred remains, it is oftentimes not possible to obtain a full profile using other methods. However, with this approach it is frequently possible to recover a sufficient quantity of mtDNA for analysis. Further, even degraded specimens, either through environmental insults or exposure to chemical challenges, can produce a mitochondrial DNA profile. MtDNA is also better suited for recovering useful material from dried skeletal remains, older fingernails, and smaller sample sizes than other methods.

Another distinct feature of mtDNA is that it is maternally inherited. When the egg and sperm meet, only nuclear DNA is contributed from the spermatozoon to the fertilized egg. This characteristic can be helpful in forensic cases, such as analysis of the remains of a missing person, where known maternal relatives can provide reference samples for direct comparisons to the mtDNA profile generated from the questioned remains. A mother passes her mtDNA profile to her children and shares her mtDNA with her mother, her siblings (both male and female), and her biological maternal relatives (male or female). Mitochondrial DNA testing has been successful in identifying soldiers from the Vietnam War and World War II by comparison to distant maternal relatives; identifying remains recovered from historical casework such as those of Tsar Nicholas II and his family; identifying the victims of mass disasters; and identifying missing persons.

Table 2 illustrates the rapid evolution of DNA analysis by the FBI.

**Table 2: The Rapid Evolution of DNA Analysis by the FBI**

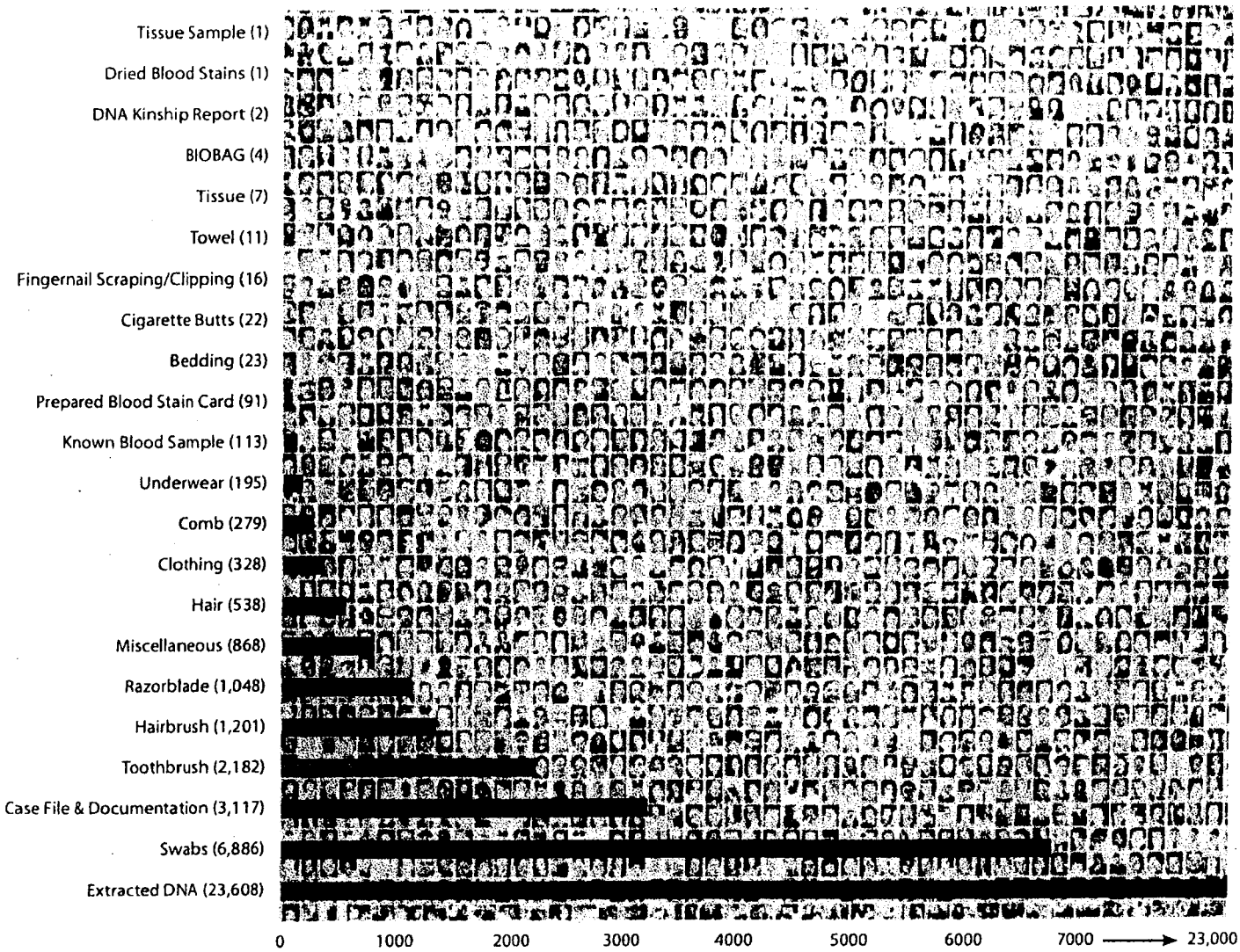
| | |
|---|---|
| **1985** | Dr. Alex Jeffreys develops RFLP probes |
| **1988** | FBI begins RFLP casework |
| **1993** | FBI begins PCR STR casework |
| **1998** | FBI initiates CODIS with 13 STR loci |
| **1999** | FBI and other labs stop RFLP casework |
| **2002** | FBI initiates mtDNA casework |
| **2004** | FBI initiates mtDNA regional labs |

Forensic labs continue to push the sensitivity threshold even lower by performing PCR amplification on select regions of the DNA molecule. A number of benefits arise as analysis techniques improve. These include high throughput potential and an overall decrease in turnaround time for most DNA typing casework. Before recent improvements in the technology (known as STR/PCR technology, referred to earlier as PCR STR on page 4), attempts in profiling degraded DNA samples usually produced inconclusive results. Now, forensic labs even have some success in obtaining profiles from fragmented and degraded DNA samples at disaster sites such as TWA Flight 800[17] and Swiss Air Flight 111.[18]

17 Jack Ballantyne, "Mass disaster genetics," *Nature Genetics* 15(4):329–331 (1997).

18 Butler report.

**Figure 1: Personal Effects of World Trade Center Victims Collected for DNA Analysis**




The World Trade Center (WTC) disaster of September 11, 2001, presented the forensic science community with the challenge of analyzing a large number of seriously degraded victim samples. Developing profiles from victims of the WTC with **single nucleotide polymorphism** (SNPs) and mitochondrial technology lowered the sensitivity threshold bar even further. Personal effects from victims were collected from around the world to analyze and compare to victim DNA profiles (see Figure 1).[19] It was agreed by the New York City Office of the Chief Medical Examiner (NYCOCME) and the New York State Police (NYSP) that the personal effects would be analyzed at the NYSP Forensic Investigation Center in Albany. The NYCOCME would analyze the victim samples. The two agencies also worked together to design and implement an evidence bar code tracking system and an intralaboratory network to compare victim and personal effect profiles. On April 3, 2005, four years and at least $80 million later, this unprecedented identification effort ended. Of the 2,749 victims, 1,592 were identified by a variety of forensic techniques. Only 111 identifications were made

**19** President's DNA Initiative, *Lessons Learned From 9/11: DNA Identification Mass Fatality Incidents*, NCJ 214781 (Washington, D.C.: U.S. Department of tice, National Institute of Justice, September 2006) at p. 59.

in the last 2 years from the 19,915 tissue samples recovered from the WTC site. The remaining samples have been archived in climate-controlled storage awaiting even more sensitive DNA techniques in the future.[20]

The latest forensic technology that shows considerable promise in exploiting greater sensitivity in DNA typing is **low copy number** (LCN). Armed with this latest technology, forensic scientists in the near future may be able to routinely obtain a complete DNA profile from only a suspect's fingerprint.[21] Skin cells from a latent fingerprint can yield a DNA profile. An unidentifiable latent fingerprint could then be used to identify a suspect at a crime scene through the use of DNA. The DNA profile from the latent print could also be used to add probative weight to a latent print that is identified to a suspect. There are also partially degraded DNA profiles that could be compared to a suspect's CODIS DNA if the law enforcement agency has established identification with fingerprints.

In the future, we may see well educated and highly trained investigators or forensic scientists arrive at a crime scene equipped with an ultramodern hand-held "laboratory on a chip" DNA profiling device. Researchers are already in the early stages of validating such prototypes of a portable DNA profiling unit.[22] It is a short leap to envisioning the possibility of recovering physical evidence and processing it on-site. At the crime scene, a DNA profile will be produced, and through interface with flagged criminal history databases, the case detective is informed of the identity of a prime suspect.

## Legal Strategies to Obtain DNA Samples

A DNA sample can be obtained by any of four basic legal strategies:[23]

***Voluntary***

A suspect may be asked to voluntarily submit a DNA sample to be compared to a casework forensic sample. A blood draw was originally used for the sample, but now it is more common to use a **buccal swab**: a small toothbrush or cotton swab that is rubbed against the inside of the cheek to collect inner-mouth epithelial cells for DNA analyses.

***Court Order***

A court determines that there is reasonable cause to authorize a law enforcement agency to collect a DNA sample from a suspect for comparison to a forensic sample.

***Law***

A statute authorizes the collection of a DNA sample from a defined group of individuals, such as convicted offenders or arrestees, for inclusion in the State DNA database.

***Abandonment***

The suspect gives up control and possession of an item that contains his DNA. For example, a cigarette butt is smoked by a suspect and then discarded. A detective observes the suspect abandon the cigarette butt and leave the immediate area. The detective recovers the cigarette butt.

**20** Eric Lipton, "At Limits of Science, 9/11 ID Effort Comes to End," *New York Times*, April 3, 2005, Section I, Page 29.

**21** F. Alessandrini, et al., "Fingerprints as evidence for a genetic profile morphological study on fingerprints and analysis of exogenous and individual factors affecting DNA typing," *J. Forensic Science* 48(3): 1–7 (2003); and A. Barbaro, et al., "Anonymous letters? DNA and fingerprints technologies combined to solve a case," *Forensic Science International* 146 Suppl: S133–S134 (2004).

**22** Cheuk-Wai Kan, et al., "DNA sequencing and genotyping in miniaturized electrophoresis systems," *Electrophoresis* 25: 3564–3588 (November 2004).

**23** Steve Hogan, Deputy Counsel, New York State Police, personal conversation with Mark Dale, Director, Northeast Regional Forensic Institute, May 25, 2005.

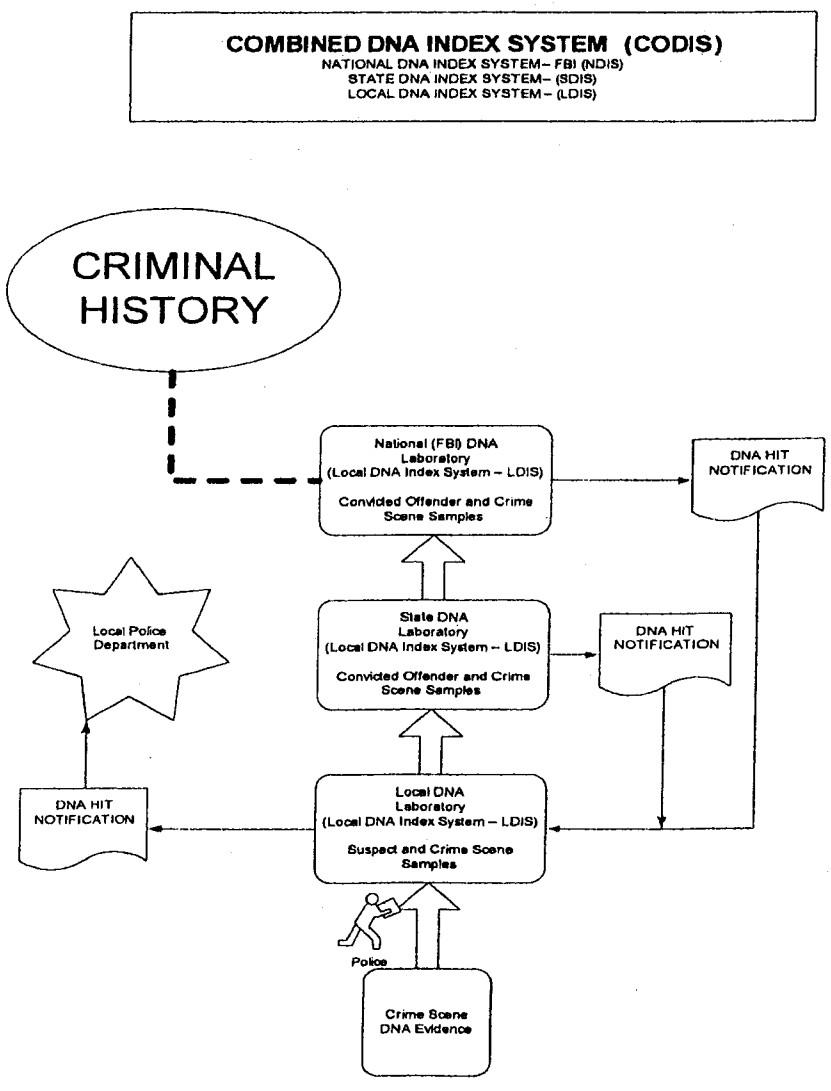
## CODIS: The Combined DNA Index System

Sponsored by the FBI, the Combined DNA Index System—CODIS—began as a pilot project with 14 participant State and local laboratories in 1990. Today, the FBI Laboratory's CODIS Unit is responsible for the software used by 177 Federal, State, and local forensic DNA laboratories that participate in the National DNA Index System (NDIS), for the operation of the National DNA Index, and for the support of the NDIS Procedures Board. Participation in NDIS is governed by a Memorandum of Understanding between the States and the FBI, as well as NDIS Operational Procedures.[24]

The primary performance measure for CODIS is a "confirmed match," commonly referred to as an "Investigation Aided" match, due to the inherent complexity in determining the results that arise from follow-up to the DNA hit report. For example, although a DNA database match may have identified a possible assailant, the police or prosecutor may elect not to arrest due to lack of cooperation from the victim, or because of the time barrier imposed by a statute of limitations, or because further investigation might reveal that the suspect identified through the DNA match could not have committed the crime, but may have had access to the crime scene or related physical evidence.

When a hit occurs in CODIS between laboratories within a State or between profiles contributed from different States, the CODIS Administrator for the State laboratory first confirms the identity and the underlying qualifying offense for which the DNA sample of the convicted offender was taken. In some jurisdictions, the State DNA Index System (SDIS) laboratory may conduct additional confirmatory analyses of the convicted offender DNA sample. A notification is then made to the two laboratories that they have a hit in CODIS. Laboratories then contact the respective police departments and prosecutors and inform them of the hit. (See Figure 2.) The hit provides reasonable cause to collect a final confirmatory DNA sample from the convicted offender, once identified and located, usually with the assistance of the criminal history record. This DNA sample is then compared to the actual evidence in the case as the final quality control check for the entire CODIS system. The hit could also provide linkage to other unsolved or solved cases.

**Figure 2: The CODIS System**




[24] Callaghan letter.

# Scientific Advances and Expanded Applications of DNA Analysis

Although the nation's justice system has placed greater emphasis on DNA identification over the past 20 years, in crimes of violence the utility of DNA typing reaches further. The use of DNA testing for linking a suspect to a violent crime, determining serial crimes, reconstructing an accident, and exculpating the innocent is powerful technology. However, DNA is proving to be an ever more remarkable tool as its potential to be applied in other criminal justice-related situations is increasingly being explored. This section explores some nontraditional applications of DNA technology that may assist in investigations today and in the future.

## *Lesser Offenses*

The New York City Police Department (NYPD) leveraged DNA technology to solve crimes not usually associated with DNA analysis, such as burglary, assault, and larceny.[25] Conceptualized from data presented in the Bureau of Justice Statistics report *Recidivism of Sex Offenders Released from Prison in 1994*,[26] the NYPD Laboratory's Biotracks program is a pilot project focused on one particular geographic area: Queens County. Crime scene response teams were trained to identify probative items that might contain biological evidence (e.g., cigarette butts, clothing, and drink containers with possible saliva) and to submit them to the laboratory for processing. The goals of the Biotracks program were to (1) solve crimes involving the commission of lesser offenses—crimes for which physical evidence is often not collected or, when collected, is not usually subjected to DNA analysis; and (2) determine the extent to which DNA from these crime scenes could be linked to more serious crimes such as rapes or homicides. The program obtained a hit rate of over 30% and identified linkages between lesser offenses with open rape and homicide cases. Due in part to the success and lessons learned from Biotracks, the New York City Medical Examiner's Office is planning to "vastly expand its forensic biology laboratory, which will ultimately redefine the way difficult-to-solve crimes, such as home burglaries and stolen property offenses, are investigated and prosecuted."[27]

Table 3 depicts the number of arrests for lesser and violent offenses attributed to the 38 offenders identified in the Biotracks program. The offenders clearly possessed a history of both violent and lesser offenses. Table 4 depicts the prior convictions for the 38 offenders identified in the Biotracks program. There was a clear history of convictions from both lesser offense and violent crimes. Case-to-case linkages were developed between a violent crime and lesser offenses (2004 burglary/1994 rape), and between a burglary and a robbery. The Biotracks program has provided valuable leads for law enforcement that have resulted in arrests and convictions. The 29 arrestees from the Biotracks program resulted in 18 guilty pleas to 27 offenses, while 3 were indicted for 4 offenses each. Eighty percent of these individuals were convicted of violent felonies, one individual for homicide, and one individual for four sexual offenses.[28]

**25** *DNA in "Minor" Crimes Yields Major Benefits in Public Safety* (Washington, DC: U.S. Department of Justice, National Institute of Justice, November 2004).

**5** Langan report.

**27** Reuven Blau, "City ME's Office Expands Crime Evidence Duties," *The Chief-Leader* (New York City), September 2, 2005, at p.1.

**28** Source: New York City Police Department Laboratory.

Table 3: Recidivism Prior Arrests of Offenders in Biotracks Program

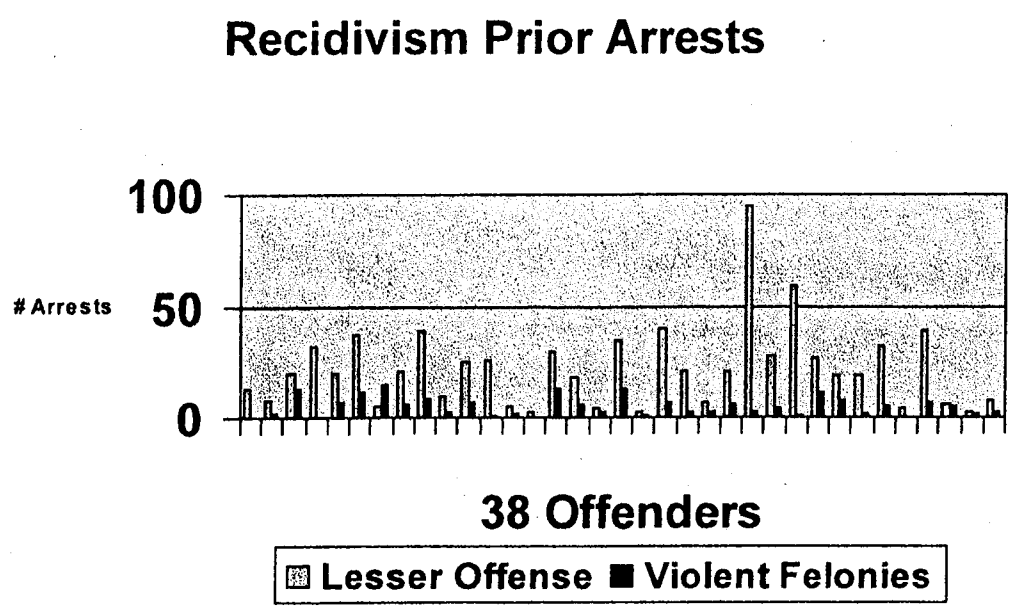
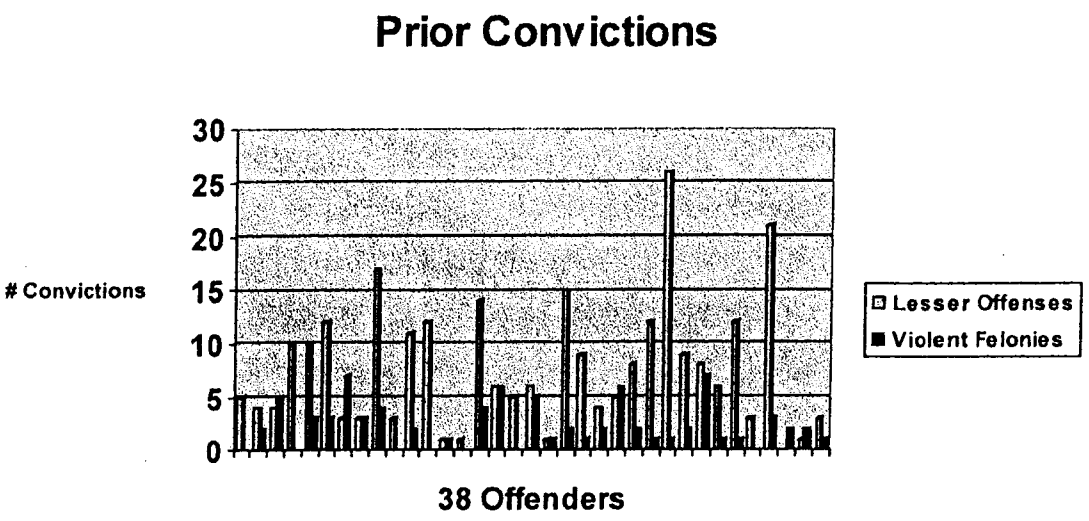



Table 4: Prior Convictions of Offenders in Biotracks Program



## Feline and Canine DNA

The American Pet Products Manufacturers ssociation's (APPMA) *2003/2004 National Pet Owners Survey* reports that the number of U.S. pet-owning households has increased by more than 10 million since 1992. Current methods used to identify dog and cat biological material are nuclear STR analysis and mitochondrial (mtDNA) analysis. These techniques use the same procedures that are used by crime laboratories worldwide to identify human biological material. Animal DNA evidence is most often contributed when the animal falls victim to a crime, e.g., shooting death of a dog during a burglary, or when the animal is a companion to a suspect, e.g., shedding of animal hair at the crime scene.

In 2002, Danielle Van Dam was reported missing from her home in San Diego, California. She was found dead in a remote area 25 days later. David Westerfield, the Van Dam family's neighbor, was arrested. Among other evidence, investigators had recovered dog hairs similar to the Van Dams' Weimaraner dog in Westerfield's motor home, on quilt, and in the lint trap of his dryer. Canine fR typing, performed by the Veterinary Genetics Laboratory at the University of California at Davis, was unsuccessful. An mtDNA match between the evidence hairs and the Van Dam family dog was entered as evidence.

Hair, of both human and animal origin, is a common piece of evidence from a crime scene. Because people and their pets live in close proximity, the recovery of animal hair evidence is quite possible. However, animal hair evidence is often overlooked as a critical form of evidence. Animal hair, in particular, can be found on clothing, in homes, and in cars. Because hair is easily transferred in daily activities, transfer of evidence occurs at every crime scene. The challenge is to identify this useful evidence. The passive transfer of animal hair can show a link to a crime scene. Analysis of canine evidence has been reported in scores of criminal investigations and trials nationwide.

## Missing Persons DNA Databases

The University of North Texas Health Science Center has created the Texas Missing Persons DNA Database, an mtDNA database that contributes mtDNA data to the national database for searches of missing persons. The objective of this database is to assist in the identification of kidnapped children, runaway children, and skeletal unidentified human remains. The Missing Persons Clearinghouse for the State of Texas reports that 70,000 people are reported missing each year in that State, with approximately 7,000 active cases at any given time.

A national missing persons DNA database is administered by the FBI. DNA exemplars from missing persons are searched against unidentified human remains. For example, a crime victim's remains are uncovered in a shallow grave, or a deceased victim is found with no form of identification with the body. The DNA from the unknown victim is searched against the missing person DNA data in the hopes of making an identification.

## Near-match Searching

Close biological relatives—parents, children, and siblings—are known to often have similar DNA profiles. Near-match searching linked two of the September 11, 2001, American Airlines Flight 11 hijackers as being brothers. Florida has employed near-match searching to identify the fathers of several babies born to rape victims. The Denver District Attorney's Office, in the first case in which the FBI has allowed near-match search information to be shared between States, is using identifying information for a convicted Oregon felon as an investigative lead to try to identify a suspect in a rape case that occurred three years earlier.[29]

**29** Richard Willing, "DNA database can flag suspects through relatives," *USA Today*, August 23, 2006, page 2A.

## Is the DNA Match Linked with the Criminal History Record Information?

No. Because an individual's DNA has the potential to reveal genetic information about that individual and his/her family, privacy advocates continue to voice concerns about the proliferation of DNA offender databases and access to the DNA data in those databases. The "eugenics" argument is that genes, unlike fingerprint patterns, contain information about an individual's racial and ethnic heritage, disease susceptibility, and even behavioral propensities.[30] Insurance companies, employers, or government agencies might raid the data for health-related information, leading to genetic discrimination against individuals or groups. Behavioral researchers will not be able to resist a database of convicted criminals.

The FBI Laboratory Division sponsored meetings with privacy and defense advocates during the information gathering stages for CODIS. As early as 1991, the FBI laboratory issued "Legislative Guidelines for DNA Databases," stating that personal information stored in CODIS will be limited ...CODIS will not store criminal history information." The policy of maintaining limited information in CODIS remains today.[31]

A similar policy has been adopted by many States. Illustrative of State DNA databases laws are:

- The California Penal Code provides that "DNA and other forensic identification information retained by the Department of Justice ...shall not be included in the state summary criminal history information."[32]
- A Florida statute provides that "any analysis, when completed, shall be entered into the automated data maintained by the Department of Law Enforcement ... and shall not be included in the state central criminal justice information repository."[33]
- A Rhode Island law provides that "all DNA typing results and the DNA records shall be stored in a computer database after all personal identifiers have been removed."[34]

Clearly, there is considerable agreement at both the national and State levels that it is inappropriate to include personal information in DNA databases, including criminal history record information that typically includes physical, biographic, and other descriptive data.

## Is the Criminal History Record Information Linked with the DNA Match?

Again, the answer is no. In May 2005 none of the 31 State criminal history repositories responding to a survey by SEARCH, The National Consortium for Justice Information and Statistics, reported making provision for the inclusion of a subject's DNA profile on the criminal history record. However, 13 of the 31 States reported employing a flag on the criminal history record to indicate that a sample had been collected, including 6 States that indicate whether the profile is located on a local, State, or national database.[35]

**30** Simon A. Cole, "Fingerprint Identification and the Criminal Justice System: Historical Lessons for the DNA Debate," in *The Technology of Justice: DNA and the Criminal Justice System*, David Lazer (ed.) (Cambridge, MA: John F. Kennedy School of Government, Harvard University, June 2003) at p. 19.

**31** Callaghan letter.

California Penal Code § 299.5(d)).

**33** Florida Statutes § 943.325(1)(d)(6)).

**34** Rhode Island General Laws § 12-1.5-10 (1).

**35** The 13 States were California, Illinois, Kansas, Kentucky, Maine, Michigan, New Jersey, New York, Oregon, Pennsylvania, South Carolina, Tennessee, and Washington.

It is not surprising that a reference to personal identifying information is found on the rap sheet. State criminal history records typically include an identification segment with a provision to record and display some, if not all, of the following personally identifying descriptive elements:

- Name
- FBI Number
- State Identification Number
- Correctional Number
- Social Security Number
- Miscellaneous Identification Number
- Driver's License Number
- Place of Birth
- Date of Birth
- Country of Citizenship
- Sex
- Race
- Height
- Weight
- Eye Color
- Hair Color
- Skin Tone
- Fingerprint Pattern
- Photo Available
- Scars, Marks, and Tattoos
- Employment Information
- Residence

In its December 1995 report, the National Task Force on Increasing the Utility of the Criminal History Record (Criminal History Utility Task Force) recognized the growing use of DNA evidence in criminal cases and the emergence of databases of DNA information. Among its recommendations, the Task Force proposed that a data element be added to the identification data on the criminal history record to indicate the existence and location of DNA samples or profile data. For this data element, location would be indicated by the name and the Originating Agency Identifier (ORI) of the agency holding the information.[36]

In 1996, the Joint Task Force (JTF) on Rap Sheet Standardization, with representation from the FBI Criminal Justice Information Services Division and its Advisory Policy Board, the National Law Enforcement Telecommunications System, and SEARCH, was formed to implement the recommendations of the Criminal History Utility Task Force by developing a standardized criminal history format for interstate transmission. After much discussion, the JTF opted to establish an element that allows for two kinds of reporting relating to DNA. First, the most common and useful is to report that a DNA sample has been taken from the subject, has been coded, and is available from a specific agency. Second, and not normally included in a criminal history response, is the optional ability to transmit the actual detail of the DNA profile. The latter capability was included should implementations evolve that would be facilitated by the transmittal of the detail code.[37] Some States that have yet to adopt the standardized criminal history record have instead opted to note on the rap sheet when an inmate has been convicted of a designated offense, and if a DNA profile is available in CODIS.[38]

**36** SEARCH, The National Consortium for Justice Information and Statistics, *Increasing the Utility of the Criminal History Record: Report of the National Task Force* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, December 1995).

**37** This specification is available at **http://it.ojp.gov/jsr/common/list1.jsp?keyword=1&forlist=1&community=yes**.

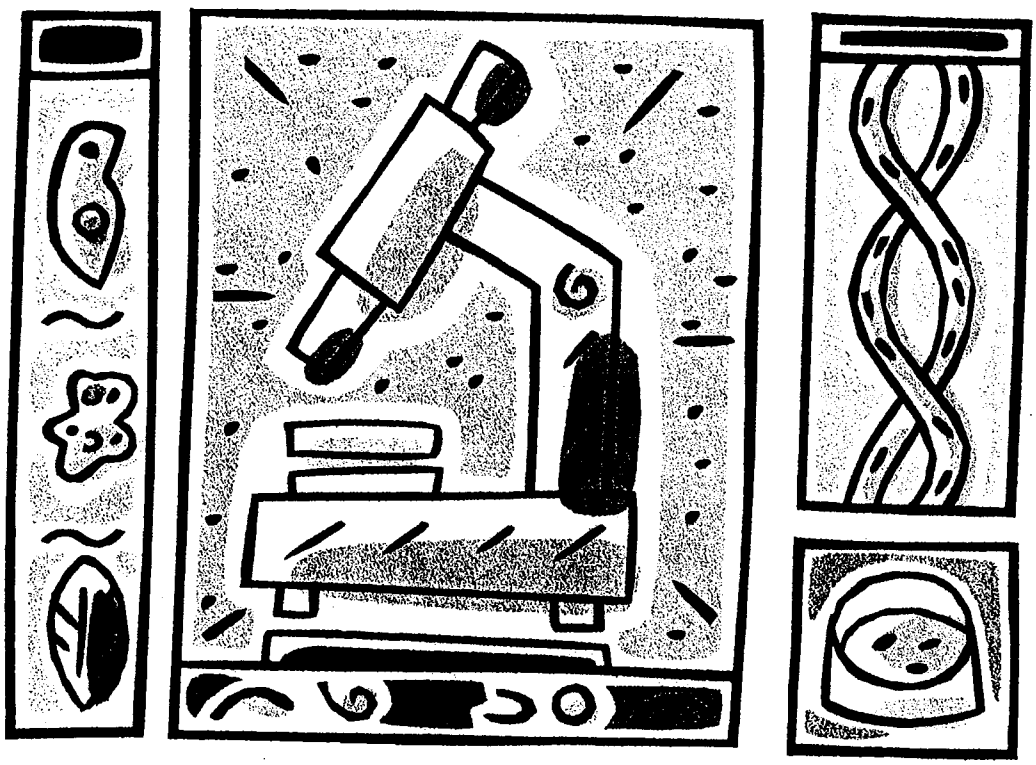
**38** Source: New York State Division of Criminal Justice Services, 2005.

## Sharing Information between CODIS, AFIS, and Criminal History Systems: Potential Benefits

The technologies of the DNA database (CODIS), fingerprint comparison (AFIS), and criminal history record systems are highly effective, albeit costly, tools for law enforcement. A detective no longer needs to identify a suspect before a latent fingerprint recovered from a crime scene is compared against a file of fingerprints of persons previously arrested in the jurisdiction, State, or nation. These automated searches and comparisons have become routine. The exchange of limited information among CODIS, AFIS, and criminal history records would provide law enforcement with the awareness that potential probative forensic evidence exists that involves a convicted or arrested offender.

Benefits derived from increased connectivity among different forensic technologies should be explored further. Of major benefit is the potential to increase the accuracy, timeliness, and utility of information provided to the criminal justice community. More hits, more exclusions, and a higher certainty of identification can be realized by combining two identification technologies (CODIS and AFIS) with criminal history databases.

Legislation authorizing the expansion of DNA databases to include new offenses often includes two components. The first is an effective date at which time all persons convicted of the new offenses are required to provide a DNA sample. The second provision may be retroactive and requires the police to have knowledge of past convictions for the newly authorized offenses. An accurate identity and criminal history of the offender is critical for the acquisition of the DNA sample. Technology can provide an electronic comparison of the databases (criminal history, CODIS, and AFIS) to identify who is required to provide samples, and who has already provided samples for the database. This connection of the AFIS, CODIS, and criminal history databases is even more critical when applied to violent crime and sexual offender registries. Law enforcement can then work more efficiently and accurately to obtain DNA samples, providing more timely leads to criminal investigators.



# Conclusion

The power of DNA technology both identifies and excludes suspects. In criminal justice applications, the data contained in the DNA profile is held separate and apart from the identification and other information, which constitute the criminal history record, a circumstance that reflects broad-based privacy concerns about the potential for misuse of DNA profile information. While there is clear consensus that personally identifying information should not be present in DNA databases, it is that very identifying information that an investigator needs to connect the DNA match to a suspect.

The inclusion of DNA profile availability and location information within the criminal history record holds out the promise of several significant operational and public safety benefits. If a suspect has a DNA profile on the State DNA database and the evidence in that case has been entered into the database with no resulting matches, then law enforcement may need to consider directing investigative efforts elsewhere. Knowledge that a DNA sample has not been provided when one is statutorily required is also beneficial, as it will promote the collection of samples without which a correspondent reduction in public safety could occur, or more recidivistic crimes remain unsolved.

Mechanisms for coupling criminal history information with select information about the availability of DNA data are readily available but have not been widely implemented—to the detriment of a more efficient justice system. The Interstate Criminal History Transmission Specification provides for an indication on the rap sheet that a DNA sample has been taken from the subject, has been coded, and is available from a specific agency. Similarly, several States, without implementing the transfer of standardized criminal history, have opted to flag the rap sheet with some or all of this information.

At its December 2005 meeting, the FBI Criminal Justice Information Services (CJIS) Advisory Policy Board (APB)[39] recommended to the FBI Director several enhancements to address the inclusion of DNA flags within the Interstate Identification Index, the national criminal history record exchange system administered by the FBI, including:

(1) allowing States to flag whether a subject's DNA profile is registered, and where that profile is located;

(2) allowing a DNA indicator to be used to indicate that DNA profiles are available at both the State and national levels;

(3) a proposed protocol for the FBI Laboratory Division to inform the Criminal Justice Information Services Division of Federal convicted offender DNA registration status data; and

(4) the inclusion of DNA indicator information on the criminal history record information response to select inquiries.

In sum, these approaches respect privacy concerns by keeping the barrier in place that prevents criminal history information and other personally identifying information from being included in DNA databases, while at the same time enhancing investigative capabilities through a more informative criminal history record.

39 The FBI CJIS APB is chartered under provisions of the Federal Advisory Committee Act of 1972 to advise the FBI Director on criminal justice information services issues. The APB is comprised of a network of working groups and subcommittees. The members represent local, State, and Federal law enforcement and criminal justice agencies throughout the United States, its territories, and Canada. Source: *CJIS Advisory Policy Board Advisory Process Information Handbook*, 2005.

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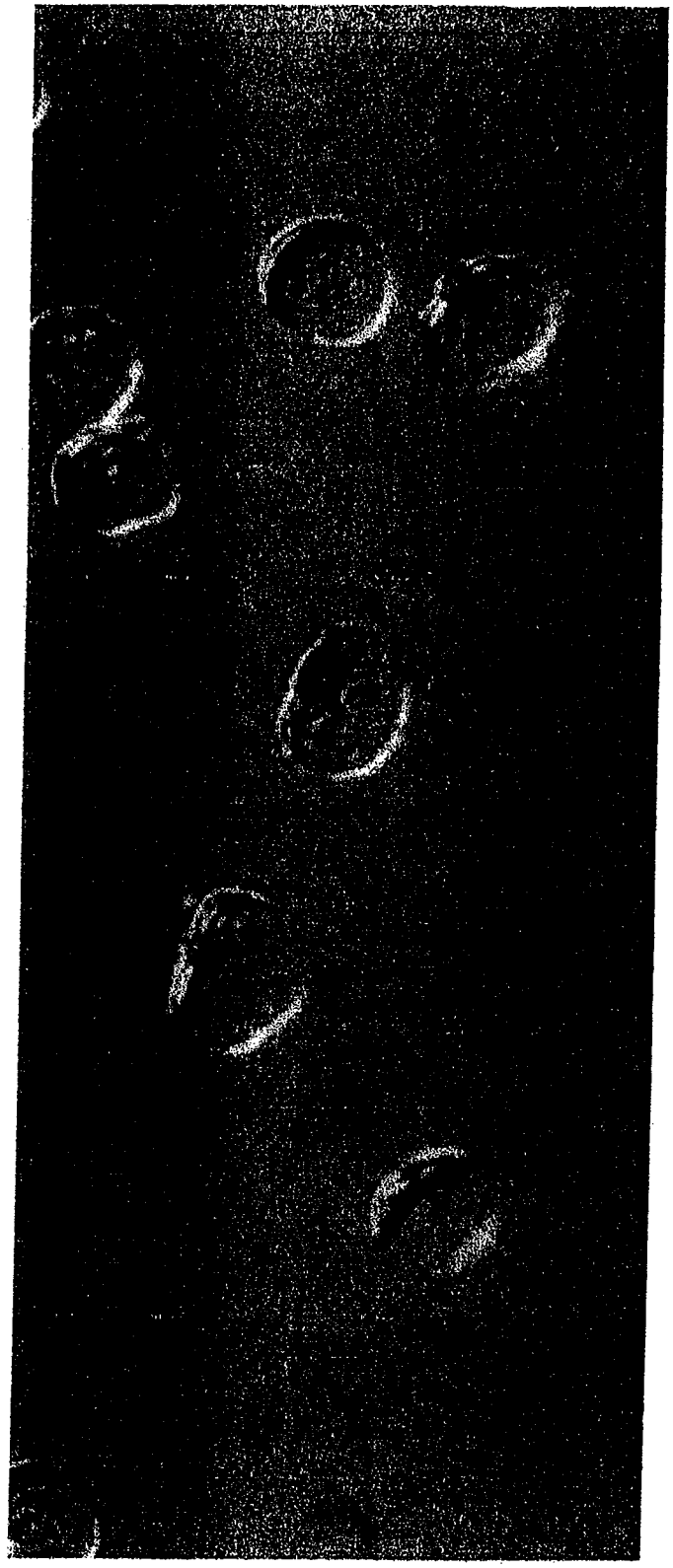
# About the Authors

**W. Mark Dale** is Director of the Northeast Regional Forensic Institute (NERFI) located at the State University of New York at Albany. NERFI provides graduate-level training and instruction in forensic DNA programs and serves as a resource for law enforcement and other governmental forensic laboratories through development of customized DNA academies. Mr. Dale previously was Director of the New York City Police Department Laboratory, Director of the New York State Police Laboratory System, and Director of the Washington State Patrol Laboratory System, and is a past President of the American Society of Crime Laboratory Directors.

**Owen Greenspan** is Director of the Law and Policy Program for SEARCH, The National Consortium for Justice Information and Statistics. SEARCH, a nonprofit organization of the States, is dedicated to improving the quality of justice and public safety through the use, management, and exchange of information; application of new technologies; and responsible law and policy, while safeguarding security and privacy. Mr. Greenspan previously was Deputy Commissioner with the New York State Division of Criminal Justice Services responsible for the operation of the State's criminal records repository, provision of information technology services to the State's justice agencies, and certification of police training. He is retired from the New York City Police Department, where he last served as Commanding Officer of the Identification Section.

**Dr. Donald Orokos** is a tenured faculty member at the State University of New York at Albany in the Department of Biology, where he teaches cell biology and immunology. Dr. Orokos also serves as the Associate Director of NERFI, and provides administrative oversight to all academic forensic programs.



**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:41 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket # OAG 121

**Attachments:** 07.31.07 AWA Guidelines Comments.doc

07.31.07 AWA Guidelines Commen..

-----Original Message-----
From: Kay Cohen [redacted]
Sent: Wednesday, August 01, 2007 7:01 PM
To: GetSMART
Subject: Docket # OAG 121

Please accept these comments on the Guidelines for implementation of the ADam Walsh Act from the National Criminal Justice Association.

Docket No. OAG 121

NCJA National Criminal Justice Association



July 31, 2007

Ms. Laura L. Rogers
Director
SMART Office
Office of Justice Programs
U.S. Department of Justice
810 Seventh Street, NW
Washington, DC 20531

Dear Ms. Rogers:

On behalf of the National Criminal Justice Association (NCJA), I would like to offer comments on the proposed National Guidelines for Sex Offender Registration and Notification (Guidelines). We embrace the goals of the Adam Walsh Act and its implementation and applaud the work of the SMART Office of the U.S. Depart of Justice (Department) in drafting these proposed guidelines with limited resources and within severe time constraints. We thank you for this opportunity to suggest that some public policy decisions encompassed in the proposed guidelines should be reconsidered and restructured.

**State-Tribal Collaboration**

The lynch pin of the successful implementation of the Adam Walsh Act will be strong and effective collaboration between state and tribal governments. Whether tribes opt to exercise their right to be a registration jurisdiction or not, states and tribes within their jurisdictional boundaries will be required to partner on many aspects of the Act's implementation. For instance, even for tribes which become a registration jurisdiction, the Act provides that they are not required to duplicate notification and registration functions. There is a strong likelihood that tribes will chose to partner or share duties with the state in fulfillment of the requirements of the Act and we would support and encourage that type of state-tribal collaboration. Of necessity under any circumstance, tribes and states must work out the details of the process of initial registration, digitization of information required to be collected, procedures for verification in Indian Country, and linkages between the two systems. Since historically the federal government has functioned on a government-to-government basis with the tribes and provided criminal justice services and functions in Indian Country, most states and tribes have not developed systems and processes for working together in the justice setting. Furthermore, a tribe may choose to rescind their election at anytime

in the future, immediately and abruptly sending delegation of the Act to the state. Therefore, we believe it is critically important that states and tribes work together on implementation of the Act from the outset. We strongly encourage the U.S. Department of Justice to take a leadership role in fostering communication and coordination between states and tribes to ensure development of meaningful, effective and efficient collaboration.

**State Notification Process**

As mentioned above states will automatically be delegated authority over tribes which rescind their election at any time during the life of the Act. However, states will also be delegated authority over any tribe found in non-compliance any time in the future. Yet, the Guidance offers no mechanism for states to be kept informed of a tribe's election status and, hence, given no warning for when that shift in delegation authority could occur. Therefore, we request a process to be included in the Guidelines which allow states to be routinely and continually apprized of the status of the tribes within their jurisdictional boundaries.

**Notice Requirements and the Definition of Jurisdiction**

The Act defines a jurisdiction to include only tribes which have elected to become a Sex Offender Registration and Notification Act (SORNA) registration jurisdiction. The Guidelines provide for notification requirements to these tribes. We would strongly encourage the Department to broaden the Guidelines to include all tribes regardless of their registration status as jurisdictions who should receive communication and notification by the Department and by the states. We support strong communication and notice that is inclusive rather than exclusive and keeps all parties regardless of registration status in the communication loop and full process.

**Process for Determining Substantial Compliance**

Typically, federal laws requiring action and compliance on the part of states specify considerable detail on the process for coming into compliance, opportunities to cure non-compliance and for communication mechanisms among the federal and state governments on process. These Guidelines however offer minimal direction to benchmarks and performance measures for the states and tribes. This could have particularly deleterious effects in the implementation of the Adam Walsh Act because of the complex relationship between the tribal and state entities and their roles in compliance. Since it is the state that will be assessed the financial penalties for non-compliance, including in the extreme for tribes found out of compliance with their registration election revoked, it is imperative the process and standards for determining substantial compliance be articulated and delineated as clearly as possible.

**Role of Federal Prisons**

The Guidelines state that federal prisons will not be required to conduct the initial registration on sex offenders as they are released from custody including the collecting of DNA samples, fingerprinting, photographing, and securing a digitized copy of the statute under which they were convicted. They will also not be required as state, local and tribal detention facilities will be to enter this information into the registry system. The Act requires offenders to register within three days in the jurisdiction where they will reside, are employed or attend school. Therefore those localities will

have to bear the burden of the initial processing costs for all offenders released from federal prisons. We urge instead that federal prisons be required to meet the initial registration requirements for all offenders released from federal custody as required of state and local detention facilities.

**Creation of an Advisory Group**

The Department of Justice should regularly convene an advisory group made up of state, tribal and local representatives to offer expertise and guidance in the many complex issues surrounding final implementation of the Act in the states and Indian Country. Other working group or subgroups should also be created as needed and determined by the larger advisory group to work with the Department in the implementation of SORNA. The issues require a further discussion among state, tribal, local and federal partners.

**Technical Assistance and Training**

We support the creation of the Sex Offender Management Assistance (SOMA) program under the Act to offset the costs of its implementation. To implement SORNA successfully state and tribes will need as much technical assistance and training as possible. We would encourage the Department to find ways to provide these services since it will likely result in higher compliance rates in all jurisdictions and implementation that is closer to the goals of SORNA as a whole.

We are concerned, however, with the concept of a bonus payment to states for "prompt compliance" with the Act. Particularly given the difficulty and complexity of developing a registry process between tribes and states we think this bonus payment system, no matter how worthy in concept, will disadvantage states with tribes in their boundaries. We are also concerned that the bonus payment will encourage states to adopt an exception to registration based on tribal court convictions for denial of a right to counsel which the language of the Guidelines permit with out an explanation of process, standards, documentation, redress, or review. We fear that this bonus payment concept, therefore, will serve to discourage real state/tribal collaboration and have the effect of further eroding tribal sovereignty.

**Determination of Acceptance of Tribal Court Convictions**

The Guidelines as mentioned previously permit the state to make a determination not to accept tribal court orders based upon a denial of right to counsel in the proceedings of the conviction. We encourage the Department to remove that authority from the states as it could invite abuse and undermines the respect and partnership that needs to exist between states and tribes in order to create an effective registry system. This authority also flies in the face of the work done to grant full faith and credit of tribal orders in the Violence Against Women Act and the work of domestic violence law for the last several years. No standards, documentation requirements, process for redress, or method for holding states accountable for such decisions is absent and is required if such authority remains in the Guidelines.

We appreciate this opportunity to comment on the Guidelines for implementation of the Adam Walsh Act. We would be remiss, however, if we did not indicate our overriding concern with the erosion of tribal sovereignty embedded in the Act. Tribes are not jurisdictions of the state. Rather, throughout American history, tribes have been recognized as having nation status. The Adam

Walsh Act implies a reduction in tribal sovereignty by delegating to the state enforcement of the Act on tribal lands and substituting state government for an historical federal government role.

If you have questions or would like to discuss any of these points further, please contact Kay Chopard Cohen at 202-448-1722 or kcohen@ncja.org.

Sincerely,

Cabell C. Cropper
Executive Director

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 5:07 PM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121: comments to Proposed Guidelines (SORNA)
**Attachments:** Comments to AWA guidelines.pdf

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**From:** AMY BORROR [mailto:Amy.Borror@OPD.OHIO.GOV]
**Sent:** Tuesday, July 31, 2007 2:40 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121: comments to Proposed Guidelines (SORNA)

Director Rogers,

Attached to this email as a pdf file, please find comments regarding the Proposed Guidelines for Sex Offender Registration and Notification, Docket No. OAG 121.

Please do not hesitate to contact me if you have questions or need additional information.

Thank you for your consideration of these comments.

Sincerely,
Amy Borror
Public Information Officer
Office of the Ohio Public Defender
614-644-1587

July 31, 2007

Director Laura Rogers
U.S. Dept. of Justice, SMART Office
810 7th Street, NW
Washington, DC 20531
Transmitted via email: GetSMART@usdoj.gov

**Re: Docket No. OAG 121: Comments on the Proposed Guidelines for Sex Offender Registration and Notification**

Dear Director Rogers:

Thank you for the opportunity to submit comments to the Proposed National Guidelines for Sex Offender Registration and Notification, which guide Ohio and other states as they work to implement the Adam Walsh Child Protection and Safety Act of 2006.

The Ohio General Assembly spent much of this year working on Senate Bill 10, which is intended to implement the Adam Walsh Act in Ohio. Most of the debate in the legislature and among interested parties centered around three issues: the retroactive application of the bill's classification, registration, and notification requirements; the inclusion of juvenile sex offenders on a public registry; and the question of what constitutes "substantial" compliance with the guidelines.

Several lengthy committee hearings and meetings of interested parties resulted in a final version of the legislation that was marginally more acceptable to the various interested parties than was the as-introduced version of the bill. The final version, however, signed into law on June 30, continues to be laden with issues that will be challenged in Ohio's court system for many years to come.

We offer suggested changes to the Proposed Guidelines below. We believe these changes will assist other states in their legislative processes as they work to implement the Adam Walsh Act, and will result in legislation and registration systems that are less likely to face lengthy and costly legal challenges.

**Retroactivity**

The Adam Walsh Act itself is not retroactive. Instead, it delegates 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.[1] The Guidelines for implementation of the Adam Walsh Act 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.

[1] 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 offender convicted before July 27, 2006 or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with [the initial registration provisions] of this section."

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 outlined in the Proposed Guidelines will unnecessarily subject 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 Senate Bill 10 means that thousands of legal decisions of trial court judges, to not label offenders as sexual predators, will be overturned by the legislature—simply because the offenses underlying those decisions, which were 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 current sex offender registration system ten years ago, have plead guilty to sex offenses. Many of them plead 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 Senate Bill 10 being applied retroactively, thousands of offenders will be notified that, because of the offense to which they plead guilty, they are being reclassified as Tier III offenders, with registration and verification duties lasting a lifetime. The State of Ohio, which years ago entered into these contracts and agreed to less-severe labels, is now unilaterally altering thousands of contracts. And, as a result, making onerous changes in thousands of people's lives, changes that were neither anticipated nor necessary.

Ohio's current sex offender registration system was also applied retroactively when it was first established. That retroactive application was later found to be constitutional by the Supreme Court of Ohio, which declared the registration requirements to be remedial, as opposed to punitive. But most of the factors that made that legislation remedial are missing from Ohio's implementation of the Adam Walsh Act: the ability of a court to remove a sexual predator label; the right of an offender to live anywhere in the community; limited notification, now that all offenders are on internet registries; and procedural safeguards, including a court hearing, with counsel, the right of confrontation, the right to present witnesses and experts, the requirement that the State have the burden of proving not only that a person committed a sexually oriented offense, but also that he or she is likely to commit another sexually oriented offense in the future, and the right to appeal an adverse ruling.

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;

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 will 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.

**Accordingly, we urge you to adopt guidelines that will allow states to apply the Act prospectively only, and to deem those states to be in substantial compliance with the implementation requirements of the Adam Walsh Act.**

**Juvenile offenders**

This year 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.[2]

The Proposed Guidelines for the implementation of the Adam Walsh Act recognize that the burdens of sex offender registration and notification should not attach when full due process protections have not been guaranteed. For convictions arising from Indian tribal court and foreign court proceedings, the Guidelines provide:

> It is recognized...that Indian tribal court proceedings may differ from those in other United States jurisdictions in that the former do not uniformly guarantee the same rights to counsel that are guaranteed in the latter. Accordingly, a jurisdiction may choose not to require registration based on a tribal court conviction resulting from proceedings in which...the defendant was denied the right to assistance of counsel...
>
> ***
>
> SORNA instructs 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 for the accused..."

The Proposed Guidelines fail to acknowledge, however, that only limited due process protections are offered to children in juvenile court. By placing juvenile sex offenders age

[2] This study compared the number of unruly and delinquency cases reported by the Supreme Court of Ohio's *2004 Ohio Courts Summary* to the number of unruly and delinquency cases reimbursed by the Office of the Ohio Public Defender during that same calendar year. The complete study can be found online at: http://www.opd.ohio.gov/press/pr_03_09_06.htm.

14 and older on a public registry, the Adam Walsh Act imposes an adult sanction 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. But it does so without regard to the limited due process protections offered to children in juvenile court.

The Proposed Guidelines recognize that lifetime inclusion on a public registry is far too severe a sanction to impose on someone whose full due process protections have not been guaranteed during Indian tribal court and foreign court proceedings. That recognition should be extended to children in juvenile court.

**Accordingly, we urge you to adopt guidelines that will allow states to include on the public registry only those juveniles who have been provided full due process protections, and to deem those states to be in substantial compliance with the implementation requirements of the Adam Walsh Act.**

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.

Research tells us that juvenile sex offenders are especially amenable to treatment. 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."[3] 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,[4] which is significantly lower than the recidivism rate for adult offenders.

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—specifically, juvenile court personnel working in conjunction with treatment

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[3] *Juvenile Sex Offenders*. Behavioral Health: Developing a Better Understanding. Vol. Three, Issue I.
[4] 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).

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.

Children who serve traditional juvenile dispositions and are successfully rehabilitated should be exempted from the public registry requirements of the Adam Walsh Act. Doing so would improve upon the overall function of the Act, by both maintaining the Act's essential elements and protecting the juvenile who is redeemable. Doing so would maintain the essence of the Adam Walsh Act, but separate from it the aspects that are inconsistent with the juvenile court system's efforts to rehabilitate juveniles. Doing so benefits not just the juvenile, but the system.

**Accordingly, we urge you to adopt guidelines that will allow states to include on the public registry only those juveniles who have been found to be not amenable to treatment, and to deem those states to be in substantial compliance with the implementation requirements of the Adam Walsh Act.**

**Substantial compliance**

One question in particular was repeated throughout the legislative process as the Ohio General Assembly deliberated over Senate Bill 10: what, exactly, constitutes substantial compliance with the guidelines for implementation? The Adam Walsh Act requires "substantial" implementation, and the Proposed Guidelines 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 Proposed Guidelines offer that the "'substantial' compliance standard...contemplates 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.

In order for the Guidelines to be a useful tool for states as they work to implement the Adam Walsh Act, a clearer definition of substantial compliance is needed. States need the Guidelines to match the language and intent of the law in order to know how to implement the Adam Walsh Act. As they are currently written, the Proposed Guidelines imply that nothing less than strict compliance will be sufficient, while the Act requires only the substantial implementation of the federal law.

**We urge you to adopt clear guidelines that will allow states to substantially comply with the Adam Walsh Act not only by blindly enacting federal mandates, but also 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.**

Thank you for your thoughtful consideration of these comments. We will be happy to assist you as you work to revise the Proposed Guidelines for the implementation of the Adam Walsh Act.

Sincerely,

**The Office of the Ohio Public Defender**
David H. Bodiker, Director

**Franklin County (Ohio) Public Defender Office**
Yeura R. Venters, Director

**National Juvenile Justice Network**
Sarah Bryer, Director

**Juvenile Justice Coalition of Ohio**
Sharon Weitzenhof, Director

**Alternatives for Youth**
Linda M. Julian, Director

**Children's Law Center, Inc.**
Kim Brooks Tandy, Director

cc: Ohio Congressional delegation
Governor Ted Strickland

# 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*

July 25, 2007

**VIA ELECTRONIC AND FIRST-CLASS MAIL**

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:

As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), the Mid-Atlantic Juvenile Defender Center takes this opportunity to express our general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current Proposed Guidelines.

The Mid-Atlantic Juvenile Defender Center (MAJDC) is a multi-faceted juvenile defense resource center serving the District of Columbia, Maryland, Virginia, 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. Part of our work includes training juvenile defenders and we have held trainings on the issue of handling juvenile sex offense cases.

**Application of the Guidelines to Youth is Contrary to the Research, Including Research Sponsored by the U.S. Department of Justice**

The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth.

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[i] In addition, the recidivism rate among juvenile sex offenders is substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even thought the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.[ii]

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose

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conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

**Application of the Guidelines to Youth Will Interfere with Effective Treatment and Rehabilitation**

SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate children, 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.

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.[iii] The stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess,[iv] destroying the social networks necessary for rehabilitation.[v]

**Application of the Guidelines to Youth Will Put Youth at Risk of Exploitation**

SORNA as applied to youth is not in accord with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children," in that it will expose these youth to adult offenders who have not sought or benefited 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 adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

**The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles**

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[vi]

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, of the states within the Mid-Atlantic region, Virginia currently allow for judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender. If a juvenile adjudicated delinquent is 13 years of age or older, the court may require the juvenile to register if, in the courts discretion and on motion of the Commonwealth's Attorney, the court finds that the circumstances of the offense require offender registration.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System**

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

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SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide to be registered in one or both of the parents' names.

Similarly, the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Similarly, the mandates and restrictions associated with the Guidelines will impact not only the youth, but the entire family, particularly in terms of where the family is permitted to live, e.g., prohibitions against living within so many feet of a school or a park.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

States that create and maintain juvenile registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**Conclusion**

The Mid-Atlantic Juvenile Defender Center supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Melissa Coretz Goemann

Director, Mid-Atlantic Juvenile Defender Center

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[i] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report;* available at http://www.ojjdp.ncjrs.org/.

[ii] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[iii] 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.

[iv] 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.

[v] Ibid.

[vi] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

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## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:50 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121
**Attachments:** NACDL - OAG 121 SORNA.doc

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**From:** [redacted]
**Sent:** Tuesday, July 31, 2007 5:55 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

TO: Laura L. Rogers
Director, SMART Office, Office of Justice Programs,
United States Department of Justice

Attached please find comments on behalf of the National Association of Criminal Defense Lawyers regarding the proposed National Guidelines for Sex Offender
Registration and Notification, Docket No. OAG 121. Thank you for your consideration.

Kyle O'Dowd, Legislative Director
National Association of Criminal Defense Lawyers
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# NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Attn: Laura L. Rogers
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Via email: getsmart@usdoj.gov

**Re: OAG Docket No. 121**

**NACDL Comments on the Attorney General's National Guidelines for Sex Offender Registration and Notification**

## I. Introduction

The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide, non-profit, voluntary association of criminal defense lawyers founded in 1958 to improve the quality of representation of the accused and to advocate for the preservation of constitutional rights in criminal cases. NACDL has a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

On February 24, 2007, NACDL issued a comprehensive statement on sex offender legislative policy. NACDL opposes sex offender registration and community notification laws but also believes that if such laws are passed they should classify offenders based upon true risk, with full due process of law. Community notification provisions should be reserved for offenders who are at a high risk to re-offend. Unfortunately, with the passage of the Adam Walsh Child Protection and Safety

Act of 2006 (Adam Walsh Act), Congress went in a different direction. The Adam Walsh Act includes the Sex Offender Registration and Notification Act (SORNA). SORNA sets forth a federal supervisory program that, if implemented by the states, is likely to significantly de-stabilize offenders, cause substantial confusion over registration and notification requirements and eventually make our communities less safe.

Unfortunately, in enacting SORNA Congress failed to recognize several important facts about sex offenders. Sex offenders, as a class, exhibit low recidivism rates and are less likely to re-offend than other convicted criminals[1]. Additionally, research suggests that community notification laws do little to reduce recidivism[2]. 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[3]. At the same time sound research demonstrates that sex offenders are not a homogeneous group[4] 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 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. Many sex offenders report negative consequences, including physical assaults, resulting from registration and notification programs[5]. 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 that are tiered upon the basis of individual risk assessment studies performed by competent mental health professionals. In this regard, SORNA is a step in the

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[1] *See,* Bureau of Justice Statistics, *Recidivism of Sexual Offenders Released From Prison in 1994,* November, 2003, 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). *See also,* 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).

[2] *See,* Welchans, S., *Megan's Law: Evaluations of Sexual Offender Registries,* 16 Criminal Justice Policy Review, 123-140 (2005)

[3] *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

[4] *See,* Lisa L. Sample and Timothy M. Bray, *Are Sex Offenders Different? An Examination of Re-Arrest Patterns,* 17 Crim. Justice Policy Rev. 83 (2006).

[5] *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).

wrong direction. SORNA and the regulations proposed in this docket will cause substantial confusion in the states and impose exorbitant costs for states to convert to a less safe system of registration and community notification.

Nonetheless, NACDL recognizes that the Adam Walsh Act and SORNA have become law. In these comments NACDL will highlight portions of the proposed regulations that ignore certain important constitutional rights or are otherwise inappropriate for an effective and fair registration and notification system.

**II. Fifth Amendment Rights**

The proposed regulations fail to allow the exercise of important Fifth Amendment privileges. The Fifth Amendment protects individuals from compelled self incrimination. The proposed regulations do not recognize or provide a means for an individual to exercise Fifth Amendment rights. The proposed regulations do not require the registration authority to advise a registrant of the Fifth Amendment right not to answer any question that may tend to cause self-incrimination. Indeed, several areas of the proposed regulations suggest that uncovering prior criminal activity of the registrant is a goal of the regulations. Additionally, certain types of registration information required under the Attorney General's "expansion authority," will compel information from the registrant that will cause self-incrimination. For instance, the proposed regulations require registrants to provide their social security numbers as well as all "purported" social security numbers. The proposed regulation specifically recognizes that such social security numbers may be false. Admitting to the use of a false social security number can expose an individual to prosecution for a number of crimes including identity theft. Similarly, the Attorney General exercises his "expansion authority" to require a homeless registrant to provide information identifying where he "habitually lives." In many jurisdictions providing such information will subject the homeless registrant to criminal prosecution for offenses such as vagrancy, loitering, public urination, indecent exposure and the like.

The regulations should require that offenders who are required to register be advised that they are not required to disclose information that may tend to incriminate themselves. Additionally the regulations should clearly state that the exercise of the Fifth Amendment privilege cannot be the basis of a criminal prosecution. Alternatively the regulations should require that the registrant be immunized from prosecution based upon information provided pursuant to the proposed regulations.

## III. Principles of Federalism

The regulations, as written, infringe upon important state rights and disregard the notion that our legal system is based upon principles of federalism, which value state sovereignty especially in the area of criminal justice. The regulations disregard state sovereignty in areas pertaining to pardons, annulments, and expungement of convictions; juvenile delinquency; and state legislative discretion as to appropriate sentencing.

Many states, either constitutionally or via legislative enactment, have procedures that permit the annulment or expungement of criminal convictions for reasons other than actual innocence. Likewise, many state governors and pardon boards have the authority to pardon criminal convictions for reasons other than innocence. In most cases such annulments or pardons are based upon recognition that the former offender has been rehabilitated. State constitutions and annulment statutes place a high value on rehabilitation and the need to remove the stigma of a criminal conviction in certain rare but important cases. Section IV, A, of the proposed regulations specifically requires that a state continue to register a former offender regardless of the annulment and pardon laws of the jurisdiction except in cases where the former offender is pardoned on the ground of innocence. SORNA does not require that former offenders who are pardoned or whose convictions are annulled or expunged be included with those who must register. The proposed regulations violate fundamental notions of federalism and are well beyond the authority granted to the Attorney General to promulgate such regulations.

Similarly, the proposed regulations violate fundamental notions of federalism in the juvenile delinquency area. Juvenile delinquency is an area of the criminal justice system that, for the most part, is left to the exercise of state authority. Many states recognize the fact that juveniles are different than adults and reflect such differences in their juvenile justice systems. In many states, delinquency is not considered to be a criminal act and great emphasis is placed on rehabilitative efforts and confidentiality. In most states a juvenile delinquency finding is not considered to be a criminal conviction. Applying registration and community notification requirements to delinquent children is likely to substantially interfere with state systems designed for the rehabilitation of children. In addition registration and community notification put those children who are required to register at risk for sexual exploitation by others as their identifying information will be freely available in the public domain. In addition to the risk of exploitation, the registration and community notification provisions will unnecessarily stigmatize children and

impose impossible challenges for such children in school and in the community. In creating juvenile justice systems most states have recognized the importance of providing a rehabilitative process that is best approached in confidence. The proposed regulations disregard this important policy concern which has already been addressed in virtually every state. The proposed regulations violate fundamental notions of federalism and will likely cause unnecessary harm to a significant number of children[6]. The proposed regulations should not include registration of children. At the very least the proposed regulations should be amended to eliminate the community notification and web site requirements for delinquent children.

Another area which is constitutionally left to the sound discretion of the states is sentencing for criminal conduct. The proposed regulations, as required by the statute, lay out a specific requirement that the maximum sentencing penalty for a failure to comply with SORNA be at least greater than one year. This provision interferes with the rights of individual states to legislate appropriate criminal punishment. It is also unwise in that the complexities of the proposed regulations may force many former offenders into a technical default which is neither knowing nor intentional but nonetheless exposes them to felony prosecution.

## IV. The Proposed Regulations Exceed the Statutory Authority Granted By SORNA And Will Not Foster the Real Purpose of the Legislation

The Attorney General, relying on SORNA § 114 (a) (7), expands the types of registration information that must be provided beyond that required in the statute. The "expansion authority" exercised by the Attorney General is well beyond the authority permitted by the statute, will not foster the goals of the legislation, and will subject former offenders to exploitation, vigilantism, shame and ridicule. The Attorney General indicates that he has exercised his "expansion authority" to require additional information to be provided by persons required to register as sex offenders. However, the exercise of this authority is unnecessary to the purpose of the Adam Walsh Act and is unwise policy. The stated purpose of the Adam Walsh Act is to protect the public by creating a comprehensive system for the registration of sex offenders. The act was not passed to impose a non-judicial probation or supervisory status over persons who have been convicted of sex offenses. The "expansion authority" exercised by the Attorney General to

[6] The efficacy of juvenile registration and community notification is further diminished when one considers the fact that the recidivism rate of juvenile sex offenders is very low. *See,* National Center on Sexual Behavior of Youth, Center for Sex Offender Management and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Protection, (2001). *Juveniles Who Have Sexually Offended: A Review of the Professional Literature Report.* http://www.ojjdp.ncjrs.org.

require far more information than the statute requires does not enhance its purpose, which is simply to create a registry. The proposed regulations invoke the "expansion authority" to require the following information at the time of registration: remote identifiers (screen names and e-mail addresses); telephone numbers; "habitual living" places of offenders lacking fixed abodes; temporary lodging information; other employment information such as travel routes; professional licenses; additional vehicle, watercraft and aircraft information; and, date of birth.

Requiring such information will expose former offenders to exploitation, vigilantism and public shame and ridicule without any benefit to the establishment of a comprehensive system of registration. Requiring the provision of telephone numbers and dates of birth will subject former offenders to the very real possibility of identity theft. Providing information about where a homeless former sex offender may "habitually live" (e.g., a certain park bench or under a certain overpass) would expose that vulnerable individual to the likelihood of assault and battery by vigilantes in the community. Similarly, former offenders may hold professional licenses that have nothing to do with children or sex (e.g., electrician or plumber's license) and the only purpose of publishing such information is to shame and ridicule the former offender in his community. Requiring such information endangers the public rather than making it safer. Social science research demonstrates that sex offenders are more likely to re-offend when they are put into de-stabilizing situations[7]. The additional information required under the Attorney General's "expansion authority" serves to de-stabilize former offenders and may render them unemployed and unemployable, subject to vigilantism and other types of exploitation. The "expansion authority" should not be used to require this information. At the very least the regulations should mandate that none of the information obtained via the "expansion authority" shall be made available to the public in any format.

**V. The Proposed Regulations Fail to Require Fundamental Due Process**

The proposed SORNA regulations fail to require states to provide any due process protections to registrants so that they can contest their designation as a Tier I, Tier II, or Tier III offender. SORNA § 118(e) requires the states to include on their web sites, "instructions on how

[7] *See,* Kruttschnitt, C., et al., *Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls,* 17 Justice Quarterly 61 (2000); *See also,* Colorado Department of Public Safety, *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community,* 2004, http://dcj.state.co.us/odvsom ; Levenson, J. And Cotter, L., *The Impact of Sex Offender Residence Restrictions: 1000 Feet from Danger or One Step from the Absurd?,* 49 International Journal of Offender Therapy and Comparative Criminology 168 (2005).

to seek correction of information that an individual contends is erroneous." However, the proposed regulations do not mandate that a state have such a method. The proposal's only example of compliance with the act is a suggestion that a state web site might refer someone to the state agency responsible for correcting erroneous information. That suggestion is insufficient and fails to require states to protect the due process rights of registrants.

The system of registration and community notification contained in SORNA and in the proposed regulations is, in reality, a system of supervision of former offenders. It amounts to another method of probation, supervised release or parole. Therefore the regulations should require that each state must have a system for the proposed registrant to contest his or her designation as a sex offender accompanied by the full panoply of due process protections including, but not limited to, the right to be represented by counsel. The effects of registration and community notification on the registrant are severe and life altering. The registrant must have due process protections and the Attorney General ought to recognize and require such protections of all state programs.

## VI. SORNA and the Proposed Regulations Are *Ex Post Facto* Laws Prohibited by Part I, Article 9 of the Constitution of the United States of America.

The proposed regulations apply SORNA retroactively in violation of Part I, Article 9 of the Constitution prohibiting the passage of *ex post facto* laws. NACDL has previously raised this concern in comments dated April 30, 2007, in OAG Docket No. 117. Those comments are incorporated by reference herein.

## VII. Conclusion

In enacting the Adam Walsh Act and SORNA Congress succumbed to myths about sex offenders which are not supported by the existing scientific and social science research. The proposed regulations in this docket fail to protect important constitutional rights of sex offender registrants and go beyond the statutory authority granted to the Attorney General to promulgate regulations that implement a registration system. The system created by the confluence of SORNA and these regulations is a non-judicial system of supervised released coupled with the ever present specter of additional prison time for even the most minor of violations.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:06 AM
Rosengarten, Clark
**ject:** FW: Docket No. OAG 121

**ttachments:** SORNA Comment NJOPD 072707.pdf

SORNA Comment
JOPD 072707.pdf..

-----Original Message-----
From: James Gilson [mailto:James.Gilson@opd.state.nj.us]
Sent: Monday, July 30, 2007 12:13 PM
To: GetSMART
Subject: Docket No. OAG 121

Kindly accept the attached for electronic filing in addition to our original copy mailed via UPS overnight Mail, tracking # 1Z F04 2R3 22 1001 534 6, on Friday July 27, 2007.

Thank you.

James A. Gilson, ADPD
Office of the Public Defender
Special Hearings Unit
Essex County Regional Office
Clinton Street, 12th Floor
Newark, New Jersey 07102

Phone# 973-877-1622
Fax# 973-877-1615
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JON S. CORZINE
*Governor*

# State of New Jersey
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YVONNE SMITH SEGARS
*Public Defender*

July 27, 2007

Laura L. Rogers
Director, SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW.
Washington, DC 20531

Re: Comments Regarding the Sex Offender Registration and Notification Act (SORNA), Docket No. OAG 121

Dear Ms. Rogers:

Please accept these comments submitted by the New Jersey Office of the Public Defender in response to the United States Attorney General's proposed. regulations promulgated pursuant to the *Sex Offender Registration and Notification Act* (hereinafter "SORNA"), 42 U.S.C. §§ 16901-16962.

Since 1996, the Office of the Public Defender has represented several thousand sexual offenders who have challenged their proposed public notification under New Jersey's Megan's Law. N.J.S.A. 2C:7-1 et. seq. Based on this and other experience working within the State's system for managing the post conviction lives of sex offenders, the Public Defender brings a thorough working knowledge of the field to this review of the Attorney General's

proposed regulations.

SORNA will require substantial changes to New Jersey's risk-based approach to sex offender notification. For the reasons outlined more fully below, we submit that the changes SORNA requires will dilute the value and undermine the effectiveness of New Jersey's sex offender management system. This scheme (continuously refined over the past decade) has become a highly successful means for safeguarding the public, and has led to recidivism levels more than 50% below the national average.[1] For this reason, we ask that states like New Jersey, which demonstrate highly effective risk-based sex offender notification programs, be given the discretion under SORNA's regulations to continue using a proven system to sex offender management.

In New Jersey, the Legislature developed a system of sex offender notification which places offenders into one of three tier, or risk, levels. Unlike the system required under SORNA, New Jersey's notification scheme does not base an offender's risk level on his offense. Rather, it is a risk-based system which evaluates an offender's re-offense risk based on factors that mental health professionals who specialize in sex offender management and treatment have identified as valid predictors of sex offender recidivism.

To formulate the risk evaluation, a risk assessment scale (the RAS) was developed by a panel of State selected experts who designed a matrix of thirteen static and variable factors which are weighted according to their predictive value. Among the thirteen factors developed for assessing a person's

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[1] Overall national levels of sex offender recidivism are reported at 13%. R.K. Hanson, & M. Bussiere, *Prediction relapse: A meta-analysis of sexual offender recidivism studies*, Journal of Consulting and Clinical Psychology *66 (2), 348-362* (1998). In a recently published study, however, the New Jersey's recidivism levels are stated as falling between 6%-8%, as much as 54% less than the national average. *See* K.M. Zgoba & L.M.J. Simon, *Recidivism Rates of Sexual Offenders up to 7 Years Later: Does Treatment Matter?* Criminal Justice Review, Volume 10, Number 2, 155-173 (2005).

risk level, the RAS considers the years an offender has lived in the community offense-free, the success of treatments received by the offender, whether a stable job has been obtained or education pursued, and if supportive supervised housing exists.[2] N.J.S.A. 2C:7-8. Other factors may also be considered such as whether the offender is so elderly or infirm as to pose a low or lower risk for reoffense. In addition, under New Jersey's system, offenders are provided an opportunity to challenge the state's risk assessment at a due process hearing. See Doe v. Poritz, 142 N.J. 1 (1995) (holding that under both State and Federal Constitutions, given the privacy and liberty interests at stake, sex offenders have a right to a hearing to challenge their risk determination. See also E.B. v. Verniero, 119 F.3d 1077 (3d. Cir. 1997).

In contrast to SORNA, New Jersey's sex offender notification corresponds to an offender's individualized risk assessment. Based upon an application of the RAS, a Tier one (low risk) offender has notification limited to local police.

Tier two offenders score higher on the RAS and are consequently subject to Tier one notice and to direct notification to schools, day care programs and community agencies and organizations which care for woman and children within a radius of the offender's home (typically one mile). In addition, in most cases Tier two offenders are subject to notice published on the State's sex offender Internet registry. There are three important exceptions to Internet notification which, in the view of New Jersey's Legislature, do not merit statewide notification. The exceptions include cases where a "sole offense" occurred and the offense was committed by a minor, or was a consensual or intra-familial offense. See N.J.S.A. 2C:7-13 (d).[3]

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[2] Attached, and marked as "Exhibit 1" is a copy of New Jersey's RAS.

[3] These three exceptions are supported by literature demonstrating that reoffense rates for these two groups are low. *See, e.g.*, United States Department of Justice, Center for Sex Offender Management (hereinafter "CSOM"), *Recidivism of Sex Offenders* (May 2001) (citing

Tier three (high risk) offenders are subject to Tier one and Tier two notification (including Internet notice in each case), and to direct notice to neighbors in the area where the offender resides.

Thus, New Jersey's notification scheme rewards offenders with narrower sex offender notification for compliance with factors shown to reduce recidivism levels. This has proven to be an essential motivational tool that contributes to maintaining the State's low recidivism levels. Our clients realize that to remain a Tier one or Tier two offender and thereby avoid the broadest forms of notification, they must remain in treatment, in school or employment, avoid substance abuse, and continue to remain free of any criminal offense. If these positive behaviors end, broader forms of community notification result.

Under SORNA, however, there is no incentive for offenders to change their lives and lower their risk level. Only Tier one offenders have the potential, depending upon state discretion, to avoid Internet notification. However, in New Jersey few persons will ever qualify as a Tier one because nearly every sex offense is "punishable" by a year or more of incarceration.

Under SORNA, therefore, nearly every sexual offender in New Jersey will be subject to identical state and national sex offender notification, including several thousand offenders the State previously determined did not require public notification due to their Tier one status. If this occurs and New Jersey is forced to abandon its risk-based approach, the State will lose a critically important and proven motivational device for reducing recidivism levels.

Additionally, unlike New Jersey's system, SORNA's sex offender notification will not include an offender's Tier level. Thus, it will provide

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study finding a 4% rate of recidivism for incest offenders) (all CSOM studies cited herein can be located at www.csom.org); Association for the Treatment of Sex Offenders ("ATSA"), *Letter Submitted to the Senate and House Appropriation Committees Commenting on Pending SORNA legislation*, (August 15, 2005) (describing the overall recidivism levels for juveniles to be 8%) (All

identical notification for thousands of offenders without indicating which pose the greatest risk. Experts agree, this will dilute the informational value of New Jersey's sex offender notification and create the misimpression that all offenders pose the same risk.[4] The result will predictably frustrate the remedial goals that our notification is designed to achieve.

For example, SORNA would have a person convicted of criminal sexual contact with a minor in New Jersey (N.J.S.A. 2C:14-3) for touching a juvenile over clothing on the buttocks on one occasion, years ago, with no history of any prior offense and with a successful record of treatment, treated as a Tier two sex offender. This offender, along with many others of a similar ilk, would be made subject to the same Internet notification with other offenders whose conviction and psychological profile make them a much greater risk. (For example a person convicted of aggravated sexual assault who received no treatment and had recently been discharged from prison.) Multiply this example by several thousand cases and it becomes apparent that SORNA's "one size fits all" approach is counterproductive and will unintentionally misinform the public that all sex offenders pose the same risk when this is clearly not the case.[5]

Also, under SORNA, New Jersey will not be able to continue to encourage incest victims to report sexual abuse by utilizing exceptions to public

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ATSA documents cited herein are available at www.atsa.com/public policy).

[4] See ATSA, *The Registration and Community Notification of Adult Sex Offenders, (2005)* (concluding the notification should occur "based on risk assessment and different strategies used based on tier level . . . so that citizens can make informed decisions regarding the large number of identified sexual offenders.")

[5] Formal studies conducted at the behest of or relied upon by both the federal government and the states confirm that sex offender re-offense rates vary greatly among different categories of offenders. See CSOM, *Myths And Facts About Sex Offenders* at 2 (Aug. 2000) (citing studies regarding recidivism rates and noting: "Persons who commit sex offenses are not a homogeneous group, but instead fall into several different categories. As a result, research has identified significant differences in re-offense patterns from one category to another."); ATSA, *The Registration and Community Notification of Sex Offenders, supra,* note 4 (explaining

notification for this low risk group. See, e.g., N.J.S.A. 2C:7-13(d)(2). With these exceptions, New Jersey avoids advertising the name and family relations of incest victims on the Internet, thereby protecting the victim from humiliation and potential harassment. These exceptions for incest offenses exist because the re-offense rate for incest offenders is low, estimated at 4%.[6] However, under SORNA, there are virtually no exceptions to such notice, as all offenders receive identical notification. We are concerned that this may prevent children and family members from reporting sexual abuse, since parents with the same surname as the victim are likely to be advertised in notices throughout their communities, even at the very schools attended by the children, and via the Internet.

An additional reason New Jersey should be permitted to keep its risk based approach concerns the substantial impact sex offender notification can have on the lives of offenders. This impact is significant because it will jeopardize public safety.

It has been our experience in New Jersey that persons subject to Internet notification will lose housing and employment -- basic resources widely acknowledged by experts in the field as key to reducing recidivism levels.[7] In addition, this notification has led to incidents of harassment, vandalism and assaults of former sex offenders, designed to drive them from their homes. In one New Jersey case, following notification five bullets were fired through the window of a registrant's apartment by a neighbor, nearly wounding an innocent

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differences in re-offense rates among sex offenders.)

6. See, e.g., CSOM, *Recidivism of Sex Offenders* (May 2001)

7 See R. Hanson and K. Morton-Bourgeron, "*The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies*," Journal of Consulting and Clinical Psychology 2005, vol. 73, No. 6 1158-59 (showing a 20% correlation between unemployment and re-offense rates among sex offenders); CSOM, *Recidivism of Sex Offenders*, (May 2001) (citing six studies concluding that stable housing, employment, and sex offender treatment reduce recidivism levels); ATSA, *Ten Things You Should Know about Sex Offenders and Treatment (2001)* (same).

tenant.[8]

The Third Circuit Court of Appeals has provided the following summary of the public's response to sex offender community notification in New Jersey:

> The record documents that registrants and their families have experienced profound humiliation and isolation as a result of the reaction of those notified. Employment and employment opportunities have been jeopardized or lost. Housing and housing opportunities have suffered a similar fate. Family and other personal relationships have been destroyed or severely strained. Retribution has been visited by private, unlawful violence and threats and, while such incidents of 'vigilante justice' are not common, they happen with sufficient frequency and publicity that registrants justifiably live in fear of them.

E.B. v. Verniero, 119 F3d 1077, 1102 (3d Cir. 1997). The E.B. court characterized this impact as "very substantial" and as "extending to virtually every aspect of an [offender's] every day life." Id. at 1107.[9]

In New Jersey, direct notification to individual members of the public, the type most likely to impact offenders' jobs and housing, typically occurs only in high risk cases, or approximately 4% of the State's overall sex offender registrant population. New Jersey Admin. Office of the Courts, *Report on*

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[8] A detailed description of incidents of dozens of cases of physical harm and threats occurring to registrants and their families following notification in New Jersey, as well as examples of instances where registrants lost jobs and housing is available upon request.

[9] These sorts of problems are not unique to New Jersey. A Department of Justice study of the impact of Wisconsin's notification law summarized interviews with thirty offenders. Eighty-three percent of the offenders said that notification resulted in "exclusion from residence"; seventy-seven percent reported "threats/harassment"; sixty-six percent reported "emotional harm to family members" and "ostracized by neighbors neighbors/acquaintances"; and fifty percent reported "loss of employment." U.S. Dep't of Justice, National Institute of Justice, *Sex offender Community Notification: Assessing the Impact in Wisconsin*, at 10 (Dec. 2000); see also Doe v. Pataki, 120 F.3d 1263, 1279 (2nd Cir. 1997) (noting "numerous incidents in which sex offenders have suffered harm in the aftermath of notification."); ATSA, *The Registration and Notification of Adult Sex Offenders, supra,* note 5, (describing that "one-third to one-half" of the sex offenders subject to community notification experience "dire events" such as loss of "a home or a job or home threats or harassment or property damage." These "stressors can cause some offenders to relapse.")

*Implementation of Megan's Law*, 17 (Nov. 2006).

However, SORNA's notification fails to consider risk. For every offender subject to SORNA (tiers 1,2 and 3), the information is authorized to be disseminated directly to a substantially broader segment of the public than under New Jersey law, increasing the risks of lost housing and employment. Also, unlike Megan's Law, SORNA will include both a state and a national Internet website, and will provide direct notice to every individual or organization who requests it in the jurisdiction where an offender lives, works and attends school. As in New Jersey, notification will also go to schools; however, under SORNA it will also include public housing agencies, social service agencies, agencies that do background checks, and volunteer organizations in which contact with minors might occur, and will be re-disseminated in those jurisdictions each time the individual changes his or her address. 42 USC. § 16914. Finally, in addition to its much broader scope of notification, SORNA allows states to include an employer's name and address in the public notification (Id. at § 16914), a provision which will virtually ensure that employment loss becomes more prevalent.

In addition, lost housing and employment will also undercut the efficacy of New Jersey's Community Supervision for Life statute, a law passed as part of the State's Megan's Law. N.J.S.A. 2C:43-6.4. The statute imposes conditions on sex offenders "to protect the public and foster rehabilitation." Id. at 2C:43-6.4(b). The CSL regulations require that State parole officers supervise where sex offenders live and work, and other areas of daily life such as the types of psychological treatment they receive and the persons they associate with. See N.J.A.C. 10A:71-6.11. The lifetime system of parole the statute establishes is an additional reason New Jersey's recidivism levels fall well below national averages. However, if as reasonably anticipated, greater numbers of sexual offenders become homeless and jobless due to SORNA's proposed notification

scheme, offenders will predictably become far more difficult to locate and supervise in the community.

Patty Wetterling has been an advocate for laws that protect children after her son Jacob was abducted 18 years ago and never found. A component of the Adam Walsh Act bears Jacob Wetterling's name. In an interview conducted June 18, 2007, on Minnesota Public Radio, Wetterling articulates the concerns with the one-size-fits-all approach to community notification. Contrary to the nature of recent legislative action on this issue, Ms. Wetterling states she "wants public policy to be effective" and that "broad sweeping laws that treat all offenders the same waste resources and lives." [10]

In preparing this comment, we contacted Ms. Wetterling regarding her concerns with the SORNA. In an email of June 11, 2007, she tells us:

> The reality is that when these guys are released from prison we want them to succeed. That would mean no more victims. I don't believe we have set up a system that encourages or even allows them opportunities that are known to help released inmates succeed. They need a place to live, they need work and they need some type of continued support.

*Id.;* (emphasis in original). [11]

Ms. Wetterling clearly recognizes the negative impact that SORNA and the Interim Rules will have on community safety. As an advocate for child safety laws, she believes that providing offenders opportunities for work, education and effective supervision in the community can decrease the rate of recidivism. New Jersey's current Megan's Law requirements and the low re-offense rates in the State have obtained have proven this true. It would be manifestly wrong in such an important area of child and community safety to

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[10] *See* Commentary on the Interview of Patty Wetterling, Minnesota Public Radio Internet Article, attached hereto as "Exhibit 2."

[11] *See* email from Patty Wetterling attached hereto as "Exhibit 3."

replace New Jersey's successful approach to the post-conviction management of sex offenders with a system that is untested and will predictably increase the number of jobless and homeless sex offenders.

Ms. Wetterling does not stand alone as the parent of a sexually assaulted and murdered child who is concerned that community notification laws have gone too far. In a recent Megan's Law hearing in New Jersey, Maureen Kanka, an ardent advocate for child protection, addressed the Court through a letter provided by the sex offender's caretaker. In a case that is representative of matters occurring frequently in New Jersey, a 19-year-old male was charged with endangering the welfare of his 13-year-old girlfriend. This case involved consensual sexual intercourse with a minor. In preparation for this registrant's tier hearing, Ms. Kanka, mother of 7-year old Megan Kanka who was tragically raped and murdered by 33 year old Jesse Timmendequas, spoke to Ms. Sharon Horan, the offender's caretaker, about the evolution of the registration and community notification laws which bear her daughter's name. Inviting Ms. Horan to articulate her position to the Court, Ms. Kanka referred to the establishment of the first laws of this nature in New Jersey, stating that "She meant to label men in there 30's from attacking little girls in kindergarten or first grade, not teenage couples."[12] The letter that articulates her comments states that, "Maureen feels that prosecuting misguided teenage couples for a 4 or 5 year age difference is a 'misinterpretation of Megan's Law' and in no way should 'teenage boys like the current registrant ever be compared to sexual a sociopath." *Id.*

Maureen Kanka and Patty Wetterling articulate that one of the keys to ensuring a safe community is to distinguish between true predators and individuals who pose a low risk to society. Without a risk-based system of

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[12] *See* Letter of Sharon Horan, dated July 20, 2006, attached hereto as "Exhibit 4."

registration and notification, this is impossible. The interim rules promulgated pursuant to SORNA blurs this distinction and characterizes every offender as a violent predator. This is simply not the reality nor does it consider established science regarding sex offender recidivism.

Section 637 of SORNA requires the Attorney General to conduct a study "of risk-based sex offender classifications systems," like New Jersey's. The study's purpose is to determine "the efficiency and effectiveness of risk-based systems" vis a vis their ability "to reduce threats to the public posed by sex offenders." This study is to be completed and a report submitted to Congress within 18 months of the SORNA's implementation, making it due in approximately six months on or about January 27, 2008 .

We believe that the proposed rules, which would require New Jersey and other states to end risk-based notification systems with a documented history of success before the required study is complete, has "put the cart before the horse." We strongly urge the Attorney General, pending completion of SORNA's study, to permit states with demonstrated successful risk-based approaches like New Jersey's to continue using them. Then, based upon sound empirical evidence, the Attorney General should promulgate rules that comport with the study's findings. By continuing to pursue implementation of the proposed rules without first studying the issue will impose potentially needless administrative and fiscal demands on the States and seriously risk compromising public safety.

Respectfully submitted,
YVONNE SMITH SEGARS
NEW JERSEY PUBLIC DEFENDER

By: (L.S.)
Michael Z. Buncher
Deputy Public Defender

# EXHIBIT 1

# REGISTRANT RISK ASSESSMENT SCALE

| Criteria | Low Risk | 0 | Moderate Risk | 1 | High Risk | 3 | Comments | Total |
|---|---|---|---|---|---|---|---|---|
| **Seriousness of Offense x5** | | | | | | | | |
| 1. Degree of Force | no physical force; no threats | | threats; minor physical force | | violent; use of weapon; significant victim harm | | | |
| 2. Degree of Contact | no contact; fondling over clothing | | fondling under clothing | | penetration | | | |
| 3. Age of Victim | 18 or over | | 13 - 17 | | under 13 | | | |
| | | | | | | | **Subtotal:** | |
| **Offense History x3** | | | | | | | | |
| 4. Victim Selection | household/family member | | acquaintance | | stranger | | | |
| 5. Number of Offenses/ Victims | first known offense/victim | | two known offenses/victims | | three or more offenses/victims | | | |
| 6. Duration of Offensive Behavior | less than 1 year | | 1 to 2 years | | over 2 years | | | |
| 7. Length of Time Since Last Offense | 5 or more years | | more than 1 but less than 5 years | | 1 year or less | | | |
| 8. History of Anti-Social Acts | no history | | limited history | | extensive history | | | |
| | | | | | | | **Subtotal:** | |
| **Characteristics of Offender x2** | | | | | | | | |
| 9. Response to Treatment | good progress | | limited progress | | prior unsuccessful treatment or no progress in current treatment | | | |
| 10. Substance Abuse | no history of abuse | | in remission | | not in remission | | | |
| | | | | | | | **Subtotal:** | |
| **Community Support x1** | | | | | | | | |
| 11. Therapeutic Support | current/ continued involvement in therapy | | intermittent | | no involvement | | | |
| 12. Residential Support | supportive/ supervised setting; appropriate location | | stable and appropriate location but no external support system | | problematic location and/or unstable; isolated | | | |
| 13. Employment/ Educational Stability | stable and appropriate | | intermittent but appropriate | | inappropriate or none | | | |
| | | | | | | | **Subtotal:** | |
| | | | | | | | **Total:** | |

**Scoring:** Highest possible total score = 111
Low Range: 0 - 36 Moderate Range: 37 - 73 High Range: 74 - 111

# EXHIBIT 2

MINNESOTA PUBLIC RADIO

# Sex offender laws have unintended consequences

by Dan Gunderson, Minnesota Public Radio
June 18, 2007

**States spend billions of dollars every year to monitor, treat and imprison sex offenders. New laws designed to get tough on sex offenders are a perennial topic of debate at state capitals around the country. There are proposals to make sex offenders wear electronic monitors, restrict where they can live, and post the picture of every offender on the Internet. But do those laws increase public safety, or create a false sense of security?**

Moorhead, Minn. — Convicted sex offenders are required to register with police, making it easier for law enforcement agencies to keep track of sex offenders in their community.

Many states have expanded on that idea, posting sex offenders pictures and addresses on the Internet. Some, like Minnesota, post only the offenders deemed most dangerous, while others put every sex offender's picture on a Web site.

The reasoning is, if you know where sex offenders live, you're safer.

## TEENAGE SEX LEADS TO SEX OFFENDER STATUS

Ricky is one of the sex offenders whose picture is on the Internet. Even though he's publicly listed as a sex offender, he asked we not use his last name because he fears harassment. Ricky was 17, living in a small town in Iowa, when he had sex with a 13-year-old girlfriend.

"I was playing a game of pool when I met her. She came up and we started talking. I asked her her age and she told me she was 16," says Ricky. "So we went out and danced, started dating. And we ended up having sex twice."

A few months later, when the girl ran away from home, Ricky was questioned by police.

"I just told them the truth because I didn't think I was going to get in trouble. I told them I had sex with her twice," says Ricky. "He told me the parents were not pressing charges, so we're just going to go ahead and let you go home."

But a few days later Ricky was arrested and charged with two counts of felony sexual abuse. He faced up to 20 years in prison.

Ricky pled guilty to a lesser charge and was placed on probation, ordered to get sex offender treatment and register as a sex offender. A few months later his family moved to Oklahoma, where his picture was posted on the Internet as a sex offender.

## "THIS WILL ALWAYS HAUNT HIM"

Ricky was kicked out of school, and must stay away from schools and parks. He's been working with a tutor and hopes to get his GED.

Ricky says he'd planned to join the Navy, go to college and become a police officer. Now he works at an assembly plant, and isn't sure what he'll do next.

"I get frustrated at times because I can't do what a kid wants to do. I'm basically stuck," says Ricky. "My friends go out and do stuff. I can't go with them. I can't play basketball or football with them. I just go to work, come home and try to just do stuff around the house."

"He's constantly watching his back," says Mary Duval, Ricky's mother. "He doesn't know if the next person who walks up on him is going to know he's a sex offender, and what they'll do or what they're going to say."

Duval says she believes her son should have been punished for having sex with a 13-year-old girl. But she's angry he's painted with the same brush as a violent predatory rapist.

"He won't date. He won't talk to girls. A girl says 'Hi' to him in the store -- and I have seen him twice bail out of the store and lock himself inside our pickup. He just says, 'I'm scared,'" says Duval. "The damage that's being done by making him register as a sex offender is long term. This will always haunt this kid."

There are likely hundreds of faces like Ricky's mixed in with the dangerous sex offenders on public registries.

**POLICIES DRIVEN BY ANGER AND FEAR**

Patty Wetterling says it's an example of sex offender laws that go too far. Wetterling has been a vocal advocate for laws to protect children since her son Jacob was abducted 18 years ago. He's never been found.

Wetterling says it's easy to just get tough on sex offenders, but she's tired of tough.

"Everybody wants to out-tough the next legislator. 'I'm tough on crime,' 'No, I'm even more tough.' It's all about ego and boastfulness," says Wetterling.

Wetterling says she wants public policy to be effective. She says broad sweeping laws that treat all offenders the same waste resources and lives.

Wetterling recently met a 10-year-old boy going through sex offender treatment. She says the boy was sexually abused, and later was convicted of abusing a young cousin.

"He finishes his sex offender treatment program and then he goes home to another state, and his picture is on the Internet while he goes back to middle school. What are the odds that kid could ever make it?" says Wetterling.

"We have to treat juveniles differently. It just doesn't make sense," adds Wetterling. "We're setting up an environment that's not healthy. It's just anger driven, anger and fear. It's not smart, and it doesn't get us to the promised land."

Conventional wisdom is that increasing public awareness of individual sex offenders will reduce sex crimes.

**RESEARCHER: LAWS ARE COUNTERPRODUCTIVE**

"Overall, we don't have very much evidence to support the idea that knowing where sex offenders live actually protects children, or reduces the number of sex crimes in our communities," says Jill Levenson, author of "The Emperor's New Clothes," an examination of sex offender policy.

Levenson teaches at Lynn University in Florida, and compares sex offender laws with research to see if the laws are making a difference.

**"The damage that's being done by making him register as a sex offender is long term. This will always haunt this kid."**

*- Mary Duval, mother of a registered sex offender*

Levenson says telling the public where the most dangerous sex offenders live might help prevent crime. But she says posting every offender's picture is counterproductive.

"When you're looking at a sex offender registry online, and you see a pedophile with several arrests and many, many victims, right next to a picture of the 19-year-old with the 15-year-old girlfriend. It becomes very difficult for the public to differentiate and know who's truly dangerous, and how to protect themselves from those people," says Levenson.

In many states, community notification has expanded to include restrictions on where sex offenders can live, or requiring all sex offenders to wear electronic monitors, despite evidence those sex offender management tools don't work well when broadly applied.

Jill Levenson says the research is clear -- making outcasts of sex offenders often makes them more dangerous.

"They need to have a place to live, they need to be able to get jobs. They need to be able to support themselves and their families," says Levenson. "And without those things, they're going to be more likely to resume a life of crime. That's not a debate, that's a fact."

Ricky says he knows what it feels like to be an outcast. His picture has been posted in the local grocery store, he can't hang out with his teenage friends, and his family has moved twice because of harassment.

Mary Duval says being publicly identified as a sex offender has changed her son's life. She worries telling his story publicly might bring a backlash. But she wants lawmakers to

know what happened to a teenager who made a mistake.

"I know tons of parents on the Internet with boys similar to mine, and they're scared," says Duval. "I've been advised not to talk to reporters, not to speak out, because it could bring bad things to my family or Ricky. I refuse to be silent. I'm going to fight this and fight this, until someone listens."

Mary Duval is fighting one of the unintended consequences of getting tough on sex offenders.

A sex offender label means many see her son as dangerous, likely to re-offend, and someone who probably can't be rehabilitated. Those are among the common perceptions held by legislators who write sex offender laws.

Experts say applying the same laws to Ricky and a violent predatory rapist makes for bad public policy.

# EXHIBIT 3

**From:** Patty Wetterling [redacted]
**To:** James Gilson <James.Gilson@opd.state.nj.us>
**Date:** 7/11/07 1:11PM
**Subject:** Re: NJ Public Defender: Regarding Adam Walsh Act

Hi Monica,
You can feel free to use my comments from the MPR interview. I haven't followed the changes proposed to the Adam Walsh Act and won't be submitting anything. My biggest concern was including juveniles in the websites and treating them the same as the more dangerous predators. Too often legislators use too broad of a brush and try and paint all sex offenders the same and they are not. The reality is that when these guys are released from prison we WANT them to succeed. That would mean no more victims. I don't believe we have set up a system that encourages or even allows them opportunities that are known to help released inmates succeed. They need a place to live, they need work and they need some type of continued support, ie: family, therapy, groups etc...Just a few thoughts...

I appreciate your work on this.

Patty

James Gilson <James.Gilson@opd.state.nj.us> wrote:
Dear Mrs. Wetterling,
My name is Monica Raj and I am an intern with the Special Hearings Unit of the New Jersey Office of the Public Defender. As a part of my internship I am learning about sexual offenses and the experiences of registrants under Megan's Law after imprisonment. After reading the Adam Walsh Act, I am currently providing comments on the proposed federal changes to the act. I recently read about your interview on Minnesota Public Radio and I found your comments very enlightening. I would like to learn more about your position regarding the Adam Walsh Act. I was wondering if you have a few minutes to discuss with me your position. I would also like to know if it is acceptable to you, in my memorandum, to include the statements you made on the Minnesota Public Radio. Lastly, I was wondering if you plan on submitting comments on the federal changes that the Attorney General has promulgated. If you are submitting comments, it would be so helpful to be able to read them because I would like to make my comments consistent with what you may be submitting, if possible. Feel free to reply to this email and I can call you at a time that is most convenient to you . Thankyou so much for your time and I look forward to hearing from you soon.

Kind Regards,

Monica Raj

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# EXHIBIT 4

[redacted]

July 20, 2006

The Honorable Judge William Meehar
Bergen County Superior Court
10 Main Street
Hackensack, New Jersey 07601

We are writing on behalf of who is waiting for his upcoming Tier Hearing scheduled for July 26, 2006. was charged with endangering the welfare of a minor at age 19, and appeared in court recently after missing several probation appointments. was sentenced to 180 days in the Bergen County Jail.

We feel compelled to intercede for this young man due to the extenuating circumstances underlying his case. It is our intention to advocate for him in place of his deceased mother (she died of a drug overdose when was a baby) and to support his father, , whose life has been filled with nothing but adversity and strife. It would be unrealistic to expect to navigate the legal system effectively all alone. In good conscience, we cannot stand by silently knowing there is pertinent information that may in fact shed light on this case and ultimately serve as a catalyst for a more positive outcome.

was a high school classmate of our son, also named , at the Community High School in Teaneck. This is a "special education" school whose mission is to educate students of average and above IQ, but who also suffer from significant attentional deficits and/or learning disabilities. We have known for almost five years, and in that time he has become our son's closest friend. They share many of the same challenges, especially when it comes to time management, impulsivity, and understanding the severity their action's consequences.

In many ways both are the same, both born with neurological and developmental impairments that impact every aspect of their lives in ways you could not imagine unless you are the parent living with an LD child. However, there is one major difference between these boys. Our has had the benefit of an intact family who can provide the structure that he lacks yet desperately needs on a 24/7 basis. Unfortunately, does not have the same network it takes to help him combat being been born heroin addicted, along with ADHD (Attention Deficit Hyperactivity Disorder) and OCD (Obsessive Compulsive Disorder). The behaviors resulting from these disorders are neither a choice nor intentional. These disabilities are neurobiological impairments as proven by scientists at the NIMH (National Institute of Mental Health) and documented by the New England Journal of Medicine in 1990. They create a multiply handicapping invisible condition that prevents patients from meeting

so called "normal" or "reasonable" expectations, such as being on time, keeping appointments, and staying out of the wrong places with the wrong people. Although it is now 2006, our legal, probation, judicial, and corrections systems lag behind the medical community in recognizing the gravity of these disabilities. Before we can have true justice for all, we need to educate all parts of society simultaneously. Only then will it become clear that people like are not criminals, but victims of birth defects that are no less crippling than any physical handicap. Although a blind person would never be blamed for walking into trouble, is being blamed for the very same thing. He is being punished for being born with genetic disabilities which impair his judgment and ability to plan/manage time. He is guilty of falling into a vicious cycle of being unable to focus well enough to work steadily; without a steady job, there is no medical insurance; without insurance, there is no money for medication; without medication, he can't hold a job. He is penalized by a point system whereby he has accumulated numerous points against him for exhibiting every classic symptom of ADHD and OCD without the proper medication. If tier level is to be determined solely by an excess of points without any consideration for his disabilities, then he will be sentenced for the crime of being born with a hidden handicap.

will be listed on an Internet Public Registry of sex offenders which will falsely portray him as a criminal predator instead of a learning disabled kid who was dealt a bad hand in life.

Any Tier Classification other than number 1 will only serve to exacerbate this young man's problems. He will be sentenced to more mandatory meetings, obstacles, and restrictions that will only create increasingly higher expectations for him to meet.

will be doomed to live with the system watching over his shoulder just waiting for him to step on a crack in the sidewalk, thus constituting future violations, which will land him back in jail. A Tier rating of 2 or higher will undoubtedly condemn him to more frustration, failure, and wasted potential.

The devastating reality is that these hidden disabilities are not outgrown or cured by the legal age of 18, 21, or any other age. They persist through life making the school-to-work-transition into the adult world chaotic and paralyzing. has literally lost countless jobs and friendships due to the OCD symptoms he struggles with every day. His symptoms (characterized by repeated and excessive washing/showering) have delayed him for 2, 3, 4 or more hours at a time in a simple attempt to leave the house, whether it be for school, work, or even parties. No employer or probation officer, and sadly very few friends, can understand how unconsciously becomes frozen in time while the clock keeps on ticking. Without the right medication or support difficulties in planning, decision making, impulsivity, low self esteem, and lack of success have lead him into depression and subsequent irresponsible behavior. Statistically, boys afflicted with ADHD/LD are already at a higher risk for substance abuse as a form of self medication than their peers. According to the LDA (Learning Disabilities Association of America), more than 60% are unemployed after leaving the structure of a special education high school and over 30% are arrested before their 23rd birthday. Is it any surprise that has experienced a myriad of typical ADHD/OCD difficulties and now stands here before you?

He is an unfortunate example of a kid who fell through the cracks of our social system. We intentionally use the word "kid" because in spite of his chronological age which legally defines him as an adult, his psychological limitations cause his emotional maturity to be at the level of a youngster.

Despite being born with the odds stacked against him, he has remained a remarkably kind, gentle, sensitive, compassionate (albeit confused) kid. The night triggering this whole mess was a simple New Year's house party among longtime family friends. The grownups and teens were only a room apart. Just as maturity is that of a boy, not a man, the young Spanish girlfriend was on the level of a blossoming woman, not a little girl. Having an adolescent crush on her dream boyfriend, she made advances toward Holiday champagne and improper medication dosages don't mix – heavy petting ensued; all the while her mother was within earshot. These teens didn't do anything different than what is written in Shakespeare's classic "Romeo and Juliet – she was not yet 14 years of age ....." this is considered to be a classic English Literature requirement studied in colleges all over the world. One cannot escape the teenage promiscuity so prevalent in our middle and high school settings today. If every underage teen that experimented or engaged in sexual contact were prosecuted, convicted, and sentenced by the courts, then 75-80% would be labeled as sex offenders. After the young lady in question was discovered by her grandmother, her embarrassment and fear of repercussions caused her story to disintegrate into a narrative account pointing the finger of blame toward . Now, instead of going off to a college dorm as most of his peers have gone, (where ironically casual sex and smoking pot has become the norm) has been branded as a sex offender and sent to jail. What a terrible lifelong price to pay for a teenage indiscretion. Where is the justice in his case? He is no more a sexual predator in our society than a lost puppy. The idea that Megan's Law does not discriminate between an infatuated teenager and the 33 year old monster, [redacted] who murdered 7 year old Megan Kanka is absolutely ludicrous.

With regard to CSL (Community Supervision for Life), it was never the intention of Megan's Law to brand an absent minded love struck teenager as a "threatening predator" subsequently forcing him to live out the rest of his life under a black cloud of suspicion. The original mission of Megan's Law was to create a tracking system for evil pedophiles that prey upon small children. I can say this because I spoke to Megan's mother, , personally on July 19, 2006. She explained to me that "her intention was to create legislation preventing any other family from suffering their family's loss." She specifically said, "she meant to label men in their 30's from attacking little girls in kindergarten or first grade, not teenage couples" leads a crusade to protect young children from the clutches of grown men who are child molesters. Presently, the own son is now 21 years old; feels that prosecuting misguided teenage couples for a 4 or 5 year age difference is a "misinterpretation of Megan's Law" and in no way should "teenage boys like ever be compared to sexual sociopaths." Since she has heard of many cases with similar circumstances to those of is currently working on new legislation to discriminate between true predators and naive teenagers.

is truly a remarkable woman who listened with great compassion to story. She assured me that she would continue to work to change the law, with boys like in mind, so that they would never even have to stand before a Tier Hearing at all, much less be labeled on the Internet. She even went so far to say that she would pray for and any others may suffer from any misinterpretation of a law passed in her daughter's memory. If Megan's own mother can see that imposing the stigma of a sex offender upon for life is not a solution, how can you judge him any differently?

The tragic irony in all this is that was so embarrassed by the charges previously filed against him, that he kept his past a secret from us until it was too late. He was afraid that if we knew about the accusations against him, we would no longer permit our son to maintain his friendship. This was indeed biggest mistake. On the contrary, if we had only known of his plight, all this turmoil could have been avoided. We would have insured that he follow through with every requirement of his probation. We would have been willing (and still would be) to bring him to every appointment on time without fail. It is obvious that he gravitated to our home in search of the order and stability he lacked from within. Although he is totally disorganized on his own, whenever he is in our presence we can unequivocally state that he is a model of good behavior and the epitome of good manners. What desperately needs is the structure and support that can be provided by loving family, not a jail. We have come to think of as one of our own sons and feel it would be a miscarriage of justice if he is forced to pay the price for the crime of being in the wrong place at the wrong time – a victim of circumstance.

No child asks to be born with learning disabilities. We are all responsible for protecting and upholding the rights of these young people in their efforts to become productive citizens in our society, not casualties of an uninformed system. To this end, we have attached a packet of material on learning disabilities. As explained in these documents, learning disabilities constitute a lifelong hidden handicapping condition that cannot be ignored when examining or judging behavior. It is imperative that governing authorities gain expertise in this field to accurately differentiate between behaviors resulting from learning disabilities versus intentional misconduct. This will determine whether or not the constitutional rights of any learning disabled person in our court system are properly served. future chance for justice depends upon this premise.

We hope you find this information valuable when considering case. Feel free to contact us at anytime – we are willing to help in any way we can.

Sincerely,

[redacted]

# OFFICE OF THE JUVENILE DEFENDER

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July 26, 2007

**VIA ELECTRONIC AND FIRST-CLASS MAIL**

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:

My name is Robert Sheil and I am the supervising attorney in the Vermont Office of the Juvenile Defender. Our office would like to take this opportunity to comment on the Proposed Guidelines that the U.S. Department of Justice is considering with regard to how best interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA). Our office, for the policy reasons set forth below, is opposed in general to the application of SORNA to youth who are under the jurisdiction of the juvenile court system. We are also particularly concerned with certain aspects of the Proposed Guidelines as noted below.

The Vermont Office of the Juvenile Defender is an office within the Office of the Defender General. The Office of the Defender General is the entity in Vermont that provides public defender representation. The Office of the Juvenile Defender provides ongoing post-dispositional legal representation to children and youth who were the subject of petitions filed in juvenile court alleging that they were delinquent, abused, neglected, abandoned, or unmanageable and who were placed in the custody of the Commissioner of the Department for Families and Children as a result of those proceedings. Our office also provides representation to children who are placed in Vermont's sole detention center, provides training to Guardians ad Litem, and offers testimony before the Legislature on proposed legislation relating to juvenile justice and child welfare issues. I, personally, sit on a number of standing committees that address juvenile justice issues.

**Research , Including that Sponsored by the U. S. Department of Justice, Indicates that Inclusion of Youth in the Application of the Proposed Guidelines is Contrary to the Basic Tenets of the American Juvenile Justice System**

The application of SORNA to youth is contraindicated by a large body of research, including research sponsored by the U.S. Department of Justice.

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[1] In addition, the recidivism rate among juvenile sex offenders is substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact over 90% of youth arrested for a sex offense are never rearrested for another sex offense, even though the youth may be arrested for other non-sex offenses typically related to juvenile delinquency.[2]

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

For these reasons it is not good public policy to include in public sex offender registries for periods of 25 years to life youth adjudicated in juvenile court.

**The Effective Treatment and Rehabilitation of Youth will be Compromised by the Application of the Proposed Guidelines to Them**

The application of SORNA to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It is imperative to keep in mind that youth implicated by the Act have not been convicted of any criminal offense. States' legislatures and prosecuting authorities have affirmatively acted to distinguish juveniles committing delinquent acts from adults committing criminal acts. These children have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior without being subjected to both the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification, adjudication and proper treatment of youth who exhibit inappropriate sexual behavior. Parents, rather than recognizing the value to their child of holding him or her accountable, 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.

In addition, public registration and community notification requirements can complicate the treatment and rehabilitation of these youth. Youth required to register have been known to be harassed at school, forcing them to drop out.[3] The stigma that arises from community

notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess[4] destroying the social networks necessary for rehabilitation.[5]

**The Guidelines, if Applied to Youth, Will Place Youth in Harm's Way and Pose a Much Greater Risk of Exploitation**

If SORNA is applied to youth it will expose those youth to adult predators who are untreated or have not been rehabilitated by treatment. This is in direct conflict with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children."

Pedophiles and other adult sex offenders, who exploit and abuse youth will be much more likely than the general public, to access the registry via the Internet and identify adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

**At a Bare Minimum the Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles**

If the Attorney General persists in his belief that SORNA be applied to youth adjudicated solely within the juvenile court system, the Department should allow judges to exercise discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[6]

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has taken or retained jurisdiction argues against mandated and indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender.

Those states that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

**Public Registration and Community Notification Requirements Should not be Required for Youth Adjudicated within the Juvenile Court System**

In the event that the Attorney General continues to insist that youth adjudicated within the juvenile court system be required to register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry. Access to such a registry by the relevant authorities but not by the general public would be sufficient to protect the public safety and victims. This type of registry would allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA if applied to delinquent youth will disrupt families and communities across the nation because SORNA stigmatizes not only the youth, but the youth's entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth will be required to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth will be required to provide will be the registration information for any vehicle owned by one or both of the youth's parents.

For like reasons the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

It is essential that the federal government must be vigilant in its efforts not to promulgate public policy that unnecessarily creates or exacerbates tensions within the family home. This is critical in supporting families and their importance in creating strong communities. It is counterproductive to formulate public policy that foments tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

When the Vermont Legislature discussed and debated proposed legislation in 1996 that eventually established a sex offender registry in Vermont there was a decision made by the legislature to exclude from required registration those youth who were adjudicated delinquent of a sexual offense in juvenile court as opposed to convicted in adult (criminal) court. However, any individual, including all children, against whom an allegation of sexual abuse has been

substantiated after investigation have their names placed on a child abuse registry even if a delinquency is not filed in juvenile court or a criminal charge is not filed in adult court.

This registry is accessible to prosecutors, the attorney general, certain department commissioners and to employers if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment, or supervision of children or vulnerable adults. The employer may submit a request concerning a current employee, volunteer, or contractor or an individual to whom the employer has given a conditional offer of a contract, volunteer position, or employment. The request shall be accompanied by a release signed by the current or prospective employee, volunteer, or contractor.

In addition, there are another two separate statutory provisions in Vermont law that specifically provide notice regarding delinquent youth who have been adjudicated for any delinquent act that involved any sort of sexual abuse, and these, provide protection for the public. Under 33 V.S.A. §5529g(4) a victim of a sexual offense may request to be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility.

There is also an exception to the confidentiality of juvenile court records, found in 33 V.S.A.§ 5536(b) and (c) which mandates the family (juvenile) court to provide written notice within seven days of a delinquency adjudication involving sexual abuse as well as certain other listed crimes, to the superintendent of schools for the public school in which the child is enrolled or, in the event the child is enrolled in an independent school, the school's headmaster. This notice is required to contain a description of the delinquent act found by the court. 33 V.S.A. § 5536a(d).

Both of these statutory schemes provide the type of public safety protections that are the focus of SORNA and comply with the essence of the act.

States that create and maintain child abuse registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

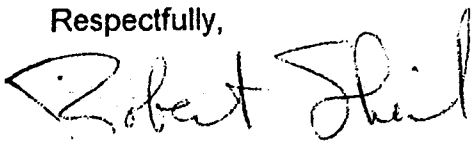
**Conclusion**

The Vermont Office of the Juvenile Defender has always supported and will continue to support efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for all communities and their citizens. However, for all of the reasons stated above, we believe that the Proposed Guidelines that have, at present, been promulgated by the Attorney General fail to take into account the inherent differences between adolescents and adults and fail to recognize the growing body of knowledge regarding recent discoveries in the area of adolescent brain development. The Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways discussed above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments

will be given serious and thoughtful consideration. May we thank you in advance for your kind consideration and attention to this matter.

Respectfully,



Robert Sheil, Esq.

Vermont Juvenile Defender

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[1] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report;* available at http://www.ojjdp.ncjrs.org/.

[2] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[3] 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.

[4] 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.

5 Ibid

[6] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

P.O.Box 9494, Laguna Beach, CA 92652
phone: 800.573.8876 • fax: 949.499.8060
info@returninghomefoundation.org

July 27, 2007

Ms. Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW
Washington, DC 20531.

Subject: OAG Docket No. 121

Dear Ms. Rogers:

We wish to make one comment upon the publication of Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act .

As stated in the document entitled *The SMART Office: Open for Business,* "the Office is the primary contact point for all professionals in need of assistance."

Our comment: We believe a primary information point must be provided for offenders as well.

We are recommending that an easy to read/understand "Sex Offenders' Guide to Obeying the AWA Law" be created AND provided to each and every sex offender to whom it applies.

While the acronym of your office stands for SEX OFFENDER SENTENCING, MONITORING, APPREHENSION, REGISTRATION AND TRACKING, the mission statement is "to assure that convicted sex offenders are prohibited from preying on citizens through a system of appropriate restrictions, regulations and internment".

We believe the mission can only be accomplished if your office can encourage sex offenders to register so you know where they are.

Unfortunately the law is already in effect. Enforcement is complex at this time and information given to a sex offender requesting information is disparate or incorrect. Many local law officials are not even aware of its registration requirements. There are also discrepancies which cause confusion: In California, for instance registration for Tier II is once a year, but the Federal Law requires two registrations per year.

Prosecution of individuals who have not been properly informed will eventually open up the program to challenges of breach of due process or entrapment. Many RSO's are homeless. Many on parole or probation are forbidden computer access, so an information Website would be useless.

Section 126 of SORNA offers SOMA Grants, but only as an aid for registration and apprehension, not education.

We would like to encourage a Grant therefore for dissemination of information to the targeted individuals for whom this law was written- namely the sex offender.

We would like to offer development of the Sex Offenders Guide Booklet. We have the expertise. I would be happy to discuss our ideas further and can be contacted at 800-573-8876.

Your truly,

Carole Urie

Carole Urie, Founder

## Rogers, Laura

**From:** Janet Neeley [Janet.Neeley@doj.ca.gov]
**Sent:** Thursday, July 26, 2007 7:46 PM
**To:** GetSMART
**Cc:** George Scarborough; john.isaacson@oes.ca.gov
**Subject:** Public Comments on Proposed Guidelines

**Attachments:** HTML

Adam Walsh public comments fin...

Attached are the official public comments from California on the proposed Guidelines for SORNA. Please contact California Deputy Attorney General Janet Neeley if there are any questions or issues concerning this submission at 916-324-5257 or 916-761-6070 (cell).
Janet Neeley

# California's Comments On the Proposed National Guidelines to the Sex Offender Registration and Notification Act

## Preliminary Comments

California is in the process of a four-year renovation of its sex offender registration database (the Violent Crime Information Network, known as "VCIN"), and is in the process of contracting with a vendor to build a modern computer database, following a year and a half process of strategic planning for the new database in order to obtain bids. If the California Legislature adopts SORNA, software modifications to the state's new sex offender registration database will be necessary to permit many of the required actions to occur. The renovation of VCIN is currently scheduled for completion in July 2010. It will be impossible for California to implement many of the proposed changes to California registration and notification laws by July 2009 since software modifications required by adoption of SORNA cannot be completed in California prior to the roll-out of the new state DOJ sex offender registration database in July 2010.

## Sealing a Juvenile Criminal Record

Sealing the juvenile record under current California law, which a court can order any time after the juvenile reaches age 18, eliminates the duty to register as a sex offender. The issue of the impact of sealing a juvenile record is not directly addressed by SORNA. California believes it is better policy for the states to allow trial courts to determine, in juvenile cases, whether a record should be sealed, which would end the duty to register for that juvenile. Such a determination is based upon the individual risk assessed for that particular juvenile, and better comports with due process than a blanket rule, such as that stated in the Guidelines, which does not consider individual risk. The proposed National Guidelines to SORNA (hereinafter "Guidelines") state that sealing a criminal record does not change its status as a "conviction" for purposes of SORNA. (See Guidelines at p. 16.) Does this preclude ending the duty of a juvenile to register upon the sealing of a juvenile criminal record? Would it show substantial compliance with SORNA if a state law was enacted which limited the discretion of judges to grant sealing of a juvenile record to cases in which the juvenile offender was shown to meet certain criteria, including demonstrating that his assessed individual risk of recidivism was low and his potential for violent or aggravated criminal behavior was low?

Further, it is our understanding that if a juvenile record was sealed after release from supervision, prior to the enactment of SORNA by the state, that such a juvenile would not have to register unless he or she re-entered the justice system for another offense. If the person re-enters the justice system, and the sealed record is still available, it is our understanding that the person will be required to register if the juvenile sex offense is subject to SORNA. Is this correct?

## Offenses against Children Younger than 12

The Guidelines state that juveniles who commit a covered offense against a child younger than age 12 must register. (Guidelines at p. 17.) However, specific criminal offenses in California against children require that the child victim was younger than age 14 or, in the case of misdemeanor sex offenses, younger than18. There is no way to determine from state records, retroactively, whether a past adjudication was an offense committed against a victim younger than 12. Thus, California will be able

to implement SORNA only prospectively as to this requirement. Implementation of this requirement will require changing state law to require all criminal dispositions sent to the state Department of Justice (DOJ) to include the age of the child victim. This entails mandating changes to court reporting forms on convictions, which are the subject of public comment prior to change. The same changes to state law and reporting forms will be necessary to determine whether a person is a Tier III offender, because currently state criminal history or sex offender records will not record whether a victim was under 13. Consequently, the state will never be able to determine from state records, retroactively, whether a victim was under age 13 to classify an offender as Tier III.

Currently, because juvenile adjudications for registrable sex offenses are not publicly disclosed in California, California does not submit them to NSOR. Does SORNA require their submission to NSOR?

A juvenile whose offense was against a child under age 12 is subject to SORNA. (Guidelines at p. 19.) Since California's child molestation statutes involve either children under age 14 (Pen. Code, §288) or children under age 18 (Pen. Code, § 647.6), it is not possible to determine under current California law the age of the victim from court disposition documents provided to DOJ. California law would have to be changed to require the victim's age to be pled, proven, and specified on court disposition documents and the abstract of judgment. Even though some sex offender registrants currently registering for a juvenile adjudication in California may not be required to register under SORNA, the state would have no viable way to determine retroactively whether the offense involved conduct other than force/threat of serious violence when the section of conviction included other contingencies; and no viable way to determine the age of the victim of the offense.

"Sexual act" is defined in SORNA as including oral-genital or oral-anal contact; genital or anal penetration; and direct genital touching of a child under 16. However, a juvenile adjudicated for having committed a lewd and lascivious act against a child under 14 (Pen. Code, §288), or for annoying/molesting a child (Pen. Code, § 647.6), may not have committed a "sexual act" within the SORNA definition. Again, state records will not disclose the nature of the act committed. Often, in plea situations, no court records describe in detail the nature of the sexual act committed. Further, until 1995, California courts were not required to retain records on felony sex offenders, and it was not until 2006 that the courts were required to retain records on misdemeanor sex offenders. (Cal.Govt. Code, § 68152.) Thus, if California law was amended to require juvenile registration pursuant to the SORNA definition of sexual contact, it would be impossible to determine, retroactively, which prior juvenile adjudications were subject to the registration law. Prospectively, in order to implement SORNA's requirement for juveniles, the charging document would have to specify the nature of the conduct, and a finding would have to be made on the record prior to judgment/plea; the finding of the nature of the actual sexual conduct would then have to be included on the court disposition form sent to DOJ. Alternatively, the nature of sexual contact for purposes of juvenile registration would have to be expanded in California to include any conduct currently prohibited by Penal Code sections 288 and 647.6, and analogous offenses.

Juveniles required to register pursuant to SORNA must be posted on the public web site, regardless of tier level–is this correct?

**Foreign Convictions**

The Guidelines require registration for those countries deemed to have a criminal justice system which affords due process of law. (Guidelines at p. 18.) The web site referenced as listing these countries is unclear regarding which jurisdictions qualify. A more recent and clear list of such countries should be

included in the Guidelines.

**Protected Witnesses**

The Guidelines state that disclosure of information about protected witnesses will be made on a case-by-case basis. (Guidelines at p. 22.) Such cases require extreme flexibility in the software which flags violations and displays public data about offenders. California will not be able to incorporate the necessary changes to its sex offender registration database to implement flexible treatment of protected witnesses until its database renovation is completed. The completion date is July 2010.

**Tier II Offenses**

The Guidelines provide that any offense against a minor, even when age is not an element of the offense, requires classifying the offender as Tier II. (Guidelines at p. 25.) Again, since victim age is not reported to DOJ on crimes in which age is not an element (such as sexual battery), California will not be able to determine, retroactively, which persons fall into Tier II for offenses committed against minors when age was not an element of the offense. Such persons' tier level will be ascertainable only after changes to state law occur, requiring pleading, proving and reporting victim's age. (Please note that in 2006 the California Supreme Court ruled that a pre-sentencing report by a probation officer is not a part of the official court record, so we are unable to use such a report to ascertain a victim's age, even if such a report is still available.)

**Tier III Offenses**

The Guidelines provide that a sexual act committed by force or threat requires Tier III classification. (Guidelines at p. 26.) However, many forcible sex offenses in California include, under one offense category, offenses committed not only by force or threat, but alternately by duress, menace, fear of immediate bodily injury, etc. (See, e.g., Cal. Pen. Code, § 261(a)(2)–the definition of forcible rape.) The state will not be able to determine, retroactively, which offenders fall into Tier III because a conviction for such an offense may have been based on duress, etc., rather than force or threat. Unless the Guidelines more broadly define this category for purposes of Tier III designation, California will not be able to retroactively determine which offenders committed these offenses by force or threat in order to classify them as Tier III..

Similarly, California will not be able to determine, retroactively, which offenders fall into Tier III based on commission of an offense against a child under the age of 12 which was punishable for more than one year. Since victim age has never been pled or proven (except when the offense requires an offense either against a child under age 14, or under age 18), there are no state records which report the age of the victims on sex offenses. In order to prospectively classify offenders as Tier III based on victim's age, state law will have to be amended to require pleading, proving, and reporting the victim's age to DOJ on every sex offense. This same problem exists in proving offenses against a child below the age of 13 that are comparable to or more severe than abusive sexual contact as defined in 18 U.S.C. section 2244. (See Guidelines at p. 26.) Currently, California's main felony child molestation statute requires proving only that the victim was under age 14.

**Tier Changes**

When new sex offenses are committed, there may be an automatic change in tier level, requiring a means of automatically flagging the person's record when it results in a new tier designation. However, appropriate software will be necessary to enable automatic tier changes to occur within the sex offender

registration database after a new conviction, which will require an interface between the registration database and the state criminal history database. If the state adopts SORNA, software modifications to the new sex offender database, due for delivery in July 2010, will be necessary to permit such tier changes to occur automatically when a new qualifying offense is reported, and to alert the state DOJ to send a letter to the registrant detailing the new registration requirements for the new tier level.

## Required Registration Information

### A. Digital Access to Related Databases

California cannot, by July 2009, meet the requirement that criminal history and DNA information be digitally accessible through either the sex offender registration database or links to other online databases. (Guidelines at p. 28.) As noted above, California's new software for its sex offender registration database will not be completed until 2010. Thus, California will not have the capability to digitally link its sex offender registration database to California's criminal history database (Automated Criminal History System), which contains DNA information, until July 2010 at the earliest.

### B. Identifiers and Addresses; Volunteer Information

California law and sex offender registration software will have to be changed to include the required information on Internet identifiers and addresses. (Guidelines at p. 28.) This cannot be accomplished until the renovation of VCIN in July 2010. The same is true for information regarding places where registrants work as volunteers. Additionally, it appears that the location of agencies where registrants work as volunteers must be publicly disclosed on the Internet–is this correct?

### C. Digital Link to Registration Offense

Although the Megan's Law Internet web site in California can provide a link to current criminal offense statutes for California, which are available on the California Legislature's web site, it is unable to provide a link either to superseded statutes, which to our knowledge are not available on a publicly accessible database, or to out-of-state codes, especially superseded ones. (See Guidelines at p. 34.) To our knowledge, there is no public link for superseded state codes, and even paid databases such as Lexis-Nexis provide access to superseded statutes only going back to the early 1990's. California does not have a free database containing superseded state statutes, nor are we aware of any other state which maintains such a database. As a result, in order to comply with this requirement, California would have to create a separate database of superseded codes by keying in all past criminal offenses going back an indeterminate length of years. This is not a feasible project. Even if such an effort was worth the time and money, California could not create such a database for other states' superseded codes. If the requirement was prospective only, it might be possible to create a database of the sex offense codes in California starting in the year of implementation, by scanning those codes into a separate database, but again, our software for the new registration database could not link to such a superseded California codes database until at least July 2010. It would make more sense for the U.S. Department of Justice to compile a database of all the states criminal codes, both current and superseded, which all could access. The current system used by California to obtain superseded out-of-state code sections, which are necessary to evaluate out-of-state sex offenses to determine if they contain all the elements of a registrable sex offense in California, is to have the California State Library obtain and fax the pertinent statute to state DOJ. If not obtainable from the library, prosecutors offices in other states have sometimes found and faxed us superseded out-of-state statutes. Rather than requiring each state to set

up a comprehensive database of superseded state codes, federal DOJ should establish such a database that is accessible to the states.

**D. Digitized Copies of Passport and Immigration Documents, and Driver's Licenses**

The Guidelines require digitized copies of passports, immigration documents and driver's licenses to be maintained in the sex offender registration database. (Guidelines at p. 31.) The availability of equipment which can digitize such documents at local law enforcement agencies, which register sex offenders in California, will be sporadic at best. It will be expensive and difficult for each registering law enforcement agency to acquire the necessary equipment for this task. Further, the incorporation of such digitized documents in our sex offender registration database may require further software development, which at the earliest could be completed by July 2010.

**E. Travel Routes and General Area of Employment**

The Guidelines require that if a registrant travels for employment that the registration information must include travel routes and general location information. (Guidelines at p. 31.) This information will be vague and California questions the usefulness of its inclusion in the database, either to law enforcement or the public.

**F. Status of Parole, Probation or Supervised Release and Outstanding Warrants**

The Guidelines require links between the sex offender registration database and supervised release and warrant databases. (Guidelines at p. 34.) While California can link the sex offender registry beginning in July 2010 to existing parole and warrant databases, participation by county probation departments in the database for probationers (the Supervised Release File) is voluntary. Consequently, it does not contain complete information on sex offenders on probation. Would a change to California law be required to mandate full participation in this database by county probation departments in order to substantially comply with SORNA?

**G. Palm Prints**

The Guidelines require digitized copies of palm prints to be included in the central registry or that there be links to the palm prints if contained in another database. In California, registering law enforcement agencies with Livescan capability can be required to send digitized palm prints to the state DOJ, and the sex offender registration database can be linked to these images. However, many local registering agencies in California do not yet have Livescan machines or the capability to obtain digitized palm prints. Palm prints can be collected from registrants sent to California state prisons, which have Livescan capability. However, probation departments may not have access to these machines in a number of California counties. The cost of mandating that each local registering agency, county jail and county probation office acquire a Livescan terminal in order to capture palm prints would be prohibitive. Such agencies send hard copy fingerprint cards to DOJ when a Livescan terminal is not available to send digitized fingerprints. Would substantial compliance require mandating the submission of digitized palm prints in every case?

**H. Driver's Licenses**

In order to link DMV software displaying driver's licenses to the state sex offender registry, software modifications will be required which again cannot be implemented at least until California's new database is scheduled for release in July 2010.

## I. Professional Licenses

The Guidelines require registrants to provide information about professional and business licenses. (Guidelines at p. 32.) This information is not required under current California law. It will be necessary to amend the software for the registration database (VCIN) to incorporate such information, which cannot be accomplished until July 2010.

## Disclosure and Sharing of Information

### A. Radius Required for Public Internet Searches

The "radius set by the user" requirement is ambiguous. (Guidelines at p. 36.) Does it mean that the user must be able to select any desired radius to search, or that the public web site simply needs to have a set of values the user can select? In addition, does this apply to every search category? California currently defaults to a one mile search radius, but allows the user to select 1/10 mile, 3/4 mile and 2 miles for address, park and school searches. Is this sufficient?

### B. Driver's License Numbers Required to Be Displayed on Internet?

The Guidelines do not specify that the image of the registrant's driver's license is exempt from disclosure. (Guidelines at p. 37.) There appears to be no reason grounded in public safety concerns for disclosing this information, and its posting presents a serious identity theft issue for registrants. The final Guidelines should specify that these are exempt from public disclosure.

### C. State Display of Registration Information Within Three Working Days

The requirement that the states display new registration information within three (3) working days (Guidelines at p. 41) is not feasible. This gives local registering agencies only two days to input such information to state DOJ. A more realistic deadline would be to give registering agencies 3-4 days to input the registration data, and the state could then have it posted by the fifth working day after registration. The Legislature would have to mandate that local law enforcement agencies provide registration or updated information to California DOJ within two (2) working days, in order for DOJ to be able to display it to the public within 3 working days. (See proposed Guidelines at p. 43.) Currently, there is no statutory deadline for entering registration information into VCIN.

Additionally, this requirement poses a problem regarding public display of information about out-of-state/foreign sex offenders. Although such an offenders can be required to register within the required time period upon entering California, their information is not posted on the public web site until the state DOJ's Assessment Unit has determined, after legal review in most cases, that the person is in fact required to register pursuant to California law. This assessment entails obtaining registration, court, and other documents from the foreign jurisdiction, and can be a time-consuming process. However, until the assessment is completed, and this time varies from case to case, there is no assurance that the out-of-state registrant in fact is required to register under California law. Thus, public disclosure would be premature. California law requires that either the person has a current duty to register in the state of conviction, or that all the elements of the foreign offense are present in a mandatory California registrable offense. In addition, a full assessment is required even for those who have a current duty to register in another state because there are five exceptions to that requirement which necessitate a full comparison of the elements of the out-of-state criminal offense and the comparable California offense. California thus cannot post such offenders on the public web site until this assessment process is completed.

## D. Information Mandated for Display or Exclusion from the Public Web Site

The proposed Guidelines require the state to display all required registration information on the public web site except for the following: victim identity; Social Security number; arrests not resulting in conviction; and travel and immigration document number. (Guidelines at p. 37.) The state may exclude the following information from the public web site, in its discretion: information about Tier I offenders whose sex offenses were not against minors; names of employers of registrants; and names of educational institutions where the sex offender is a student. SORNA and the proposed Guidelines additionally mandate that certain information must be displayed on the public web site. California already displays some of the required information. The following information which is not currently displayed on California's public Megan's Law Internet web site, but which the proposed Guidelines require the states to display, is as follows: the address of any place where the sex offender is or will be an employee, and if no definite employment address, information about where the sex offender works; the address of any place where the sex offender is or will be a student; the license plate number and description of any vehicle owned or operated by the registrant; and e-mail addresses. Current registry software cannot accommodate additional data fields. Consequently, even if state law was amended sooner to require this additional information to be collected, it could not be displayed on the public web site until the modification of the sex offender registry software, scheduled for implementation in July 2010.

Similarly, California does not currently include on its public web site the following information which would be required to be displayed if SORNA is adopted: information about any place where a registrant stays, on a temporary basis, for seven or more days, including identifying the place and period of time the sex offender is staying there; information about travel routes when a sex offender's job involves habitual travel; professional or occupational license information; the address of any school (including secondary schools) attended; descriptive information on watercraft and aircraft owned, including where the boat or airplane is parked, docked, or otherwise kept; text of the registration offense, or a computer link thereto; and the address of the registrant's employer, including the address of an employer which is an institution of higher education. Again, these data fields cannot be included in current state sex offender registry software, nor displayed on the public web site, until full renovation of VCIN is completed in 2010.

Similarly, California does not currently display sex offenders convicted of incest (Cal. Pen. Code, § 285) because display may inadvertently disclose the victim. California also currently permits certain incest offenders to be excluded from the public web site upon application to state DOJ. It appears that all incest offenders whose victim was a minor must now be displayed on the public Internet web site–is this correct?

## E. Community Notification and Targeted Disclosures

The proposed Guidelines require that within three working days after an initial registration or any update of registration, information must be provided to specified entities and individuals: (1) to the FBI if required for inclusion in the National Sex Offender Registry; (2) to the U.S. Marshals Service, if required by that agency; (3) other law enforcement and supervision agencies; (4) national Child Protection Act agencies [child care providers background checks]; (5) schools, public housing agencies, social service entities which protect minors, volunteer organizations in which contact with minors might occur; any organization or individual requesting such notification. This requirement is satisfied if the state requires that the updated registration information is included on sex offender web sites and posted within 3 working days, and if the state's web site includes a function under which members of the public and organizations can request notification when registrants commence residence, employment or school attendance within zip code or geographic radii specified by the requester, where the requester provides

an e-mail address to receive such information, and an automatic update is sent to the requester when new registration information is entered. (Proposed Guidelines at p. 43.)

The above automated notification system will have to be incorporated in California's VCIN renovation project. It cannot be implemented prior to July 2010. It will also require a change to state law to require local law enforcement to input registration information within two working days. As noted above, this is an unrealistically short timeline. Three days for local input and two for posting online would be more feasible.

Additionally, the Guidelines require submission to NSOR, and notification to the U.S. Marshals Service, as well as unspecified other federal agencies, every time a registration entry or update is made by a local registering agency. In California, this seems to mean that hundreds of thousands of registration transactions each year must be individually reported. Since the registration information is entered into the state's central sex offender registry, VCIN, and is also available to law enforcement via California's intranet Megan's Law web site for law enforcement, California asks for clarification regarding whether this information must also be electronically transmitted to the U.S. Marshals Service. It will be automatically submitted to NSOR, but California believes that the three day deadline, as discussed herein, is too short, and that a 4-5 day window would be more feasible, to allow local agencies 3 days to input the data and 2 more days for the state to post and transmit such information.

**F. National Child Protection Act Agencies**

The Guidelines require the state to conduct a criminal history background check on child care/elder care providers. California already provides such checks; however, the Guidelines state that jurisdictions can implement this by making criminal history information available within three business days. (Guidelines at p. 43.) Does this mean background checks by the state Department of Justice would also have to be accomplished within three days? If so, the timeline is unworkable. California is a closed record state and is unlikely that the Legislature will change the system we now have, in which background checks of criminal history information are conducted by the state, to allow others to access criminal history information directly. Thus, more time must be allowed for the state to complete a criminal history background check.

**Where Registration is Required**

**A. Registration in County of Conviction**

The Guidelines state that the jurisdiction of conviction is in a better position to register a sex offender within three working days of release and therefore even if a sex offender is paroled to a different jurisdiction, he must first travel to the jurisdiction of conviction to register within three working days. (Guidelines at p. 45.) California understands this requirement to apply only when the registrant is convicted in another state, and thereafter returns to the home state. Is this correct?

California questions the usefulness of this requirement since the offender will not yet have obtained an actual residence address where he expects to reside. In California, if a person is convicted here of a sex offense, the state registry will already have all the information needed about the registrant in the registry from his pre-registration and his notification forms prior to release on parole or onto probation. The only pertinent missing information is his actual address. He has to have proof of residence at a certain address in order to register in California. If he is registering in California only because he was convicted and released from custody here, he will not have an address which he can register. Is it intended that California require he provide an address in another state where he expects to reside instead?

**B. Transient Registrants**

The Guidelines require transients to register in the jurisdiction(s) where they "habitually reside." (Guidelines at p. 46.) Presumably, this also means that when they change the area where they habitually reside, they have to register that change in registration information. California intermediate appellate courts held that a prior registration law (pre-1995) requiring transients to register where they were located, and to re-register upon change of location, was unconstitutionally vague. Thus, California law was amended and now requires simply that transients register every 30 days, in whatever jurisdiction they are located. California cannot go back to the system now proposed by the Guidelines because it has already been ruled unconstitutional, since a transient's place where he habitually resides is almost identical to the prior requirement that a transient register where he was located. California requests clarification that its current system of transient registration every 30 days will be deemed in substantial compliance with the Guidelines.

California also requests clarification of the posting requirements on transient information. Since transients do not register at a particular location, they are required to list places they frequent on the registration form but this information is not publicly displayed. Would its display be mandated under the Guidelines?

**C. Registration in Employment Jurisdiction**

The Guidelines state that registrants must register in the jurisdiction of employment. California understands this to mean that if the registrant resides in California but is employed in another state, he must register in both states. However, if the registrant both resides and works in California, the state can permit him to register just in the jurisdiction where he resides, but he will be required to provide information about his employment to that registering jurisdiction. Is this correct? California cannot display on its public web site the additional data field of employment address at this time, which will have to wait until implementation of the new database in 2010.

**D. Registration in Jurisdiction of School Attendance**

If adopted, the new law would also require registration in the jurisdiction where the person attends school. California law already requires this for institutions of higher education, but the Guidelines state that it also applies to secondary schools. (Guidelines at p. 47.) This means that registering agencies in every jurisdiction with a secondary school will have additional registration responsibilities, or that the agency with jurisdiction over the residence must also take information about the secondary school attended (institutions of higher education register persons required to register on those campuses if a police force exists for the campus). The new requirement means that state DOJ's registration database will have to have an additional field for secondary school attendance; again, this cannot be accomplished until VCIN renovation in 2010 to add the data field to the registry, and also to post the school's address on the public Internet web site.

**Initial Registration**

**A. Forwarding Initial Registration Information to Other Jurisdictions**

The Guidelines require that the initial registering jurisdiction forward the information to all other jurisdictions in which the sex offender is required to register. (Guidelines at p. 48.) Can this be accomplished by forwarding the information to the central registry at state DOJ, where it is then made available on a law enforcement intranet web site as well as through VCIN?

**B. Retroactive Classes**

The Guidelines provide that even though SORNA applies retroactively, if persons subject to SORNA have been released from prison and supervision without being notified of the now-existing registration duty under SORNA, they do not have to be notified and registered unless they re-enter the system. Generally, retroactive application is not a problem in California since we have had lifetime registration since 1947. However, until 1996 any registered sex offender who obtained a certificate of rehabilitation was released from the duty to register; since 1996, certain categories of registrants are still released from the duty to register upon obtaining a certificate of rehabilitation, including misdemeanor child molesters, who will fall into Tier II under SORNA. Will persons who obtained certificates of rehabilitation (or whose juvenile records were sealed) and were notified that their duty to register ended now have to be notified, if they re-enter the system, that the duty to register has been revived by SORNA?

**C. Federal Parolees and Notification of Registration**

The Guidelines state that federal parolees will be notified by the federal Bureau of Prisons of their duty to register pursuant to SORNA. (Guidelines at p. 51.) It would be useful if the registrant was also notified, pursuant to the notification law of the state to which the offender will be paroled, of the duty to register in that state. California has a form which all state prisoners must complete prior to release from custody, called the Notification of Registration Requirements form (DOJ form SS 8047). The states could provide online access to such forms for the federal Bureau of Prisons to download the current forms, and the Guidelines could require all federal and military parolees being paroled to a particular state to sign that state's notification form prior to release, in addition to any federal notification form. A copy of both the federal and state notification forms should then be forwarded, electronically or in hard copy, to the state's sex offender registration database, within 45 days of release.

**D. Forwarding Information about Registrants Entering the State**

The Guidelines seem to require the state to notify individual registering agencies when it receives notice that an offender from out-of-state or a foreign jurisdiction is expected to enter the state and register at a particular location. (Guidelines at p. 52.) If the state receives such information, it will require new data fields in VCIN to enter it, since there is currently no system for recording information on such a registrant prior to his appearing at the local agency to register as a sex offender. VCIN cannot accommodate such a new field until July 2010. Additionally, California questions whether this guideline requires individual notification to a particular local agency in addition to entering the data that the registrant is expected to reside in a particular jurisdiction within the state in VCIN, California's central sex offender database?

**Keeping the Registration Current**

**A. Updates Within 3 Business Days Are Required**

The Guidelines require that the registrant keep his registration current in each jurisdiction where he registers, including the jurisdiction where he resides, or is employed, or is a student. (Guidelines at p. 54.) This information must be "immediately" transmitted to all relevant jurisdictions and it is unclear whether this can be accomplished simply by electronically forwarding the changed registration information to the sex offender registry at DOJ, where all agencies would have access to the information via VCIN and the law enforcement intranet web site for Megan's Law in California. However, transmission to the state registry, where it is accessible to all relevant agencies, should be deemed to suffice. California requests clarification of this requirement.

**B. Update of Registration Information in Various Jurisdictions Required**

California's understanding of the requirement to register a change in employment or campus registration status is that it can be reported to the local agency designated by the state, so in California that would be the agency with jurisdiction over residence for all changes except changes to campus status. (Guidelines at p. 54.) Our further understanding is that only when the person registers in another state for employment or school attendance is he required to report the change in each jurisdiction. Since all such registration information is sent to the state registry at DOJ, all local police jurisdictions will be aware of any change made in employment or student status via entry of the changed information into the state database. There should be no need to electronically forward changes to registration information to individual registering agencies, since all such agencies can view the updated changes in California's sex offender central registry, VCIN, as well as accessing those changes on the law enforcement Megan's Law intranet web site. (See Guidelines at pp. 55-56.) Thus, there would seem to be no need for electronic forwarding of changed registration information, since he would have notified each state with jurisdiction over residence, employment or campus status of any change to that status. Is this correct?

**C. Failure to Appear**

The Guidelines provide that if a sex offender who is expected to commence residence, employment or school attendance fails to appear, the agency must notify the last registering agency of the failure. (Guidelines at p. 56.) Does this mean that when a registrant notifies the last registering agency that he is moving, ending employment, or ending school attendance, that he is also mandated to provide the new address or location where he expects to live next, if known; the name of a new employer, if known, and the name of a new school, if known? In most cases, of course, the registrant will not know the new address, employer or school. If such information is supplied by the registrant, it would be posted in the state's central registry, which is open to law enforcement. Again, this requires software changes to California's database which cannot be accomplished prior to July 2010. Does this also require a separate electronic notification by the last registering agency to the proposed jurisdiction of new residence, employment or school attendance?

**D. Changes in Other Registration Information**

The Guidelines require a registrant to immediately report changes to information on vehicles, temporary lodging of seven or more days duration, and changes in Internet identifications/addresses. (Guidelines at p. 56.) These are required to be transmitted electronically to all other registering agencies. However, since these changes will be transmitted to the central registry, VCIN, and available for all other agencies to view, there is no need for a separate requirement of electronic transmission to the other individual registering agencies. California would like clarification that availability of this information to all registering agencies in VCIN and Megan's Law law enforcement sites obviates the need to separately submit such information to other registering agencies. California understands that if another state is involved (such as travel plans reported to another state), that California is supposed to e-mail the travel update to the other states involved–is this correct? Would this transmission be to the state's sex offender registry, or to the county in which the offender plans to be in his travels out-of-state?

**E. Reporting Residence, Employment or Study Abroad**

The requirement that registrants report employment or study abroad (Guidelines at p. 58) will require amending California law and registration forms. Under California law, registrants already report a change of residence to a location outside the country. This new information cannot be incorporated into VCIN until July 2010. California understands the requirement to notify all other registering

jurisdictions to mean other states which maintain registration information on the registrant. Transmission to other registering agencies within California is unnecessary, since the information will be available to all agencies via VCIN and the law enforcement intranet web site for Megan's Law. Additionally, the U.S. Marshals Service can access both VCIN and NSOR, where the change in registration will be entered, so there is no need for the registering agency or the state to directly notify the U.S. Marshals Service. California requests clarification of this requirement.

**Verification/Appearance Requirements**

The Guidelines state that the update requirement applies to every registering agency, meaning that if the registrant is registered in three different jurisdictions where he resides, is employed, and is a student, and he was a Tier III offender, he would have to update every three months at each agency. (Guidelines at p. 59.) California understands this to apply only when the three registering jurisdictions are three separate states–not three local jurisdictions within California. Is this correct? California currently requires that all updates be done at the agency which has jurisdiction over the residence, except for changes in student/campus registration status. A registration change pertaining to school attendance status is done at the agency having jurisdiction over the campus. When registration is only in local jurisdictions within California, all the agencies will be able to see the updated changes made by the other registering agencies in both VCIN and the law enforcement intranet web site. California further understands that if the registrant is registered in other states, that electronic notification directly to other registering agencies of any change in California registration information is required (Guidelines at p. 60)–is this correct?

It is possible that the myriad of new requirements being imposed on registrants via SORNA may ultimately cause the courts to change their position on whether sex offender registration constitutes punishment for purposes of the Constitution. In particular, due process challenges will become more prevalent and may well be successful, if it appears that compliance with such a detailed law is impossible or the burden too onerous. The burden imposed upon the registrant who is required to update his registration every three or six months at each of several registering agencies, as well as to immediately update other information which changes in the interim immediately, is not inconsequential and may have adverse consequences when the law is reviewed in the courts.

**Duration of Registration**

SORNA sets minimums for duration of registration for each tier. (Guidelines at p. 62.) California has lifetime registration, so this is not an issue as to most registrants. However, there is a group of California registrants who are relieved after 10 years if they obtain a certificate of rehabilitation. The statute can be amended to require the longer registration duration for those affected in that group, but California has a question about retroactive application. If a person has already been relieved of the duty to register by obtaining a certificate of rehabilitation, does SORNA require that if they come back into the criminal justice system that they be notified of a renewed duty to register?

Additionally, the proposed Guidelines state that in order for a registrant to obtain a reduced duration of registration, he must demonstrate a clean record. (Guidelines at pp. 62-63.) One requirement is that the person successfully completed an appropriate sex offender treatment program. California does not provide sex offender treatment for all its registrants. There is treatment for some high risk offenders and, occasionally, certain other sex offenders, including juveniles. It is likely that many registrants will meet all the criteria for a clean record except the one for treatment, because they were not offered treatment in California. Would this preclude a reduction in the duration of registration period for those offenders?

**Enforcement of Registration Requirements**

The California public Megan's Law Internet web site currently places a large check mark by the offender's name, when appropriate, to indicate he is not in compliance with the registration law. This means he either has absconded or is late in registering or re-registering. The Guidelines indicate that the web site must show when a registrant has absconded. (Guidelines at p. 65.) Is this requirement met by the current system? If not, VCIN will have to be enhanced by a software modification, which cannot be completed until July 2010. California does not believe that any process regarding an absconding offender should commence until it is in fact verified by local law enforcement that a registrant has absconded–not that he "may" have absconded.

The Guidelines state that a warrant must be sought for the arrest of a registrant who has absconded. (Guidelines at p. 65.) Does this apply to registrants whose violation of the registration law is a misdemeanor, as well as to those whose violation is a felony?

Would it suffice to enter the fact that an offender has absconded into California's sex offender registration database (VCIN) as well as on the law enforcement intranet web site, rather than transmitting a direct e-mail notification by the state or local registering agency to the U.S. Marshals Service?

The Guidelines indicate that if an offender fails to register on time, or complete a required update of registration, including registration at his place of employment or school attendance, the law enforcement agency with appropriate jurisdiction must be notified. (Guidelines at p. 66.) Does entry of the violation into the sex offender registration database and law enforcement intranet web site constitute notice, or is direct notice via e-mail or other electronic notification required?

If direct notification is required, an enhancement to VCIN may be necessary to deliver such notice automatically to the registering agency, which change cannot be completed until July 2010.

**Conclusion**

The proposed Guidelines create a myriad of notification requirements, most of which should be satisfied by the state's entry in its central sex offender registration database, open to federal, state and local law enforcement agencies, of all registration information about registrants. Instead, the federal law appears to require direct e-mail notifications in many situations, which is a serious resource and workload issue. Further, the Guidelines create so many new requirements for registrants that it may well be increasing the chances of successful due process challenges to the new federal law. Finally, unless the registration requirements for juveniles can be modified regarding required Internet display of juvenile sex offenders and duration of registration for low risk juvenile offenders (as determined by a court), there may be issues regarding the appropriateness of adopting of SORNA.

**Rosengarten, Clark**

**From:** Rogers, Laura
**Sent:** Wednesday, August 01, 2007 8:17 PM
**To:** Rosengarten, Clark
**Subject:** Fw: NYS comments on AWA Guidelines

**Attachments:** NYS comments AWA Guidelines.pdf

Clark,
More comments.
Thanks

----- Original Message -----
From: Martland, Luke (DCJS) <Luke.Martland@dcjs.state.ny.us>
To: Rogers, Laura
Sent: Wed Aug 01 14:35:07 2007
Subject: NYS comments on AWA Guidelines

NYS comments
WA Guidelines.pd..

Dear Dir ctor Rogers;

Attached please find the comments submitted by New York State as to the Adam Walsh Act proposed Guidelines. Please call me at the number below if you have any questions, or if there are any problems with the attachment. I have also forwarded you a paper copy of this letter.

Sincerely,

Martland
ector, Office of Sex Offender Management New York State Division of Criminal Justice
ervices
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lbany, New York 12203-3764
518) 485 1897
uke.Martland@dcjs.state.ny.us

STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
4 Tower Place
Albany, New York 12203-3764
http://criminaljustice.state.ny.us

July 31, 2007

Ms. Laura L. Rogers
Director
SMART Office
Office of Justice Programs
U.S. Department of Justice
810 Seventh Street, NW
Washington, DC 20531

Dear Director Rogers:

Thank you for the opportunity to comment on the proposed Guidelines on the Adam Walsh Act. In preparing the comments set forth below, advice was solicited from a number of State agencies that regularly deal with issues affecting sex offenders, including the Division of Criminal Justice Services, the Division of Probation and Correctional Alternatives, the Office of Mental Health, the Department of Correctional Services, the Division of Parole, the Office of Children and Family Services, and the Board of Examiners of Sex Offenders.

## I. Retroactivity

The current guidelines provide that a state will have substantially complied with the Sex Offender Registration and Notification Act (SORNA) standards when it registers three categories of sex offenders who were convicted prior to the state's implementation of those standards: (1) those who are incarcerated or under supervision, either for the predicate sex offense or for some other crime; (2) those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; or (3) those who thereafter re-enter the state's criminal justice system because of a conviction for some other crime (whether or not it is a sex offense).

This provision of the guidelines should be amended to allow states greater flexibility in determining the retroactive applicability of the SORNA standards. When each state first created its sex offender registry, it made a choice about how the registration requirements would be applied to previously convicted offenders. In some states, like New York, eligible offenders would be required to register if they were then in custody or on parole or probation. See, e.g., Ark. Code Ann. § 12-12-905; 11 Del. Code § 4121(a)(4); Mich. Comp. Laws Ann. § 28-723. Other states required all previously convicted sex offenders to register even if they were no longer in custody or under supervision at the time the registry became effective. See, e.g., Alaska Stat. § 12.63.100(5); Ca. Penal Code § 290.

The decision on retroactive applicability raises substantial practical and policy concerns that are more appropriately addressed by the individual states. The first and third guideline

categories will greatly expand the pool of registerable sex offenders in New York State. It will also require the State to search the prior criminal history of each person entering the criminal justice system to determine whether, at any time in the past, he or she was convicted of, or adjudicated for, a qualifying sex offense. This is both burdensome and unworkable because in many cases older records will no longer be available, or they will be incomplete or inaccurate. Some juvenile delinquency and youthful offender records will have been sealed or expunged. See N.Y. Fam. Court Act §§ 375.2, 375.3 (juvenile delinquency records); N.Y. Criminal Procedure Law § 720.35(2) (youthful offender records). This is consistent with New York's long standing policy that recognizes that young offenders have a strong potential for rehabilitation, and can be more effectively redirected into becoming productive citizens if they are not stigmatized as criminals or registered sex offenders.

Moreover, the expansion of the pool of registerable sex offenders will only exacerbate the difficulties that states are now facing in finding appropriate housing for sex offenders. In New York and in some other states, there are state or local restrictions that bar registered sex offenders from living in certain areas. See Joseph L. Lester, Off to Elba! The Legitimacy of Sex Offender Registration and Employment Restrictions, 40 Akron L. Rev. 339, 351-352 (2007) ("Nineteen states and many other local communities have enacted residence restrictions on former sex offenders, prohibiting them from living a certain distance away from schools, child-care facilities, public swimming pools, public playgrounds, churches, or any area where minors congregate, . . . ."). Even apart from such legal restrictions, placement of offenders is often made more difficult by community opposition. As a result, there is already a shortage of housing for the existing pool of sex offenders, which in New York consists of those who have committed a sex offense more recently. Any extension of the registration requirements to those who have committed sex crimes in the distant past will exacerbate this housing shortage. In addition, it may have the unintended consequence of undermining public safety by forcing offenders to become homeless or to go underground, thus making it difficult to track their whereabouts.

Finally, we have grave concerns that the retroactive expansion of the registration obligations to juvenile delinquents and youthful offenders will likely be constitutionally challenged under the ex post facto clause of the federal constitution, and/or various provisions of the State constitution. Past judicial decisions have upheld these requirements for adult sex offenders. However, for youths who are already under supervision following a non-criminal adjudication – entered without all of the procedural safeguards attending a criminal conviction (see, e.g., N.Y. Family Court Act § 342.2) – the lengthy period of registration, the onerous reporting requirements and the upsetting of sealing and expungement provisions leading to public disclosure of their acts and of other personal information about them would be cited in serious court challenges to a state statute compliant with the currently proposed guidelines.

## II. Substantial compliance

SORNA vests the Attorney General with the authority to determine whether states have passed legislation that "substantially implement[s]" the Act. According to the guidelines, the SMART Office will make a case-by-case determination whether deviations from a requirement of SORNA or the guidelines "will or will not substantially disserve the objectives of the requirement." The guidelines also recognize that states will have "some latitude" in meeting SORNA's "substantial" compliance standard, but the examples that are given of potentially acceptable deviations from the SORNA requirements concern relatively minor administerial deviations. This definition of "substantial" compliance should be broadened to allow states

greater latitude in deviating from SORNA, in particular with respect to the decision whether or not to require registration of juvenile delinquents.

SORNA requires states to register all juveniles over the age of 14 who are found to have committed a qualifying sex offense, and to include information about them and their offenses on the state's publicly available website. For many states, including New York, this will require a substantial change in the treatment of juvenile delinquents.

New York and almost half of the other states do not require registration of juvenile delinquents. To the contrary, juvenile delinquency records are explicitly protected from public disclosure by laws requiring that these records be kept confidential and/or that they be sealed or expunged. See N.Y. Family Court Act §§ 375.2, 375.3, 380.1, 381.2; N.Y. Criminal Procedure Law § 720.35. Shielding these juvenile delinquents from public scrutiny recognizes that adolescents do not appreciate the consequences of their actions in the same manner as adults, and that stigmatizing them as criminals will undermine their ability to redirect their lives, through education and employment, into becoming fully functioning, law-abiding adults. Branding such youths as sex offenders – through registration requirements and public posting of their identities on the Internet – would be a paradigmatic shift in the state's treatment of such offenders. And, in combination with the residency restrictions discussed above, it could prevent juveniles from reuniting with their families or reintegrating into their communities.

By the same token, New York also has a unique law that allows fourteen and fifteen year old offenders who commit certain serious, sexually violent acts to be prosecuted as adults.[1] If convicted, these "juvenile offenders" will receive sentences of imprisonment that eventually will require their transfer to the adult correctional system, and require them to register as sex offenders. See N.Y. Criminal Procedure Law § 1.20(42); N.Y. Penal Law § 30.00(2); N.Y. Correction Law § 168-a(1). While this juvenile offender option already requires registration of those youths who commit the most serious sex offenses, it will not require that all juveniles over the age of fourteen who commit qualifying sex offenses to register because persons adjudicated to be juvenile delinquents, instead of being prosecuted as adults, are not subject to registration requirements.

The guideline definition of "substantial compliance" should be broadened to allow states to make these types of policy choices with respect to juvenile registration. Indeed, because such a large number of states have recognized that youths may be better served by such non-disclosure, the guidelines should be amended to recognize that a state may substantially comply with SORNA, even if it chooses not to register juvenile delinquents whose cases have been adjudicated in a Family Court rather than the criminal courts.

Additional flexibility should be written into the substantial compliance definition to permit states to maintain a risk-based, rather than a strict offense-based, tier system. In New York, most criminal charges are resolved by plea negotiations, which typically will include bargaining for the particular offense to which the defendant will plead guilty. If the offense of conviction is the only determinant of which tier will control an offender's registration obligations, it is anticipated that defendants will be less likely to agree to plead guilty to more serious sex offenses. In a case with a vulnerable victim, which a prosecutor will often be reluctant to bring to trial, this could result in

[1] In addition, the age of criminal responsibility in New York is sixteen. N.Y. Penal Law § 30.00(1). As a result, New York already routinely registers sixteen and seventeen year old sex offenders.

the prosecutor agreeing to allow the defendant to plead to a low-level sex offense, and there would be no opportunity to have the offender's registration obligation turn on the seriousness of his or her actual conduct. This would be an unfortunate and unintended consequence of a strict offense-based tier system. An expanded definition of "substantial compliance" would, however, allow states the flexibility to accommodate those features of their own criminal justice systems that, while serving the purposes of SORNA, require different procedural and policy choices.

Finally, to the extent that the goal is to encourage all states to adopt SORNA in order to facilitate the creation of a more uniform federal registry, it seems likely that a rigid and inflexible definition of substantial compliance that requires states to deviate from long-standing procedural and policy choices will create disincentives for states to do so, especially when coupled with what appear to be the extraordinary administrative and resource burdens created by SORNA. Giving states more leeway in these areas will, by contrast, encourage them to pass legislation that will serve the public safety objectives of SORNA, while still respecting and accommodating their own state policies and procedures.

Once again, we appreciate the opportunity to comment on the proposed Guidelines on the Adam Walsh Act. Although we strongly support sex offender registration, and doing everything possible to protect our families and communities from sexual crimes, we have substantial concerns about some aspects of the Adam Walsh Act. We hope that our concerns will be given serious consideration, and that the final version of the Guidelines will address the issues discussed above.

Sincerely,

Denise O'Donnell
Commissioner
NYS Division of Criminal Justice Services

George B. Alexander
Chairman and Chief Executive Officer
NYS Division of Parole

Gladys Carrión
Commissioner
NYS Office of Children & Family Services

Brian Fisher
Commissioner
NYS Department of Correctional Services

Robert Maccarone
State Director
NYS Division of Parole and Correctional Alternatives

Beth Devane
Chair
NYS Board of Examiners of Sex Offenders

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:49 AM
**To:** Rosengarten, Clark
**Subject:** FW: Hawaii's Response to SORNA
**Attachments:** Response to SORNA.doc

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**From:** Norma Ueno [mailto:nueno@hcjdc.hawaii.gov]
**Sent:** Tuesday, July 31, 2007 10:03 PM
**To:** GetSMART
**Cc:** Liane Moriyama; Laureen Uwaine
**Subject:** Hawaii's Response to SORNA

I have attached Hawaii's response to SORNA and the guidelines. If you have any questions, our contact is our Administrator, Ms. Liane Moriyama. Her contact information is included in our response document.

Thank you!

Norma Y. Ueno
CHRC Unit Supervisor
Hawaii Criminal Justice Data Center
465 S. King Street, Room 101
Honolulu, HI 96813

(808) 587-3349
nueno@hcjdc.hawaii.gov

# STATE OF HAWAII RESPONSE TO THE NATIONAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA) 2006

*Contact:* *Liane M. Moriyama, Administrator, Hawaii Criminal Justice Data Center*
*(808) 587-3110*
*lmoriyam@hcjdc.hawaii.gov*

## FUNDING

Implementing all the requirements of SORNA will require additional funding and resources beyond the Byrne grant allocation. Are there plans for additional funding through the SMART Office?

## OUT-OF-STATE SEX OFFENDERS

Can the guidelines help to address the need for court documents when sex offenders move to another state? The receiving state must request court documents from the state that the sex offender was convicted in order to qualify them to register in the receiving state. Would the SMART Office consider creating a "warehouse" to store digitized court documents that could be accessed by the states? Nationally, there should be a rule that once a sex offender is registered in one state, they must register in any state that they move to without the need for court documents.

## SECTION-BY-SECTION COMMENTS:

§111 Relevant Definitions: Does SORNA include offenders who have been acquitted/found not guilty by reason of insanity or found unfit to proceed? If not, shouldn't these categories of offenders be included?

§111(5)(B) Foreign Convictions: Who will be notifying the state when a person convicted of a foreign offense enters their state? How will the state obtain the proper documents to place the offender in the correct tier? Will the SMART office establish procedures with the Department of State? ICE/Customs? Who will be determining which additional countries meet the standards for fairness and due process, and how will the states be notified that a country meets those standards?

§111(8) Convicted as Including Certain Juvenile Adjudications: This will require legislative change in the majority of states and may be an area of "contention". Would it be reasonable to look into alternatives for this requirement, such as registration but no

public dissemination, especially since the juvenile offenders would remain on the registry until the time limit on their tier classification is reached.

§113 (c) Registry Requirements for Sex Offenders: This requires the offender to appear in-person to update any registration information. Is there any restriction on where the offender must do this? Can we assume that it can be at an agency other than the registry? Also, with the new required fields, will the offenders be able to initially update their information by mail as a means to help the states deal with the resources that will be needed up front to meet this requirement?

§113(c) Registry Requirements for Sex Offenders: Changes in name, residence, employment or student status must be made in person. The Guidelines describe an additional implementation measure that requires the sex offender to also report changes in vehicle information, lodging of seven days or more duration and Internet designations. We understand that Internet identifiers do not need to be updated in person, but could be updated via the Web. Will there be further guidance on how these updates should be made?

§113(d) Registry Requirements for Sex Offenders: If an offender is convicted of a sexual offense in one state, but is incarcerated in another state (it could be for the sexual offense or for another offense), is the state that has custody of the offender required to register the offender before he is released?

§113(e) State Penalty for Failure to Comply: §846E, Hawaii Revised Statutes, establishes that an intentional or knowing violation is a class C felony which would subject the offender to a maximum term of imprisonment of five years. A reckless violation is a misdemeanor that would subject the offender to a maximum term of imprisonment of one year. Do these offenses meet the SORNA requirement?

§114(a)(7) Travel & Immigration Documents: SORNA requires the registry to maintain a digitized copy of the offender's passport or immigration documents and critical information from those documents. Besides the digitized copy, what other information is required? Will the SMART Office be coordinating access on behalf of all states to the databases of the agencies issuing passports and immigration documents?

§114(b)(2) Text of Provision of Law Defining the Criminal Offense: Can this requirement be met by providing a link? We understand that the SMART Office will be creating a "warehouse" with the text of the states' offenses, including historical statutes that the states would be able to access and download to their registries. Would this apply to military/federal offenses as well?

§114(b)(3) Criminal History and Other Criminal Justice Information: We understand that this requirement can be met for offenders registering in the same state that they were convicted in by providing a link to the state's criminal history information system. How would this be accomplished for offenders who have been convicted of charges in another state, or at the federal/military levels? Would the FBI allow the states to provide

the national criminal history record for multi-state offenders at no charge? Is there any requirement for the states to post public criminal history record information, or at least the qualifying conviction, for the public?

§114(b)(5) Fingerprints and Palm prints: Can this requirement be met by noting on the record that the fingerprints/palm prints are already captured and available in the state's AFIS without directly linking to this system/database?

§114(b)(6) DNA Sample: Can this requirement be met by noting on the record that this information is contained in the state CODIS database?

§114(b)(7) Driver's License or Identification: Can this requirement be met by providing a link to the state DL/ID system?

§116 Periodic in Person Verification: Are incarcerated, committed or administratively detained offenders exempt from this requirement?

§121 Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program: Does the notification program require the state to notify the listed agencies, (b)(1) through (b)(7), about any offender who registers or updates his information, or can the listed agencies specify a geographical area and be notified only when an offender in that area registers or updates his information?

§123 Development and Availability of Registry Management and Website Software: Is the software going to be delivered in phases? Is the first target date still 12/2007 and what applications will be available in the first release? What type of technical support will be available for the software? Who will be providing the support? Also will the states be involved in the requirements, development, testing or piloting?

§142 Federal Assistance with Respect to Violations of Registration Requirements: What is the role of the federal law enforcement agencies? Is there a national direction as to exactly what the U.S. Marshal's Office (and other federal agencies) role will be or is it up to each local office as to the role it will play in the state? In particular it seems that the US Marshal's Office is very active in some states and not so in other states. Will the SMART Office serve as the liaison between the states and the federal law enforcement agencies, or will it be up to each state to deal with its local offices? What is the role of the National Center for Missing and Exploited Children (NCMEC) in this area? Is it to only provide training?

Miscellaneous: If a registered sex offender does not have an FBI number, will it be possible for the state to submit the fingerprints taken at the time of registration to the FBI so that an FBI number can be assigned to the offender and the record submitted to NSOR? Currently, without the FBI #, an NSOR entry cannot be completed, although we understand that this policy will be changed soon.

**Rogers, Laura**

**From:** dispatch2@ohiomuskingumsheriff.org
**Sent:** Wednesday, June 13, 2007 8:39 AM
**To:** GetSMART
**Subject:** AWA

As a member of the Ohio Region 8 CART team I want to thank you for the new guidelines and your determination to keep our children safe.
It is going to take a bi-partisan effort and cooperation on all fronts to fight the hard fight for our children and their ongoing safety. It is high time that all sex offenders specifically Predators realize they are going to be watched very closely regardless of how much whining that they do. Again thank you for your diligence and willingness to provide a safe country for our children.

Joleen Y Kinsel
Muskingum County Sheriff Office
Ohio Region 8 Cart - Dsipatcher

**Rogers, Laura**

**From:** Bob White [redacted]
**Sent:** Monday, July 23, 2007 5:54 PM
**To:** GetSMART
**Subject:** Sex Offender Laws

I would like to take a moment to thank you for putting together a National Sex Offender Guideline that for once all 50 states can follow.

Currently our system in this country is nothing but a joke. Some states do not do hardly anything and other states go so far overboard that they have offenders living under bridges.

The state of Georgia wrote such a bad law (HB 1059) that almost every part of it is being picked apart by the courts.

The biggest problem is not as much how the law has been written, but how the law is being applied. This is part of the problem with what you are doing with the National Standards for Sex Offenders.

Have you really taken the time to research all the facts on how a Judge would react with these standards?
What about the Sheriff's department and local probation officers? The problem is that you are writing laws that sound good on paper, but do not work in the real world!

I would be happy to share with you on some insite to some of the flaws that are in your current writings.
If you continue to focus on one group of criminals and continue to banish them from everything in our socity, then you are not just banishing them, but the families of the offenders as well.

Bert White

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**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:49 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121
**Attachments:** 4184385160-Neely_Ltr. SMART Office.doc

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**From:** Larry Neely [redacted]
**Sent:** Tuesday, July 31, 2007 7:16 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

Letter attached with comments.

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Larry Neely
[redacted]

Laura L. Rogers
SMART Office
U.S. Dept. of Justice
810 7th Street NW
Washington, DC

*Via email*: getsmart@usdoj.gov

Re: **OAG Docket No. 121**

Comments on the Attorney General's National Proposed Regulations
Adam Walsh Sex Offender Registration (SORNA).

The comments I wish to submit regarding the Proposed Regulations are as follows:

1. The retroactive application will force the states to engage in expensive litigation. This is likely as a result of the provision requiring those with older convictions to register after a new encounter with the criminal justice system. It is probable there will be numerous ex post facto challenges asserted along with ineffective assistance of counsel claims.

2. The increase of the period of time a person must register from 10 years to either 25 years or lifetime will dissuade many from continuing to register as they will see no hope of ever getting off registration. Since only misdemeanors can be designated as Tier I offenses, most will be required to register for either 25 years or life.

3. Local law enforcement will be required to track offenders for a significantly longer period of time without additional funding. This comes at a time when most Sheriffs are already stretched to the limit. The net result will be, a needless diversion of scarce resources, to track registrants that pose little threat to our communities. This is another un-funded Federal mandate on the states.

4. States that currently assess their offenders for risk of re-offending will have no incentive to incur the expense for such assessments as the Tier designations have no correlation with the predicate offense. Additionally, most offenders would be unlikely to cooperate with a risk assessment if there is nothing to be gained by doing so.

5. Presently, the law in many states, *does not* require offenders assessed either low or moderate risk to be posted on the internet. We can anticipate a lack of motivation for treatment if there is no means for a registrant to prove he/she has been rehabilitated or at least successfully treated. This provision alone will significantly undermine the goals of the Adam Walsh Act. Statistics consistently prove that treatment reduces the likelihood of recidivism.

6. If the states are forced to display more information on their websites, i.e.: employer's address and exact home address, there is a strong likelihood of more acts of retribution against the registrants or the businesses that employ them. The unintended consequences are likely to be more registrants re-offending and employers not hiring sex offenders to avoid becoming targets of negative publicity *for employing a sex offender.*

7. There has been documented cases of murders and revenge attacks as a result of information displayed on sex offender registries. More offenders are likely to fear retribution or loss of their jobs and could discontinue registering. You should consider Iowa's experience in terms of their residency restrictions. Many (previously compliant) registrants have simply disappeared.

8. The Adam Walsh Act only establishes minimum criteria the states must adopt. It is very likely that some states, in order not to be outdone, will enact even more stringent laws. If this happens, other states trying to be reasonable will feel compelled to pass new laws that equal or surpass the surrounding states.

9. If the states again begin to "one up" each other, we will be back in the same predicament as we are today with 50 totally different statutes. During a recent Georgia legislative session, a legislator remarked, "[M]aybe they will all leave." No state will want sex offenders from another state to move in. As a result, the competition between the states to be the toughest will continue.

10. The cost for the states to track the offenders and administer their programs will be enormous with a diminishing return to the citizens.

These proposed regulations are bad public policy, counter-productive their stated goals, and a costly un-funded mandate on both States and Counties. It is my hope that the Justice Department will reconsider and amend these regulations prior to their adoption.

Sincerely,

Larry Neely

**Rogers, Laura**

**From:** Tim Poxson[redacted]
**Sent:** Wednesday, July 18, 2007 1:30 PM
**To:** christine_leonard@judiciary-dem.senate.gov
**Cc:** GetSMART
**Subject:** OAG Docket No 121

I am writing to you today as I have done many days since the SNORA Rules were posted.

Today however I will first start by saying I am a retired Police officer with over 25 years of service.

I am writing to you today from the hart to tell you how much I am against the SNORA as written.

I understand the need of those in government to be hard on crime, however the real truth is you should be smart on crime. Most of what the SNORA will do is cause more problems than good. This country now has over 600,000 sex offenders on sex offender registries. This number will grow to an number that is going to be two or more times what it is now. I am from the state of Michigan and we have over 38,000 sex offenders on the registry now. And the problem is that most of them are of no danger at all to the public. And when you talk to members of the public they will tell you that the sex offender registry is not what they think it should be. Of course many in the public think that if a person is on the registry they must be a danger.

As you write these rules and sit in your office, yes they may look good on paper but lets talk for a minute about what they are and are doing.

1. In some states they are causing sex offenders to move because of local laws passed or state laws. This is causing some sex offenders to go underground, or give false addresses. This is not good if you think that sex offender registries are a good thing.

2. They are causing law enforcement to use up very limited resources to check on and register low level offenders. This manpower could be better used to track and monitor high risk predators. ( You will not hear many in law enforcement say this as since they are still on the payroll, it is hard for them to come out with any such statement because they would be taken as soft on crime.)

3. The SORNA will add more offenders that should not be on it, but they will be added only because they committed a low level sex offense, or in some cases they will be placed on it even though they have no conviction at all! The sex offender registry should be used only for those who have been convicted. And then only those sex offenders who are high risk offenders. The SNORA should adopt a tiered approach to identify these high risk offenders founded on empirically based risk factors.

4. The SONRA should provide a reasoned , circumspect petition process for removal from state and federal registries. No public good is served by stigmatizing and isolating low risk or rehabilitated people , exposing them to harassment, depriving them of normal opportunities for education, employment, and housing. Further more some of those who have been on public web sex offender registries, have been murdered. Some have had damage done to their property. And many have lost jobs. If the SONRA is not going to be punitive it must give the offenders a chance to show they are of no danger to anyone.

5. Juveniles should not be required to be on any sex offender registry unless they were tried as an adult. In our country we have always treated juvenile offenders different than adult offenders. Research has shown time and time again that most youth who break the law during their childhood or adolescence can and will mature out of this behavior given the appropriate treatment and consequences. If however they are subject to having to be on a sex offender registry for 15 years, 25 years or a life time, they will not see any hope and will most likely keep going down a road of crime.

What I have seen first hand the sex offender registry now in place does.

1. causes some a loss of all hope and some give up and go back to crime.

2. I have seen people who are on the registry become the victim of an assault because they are on the public registry.

3. someone who was running a business, employing five people and was convicted of a minor sex crime. Well Michigan was going to require that all sex offenders must notify all those who work for him that he was on the sex offender registry, so this sex offender laid off his employees and moved his company to a smaller building so he could run the business himself.

4. a sex offenders female child was sexually assaulted because the boy said " your father is on the sex offender registry so you must be easy". (This police report is available from the a sheriff department in Vermont.)

5. The public that uses the sex offender registry in Michigan (the SORNA will be the same way) has very little understanding of who is a danger, and who is not so they give up. If they do not give up they feel that they are safe from any sexual assault because they know were all the sex offenders are that live near them. The problem with this type of thinking is as you know already; over 90% of sexual assaults are committed by a person well known and trusted by the victim. With over 50% of sexual assaults committed by a family member.

6. The public is not told that the US Dept. of Justice Bureau of Justice Statistics on Recidivism show that within 3 years of release from prison 3.5% of sexual offenders are re convicted for another sex crime. This is one of the lowest recidivism rates with the exception of those who are in prison for murder.

7. Sex Offender Registries have created a group of people that the government has given the public the license to hate and hurt. And the government has given those in the public that may want to hurt; the name and address and all the other information about this group, making it easier to find them to hurt them or do damage to their property. This group of people are hated more than blacks people were by some in the public. More hated than Jewish people were hated under the germans. So hated that they have been added as a target group the KKK will go after. The government has feed this hate by not giving the public all the facts on who is committing most sex crimes. The government has made sure that the public does not forget to hate this group of people, by naming the laws after children that were killed (this is an act by the goverment of putting gas on a fire.)

8. Because of sex offender registries; some will not report to the police that a family member is sexually assaulting them, because they fear a loss of the home they live in when that offender is placed on a Public sex offender registry. They do not see the government as trying to aid the offenders to get appropriate treatment, helping the offender to end this cycle of assault. And then letting the offender move forward as a productive member of this society. They see the governments role as only to oppress

the accused and the family of the accused.

9. THE REAL TRAVESTY IS THAT A MAJORITY OF THOSE OFFENDERS THAT WILL FOLLOW ALL THE RULES OF THE SONRA, WILL NOT RE OFFEND AT ALL. IF ALL ONE HAS TO DO TO STOP CRIME IS PASS LAWS, THEN WE WOULD HAVE NO CRIME AT ALL. Those offenders that are going to re-offend will do so with or with out the SONRA. The SONRA will be of limited help to investigate sex crimes after the fact if it is loaded with so many sex offenders on it. By placing those who are at greatest risk to re-offend on sex offender registries we are then able to use it as a law enforcement tool. And by setting up a system of reward for not doing any more sex crimes the sex offender is then rewarded by being able to petition the court for removal from state and federal registries. This one thing would be far greater in Crime Prevention effort than all of the money the states and federal government have already put into crime prevention legislation they have enacted to date.

So after saying all of that you must think I am against sex offender registries in total. NO I AM NOT! I want the government to place only those of high risk to re offend on sex offender registries as I stated those who are identified as high risk offenders founded on empirically based risk factors.

The SONRA is as written a punitive measure, that shows that this Attorney General has forgotten he is the Attorney General for all the people, not just an official that works only for the government. The A.G.'s office should do what is right and re write the rules for the SONRA. You are not elected to office so you could be looking at all sides of an issue.. You were appointed to office not to enact rules that will be seen as ex posto facto. I welcome any return e mail to my comments. I am open and willing to hear your thoughts also.

WE MUST MOVE FROM BEING HARD ON CRIME TO BEING SMART ABOUT CRIME. Only then will we place some of the burden on the criminal to stop the criminal behavior. Being hard on crime has not reduced crime at all.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Thursday, July 26, 2007 3:46 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No 121

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**From:** Tim Poxson [redacted]
**Sent:** Wednesday, July 25, 2007 4:13 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

I hope you will take the time to read this artical. thank You Tim P.

http://www.usatoday.com/news/nation/2005-03-24-sex-offenders-usat_x.htm

Girl's death raises questions about tracking of sex offenders

By Mark Memmott, USA TODAY

The arrest of a convicted sex offender this week in the kidnapping, rape and murder of a 9-year-old Florida girl underscores a national problem, experts say: Authorities don't have enough money to identify, treat and monitor the sex offenders most likely to repeat their crimes.

John Couey's name was on Florida's sex-offender registry when he got a job at Jessica Lunsford's school.
By Phil Sandlin, AP

"The systems at the state and federal levels need to be fixed," says Allison Taylor, executive director of the Texas Council on Sex Offender Treatment, which coordinates that state's sex-offender treatment strategies.

"We have 41,000 names on our (sex offenders) registry," she says. "If we could take our money and focus it on the 10% or so who are most likely to reoffend, we could make great progress."

In fact, most sex offenders are less likely to reoffend than other criminals.

Studies show that most sex offenders do not reoffend after being caught," says Karl Hanson, a psychologist and senior research officer at Public Safety and Emergency Preparedness Canada, that country's

equivalent of the U.S. Department of Homeland Security.

Hanson, one of the world's leading authorities on sex offenders, says counseling, an offender's past, and even polygraph tests help identify the "highest-risk reoffenders." Those individuals need to be imprisoned for "very long sentences," he says.

Jessica Lunsford was reported missing from her home in Homosassa, Fla., on Feb. 24. Her body was found March 19, buried behind the trailer home in Homosassa where John Couey had been living. The grave was 150 yards from □ and within sight of □ Jessica's home. Couey, 46, has been charged with murder, battery, kidnapping and sexual battery on a child under the age of 12.

Couey had been convicted in 1991 of committing a "lewd and lascivious act in the presence of a child." The police report filed at the time stated that Couey exposed himself to a 5-year-old girl, masturbated in her presence and had her touch his genitals, according to Officer Ralph Herrera of the Kissimmee (Fla.) Police Department.

Couey was sentenced to five years in jail for that crime and served about four years.

Though Couey's name was put on Florida's registry of sex offenders after its creation in 1996, he still was able to get a job on a construction project at Jessica's school last year. He had informed the local sheriff of his presence in the county, as sex offenders in the state are required to do, but apparently no one checked his criminal record when he applied for the job.

Jessica's murder and Couey's arrest have prompted Florida state Rep. Charles Dean to draft legislation that would require the state's convicted sex offenders not only to be registered and to report their whereabouts to authorities, but also to wear GPS tracking devices after being released from prison.

About 50,000 names are on the state's sex-offender registry.

Experts who treat sex offenders say tracking devices and registries alone won't protect the public. "If we're just going to go down that path, we do ourselves and society a great disservice," says Fred Berlin, director of the National Institute for the Study, Prevention and Treatment of Sexual Trauma in Baltimore and a professor of psychiatry at Johns Hopkins University.

What's not widely understood, Hanson and other researchers say, is that most sex offenders are relatives or acquaintances of their victims □ not strangers such as Couey. Few are on the registries.

Studies show that fewer than 3% of convicted rapists are arrested for the same crime within three years of their release, and "10% to 15%

(of all sex offenders) will be recaught or rearrested" within five years, Hanson says.

Both percentages are well below recidivism rates for most other types of criminals.

If correct treatments are used, Hanson says, studies show the recidivism rate for sex offenders drops even further.

That's why federal and state agencies need to concentrate their spending on the worst offenders, Texas' Taylor says.

Taylor says the state must try to keep tabs on everyone on the registry, no matter how likely each is to commit another crime. That drains money from efforts to identify, treat and monitor the most hard-core offenders.

"Our thinking needs to be overhauled," Taylor says. "And it's really sad that it takes the homicide of an innocent child for us to take a step back and look at these things."

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:56 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No 121

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**From:** Tim P [redacted]
**Sent:** Friday, July 27, 2007 4:06 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SORNA and what can be done to improve it and make it work to protect the citizens of the USA.

It is imperative for the safety of USA citizens that we reduce the unintended, detrimental consequences to young people and low risk offenders, their families, and out communities. To that end these are some of the changes that should be made to the SORNA.

**Remove the registration requirement for juvenile offenders.** There are enormous differences between the nature of juvenile offense and those of an adult, predatory sex offender. Research demonstrates that most youth who break the law during their childhood or adolescence can and will mature out of this behavior given appropriate treatment and consequences.

**Remove the registration requirement in the SORNA for individuals who do not have a conviction on their record.** Individuals who are now on sex offender registries are losing jobs, housing, and educational opportunities, solely because they are included on a sex offender registry.

**Adopt a tiered approach to identify high risk offenders founded on empirically based risk factors.** The SORNA is so broad that law enforcement will be more hampered in its efforts to protect the citizens of the USA from high risk offenders. Law enforcement is going to be forced to use more precious resources tracking low risk offenders rather than monitoring high risk predators.

**Provide a reasoned, circumspect petition process for removal form state and federal registries.** A provision is needed to allow registered individuals, identified empirically as low risk to te community, the opportunity to petition for release for the registry. No public good is served by stigmatizing and isolating low risk or rehabilitated people, exposing them to harassment, and depriving them of normal opportunities for education, employment, and housing.

**Establish a central location/ agency to assist registrants with compliance in each state.** A definitive resource should be available to answer questions regarding sex offender related laws and the specified registration requirements. Currently, it's difficult for individuals to comply with the sex offender laws because they are hard to interpret, frequently modified, and difficult to access. This will even become a bigger problem with the on set of the SORNA. Because of these challenges, law enforcement agencies and municipalities are now often misinterpreting and mis applying the law.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:02 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No 121

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**From:** Tim P [redacted]
**Sent:** Monday, July 30, 2007 3:53 PM
**To:** GetSMART
**Cc:** christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121

The SORNA states that it is is trying to bring together all the past laws and make it easier to deal with the issue of sex offenders. One such law was the Jacob Wetterling law passed by many states. One of the founders of the Jacob Wettering foundation **Patty Wettering,** (mother of the victim) has gone on record that the SORNA and many of sex offender laws have gone "to far". In doing so she is trying to call your attention to the problems that many of these laws have crated. Furthermore she pointed out that these laws were supposed to be be for the worst of the sex offenders. The SORNA is a far reaching law that will sweep up all sex offenders even those that are no risk, and paint the offender with one rush. Just as no one can say that all the people who hold political office are just out for themselves, no one can say that all sex offenders are going to go back to do a sex crime. The US Dept. Of Justice statistics on recidivism even paint a different picture. 3.5% re convicted of a sex crime within 3 years of release from prison is one of the lowest recidivism rates among all criminals. Even **John Walsh** the father of the victim this law is named after **Adam Walsh**, has gone on record as saying his intent for this law was just to "make the public aware of those sex offenders that are the most danger". This is not were the SORNA has gone. The SORNA does not mandate a tiered approach using testing to find out which sex offenders are at most risk to re offend. The SORNA does not mandate tiered approach to identify **high risk** offenders **using empirically based risk factors.** The SORNA could be a chance to correct these issues. The public should be protected from high risk sex offenders. And low risk offenders should have the right to continue a life free of crime, free of harassment, free of a loss of housing, job opportunities and educational opportunities.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, June 28, 2007 4:38 PM
**To:** GetSMART; christine_leonard@judiciary-dem.senate.gov
**Subject:** OAG Docket No 121
**Attachments:** 6-27-07 SEX OFFENDER LAWS UNDER FIRE.htm

Attached is an artical about the sex offender laws from a person who had a child killed by a sex offender. You should take the time to read it you will see that Mrs. Wattering does not support the direction these laws are taking.

http://www.operationawareness.com/whats_new.html

I. Smith
[redacted]

Laura Rogers
Director
Smart Office
Office of Justice Programs
DOJ
810 7th St. NW
Washington DC
20531

**RE: SORNA REGULATIONS Docket #OAG 121**

Dear Ms. Rogers:

The following comments pertain to the proposed guidelines "to interpret and implement the Sex Offender Registration and Notification Act."

**OVERVIEW:**

The Supplementary Information states:
"the Sex Offender Registration and Notification Act (SORNA), contains a comprehensive revision of the national standards for sex offender registration and notification. The SORNA reforms are generally designed to strengthen and increase the effectiveness of sex offender registration and notification for the protection of the public, and to eliminate potential gaps and loopholes under the pre-existing standards..."

First, the governmental interest in originally enacting the registration requirements was the protection of the public. The foundation for said protection was the stated allegation that convicted sex offenders posed a high risk of reoffending. That foundation no longer supports increased registration legislation. The DOJ's own statistics reveal that less than 6% of convicted sex offenders were arrested for a new sex offense over a 3 year period, sexhttp://www.ojp.usdoj.gov/bjs/crimoff.htm#recidivism.
These statistics are consistent with findings by the states of Minnesota, http://www.doc.state.mn.us/documents/04-07SexOffenderReport-Recidivism.pdf , and Pennsylvania, http://www.cor.state.pa.us/stats/lib/stats/SexOffenderResearch._2005.pdf.

Second, experts in the field generally agree that the more restrictive the sex offender regulations, the less effective they become, which puts the public at greater risk as the

offenders tend to go underground just to co-exist. Which is why a varied collection of experts, advocates, citizen groups and law enforcement personnel are speaking out against sex offender regulations that have become counterproductive. http://minnesota.publicradio.org/display/web/2007/06/11/sexoffender1. This includes Patty Weterling.

Third, there is nothing in the record to suggest the states are not providing adequate public safety with respect to registration of convicted sex offenders. "Potential gaps and loopholes" has no real meaning.

**SECTION 114(a)(7)—Internet Identifiers and Addresses:**

First, this subsection applies to all RSOs, not just those whose crime involved the use of a computer or the Internet. Those on conditional release are already required to provide this information. This is a sweeping requirement indicating punishment, not public safety, is the thrust of the regulation. In addition, Internet identifiers and addresses are not like home addresses. Google an internet identifier and you not only see where the individual has gone, but the content of any postings. These postings would include political speech, medical forums, case research, etc. There is no corresponding regulation with regards to tracking one's regular mail, nor could there be.

Second, the proposed guidelines contemplate a scenario that would allow third part website administrators to access the non-public Internet identifiers and addresses to block RSOs from accessing their websites. This is state sanctioned censorship. Using privacy information controlled by the government to deny a RSO the right to engage in legal conduct, free speech, is clearly a violation of the First Amendment.

**SECTION IV.A. Convictions Generally:**

"...or under which the convictions of such sex offenders may nominally be ``vacated'' or ``set aside,'' but the sex offender is nevertheless required to serve what amounts to a criminal sentence for the offense. Rather, an adult sex offender is ``convicted'' for **SORNA** purposes if the sex offender remains subject to penal consequences based on the conviction, however it may be styled. Likewise, the sealing of a criminal record or other action that limits the publicity or availability of a conviction, but does not deprive it of continuing legal validity, does not change its status as a ``conviction'' for purposes of **SORNA**."

It's unclear from the above language whether Sorna applies to "expunged" records, which of course are sealed documents. Under Missouri law, revealing the contents of sealed documents, absent specific and narrow exceptions not applicable here, is a class B misdemeanor http://www.moga.state.mo.us/statutes/C600-699/6100000125.HTM . In fact, one can deny the conviction without consequence, absent the same exceptions.

A federal rule that forces one to commit a state offense in order to comply with said rule is unconstitutional on its face. Carving an exception for sex offenders would also violate the Equal Protection Clause, as the benefits of an expunged record must apply to all.

If SORNA does apply to "expunged" convictions, serious Constitutional considerations are at stake, which will likely involve protracted litigation.

For these and other reasons, the proposed guidelines need to be revised and rethought. Thank you.

Sincerely;

July 26, 2007

**Rosengarten, Clark**

**om:** Rogers, Laura on behalf of GetSMART
**-t:** Monday, August 06, 2007 10:47 AM
Rosengarten, Clark
**ubject:** FW: Comments on Proposed SORNA Guidelines

**tachments:** Comments on SORNA - 2007.doc

Comments on
RNA - 2007.doc (.

----Original Message-----
rom: [redacted]
ent: Wednesday, August 01, 2007 2:24 AM
o: GetSMART
ubject: Comments on Proposed SORNA Guidelines

lease see attached MS Word file.

hanks.

When I was 7 years old, I never could have imagined that someday I'd be in this position.

When I was 7 years old, it was 1977, and the nation as a whole had a different outlook on sex crimes, and crimes against children. My parents were advised by the police, then, to not press charges, as the word of children would not be held against the word of an adult. Sadly, this was in California, which has had a sex offender registry since the 1950's (if I recall correctly). Whether Mr. Randolph was on the registry or not, I don't know – the registry was not available to the public, or if it was, that fact was not made known to my parents – it's moot; Mr. Randolph died when I was still very young. But there was no closure, for me or my two sisters – who were 5 and 3 years old at the time. This shared abuse affected each of us in different ways – I did receive some therapy from a child counselor, but it never really treated the underlying feelings of shame and sexual discomfort.

Many children survive their abuse with determination to do better, and to make reforms towards a safer society. Other children lock their emotions inside, and release it later inappropriately, to the detriment of their standing in society – and their rights to enjoy the pursuits of "life, liberty, and happiness" with the same ease as their fellow citizens. Sadly, they allow themselves to become like those who abused them – even when the crime itself might be quite different in nature.

I am pleased to see that the legislative and judicial landscapes have changed, and that children's voices are heard in courts, and are taken seriously when they report abuse – whether it be by a family member, a stranger, or the neighborhood children librarian's husband, whom she assisted by luring in the local kids with books to read.

There are still generations of victims, however, who did not receive proper therapeutic assistance, and did not feel their voices were heard by any Higher Authority. I ask that you hear mine now, and consider my thoughts on the SORNA guidelines, as proposed by the Attorney General. I will do my best to only comment with subjective merit.

My concerns, which I will elaborate following, and which are touched on in the SORNA requirements, have to do with not causing unreasonable hindrance of "life, liberty, and the pursuit of happiness" to classified "low risk" / Tier I offenders who have a good record of post-conviction conduct, and are making efforts to be productive, contributing members of society.

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## Specific Comments as Relate to SORNA Requirements

- **I feel that Tier I offenders should not be listed online, or not in their entirety; I do agree that Tier I offenders need to register with local jurisdictions, as it IS an active deterrent:**
  - The average person is not properly educated about what constitutes a "sex offense", and sees only "child molesters" in that terminology. Regardless of any disclaimers put to the web site, large portions of the population will continue to associate "registered sex offenders" with "child molesters".
  - At a minimum, Tier I offenders should be identified as being low risk sex offenders, making clear that the underlying conviction was not for a crime against a child (as applicable), or specifically a sex act upon another person (as applicable)
  - The information made available online should be less specific, such as county or general zip code (but without address publication), for Tier I offenders required to be listed online; full information would still be retained by registering jurisdictions.

addresses. I understand the concern where the sex offender has targeted minors, or has previously committed crimes through the use of the Internet as a medium. I do not see where it should be enforced on those that have not committed such crimes, as even sex offenders may have legitimate reasons for establishing online personas – such as adult social networking, or to maintain contact with friends from other locales.

- **SORNA has the primary stated purpose to protect the public, rather than apply further punitive actions to the sex offender (aka Title XII – Comment 1).**
  - Could it feasibly be made to include the availability of funded programs to assist those offenders who are earnest in being rehabilitated. Some programs are more effective than others (Washington State, for example), and most "sex addictions" are related to some underlying abuse or neural inhibitor issue. "Sex Offender Treatment Programs", as called for in SORNA Title XII, are not unilaterally available and affordable.
  - Rehabilitation should be a goal of SORNA, as this removes the 'sex' component from the offenders methodology, and thereby protects the public welfare.
  - Treatment for victims who were Minors, at the time the crime was committed, should also be included, perhaps offset by additional registration costs paid for by Sex Offenders whose crimes were committed against Minors. The cycle of "Offender:Victim → New Offender:New Victim" needs to be prevented – or, at least, minimized.

- **For a "non-punitive" set of regulations, sex offender registration is easily perceived as being punitive, while under its jurisdiction (aka Title XII – Comment 2).**
  - It limits accessibility, and basic rights to the pursuit of life, liberty, and happiness for all classes of sex offenders, without regard to circumstances or outside factors.
  - I would like to see a national standard for a "Certification of Rehabilitation", which would be applied to all jurisdictions unilaterally, upon satisfaction of its requirements. This would be an expansion on the rules of Title XII (Duration of Registration). This amendment to that title would reinstate full rights (except handgun ownership for convicted felons) to the "offender" for all of the states, territories, and tribes of the USA; as exists now, one can be relieved of duty to register in one jurisdiction after 15 years, but still be required to register in a second jurisdiction for 25 years – which could create the "circular" argument in a third jurisdiction of the need to register, in that the offender is still required to register in at least one other jurisdiction.

- **Some offenders are of a class deemed "low risk" in their "native" jurisdictions, and afforded certain protections relating to what is available to the general public online.**
  - In the case where a jurisdiction requires registration SOLELY on the basis of the registrant being required to register in the jurisdiction where a "registerable" offense was charged & convicted, and not for an underlying crime that would also be "registerable" if committed in THAT jurisdiction, the information collected and shared with the public should be based on what the native jurisdiction would require.
  - The intent of such "jurisdictional inclusion" regulations was to prevent offenders from leaving one jurisdiction to a less effective jurisdiction, to evade registration requirements; while I applaud that effort, the reverse should be noted, as the crimes which qualify as a "sex offender" vary amongst jurisdictions, and the native community to a jurisdiction may not understand that a non-resident's sex offense may be for a less severe act of a sexual nature.
  - At a minimum, I would offer that online registry wording includes that out of state offenses be noted as such, and to identify the original jurisdiction; the ideal would be that

would in the originating one, given that ours IS a "mobile nation".

- **For those whose work requires travel, whether as a consultant, truck driver, construction worker, or other profession; the associated provisions of SORNA and local jurisdiction requirements becomes a burden that can compromise the security of said job, and the effective ability of the offender to contribute most effectively not only to society, but to their own rehabilitation.**
  - I would like to offer a provision for a Federal component of SOR, whereby a person whose position requires travel could register with a Federal jurisdiction body, and carry an identification card demonstrating compliance for other jurisdictions. The program could be limited by offense type, and length of time as a registrant without acquiring new convictions, or other deemed appropriate restrictions, in line with the reasoning of Title XII's "registration durations".
  - A person participating in such a "Federal Mobile" program, when traveling for legitimate reasons, would notify their federal contact, verify their primary address (if changing), notify of their temporary secondary address(es), length of stay(s), means of contact, and other pertinent information.
  - The federal contact would notify the local jurisdiction, and provide the underlying offense information as required; if the local representative required a face-to-face verification with the offender entering his/her jurisdiction, arrangements could be made that didn't compromise either's schedule (as this is a facet of doing business as a sex offender, and not a punitive action).
  - The registrant would appear on the National website, and their "permanent residency" jurisdiction's website, but would not be placed onto the websites for "temporary residency" jurisdictions. A time component would be included; perhaps a stay of more than 14 days (which many states default as their temporary residence reporting time) constitutes a 'temporary move', and allows them to be placed, on that temporary basis, on the local jurisdiction's web site.
  - If such is <u>not</u> feasible, then a "Good Faith" provision by which if a registered sex offender contacts a jurisdiction to verify their requirements, for short-term travel into that jurisdiction on the behalf of their existing "home state" employer, and is given inaccurate or false advice by that jurisdiction's authorized representative, the sex offender won't be considered to be in violation of reporting requirements for either jurisdiction, except such as that he/she fails to comply with officials once the miscommunication is made clear.

- **Petition for Clemency in Application of Registration Provisions.**
  - For those sexual offenders that have demonstrated good behavior, have not had subsequent convictions, are considered to be of "low risk" to re-offend, and have demonstrated an ability and willingness to contribute positively to society, and expressed remorse for their past grievances.
  - Perhaps with a requirement for therapy, and regular reports by the therapist to the registering jurisdictional agency, to verify that the offender appears to remain low risk.
  - The specifics of the "Clemency" (assuming that's the correct term) would be to allow that the Sex Offender, while being required still to register, and not being (as yet) eligible to be relieved of their duty to register, would be omitted from the online published registry of sex offenders. (Perhaps with the provision that members of the public could still appear in person at their jurisdiction's registration authority, and request information about any (real or suspected) sex offenders living in their community.

As you may have surmised, I am a Registered Sex Offender in a subsequent jurisdiction, for a crime committed in California in 1992, which if committed in my residing jurisdiction would not have been a registerable offense: indecent exposure (self-gratification in my vehicle, witnessed by an adult female).

Most jurisdictions in the USA do not count this as a registerable offense, but do uphold the requirements of other jurisdictions' registration laws, to discourage offenders from relocating solely to bypass the registration requirements of the jurisdiction in which the offense was committed. I can not argue the intent and validity of this action, as it has its merit.

I was provided "alternative sentencing" in a "Furlough" program, which allowed me to pursue my B.S. degree at San Jose State University; I resided in a supervised dormitory facility, with both Work and Student furlough participants, for about 4 months. I served a total of five years of Adult Probation, and have made every effort to be compliant in meeting my continuing registration requirements. I have had no convictions in any jurisdiction since my registering offense in 1992 (sentenced in 1993).

At this time, I participate in a 12-Step program, and regularly see a therapist to discuss my abuse, interpersonal relationships, mourning of loved ones, and past inappropriate behaviors (not a jurisdictional requirement). I was also diagnosed with Sleep Apnea, and currently use a CPAP medical device; this corrected many of the underlying patterns of impulsivity and rash decision-making.

My personal interests, naturally, may have biased my preceding input; I rely on the judgment, and learned education, of those reviewing these comments, to sort through the words and apply merit where so warranted. Please comment back if you have any questions, wish a point to be clarified, or require personally identifying information so as to weigh my input.

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- **Addressing the SORNA requirements as both a child molestation victim, and a registered sex offender, I understand the challenges and concerns from both sides – and limitations.**
    - I agree that parents need to know about potential child predators, and have a right to pursue relief from those that have assaulted their children.
    - I don't know that the Registration in of itself does that, as generally speaking, those stories that grab the media's attention more often involve offenders who did not register, moved to evade registrations, or gave false information; increasing penalties and tightening regulations only puts additional duress upon those sex offenders who are, and have been, in compliance with the registration programs' requirements.
    - The laws will not prevent high-risk offenders from exploiting loopholes, or otherwise going "underground", as I have seen them written. Furthermore, greater penalties increase the chances that repeat child molesters will harm their victims, in an attempt to avoid or prolong capture and prosecution. I am concerned that political aspirations might be driving some legislation which, by its design, ultimately puts child victims in greater physical jeopardy – at least, according to the "newsworthy" trends.
    - Most parents don't look at their child victim and see that they could become an adult offender; parents, children, and the public need "sex offense awareness" training, both to recognize suspect behavior in persons close to their children, and to promptly assist their children in receiving treatment if their child has been the victim of a sexual nature crime.
    - SORNA doesn't address the underlying factors that create new sex offenders, despite the publicity, and the "now-known" consequences of being classified as a 'sex offender'.
    - Laws need to be applied to male and female equally – still illegal in some states for <u>only</u> a male to look into a female's window, and <u>not</u> the other way around.

ladies, such as Paris Hilton, Lindsay Lohan, and Britney Spears, who expose themselves to photographers and the public, essentially flaunting that they their lives do not have the same limitations and repercussions as those of other citizens – not to mention sending mixed messages to our youth.

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Thank you for making the time to review this commentary on the proposed SORNA guidelines. I hope that it has been a positive contribution, and that it will carry some weight for discussion of existing and proposed sex offender provisions. I understand that it may not be taken as having full merit, with the admission that I am directly affected by its application; I feel, however, that this admission adds to the integrity of the review and commentary, as I have not attempted to mask the extent to which it is a personal issue for me, as both a surviving child victim and an adult sex offender.

I appreciate the task before you, in weighing judicial, political, and humanitarian concerns. I honestly pray that you will find value in what I have contributed here, and will implement some aspect of it, as I feel these concerns are representative of other concerned parties' feelings, balanced with what is good for the overall security and safety of the general populace – and especially of our children.

Sincerely,

July 31st, 2007,

'rom: Rogers, Laura on behalf of GetSMART
ent: Monday, July 30, 2007 11:55 AM
Rosengarten, Clark
ubject: FW: OAG Docket No. 121

----Original Message-----
'rom: Maria Kupillas [redacted]
ent: Friday, July 27, 2007 5:43 PM
'o: GetSMART
ubject: OAG Docket No. 121

'o Whom It May Concern,

am writing to express my concerning regarding the proposed national guidelines for sex ffenders. While protecting our children from pedophiles should be a priority for our ustice system, consideration should be given to those who are labelled as sex offenders ut whom the law was clearly not intended to cover.
pecifically, those who are on sex offender registries as a result of youthful ndiscretions.

s such, I make the following suggestions:
. The State should be able to take existing offenders who qualify for exemption as per he new legislation off of the registry without fear of losing federal funding.
. Solicitation of a Minor to engage in sexual conduct, any direction, request, nticement, persuasion or encouragement of a minor should have an exemption for teens ithin three years of age.
clause should be added to allow offenders under the age of 18 or within three years he age of the victim to be categorized as a level one offender if the state deems them o be a low risk to re-offend.
. The guidelines do allow states to elect to allow a non public registry for level one ier.
tates should be able to decide if offenders within three years of their victim that ommitted a felony are eligible for the level one non- public registry. Many states today ave this non- public registry for youthful offenders that are considered a low risk to e-offend. The new guidelines as written would take this option away. The states should, owever, continue to be permitted to have a non-public registry for these youthful ffenders.
. Tier one offenders can petition for a shorter registration of 10 years if they uccessfully complete a sex offender treatment program certified by jurisdiction. This hould only be if you were sentenced by the judge to do so. If it was not required at entencing then it should not be required for the petition.
. In a tier system a level two offender is required to register for 25 years. A clause hould be added that allows offenders who are within three years of the victim to petition or a reduction in years of registration if their record is clean for 10 years.
. Some states, like Michigan, allow for a reduction in years of registration for ffenders convicted of a felony, who were within three years of the victims age, who have ompleted probation, who have been prosecuted specifically because of the age of the ictim and who have proven that they are at low risk to re-offend.
hese offenders have had their registration reduced to 10 years by a judge. The new uidelines would require these same individuals to now register for 25 years. This should e changed to allow the individual to register as per the judge's decision. The Michigan aw should be considered a model for the implementation of national guidelines.

ank you for your consideration.

a R. Kupillas, Esq.
[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:50 AM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** [redacted]
**Sent:** Saturday, July 28, 2007 4:51 PM
**To:** GetSMART
**Subject:** Re: OAG Docket No. 121

Dear Director Laura L. Rogers,

I am writing you concerning the new national sex offenders guidelines under review by the Smart Office. I want every effort made to eliminate registration altogether for youthful indiscretions. Clearly these are not individuals the American public wants on sex offender registries. The purpose of the registry is to protect children from predators. As the Godfather to a 4 year old girl I appreciate the spirit and intent of the law. At the same time, I am also a relative of a youth whom, at 18 years of age, received the stigma and punishment reserved for sex offenders for consensual sex because his partner, who was only a few months younger, was under the age of 18 years old. In this day and age this type of injustice is not acceptable.

Below are a few additional clauses I would ad to your guidelines.

1. It is very necessary for the State to be able to take existing offenders who qualify for exemption as per the new legislation of the registry without fear of losing federal funding.

2. Solicitation of a Minor to engage in sexual conduct, any direction, request, enticement, persuasion or encouragement of a minor should have an exemption for teens within four years of age, otherwise many teens could become susceptible to this offense.

3. In a Tier system, Tier one, as written, can not include Romeo & Juliet cases that involve intercourse because it only includes cases that involve jail sentencing of less than a year. All cases where intercourse or oral sex is involved would require sentencing of more than a year. A clause should be added to allow offenders under the age of 18 or within four years of the age of the victim to be assessed as a level one if the state deems them to be a low risk to re offend. In this way a state has the option to take their residence prosecuted in there state off the registry and they have options on how to treat a offender coming in from a stricter state.

4. The guidelines do allow states to elect to allow a non public registry for level one tier. States should be able to decide if offenders within four years of their victim that committed a felony are eligible for the level one non public registry. Many state today already have this non public registry for youthful felonies that are considered low risk to re offend, the new guidelines as written would take this option away. This option must remain in tack for the states.

5. Tier one can petition for a shorter registration of 10 years if they have a clean record for the ten years. It should only require a clean sexual record.

6. Tier one can petition for a shorter registration of 10 years if they successful complete a sex offender treatment program certified by jurisdiction. This should only be if you were sentenced by the judge to do so. If it was not required at sentencing then it should not be required for the petition.

7. In a tier system a level two offender is required to register for 25 years. A clause should be added that allows offenders who are within a 4 year age difference of the victim to petition for a reduction in years of registration if

their sexual record is clean for 10 years.

8. Some states like Michigan already allow for reduction in years of registration for offenders, convicted of a felony, who were within three years of the victims age, who have completed probation, who have been prosecuted specifically because of the age of the victim and who have proven that they are at low risk to re offend. These offenders have had their registration reduced to 10 years by a judge. The new guidelines would require these same individuals to now register for 25 years. This should be changed to allow the individual to register as per the judges decision.

With careful consideration of all who might be affected by the national sex offender registry, the results sought, i.e., to protect children, can be achieved.

Sincerely,

[redacted]

[redacted]

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**From:** [redacted]
**Sent:** Sunday, July 08, 2007 4:22 AM
**To:** GetSMART
**Subject:** OAG Docketr no. 121 SORNA respone

As a citizen and member of the public I would like to make the following suggestions regarding SORNA :

1. Provisions and regulations should BE ADDED for the use of such information by any non- governmental organization or agency.
   a. Prevents misuse of information
   b. Pre set guidelines for agencies or contractors that may form the business of maintaining the tracking system.

2. Define the Tiers by risk or crime and not the punishment; Crime definition remains the same / punishments differ .
a. Would reduce confusion, maintain ease of tier placement / classification by jurisdictions
b. Promote public and jurisdictional confidence of the system.
c. It would promote fairness.
d. It would prevent movement of SOs; If all states had the same mandatory guideline, SOs would not keep moving around causing more havoc for the tracking system ? which is the goal for public safety.

3. Jurisdictions must NOT be free to exceed the SORNA minimum standards.
a. Decrease Jurisdictional and cross-jurisdictional confusion and differences.
b. Would standardize across the board.
c. Make it a comprehensive mandatory system. Remove the word ?guideline?
   Increase the public?s trust in the system.
   Increases the understanding and education of all parties.

4. Jurisdiction MUST NOT include address, telephone #, email, IM, employment
a. Protection from harassment
b. Promote reentering into society (work).
c. Public should use their own zip code to research local SOs
d. Public should then call law enforcement for any further issues.
e. Serve and protect the public - SOs are part of the public also. We would want these SOs working, paying taxes, and not living under bridges.

5. SO Harassment by the public: Sec 118 (F) change wording from MAY to SHALL or WILL BE
a. Discourage public misbehavior
b. Promote SO confidence in the system thereby promoting comliance

6. Sec 118 (c ) Make it MANDATORY for jurisdictions to keep Tier I off public registry.
a. Tier I are your low risk
b. More likely the ones trying to return to society and no re-offense
c. For public Safety, the Tier III photos should stand out in the registry - not lost in the sea of faces of low-risk offenders.
d. Make it work the best for the public.
e. Make it an efficient system for the tracking agencies.

7. Reduce punishment time for Failure (10 years)
a. Provide a First infraction leniency
b. Have the punishment fit the crime.
c. Promote compliance ? positive outcomes, such as reduction in monthly fee
d. Provide toll free phone numbers to make access reasonable
   Provide access for notification from any jurisdiction ?.

8. Residency restriction ? standardize
a. Promotes confidence w/ public
b. Prevents movement of SOs

9. Provide for a data collection resource
a. Mandate statistical evaluation
Cause of death & crimes against SO vs Crimes & deaths committed by SO
Mandate annual report
c. Interpret system?s public safety effectiveness
e. Determine the effects on the SOs

10. Include a system to remove the SO from the registry:
a. Three days within completion of the term of compliance
b. Three days from the death of the SO

Thank you for allowing me to voice my opinion and suggestions.

**From:** [redacted]
**Sent:** Wednesday, June 20, 2007 4:04 PM
**To:** GetSMART
**Subject:** SONRA Issues

Aside from constitutional issues which need to be addressed, here are some things I and others feel need to be considered before enacting these laws.

1.Sec 118 subsection (f) This is the section on using the list to cause injury or harassment to commit may be a crime.

Issue; I feel the word may should be changed to shall result in civil and criminal penalties. This would require if the word shall were put into the law the police would have to take a report if an SO is harassed or injured because their information was on the SOR.

2. Sec 114 (a) (7) this section states that if a SO is going to stay in any one place more than 7 consecutive days they must register that location as one they may stay in.

Issue; I feel that this should read in 7 seven days anyone calendar year

3.Sec 114 (a) (6) (a) (7) All vehicles including water craft or any type of vehicle shall be part of the SOR.

Issue; As I see it this information should only be available to Law Enforcement and be added to section 118(b) and Part VII as mandatory excluded information from the public. I have many reasons that I feel this information should not be public. But the main one was what happens when other people drive that vehicle; not the SO, these people will be subject to possible road rage and harassment as they travel down the roads, this will ;se a danger to all the people around them. Furthermore this could cause more unjust .victions of person on the SOR as this would give a person enough information on the SO to report a false crime that the SO did.

4. Sec 113 (a) (b) (c) and also in sec. 117 (a) This is the 3 (Business days) day rule that req. the SO to report any change in address, school, or work. Also it requires the SO to report immediately any change in vehicles, phone numbers; cell or land line and any change in internet status. (IE new e mail address, new screen name and so on)

Issue this is to short of a time frame to report, take for example a person moves to Lansing to go to MSU. And they are going to work in DeWitt. This requirement as I read it says they will report to all 3 locations within 3 days. Now I am using this example because all 3 of these locations are in different jurisdictions and would require a lot of traveling to get to each one. I would say a person could take one or two full days going to each of these locations. If they are trying to start a job this would possibly cause them a hardship and maybe a loss of the job.

5. Each state may post the registrants communications on the public web sight. The SONRA is letting each state set its own boundary here.

Issue; if a state does post this information on the public web sight, SO will get e mails or phone calls of a harassing nature. I feel this information should only be available to Law Enforcement.
If for some reason the public would like to check a phone number or e mail address, then they should have to submit that request with the phone number or e mail to law enforcement in some form of written request (even e mailing it in) and law enforcement can tell them if that phone number or e mail belongs to a sex offender. I see many other issues with this one also. I said in my e mail to the smart office that I was afraid this would ourage SO's to communicate and work to get these very laws overturned. That is the last ng these people would want to see happen.

5. Sec 118 (c) This section lets the states determine if they will leave Tier 1 off the ublic SOR.

the public registry. I said that if the SNORA is truly trying to protect the public from SO's then having Tier 1 on the public SOR will not be in true line with that thinking. Furthermore it will just add more names to a SOR that have no value to the public and make the public look though more faces to pick out those SO's that really are of a danger.

7. Employment sec 114 (a) (4) and (a) (7) call for address of employer to be on the SOR. The state may decide that they will leave out the name of the employer.

Issue. I wanted the name and address of the employer mandatory off the public SOR. The reasoning I gave was that if we truly want to protect the public from the SO we should want the SO working. If we place the information of the employer on the SOR, employers are going to have a hard time in this day and age hiring a SO. We want the SO working so they are paying taxes and not a drain on the system.

8. Sec 114 (a) (7) The SO to provide information on any place they are staying 7 seven or more days.

Issue this is an overly broad statement and should only be required of tier 3 offenders. Also see the issue above were this is also talked about.

9. Sec V and Sec III (2) (4) Classes of sex offenders. The states are NOT required to set up a tier system but will follow general guide lines as to what the SO must do based on the their system in the SNORA. This is to be used as a starting point and states may make it harder on the SO if they like. (my words) The SNORA as it is being read by the AG office could it they liked set up a Tier system but the guide lines would not let many states have very many Tier 1 offenders as the SNORA says any sex crime that a SO can get more than one year in prison shall be a Tier 2 or in some cases a Tier 3 classification. In Michigan even CSC 4th is a two year misto. so this would get the SO a Tier 2 under the guide lines as written.

Issue. If the SNORA is really being set up to protect the public then a Tier system should be mandatory for all states. A tier system that uses empirically based risk factors. If tier system is so broad it will hamper the publics ability to pick out who is a real danger.
Furthermore if the present SNORA system is used; the system will include many who are of no risk at all but yet Law Enforcement will be forced to use precious resources tracking low - risk offenders rather than monitoring high risk offenders. Furthermore if the present guide lines are put in place the Tier system as recommended will cause one state to classify some offenders as Tier 2 when in another state that same offender with the same sex crime will be classified as a Tier 1. This type of classification discrepancy will lead the public into not trusting the SNORA. Furthermore it may cause SO's to move to a state that is more favorable to the tier system so they can get a better tier rating. This will place an undo burden on the states with a tier system that is favorable to the SO's. If the tier system is thought to fair and correct in all the states with all using a empirically based risk factors, both the public and the SO's will be more inclined to go along with it. Also if states fail to set up a tier system and paint all the SO's as the same, the likely hood that a SO will take this system to court is greater. And given that the US Dept. of Justice Bureau of Justice Statistics on Recidivism show that within three years of release from prison 3.5% of sex offenders are reconvicted of a new sex crime. In that this is one of the lowest recidivism rates among all criminals with the exception of murder's; the US Attorney General will have a hard time defending the SONRA in court. By setting up a tier system using empirically based risk factors the AG will be in a better position to defend the SONAR when it goes to the Supreme court.

10. 18 USC 2250 reads that knowingly failing to register is up to ten years in jail.

Issue; How can the crime of failing to register draw an SO more time than the original sex offence they were convicted of. In that if the SNORA's purpose is to protect the public, and not to punish the SO's. If that is the case knowingly failing to register should only draw the same amount of jail time as the original crime.

. Indian tribes will have a loss of power under the SNORA.

Issue; since the beginning of the written laws of the USA we have under treaty with the indian tribes always let them govern themselves. This would be the first time in the

to the states if the indian tribes fail to act.)

THE FOLLOWING ISSUES ARE NOT ADDRESSED IN THE GUIDELINES AND SHOULD BE ADDED.

. A system should be in place to enable a SO to be reevaluated from a Tier II to a Tier I.

13. The SNORA does not mandate that States set up a toll free phone number that the SO can call when they have issues with the SNORA, such as not understanding when and were to register, or other questions they may have. Also should they have a emergency that for some reason the SO can not get in to register in time, they could call this number and a notice would be sent to the local agency that registers this SO. This would help with compliance of the law.

14. The SNORA is punitive given that the US Dept. Of Justice Bureau Of Justice Statistics on Recidivism show that only 3.5% of sex offenders are reconvicted of a sex crime within 3 years of release from prison. Also given that over 90% of sex offenses are committed by a person known to the victim, with over 50% of those being a family member, then the SNORA is of little value. If the AG and the congress really wants to protect the public they will set up a national registry for Drug Dealers, Drunk Drivers (OUIL) and others that are a greater risk to hurt and kill the public. (this is not going to get added to the SNORA but it is a point that should be made to the OAG's office at some point when you write to them.)

15. If the SNORA is set up to be a catch all for sex offenders crimes, then the SNORA should add a provision that only the States and the Federal government are able to set up laws that govern sex offenders and sex offender registries. This would include the fact that local ordinances and laws may not provide for limits on were sex offenders can live. Given that the SNORA is not meant as an additional punishment, and that studies have shown that residency restrictions do not protect the public and in fact may make it more dangerous for them in that SO's will go undergroundor report false address, and Law Enforcement does not have the manpower to check all of the address. Furthermore if local its of government pass their own laws in this area, we will have a patch work of laws that are different from one government unit to the next.

16 As addressed above the guide lines on the SNORA as they are written now will have the same offender with the same crime being placed in the tier system differant in each state. The only true way to make sure we are getting all the high risk offenders on the SNORA is to have empirically based risk factors to place the SO on a Tiered systembased on that and not one system in one state and anouther in a different state.

17. Each state under the SNORA should be required to set up a central location that keeps the information on the following acts. 1. Death of a SO by suicide, 2. Death of a SO by vigilantes or the victim causing death of the SO 3. any crime committed against a SO who is on the public registry. This information would be helpful to show if the SNORA is being used by the public in the way it was intended or is the SNORA being abused.

18. Each state should be required to set up a tiered approach to placement of SO's on the SNORA within 3 years of passage of the SNORA,s guidelines. This would show that the real reason behind the SNORA is for public protection and not as a punitive law.

19. Upon the death of a sex offender the death certificate will be presented to one of the SO,s regisrty points and they shall cause the SO's information to be removed from the SNORA.

Signed,
An American Citizen

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:01 AM
Rosengarten, Clark
**Subject:** FW: Regarding OAG Docket No. 121

-----Original Message-----
From: Michael Eisdorfer [redacted]
Sent: Monday, July 30, 2007 5:01 PM
To: GetSMART
Subject: Regarding OAG Docket No. 121

To Whom It May Concern,

I read the OAG Docket No. 121 and I would like to voice my concerns with it. I want every effort made to eliminate registration altogether for youthful indiscretions. Specifically, I respectfully request that those who engage in consensual experimentation, who are under the age of eighteen and are within 2 years of each others' age, should not be placed in the registry, or labeled as "offenders." These people are teenagers, who were tempted by their new bodies and made a wrong decision by engaging in exploration with a peer. There are to many young people on the sex offender list who have been condemned for years based on stupid decisions or teenage mistakes they made in their past.

Below are a few additional clauses I would like added to your guidelines:

1. The state should able to take existing offenders who qualify for exemption as per the new legislation of the registry without fear of losing federal funding.

Solicitation of a Minor to engage in sexual conduct, any direction, request, enticement, persuasion or encouragement of a minor should have an exemption for teens within two years of age, otherwise many teens could become susceptible to this offense.

3. In a Tier system, Tier one, as written, can not include Romeo & Juliet cases that involve intercourse because it only includes cases that involve jail sentencing of less than a year. All cases where intercourse or oral sex is involved would require sentencing of more than a year. A clause should be added to allow offenders under the age of 18 or within two years of the age of the victim to be assessed as a "level one" if the state deems them to be a low risk to repeat the offense. In this way, a state has the option to take their residence prosecuted in their state off of the registry and have multiple options as to how an offender coming in from a stricter state will be treated.

4. The guidelines do allow states to elect to allow a non public registry for level one tier. States should be able to decide if offenders within two years of their victim that committed a felony are eligible for the level one non public registry. Many states today already have this non public registry for youthful felonies that are considered low risk to repeat an offence. The new guidelines as written, would take this option away. This option must remain intact for the states.

5. Tier one can petition for a shorter registration of 10 years if the offender have a clean record for the ten years. It should only require a clean sexual record.

6. Tier one can petition for a shorter registration of 10 years if they successful complete a sex offender treatment program certified by jurisdiction. This should only be ou were sentenced by a judge to o. If it was not required at sentencing, then it should not be quired for the petition.

7. In a tier system a level two offender is required to register for

sexual record is clean for 10 years.

7. Some states like Michigan already allow for reduction in years of registration for enders, convicted of a felony, who were within three years of the victims age, who e completed probation, who have been prosecuted specifically because of the age of the victim and who have proven that they are at low risk to repeat the offence. These offenders have had their registration reduced to 10 years by a judge. The new guidelines would require these same individuals to now register for 25 years. This should be changed to allow the individual to register as per the judges decision.

Please make the effort to protect those who need protecting. Teens are too young to be held accountable for laws that we as a society should do a better job in teaching them. Placing a boy on a list with rapists, when he had consensual sex with a high school peer (a few months over a year apart in age) is absurd. These young men and women should not be condemned because of teenage curiosity and they should not be punished and labeled as "sexual offenders and predators" when their individual circumstances were not predatory to begin with.

As a country, it is our obligation to teach our children and our teenagers the law and how to abide by it. Realistically speaking, statutory rape is not explained to youths as a peer on peer encounter; it is explained as a "sick person," a "bad person," an "older person" with bad thoughts and who is harmful in an attacking way. These teens are not aware that they themselves could be considered "predators." They are not aware of these extreme laws that could hinder their future. In adulthood, ignorance of the law is no excuse, but to condemn a high school teenager for ignorance to this law is shameful on us as a society. I respectfully ask that my plea for our youth be considered.

Thank you,

:iael Eisdorfer

[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 12:00 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No. 121

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**From:** Ed Lynch [redacted]
**Sent:** Wednesday, July 25, 2007 10:44 PM
**To:** GetSMART
**Subject:** OAG Docket No. 121

To: Laura Rogers, Director
From: Edmond R. Lynch
Date: 7/26/07
RE: OAG Docket no. 121

The concept of a national registry is somewhat appealing, if not for any other reason than it can perhaps sort out some of the ill intended consequences for poor legislation at the state level. However, if this is not done properly, it may serve to make poor legislation worse. A few items of utmost importance are:
A: Youthful indiscretions must be protected. Young men and women cannot be stained with the internet age Scarlet Letter for 1 mistake in their teens.
B: States must be able to remove existing offenders without risk of losing federal aid. Though our society does have some absolutes, they are few, and the laws put in place to identify and punish sexual predators are particularly subject to moral interpretation. As a result, judges must be given discretion to fully understand the facts of the case, and states must be able to reduce punishment and exempt people from the list.
C: A tiered system can be useful, particularly as it can differentiate between true sexual predators and cases where the parties are within 4 years of each other. Offenders who are younger than age 18 should be treated more leniently than older offenders. States and judges should be given discretion.
D: States should have the option to keep a non-public registry.
E: Other non sexual violations should not impact length of time on registry.

Please give careful consideration to how to allow for the delisting of Romeo & Juliet cases. These young people are making mistakes that have been made for centuries, with the difference being that those on the list in today's society were caught. Let us not rob them of the opportunity to grow into mature, contributing members of society while still protecting our nation's youth from true sexual predators. It does us no good to have the list inflated with people who are not true risks.

Thank you for your consideration,

Edmond R. Lynch
[redacted]

**Rogers, Laura**

**From:** Peterson, Laurie [redacted]
**Sent:** Sunday, July 22, 2007 8:50 PM
**To:** GetSMART
**Subject:** SORNA comments

While the new legislation under AWA improves some of the shortfalls of the old mandates, it is imperative that we address the offenses that were non violent and singular on these registries as soon as possible. A substantial number of state crimes classified as felonies fall under the tier 2 mandates of AWA, requiring a 25 year public registration. Statutory rape is only one of such crimes, that is going to be inconsistently dealt with from state to state allowing some of these offenders to be tier 1's (if their crime was punishable by less than 1 year in the state of residence) versus the same offense in a neighboring state that requires a felony conviction (more than 1 year) for the exact same circumstances. This is not consistent and does not benefit public safety. Further, the online registry must be narrowed to those who are CLEARLY violent and predatory or who may have repeat offenses or a psychological diagnosis for desiring children as sex objects. Please do not ignore the comments and position on these issues of Patty Wetterling, the founder of the first registration law, named after her son Jacob. She has recently spoken out on the broad brush approach that has been used, specifically citing how children themselves are now required to register as sex offenders, as well as teenagers involved consensually with somewhat younger peers. I realize there is a 4 year age difference built into SORNA/AWA, but it hardly serves the needs of justice when the sentencing judge is removed from determining the appropriate level, if any, of registration on an individual basis for those who are under 21 years of age involved in consensual acts with those 13 and above (as per the established minimum age already in SORNA for consensual acts sec 111 ,5, C.) To underscore this point, Mark Lunsford's son was 4 years and 1 month older than his 14 year old girlfriend, and was arrested for felony sexual assault in the state of Ohio. Had he not been allowed to plea to a misdemeanor charge, this young 18 year old would have been subject to a 25 year registration under SORNA! This surely would have been an outrage to justice, had this occurred. Joshua's Lunsford's case is not isolated, there are thousands of teens/young men and women who are under the age of 21 who are being arrested and *convicted* of felony sexual assault for consensual sex acts across America, who are not allowed to plea down to a misdemeanor. They are then subject to federally mandated minimum 25 year registration under AWA, or a lifetime of registration under state law, since SORNA/AWA does not set a ceiling on these requirements, instead leaving them open to state discretion to exceed. Again this is not consistent. You must revise the registration guidelines to take the following into consideration:

1) Set a ceiling on the tier 1 and tier 2 registration limits for first time offenses. Currently the floor is set at 15 years and 25 year and lacking a mandatory ceiling which is needed for consistency.

2) Allow for a Tier 2 offense to be reduced to 15 years registration (or some other reduced number of years from 25) if the requirements for reducing a tier 1 offense are met as a tier 2 offender. This is imperative since the current sequence allows for those who are the most heinous level, a tier 3, to be reduced to 25 years, but there is no such remedy for a tier 2 offense.

3) Create a separate provision that allows states to set their own guidelines (without loss of grant money) to deal with registration requirements for those who are under 21 years of age and were involved consensually with another teen who has reached the age of 13, but is less than the state mandated age of consent.

Please strongly consider these suggestions and feel free to contact me as needed.

Sincerely,

**Laurie Peterson**
Cocerned private citizen
[redacted]

8/16/2007

SMART Office

Information

This is just an informal comment / suggestion / observation. I could not get permission from my management to send this in email form.

## Observation 1: Sect V. Classes of Sex Offenders

- "Substance, not form or terminology"
  - all States have different interpretations of legal terminology
  - There is a guide to State specific legal terminology on www.leo.gov - for the Law Enforcement Community. This list was developed and is maintain by the FBI/NILS Legal Research and Analysis Team. It deals with a variety of terms including juvenile adjudication for all 50 states and us territories. You have to be a LEO member to view.
- if language was added to the law / or possibly SORNA guidelines indicating that when a subject is registered under a "tier" they are found to be a danger to themself or others it could establish a federal firearm prohibition under 18 USC 922(g)(4). This may be a valuable source for establishing a firearm prohibition not available by other means

(over)

Observation 2: Sect. VII Disclosure of Information

- National Databases - "NSOR "or Other appropriate databases"
  - this could allow entry of records from SORNA into the NICS Index to identify federal firearm prohibitions under 18 USC 922
  - Any finding of a subject by a lawful authority that a subject is a danger to themself and others is a federal firearm prohibition under 18 USC 922(g)(4)
    - this is not just mental commitments.
- Any access to records in SORNA may assist the NICS in obtaining information and establishing federal firearm prohibitions.

William Swan
[redacted]

July 7, 2007

U.S. Department of Justice
GetSMART@usdoj.gov

Dear Sirs:

With all due respect to the authors of the proposed guidelines for national sex offender registration[1], who have clearly put in considerable effort in drafting them, I fear they have started with an incorrect premise, have gone in the wrong direction, and that the proposed guidelines will be considerably more destructive than helpful.

I have organized these comments on the guidelines into three sections: background and general issues, specific problems and constructive alternatives.

I urge you to review these comments and incorporate them into a revised set of guidelines.

Sincerely,

1 Announced May 2007, online at: http://www.usdoj.gov/opa/pr/2007/May/07_ag_366.html Guidelines at http://www.ojp.usdoj.gov/smart/proposed.htm

## 1. Background and General Issues

In this section are general comments about the proposed guidelines. Specific items will be addressed in section 2.

**1.1 It's all speculation.** The stated goal of all sex-offender registration programs, and everything that builds on them, is safety. However, it has never been established whether any safety has really been achieved by any element of those programs, which makes them merely speculative. This shows even in these proposed guidelines. For example, the introduction reads in part:

> "These programs serve a number of important public safety purposes. In their most basic character, the registration aspects of these programs are systems for tracking sex offenders following their release into the community. If a sexually violent crime occurs or a child is molested, information available to law enforcement through the registration program about sex offenders who may have been present in the area **may help** to identify the perpetrator and solve the crime. If a particular released sex offender is implicated in such a crime, knowledge of the sex offender's whereabouts through the registration system **may help** law enforcement in making a prompt apprehension. The registration program **may** also **have** salutary effects in relation to the likelihood of registrants committing more sex offenses. Registered sex offenders will perceive that the authorities' knowledge of their identities, locations, and past offenses reduces the chances that they can avoid detection and apprehension if they re-offend, and this perception **may help** to discourage them from doing so." [1. Introduction]

The word "may" appears in this sense throughout the entire guidelines -- the entire basis of these guidelines is mere speculation! Surely, in the 17 years that have passed since these laws were first enacted, there would now be sufficient information to tell whether these existing laws achieve anything of their intended effect or not. But there is none; instead lawmakers keep piling on new requirements and restrictions, such as those in these guidelines.

Some laws have proven to be extremely counter-productive (and impossible to get rid of[2]). It would be far better to have a completed study of the effectiveness and issues with existing laws before building weightier structures on what may prove to be not just sand, but quicksand, with very costly and damaging results. For every considered measure a pilot test should also be performed and analyzed, to be widely enacted if it proves beneficial or terminated if not.

I will note that there is currently a federally-funded study on the effectiveness of sex-offender registration being conducted by the New Jersey Department of Corrections, with results due early next year. Finalization of these proposed guidelines should at the very least be deferred until that study is published, and only then revisited.

**1.2 Perceived safety is not real safety.** Measures to increase perceived safety can reduce actual safety. If the vast majority of sex offenses were committed by previously-convicted sex offenders, these measures would make sense. But this department's own Bureau of Justice Statistics says otherwise in its report "Sex Offenses and Offenders" (NCJ 163392): The table on page 23 shows that only 10% of rapists and 15% of sexual assaulters in prison had prior sex-offense convictions: thus 85% to 90% of the sex-offense convictions were first-time convictions.[3]

With all the focus placed on convicted sex offenders, the fact that over 5 out of 6 new offenses are first-time offenses is lost; not only do people think they and their children are safe if there are no *registered* sex offenders living nearby, they are even being sold on ideas such as "safe sex-offender-free communities[4]" (i.e., you can let your guard down here), a dangerous abuse of registration that will only result in more victims.

These measures also carry the likelihood of increased recidivism in both in-category (sex) offenses and out-of-

2 See http://www.radioiowa.com/gestalt/go.cfm?objectid=352CF80A-92E1-67A5-6D2385E4022D9224

3 http://www.ojp.usdoj.gov/bjs/abstract/soo.htm, p.24: Table 3 and bullet item 3 show all violent sex offenders falling into these two categories.

4 See http://www.wreg.com/Global/story.asp?S=4768425 for an example.

category. Psychologists and other experts say that the best protection against recidivism is increased engagement with the community and as others note, these measures "may, in fact, make offenders more likely to commit new crimes by consigning them to social isolation.[5]" Every new crime means a new victim and even these guideline provide *zero* protection here; at best they move the crime to a different locale.

**1.3 Ratcheting up is very bad.** The proposed guidelines are a nasty *ex post facto* ratcheting up of the requirements to live in society. They should be applied only as an element of a conviction and not retroactively, because they break the promise of "this is all we will ever want from you" given when when the original registration laws were passed.

Ratcheting up registration and notification measures (Section II.C pp. 7-9 and "Retroactive Classes", pp. 49-51) on registered sex offenders who will not and intend not to re-offend (which appears to be about three out of four of them[6]) tells them quite explicitly that there is nothing they can do, no amount of good behavior, that will prevent their lives from becoming worse. Especially with the measures proposed here this is a sure-fire recipe for disaster: they will withdraw from society, and be instilled with feelings of fear and powerlessness, leading to anger, bitterness – and new victims. "If it's only going to get worse anyway, what's to lose?"

If anything, these guidelines should also be setting *maximum* levels on what is allowed, particularly when we have politicians dreaming up punitive "non-punishments" such as branding drivers' licenses and license plates, and non-residency zones. (Non-residency zones have caused registration non-compliance to zoom from 5-10% to over 50%[7] but the first state with this law finds it can't repeal the law[8] -- yet other locales continue to enact similar laws.)

**1.4 These measures are punitive by design and effect.** The very first measure enacted was simple registration, with annual verification by mail. Subsequent measures have added punitive elements such as the posting of mug shots and addresses, labeling drivers' licenses and more – in many ways like the "shaming" punishments imposed for "deadbeat dads." Add to that the four known murders of registered sex offenders by complete strangers using the online registries, and the untold number of registered sex offenders' houses across the country torched in efforts to drive them away, and you already have a punishing fear that will be exacerbated by these measures.

## 2. Specific Problems and Futilities

This section evaluates the problems with and futile efforts made by specific elements of the prosed guidelines.

**2.1 Section V, pp. 24-27, "Classes Of Sex Offenders," increases the public risk.** As studies[9] have shown, the severity of the offense is not an indicator of and may even be inverse to the likelihood of re-offense. The proposed change to a rigid offense-based classification is not only punitive in nature, it creates a bigger public risk than the current system of individual evaluation. The end result will be costly in terms of new victims, costs of incarceration and costs of administration by the supervising agencies.

The current system, under which each registered sex offender is independently evaluated for risk level by officials familiar with the ex-offender's record, plus the development and refinement of accurate classification tools, should not be altered. (I address this issue further in my comment 3.1.)

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5 From http://www.cmonitor.com/apps/pbcs.dll/article?AID=/20060503/REPOSITORY/605030304/1027/OPINION01

6 Derived by extrapolating Chart 1 in "Historical Review of Returns to Prison," Washington State Department of Corrections, online at http://www.doc.wa.gov/budget/docs/publications/Recidivism20.pdf

7 See http://www.tribune-georgian.com/articles/2006/07/05/news/opinion/1opinion7.5.txt

8 See http://www.radioiowa.com/gestalt/go.cfm?objectid=352CF80A-92E1-67A5-6D2385E4022D9224

9 For example, see http://www.johnhoward.ab.ca/docs/sxoffend/page1.htm

**2.2 Section VI, pp. 28-35, requiring too much information increases the public risk and cost.** The amount of information being demanded goes so far it will lead to deliberate non-compliance. "Internet identifiers and addresses" is one such example; this is "Big Brother" punitive invasion, but to a registered sex offender intent on finding a victim online or by other means the requirement for so much information provides absolutely no deterrent at all – especially considering that penalty for the crime far exceeds the penalty for unregistered addresses or identifiers.

Note that deliberate noncompliance is *extremely* dangerous because it places the registered sex offender into the continual mindset of being an unapprehended criminal -- exactly the opposite of what is needed to avoid recidivism. The end result will be costly in terms of new victims, costs of incarceration and costs of administration by the supervising agencies.

To invasively and uselessly requiring "Internet identifiers and addresses" one should add: telephone numbers (home and cell), Social Security Number (the justification for this is silly), "temporary lodging information" (this one is so useless it is ludicrous – consider all the focus on extended contact and "grooming" by intended predator; *one week*?), travel and immigration documents, professional licenses, and DNA. (I add DNA as a special case due to the fact that the practice of acquiring DNA has gone on so long it is very unlikely that those who have not supplied will re-offend. (Risk reduction over time is mentioned in comment 3.1.)

Other specifically required items that are invasive and uselessly excessive are:

- Other residence information (excepting homeless residence locales). Consider that the registered sex offender who supplies this information and then intends to commits a crime will avoid any location he supplied to the registry. And if he's sought he will also avoid those locales, thus wasting law enforcement time while they search the locales where he will not be.

- Current photograph. Requirements for repeatedly taking mug shots (Section XI) reinforce the mindset of being forever a criminal, which makes a new offense much more likely. Treat them like criminals and you'll get more criminals. What is worse, this is costly and unnecessary – photographs are already available in drivers' license and state ID records; they can be pulled up as needed, as noted in the driver's license clause of Section 6, p.35.

- Vehicle information and habitual location. This starts out at a very high level of useless information ("in case of flight"?), and gets worse by placing no ceiling. Some locale will undoubtedly require reporting such for nothing more than borrowing a friend's car one time; instantly the registered sex offender becomes a criminal.

Information that is questionable (some of this is often already required but it is not clear if it has any value whatsoever, and it adds to the cost of the registry) is:
- employer name and address
- school information
- text of registration offense (VERY costly to add retroactively)
- criminal history and other information

The reasonably required information are names and (non-Internet) aliases, residence address or homeless alternative, date of birth, physical description but this should be allowed to "age" along with the photograph, noting again that updates are available from the driver's license database, and fingerprints and palm prints if already acquired.

**2.3 Section VII, pp36-44, disclosing too much will increase the public risk and cost.** The amount of information required to be disclosed on website will be immensely destructive to the registered sex offender's life.

- Disclosing exact address: there is no knowing how many registered sex offender's houses have been torched because their exact address was available; there have been at least four murders by strangers facilitated by this information. (Note: registered sex offenders can use this to contact each other; see comment 2.4.)

- Disclosing employer or address: any bill allowing this should be titled "The Registered Sex Offender Unemployability Act," because that is exactly what will result. Angry ex-offenders, unfairly rendered unemployed by such action, will be ripe for recidivism. (However, if they remain employed they can be contacted by other sex offenders using this information: "Hello, Acme Company? May I speak to Reggie Sexoffender, please?" See comment 2.4 and also next two items.)

- School address: this cannot be justified. Worse, it leads to the potential, even likelihood, of the registered sex offender's car being vandalized, per the next item.

- The license plate number and description of any vehicle owned or operated: it leads to the possibility of these vehicles being vandalized. Vandalism of registered sex offender's cars already occurs.

- A current photograph: incorporate here by reference my comment 2.2 on photographs.

Disclosure of any single one of these items, much less all of them, will increase the fear instilled in the registered sex offender, decrease the feeling of being a member of society again, and thus increase the likelihood of re-offense. And if any harassment or worse occurs, the feeling of isolation will be cemented forever, This will be costly in terms of new victims, costs of incarceration and costs of administration by the supervising agencies.

**2.4 Section VII, pp. 39-40, disclosing "remote communication addresses" is dangerously false security.** The proposed protection mechanisms in this section are so easily and obviously circumvented it is not worth mention; however, the registered sex offender who obeys the law could wind up penalized by exclusion.

The third paragraph of "REMOTE COMMUNICATION ADDRESSES," p. 39, enumerating all the nefarious things registered sex offenders "could" do (speculation again!) if they got together is simply laughable and its author should be quite embarrassed for his hysterics. Think it through for half a second: if this is such a problem, why do we incarcerate convicted sex offenders in prison... together... for year after year...?

Besides, whether the lists are made available to Internet social networking site owners or partially occluded via the method in the fourth paragraph, either way registered sex offenders can find each other using them.[10] If the lists are made available, a registered sex offender or a friend could set up a social networking site and obtain the list. If the mechanism is to test an address, set up a "sex offender only" site, use this test to keep others out, and thus accumulate a list..

But it gets worse. When researching material for these comments I found a web page that notes the high value such a list could have. One sentence bears quoting:

> All a spammer has to do is to run his huge list of e-mail addresses (and whose e-mail address doesn't soon wind up on spammers' lists?) past the verifier and BINGO! he has a qualified list of sex offenders' e-mail addresses.

What purveyor of porn would not love have such a highly qualified list of potential customers?

Similar treatment of phone numbers is even riskier, because cellphones can receive audio as well as text-message solicitations. And because cellphone number ranges are known (though no longer exclusively by carrier) one

10 And even without those the proposed identification/location information can be used: see comment 2.2.

doesn't even need a list in order to scan for registered sex offender contact information.

The first paragraph of p. 40 demonstrates the dangerous false sense of security that collection of and access to this information will engender. It states, in part:

> ... In the case of a concerned parent as described above, for example, this could enable the parent to ascertain that the e-mail address of an individual attempting to communicate through the Internet with his or her child is the address of a sex offender...

The two problems with this are:

1) A registered sex offender seeking to re-offend is unlikely to use a registered address.
2) As noted in comment 1.2, the vast majority of convictions are first-time convictions.

There's a technical term for the child whose parents will inevitably rely on this for protection: "victim."

**2.5 Section VIII, pp.45-47, "Where Registration Is Required" is inadequate.**

This section fails to set a universal standard for the rules for when registration is required, with dangerous results. It establishes a minimum level, but as the last paragraph demonstrates, jurisdictions can set broad standards that, without fair notification, amount to entrapment:

> For example, if a sex offender who is a long-haul trucker regularly drives through dozens of jurisdictions in the course of his employment, it is not required that all such jurisdictions must make the sex offender register based on transient employment-related presence, but rather they may treat such cases in accordance with their own policies. [emphasis added]

One wonders if such registration would also be required for a registered sex offender who is an airline attendant or pilot and who is forced to land in some unanticipated jurisdiction, say, for an engine failure.

With no standard, jurisdictions can and will enact different rules, creating a non-standard patchwork of rules ready to trip up the traveling registered sex offender. Such a threat will not aid rehabilitation.

**2.6 Sections X and XI, pp. 54-61, go over the top with in-person appearances.**

One recognizes the need for an in-person appearance upon initial registration in the jurisdiction of residence, but requiring it periodically, upon change of employment, student status or any other reason is dangerous for its extremely unpleasant effect upon the registrant.

Even without repeated fingerprinting and mug shots, the in-person appearances required here will say "you're still on probation" and block any sense of reintegration into society. This will lead to increased recidivism and is also likely to increase the number of registered sex offenders who decide to abscond. Again the proposed guidelines engage in speculation. Page 59, paragraph 3:

> Likewise, from the perspective of the sex offender, periodic in-person encounter with officials responsible for their monitoring **may help** to impress on them with greater vividness than remote communications that their identities, locations and past criminal conduct are known to the authorities. Hence, there is a reduced likelihood of their avoiding detection and apprehension if they re-offend, and this **may help** them to resist the temptation to re-offend.

This is unlikely. Less than 30% of rapists and less than 15% of sexual assaulters are convicted of offenses against strangers.[11] These measures would do little for those whose victims were already known to them, and the others will easily figure out how to evade these measures by means such as committing the new offense in a different jurisdiction.

In addition, information provided in person might not be correct. The Kansas City Star published an article sometime on or before 6/11/2006 (it's no longer online) about one Arvel Walls Jr., a registered sex offender who had dutifully appeared in person every 90 days for years – giving the wrong address, undetected until it was

11 "Sex Offenses and Offenders," NCJ-163392, U.S. Dept. of Justice, Bureau of Justice Statistics, 2/1997, p.24, Table 3. http://www.ojp.usdoj.gov/bjs/abstract/soo.htm

independently checked. It is hard to see how this meets the speculation in Section XI, paragraph 3:

> Beyond these functions of directly helping to ensure the accuracy and currency of the registration information, the appearance requirement... [emphasis added]

What will certainly result is a buildup of anger and stress in all registered sex offenders who have these draconian probation-like measures imposed upon them *ex post facto*. It has been observed that the majority of sex-offender re-offenses are already non-sex-offenses[12]; it would not be a surprise to see the latter grow, particularly in jurisdictions who follow the hints in Section XI of requiring more frequent appearances, and/or with "more extensive or additional measures." (p. 60)

Increased recidivism, registered sex offenders who lie or abscond because maintaining registration is too onerous, the resultant (unnecessary) incarcerations, and all the administrative work of information collection and distribution... this measure will be an extremely expensive one, especially considering that it will reduce, not increase, public safety.

**2.7 Section XI, pp. 59-61, requiring periodic in-person appearances, may be unconstitutional.**

Although not an attorney, I will note that the requirement periodic in-person appearances may be unconstitutional when applied retroactively. Such appearances may be impossible to make if the person is disabled or on extensive travel. If jurisdictions allow the police to mandate appearance on specific dates, this becomes a major impediment to the person's conduct of business, or even a threat to his employment. It is certainly a questionable and arbitrary police power with threat of incarceration for failure to comply.

I would anticipate this requirement to be immediately challenged if enacted.

**2.8 Section X.C, pp. 57-58, "International Travel" will make such impossible.**

The international exchange of convicted sex-offender status information in Section X.C is troubling, particularly when section IV.B (pp. 17-18) implies that many jurisdictions may not have "sufficient safeguards for fundamental fairness and due process." It is almost a certainty that available conviction histories will be used by other governments to exclude Americans who bear such, as Canada does presently.

The resultant inability to travel internationally will likely affect only a minority of registered sex offenders (and may be damaging to the employment of some), but the effect will be significant, particularly when they realize that their own government has helped erect these walls against them. This will not be conducive to rehabilitation.

## 3. Positive and Constructive Comments

**3.1 Section XII, "Duration of Registration" is a step in the right direction.**

I commend the authors for the suggested durations of registration, although with lifetime registration requirements already implemented in many jurisdictions they should be considering a requirement centered on a specific value rather than a minimum, because there will be pressures on all non-lifetime jurisdictions to ratchet up to lifetime.

In comment 2.1 I have already addressed the major problem of "tiering" (tied to offense level) as opposed to "level" (likelihood of re-offense), and so I will address the issue in terms of "level."

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12 "Examining Sex Offender Recidivism," p.7, http://esor.freeservers.com/Examining.pdf, derived from "Recidivism of Prisoners Released in 1983," NCJ-116261, U.S. Dept. of Justice, Bureau of Justice Statistics, http://www.ojp.usdoj.gov/bjs/abstract/rpr83.htm

Available studies show the risk of re-offense declines the longer a registered sex-offender remains out without re-offending.[13] Clearly those who remain offense-free for a considerable period of time have worked out means or mechanisms to remain in society offense-free. Also, even those considered "most likely to re-offend" may become less likely to re-offend by illness or other incapacity, including the effects of increasing age.

The registration requirements of Section XII seem to recognize this. I encourage these to be based on the "Level" model rather than the "Tier" model, because the former is based on the observed, measurable, and refinable perspective of the likelihood of re-offense. The "Tier" model is rigid and inalterable. Note: if likelihood of re-offense turns out to be closely tied to offense level, the "Level" model could become identical to the "Tier"model.

I suggest certain amendments to this section, not as minimum but recommended guidelines. These suggestions are based upon studies that analyzed recidivism over time and appear to show that at least by twenty years post-release, if not sooner, the risk of re-offense appears to drop to the likelihood of a first offense by a member the general population.[14] These suggested guidelines are as follows:

1) Establish a task force or commission to study sex-offender recidivism rates over time and recommend modifications to the time frames in 2) through 4), following.

2) Level 1 registrants have their registration automatically terminated after 10 years as a Level 1, commencing upon release at or entry into Level 1 status. or may request termination if special conditions arise.

3) Level II registrants may request re-evaluation to Level 1, annually after 5 years post-release or entry into Level II status, or if special conditions arise.

4) Level III may request re-evaluation to Level 1I or I, annually after 5 years post-release, or if special conditions arise.

5) Evaluations made by the jurisdiction of residence (or incarceration, pending release) shall be honored by all other subsequent jurisdictions.

A benefit of this scheme is that it adds a carrot to the stick, a positive incentive to remain in society offense-free.

**3.2 Set upper limits to what local jurisdictions may do.**

Various legislators around the country have blatantly attempted one-upsmanship games with their sex-offender registration requirements and restrictions in order to push the registered sex offender into other jurisdictions.[15]

The guidelines here do not restrict such actions but should, by establishing upper limits to what jurisdictions may do. My recommendation is that the upper limits should be set by a task force comprised of law enforcement, victims' advocates, civil liberties and legal organizations, and, if possible, registered sex offenders themselves (for the "inside" look at the guidelines and their effects).

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13 "Examining Sex Offender Recidivism," p.13 and 16-17, http://esor.freeservers.com/Examining.pdf, derived from "Sex Offenses in Washington State: 1998 Update," http://www.wsipp.wa.gov/rptfiles/chrtbook_98.pdf, and "Examining Recidivism," NCJ-96501, U.S. Dept. of Justice, Bureau of Justice Statistics, 2/1985, paper only.

14 See "Ten Year Recidivism Followup of 1989 Sex Offender Releases", Ohio Dept. of Rehabilitation and Correction, Table 19, "Time to Sex Recidivism" p. 12, http://www.drc.state.oh.us/web/Reports/Ten_Year_Recidivism.pdf.

15 For example, GA House Majority Leader Jerry Keen (R): "We want people [sex offenders] running away from Georgia. Given the toughest laws here, we think a lot of people could move to another state... If it becomes too onerous and too inconvenient, they just may want to live somewhere else. And I don't care where, as long as it's not in Georgia." http://findarticles.com/p/articles/mi_km4464/is_200606/ai_n16578162

**Rogers, Laura**

**From:** Kimberly Held [redacted]
**Sent:** Saturday, July 21, 2007 10:26 PM
**To:** GetSMART
**Subject:** OAG Docket no.121 SORNA Guideline Response

Please allow me to make the following suggestions regarding SORNA:
GOAL: To promote SO stability and registry compliance.
GOAL: To provide and maintain a comprehensive Tracking System that promotes fairness and public confidence.
Jurisdictions must provide the tools to determine distance (ie.1000FT)
Jurisdictions must provide toll free telephone numbers with 24 hours service
Jurisdictions must provide access for notification from any jurisdiction
Jurisdictions must provide positive reinforcement( ie register on time for 6 months, get next month fee free)
Develop a standardized Tier system that all jurisdictions must follow according to the risk level not the punishment
Provide the public with statistical analysis of the effectiveness by showing registry compliance and recidivism rates in every jurisdiction and state on an annual basis
Analyze and consider the affects of the consequences of registry on the SO lives, families (sociological), communities (safety), jurisdictions, and Department of Corrections (financial).
Provide for annual jurisdictional re-examination utilizing the above analytical results.
Other than creating a unemployed and homeless population that is depressed,stigmatized, and angry, help create hope and change by providing resource centers for jobs, living quarters, and treatment.
thank you, Kim Held

Kim Held, R.N.
[redacted]

July 20, 2007

OAG Docket No. 121

Ms. Laura L. Rogers, Director
SMART Office

Dear Ms. Rogers:

We have carefully read through The National Guidelines for Sex Offender Registration and Notification. Throughout the document it is stated, on numerous occasions, that the primary purpose is to protect the public. Yet, nowhere in the document nor anyplace else has the Justice Department, Congress or Attorney General Gonzalez published any scientific study or statistics to support the viewpoint that restrictive laws after prison, public access Internet information and community notification about a particular group of people, in this case former sex offenders, does and will protect the public. On the contrary, there are quite a few studies displaying statistical data that confirm the fact the majority of sex crimes, approximately 95%, are committed by **first time** offenders, not by people registered on a public Internet registry. Former Congressman Mark Foley is an example.

Another aspect of "protection of children and the public" that concerns us is that SORNA assumes people on the registry are dangerous and will reoffend. That is a reprehensibly false assumption and presupposes an individual will reoffend. It gives the former offender no opportunity to present a case that he or she will not reoffend. It does seem to violate Due Process.

Because SORNA requires former sex offender people to have personal information posted in a public-access Internet site it leads people to continue to hold the **false** belief that "once a sex offender always a sex offender." Politicians have not based SORNA on research-based facts. SORNA is based on false premises, emotions, hysteria, fear and a scant of highly media-sensationalized cases; the magnitude of the problem has been grossly over-exaggerated. SORNA

within five years.

Source for numbers 2 through 7: Sohopeful International, Inc. Portland, Oregon, page 16. Published: September, 2005

8. The Michigan Parole Board recidivism statistics show, in an eleven-year study (1990-2000), that former sex offenders average 1.65% recidivism rate for the same crime. This is considered to be an important study because it tracks before and after public registries and **documents that a public registry has virtually no effect on recidivism.**

One of the tragedies of SORNA is that it focuses entirely on former sex offenders as the greatest threat to the "protection of children and society," whereas the research clearly indicates the majority of horrific crimes against children are committed by family and close friends. It has been well-documented that each year thousands of children are physically abused by parents and caregivers. In 2003, according to the Department of Human Services, more than 1,500 children died from the abuse of their parents or caregivers. That translates into an average of over four children every single day! To deflect, minimize and draw attention away from the crisis and tragedy happening everyday to children within the family unit to censure, publicly isolate, humiliate, blame and further punish former sex offenders as being the demons in society is unconscionable.

An added concern we have about SORNA is that Attorney General Gonzalez and Congress have said SORNA is intended to be non-punitive, but those words play with semantics to simply satisfy and weakly defend a viewpoint that is not supported by research. By definition, the word punitive entails penalty, deprivation and disciplinary measures. SORNA directly imposes penalties, restrictions, disciplinary measures and deprivation into the lives of former sex offenders and their families. The results of the penalties have had a major impact in the lives of former sex offenders and their families. Some have been forced to move, some are harassed in different ways and some are physically and verbally assaulted. Some have lost jobs and some cannot even secure a job. Some have been murdered. Former sex offenders are deprived of their privacy when information about them becomes public information; it is publicly humiliating, shames and disgraces a person. It is a form of banishment.

A further concern we have with SORNA relates to the tiered classification system. It appears SORNA wants to place former offenders into tiers based on the committed crime. For many reasons, there is great disparity in sentencing sex

offenders, even when the crime is identical. One person is sentenced to probation and another is sentenced to years in prison for the same crime. It is well-documented women generally receive lesser sentences than men. There is the considerable likelihood that a person could be placed on Tier I and in actuality have committed a greater offense than another person on Tier II. If a tier classification system is used it should be based on the individual person's past, present and future likelihood of reoffending. Only qualified professional psychiatrists and psychologists who are knowledgeable about recidivism assessment tools should assess a person's "risk of reoffending."

It has cost, is costing, and will continue to cost taxpayers millions of dollars to **falsely** protect children and the public through public Internet registries. No one seems to be asking such questions as, "How effective are the laws? Are there other alternatives that would work better? Is there a justifiable threat? How common is the threat? What are the real threats and dangers to children and society?"

Before entering a public-access Internet registry it should be required that people read the research data on sexual offending. That information should be available to people upon entering the registry. There should also be a list of sources to go to for people who wish to further their knowledge base.

It is extremely obvious to people who have read and studied the research that SORNA is not based on research or logic. It is a tragedy that the murder of a child has been linked to all former sex offenders. It is a tragedy that many thousands of people are being subjected to SORNA. It is a tragedy that the millions of dollars being spent are not being used to provide professional rehabilitative therapy for former sex offenders with the goal of positive integration into society and not segregation and isolation. It is a tragedy that millions of dollars are not being spent to professionally help the thousands of families who physically abuse their children every day. SORNA was legislated "not because it is good crime control, but because it is good politics."

Very sincerely,

Justine Landes
Larry

**Rogers, Laura** Hicks, D.P.

**From:** [redacted]
**Sent:** Thursday, May 31, 2007 6:50 PM
**To:** GetSMART
**Subject:** soma rules

Dear Ms rogers,

I see a lack of due process for teir 3 people to be taking off the list. I also see a lack of due process when people are forced to carry the goverments mail box when they travel. this I feel can not be made retroactive.

Steve Oakes
[redacted]

Dear sirs,

If the Members of congress, and other members of government have 6 months before they have to fill out any state paper work when they move, how can sex offenders have only 3 days. I see a great lack of equal due process.

Aren't Email addresses protected by the 4th admendment? And if allowed to be taken, would they not be protected as evidence.

If teir 1 can be removed from the list after 10 years, would this not deny teir 3 equal due process. these laws are suppose to be based solely on having a record, and not into the contents of the record, as per the supreme court ruleing. I can see many court challenges headed your way. I also have to wonder whats going to happen when 730 thousand sex offenders get tired of being lock up for crimes that don't apply to the rest of the public, or their leaders in government.

Steve Oakes
[redacted]

**Rogers, Laura**

**From:** Bob Kerr [redacted]
**Sent:** Wednesday, July 25, 2007 12:23 PM
**To:** GetSMART
**Subject:** Re: OAG Docket No 121

Director Rogers,

Why not focus on breaking down the registry into classes! This would reduce hardship on those who made a mistake in their youth and those who are true predators on *people not just children.* Every time I hear "For the Children" that seems to be a key word for the over zealot politicians who want to make a name for them selves.

**You have to come to you senses on this witchhunt you have fueled the fire on.**

On 7/21/07, **GetSMART** <getsmart@usdoj.gov> wrote:

Thank you for your feedback on the proposed National Guidelines for Sex Offender Registration and Notification. The guidelines will provide a comprehensive set of minimum standards to strengthen our ability to track and monitor sex offenders and will give us an important tool in our nation's efforts to protect children against predators. We appreciate your comments and will take them into account as we finalize this document.

Laura L. Rogers, Esq.
Director
Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office

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**From:** [redacted]
**Sent:** Friday, June 22, 2007 9:02 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

This docket is absurd. Please refocus your attention to more pressing issue instead of this media witch hunt. If you would go to the class system and quit harassing people who made a stupid mistake it would not destroy more lives!

The following is a list of issues as I see it with the SONRA. I would suggest that people write to the office of SMART. They should rewrite the issue as they see it. I am listing them by number only that is not to say the first numbers are the most important.

1.Sec 118 subsection (f) This is the section on using the list to cause injury or harassment to commit may be a crime. Issue; I feel the word may should be changed to shall result in civil and criminal penalties. This would require if the word shall
were put into the law the police would have to take a report if an SO is harassed or injured because

their information was on the SOR.

2. Sec 114 (a) (7) this section states that if a SO is going to stay in any one place more than 7 consecutive days they must register that location as one they may stay in.

Issue; I feel that this should read in 7 seven days anyone calendar year

3.Sec 114 (a) (6) (a) (7) All vehicles including water craft or any type of vehicle shall be part of the SOR.

Issue; As I see it this information should only be available to Law Enforcement and be added to section 118(b) and Part VII as mandatory excluded information from the public. I have many reasons that I feel this information should not be public. But the main one was what happens when other people drive that vehicle; not the SO, these people will be subject to possible road rage and harassment as they travel down the roads, this will cause a danger to all the people around them. Furthermore this could cause more unjust convictions of person on the SOR as this would give a person enough information on the SO to report a false crime that the SO did.

4. Sec 113 (a) (b) (c) and also in sec. 117 (a) This is the 3 (Business days) day rule that req. the SO to report any change in address, school, or work. Also it requires the SO to report immediately any change in vehicles, phone numbers; cell or land line
and any change in internet status. (IE new e mail address, new screen name and so on) Issue this is to short of a time frame to report, take for example a person moves

--
Bob Kerr
[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Saturday, June 02, 2007 10:53 PM
**To:** GetSMART
**Subject:** Sexual predators new laws

**Why I put this together and some other issues:**

1. **When parents check the computer, they should have a clear understanding of what crimes the sex offender has committed.**
2. **Having clear laws and language describing the crime the same nationally will help when a sex offender moves.**
3. **Having clear laws and language throughout the nation will also help young men and women realize what behavior is a crime. Our society is saturated by sexual images in the media, internet and in our society as a whole – strip clubs, adult stores with pornography etc., adult movies and programming on television, prostitutes, magazines, etc.**
4. **The issue with the tattooing is that it would be much easier for families and children to be safe if we are still letting these people out of jail and prison. It is time we make children and families more important than a sexual predator.**

## SEX OFFENDER'S CRIME

**Sexual Assault:**
First Degree
Second Degree (Unable to Consent)
**Incest**

**Attempted Sexual Assault: No Penetration**
First Degree
Second Degree
**Incest**

**Intent to Commit Sexual Assault:**
Sexual Assault by Voyeurism (wanting someone to see, fear, hurt)
Sexual Assault by Indecent Exposure (wanting someone to see, fear, hurt) (vs. Exhibitionism)
Trespass/Burglary

**Sexual Exploitation of Children:**
Possession of Child Pornography
Trafficking in children;
Procurement of a child for sexual exploitation;
Soliciting for child prostitution;
Pandering of a child;
Procurement of a child for prostitution;
Keeping a place of child prostitution;
Pimping of a child;
Inducement of child prostitution;
Patronizing a prostituted child;
Engaging in Sexual Conduct in a Penal Institution;
Wholesale Promotion of Obscenity to Minors; and
Promotion of Obscenity to Minors
Criminal attempt, conspiracy or solicitation to commit any of the above offenses.

**Statutory Sexual Assault**
child/child - boyfriend/girlfriend - with consent

**PUNISHMENT**
Mandatory Family Counseling (Fine)

| |
|---|
| Probation, Offender Counseling (Fine) |
| 3-12 months jail, Tattoo, Offender Counseling (Fine) |
| 1-5 years prison, Tattoo, Offender Counseling (Fine) |
| 6-10 years prison, Tattoo, Offender Counseling (Fine) |
| 11-20 years prison, Tattoo, Offender Counseling (Fine) |

21 years to life in prison with the choice of death

AGE OF OFFENDER 0--4 5--8 9--11 12--14 15--17 18 older

| AGE OF VICTIM | 0--4 |
|---|---|
| | 5--8 |
| **SEXUAL ASSAULT** | 9--11 |
| 1ST OFFENCE | 12--14 |
| | 15--17 |
| | 18 older |

0--4 5--8 9--11 12--14 15--17 18 older

| | 0--4 |
|---|---|
| | 5--8 |
| **ATTEMPTED** | 9--11 |
| **SEXUAL ASSAULT** | 12--14 |
| 1ST OFFENCE | 15--17 |
| | 18 older |

0--4 5--8 9--11 12--14 15--17 18 older

| | 0--4 |
|---|---|
| | 5--8 |
| **INTENT TO COMMIT** | 9--11 |
| **SEXUAL ASSAULT** | 12--14 |
| 1ST OFFENCE | 15--17 |
| | 18 older |

0--4 5--8 9--11 12--14 15--17 18 older

| | 0--4 |
|---|---|
| | 5--8 |
| **SEXUAL** | 9--11 |
| **EXPLOITATION OF** | 12--14 |
| **CHILDREN** | 15--17 |
| 1ST OFFENCE | 18 older |

0--4 5--8 9--11 12--14 15--17 18 older

| | 0--4 |
|---|---|
| | 5--8 |
| **STATUTORY** ( I NEED TO CHECK THE LAWS WITH AGE DIFFERENCES) | 9--11 |
| **SEXUAL ASSAULT** | 12--14 |
| 1ST OFFENCE | 15--17 |
| | 18 older |

0--4 5--8 9--11 12--14 15--17 18 older

| | 0--4 |
|---|---|
| | 5--8 |
| **SEXUAL ASSAULT** | 9--11 |
| 2ND OFFENCE | 12--14 |
| | 15--17 |
| | 18 older |

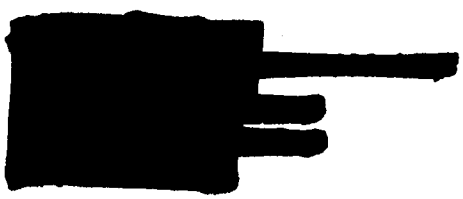
0--4 5--8 9--11 12--14 15--17 18 older

| | 0--4 |
|---|---|
| | 5--8 |
| **ATTEMPTED** | 9--11 |
| **SEXUAL ASSAULT** | 12--14 |

| | | |
|---|---|---|
| 2ND OFFENCE | 15--17 | |
| | 18 older | |
| | | 0--4 5--8 9--11 12--14 15--17 18 older |
| | 0--4 | |
| | 5--8 | |
| **INTENT TO COMMIT** | 9--11 | |
| **SEXUAL ASSAULT** | 12--14 | |
| 2ND OFFENCE | 15--17 | |
| | 18 older | |
| | | 0--4 5--8 9--11 12--14 15--17 18 older |
| | 0--4 | |
| | 5--8 | |
| **SEXUAL** | 9--11 | |
| **EXPLOITATION OF** | 12--14 | |
| **CHILDREN** | 15--17 | |
| 2ND OFFENCE | 18 older | |
| | | 0--4 5--8 9--11 12--14 15--17 18 older |
| | 0--4 | |
| | 5--8 | |
| **STATUTORY** | 9--11 | |
| **SEXUAL ASSAULT** | 12--14 | |
| 2ND OFFENCE | 15--17 | |
| | 18 older | |

* making it simple for everybody it the best way to keep us all save. And it starts with the children. I'm a victim myself and it destroyed my life for many years. Until we prove to our children that they are important enough to protect, we will continue down this road. The more children that are victims of this abuse, the more predators we are creating.

Contact:
Author Becky Due



**The Gentlemen's Club, A Story for All Women**
ISBN: 0-9746212-0-X
**Blue the Bird, On Flying**
ISBN: 0-9746212-1-8
**Touchable Love, An Untraditional Love Story**
ISBN: 978-0-9746212-2-7

**Rogers, Laura** general

**From:** [redacted]
**Sent:** Wednesday, July 25, 2007 7:46 PM
**To:** GetSMART
**Subject:** AWA response

Mr. Gonzales,

I am writing this letter in regards to the recently passed Adam Walsh Act and in regards to sex offender registration in the state of Washington. As the mother of four children and a teacher in the state of Washington, I share your concern for the welfare of not only my children and students but of those everywhere. In addition, I am a survivor of childhood sexual abuse.

Because of your concern for children and indeed the community in which children reside, I commend you for your efforts to protect children and pass legislation designed to make America safer for the future generation. I know that you are only interested in doing what is best for children and families. However, I am frustrated at the lack of effective legislation and at the amount of laws and regulations passed at both the state and national level which are not only ineffective and expensive, but harmful to families. While I recognize that sex offenses are abhorrent, I am disgusted at how many laws continue to be passed that ignore real statistics and instead feed into the media and politically induced hysteria surrounding these crimes. Relying solely upon statistics published by America's own department of justice, it is apparent that lawmakers are either unaware of the true statistics or are turning a blind eye to the truth. I pray that you are not one of these lawmakers.

The Adam Walsh Act (AWA) is hailed as legislation that will "finally" tighten up the registration laws and reduce or eliminate repeat offenses. Nothing could be further from the truth. This law has tightened registration laws to the point that it will make it nearly impossible for registered sex offenders to fully comply. This will result in further unnecessary incarceration as well as send even more underground. Frankly, these results will make it more difficult and expensive for law enforcement to keep tabs on previous offenders and many agencies have already voiced this concern. However, I have additional concerns that deal specifically with the lives and welfare of thousands of children across the United States and in the state of Washington.

Families are the basic unit that this country is built upon. Sex offenders are not all crazed individuals and they each have families of their own—families who do in all likelihood have voting rights. However, many sex offender families are afraid of speaking out for fear of repercussion. I no longer fall into this category—and I am the wife of a sex offender. I speak from experience and with concern for the welfare of sex offender families everywhere. It is a media induced fallacy that all sex offenders re-offend; in fact, the below listed department of justice study and many others indicate that only about 5% do re-offend. Those who do, I have little if any sympathy for and agree that they should receive stiffer penalties along with those who use heinous violence and/or rape pre-pubescent children. However, there are quite a few on the registry who are guilty of having a consensual relationship with someone underage (often someone who lied about their age) or who are guilty only of turning 18 and continuing in a relationship started before that magical birthdate. I have also witnessed firsthand and know of other situations that involve an accusation rendered just to secure custody or to take revenge against someone. None of these situations are violent nor do any of these individuals pose a threat or serious risk to society in general and yet they are treated nearly the same as or worse than a serial criminal and even a violent child rapist.

I have felt that Washington laws, registration requirements, and notifications were actually quite fair and took into account the differences among crimes. As the wife of a soon-to-be released sex offender who had an affair with a teen (incidentally, whose guardian knew about the affair, met him, and even drove her to our home), I have felt that the laws were in the best interest of all involved and even supported my husband in his decision to plead guilty in order to spare her family the ordeal of a trial and the embarrassment to her negligent parents. However, this federal piece of legislation flies in the face of you and other WA lawmakers' due diligence and sets up ridiculous laws that seriously jeopardize my family's—including our children—right to privacy, property, and even safety and so I am speaking out to encourage you to stand up for the rights of our state to govern itself.

The AWA's way of tightening restrictions includes dividing all offenders into three tiers with no regard to circumstances, recidivism risk, completion of treatment, or anything else. Instead it lumps nearly all offenders together and will increase the risk level of nearly all offenders. My husband is one of those who will be moved from a low risk level 1 to a tier 2 thus changing his registration period from 10 years to 25 years and requiring 6 month registration instead of annual registration. This is costly to the American taxpayers and does nothing to improve public safety. In fact, it compromises it as the increased publicity and public access provides anyone the "right" to view private information about thousands of families, many with children, across the United States and it removes any incentive to complete treatment. As a teacher, I have already personally witnessed bullying that can occur when a parent of one student is discovered by another student's family to be on the registry. Hysteria is bred when the words "sex offender" are used. Irresponsible laws such as these incite paranoia and the incorrect information that feeds into this is creating a sub-class of citizens with little or no rights even if they are only guilty of being the family member or child of a sex offender.

The AWA compromises the safety of my children, and thousands more, by insisting that all sex offenders be lumped together in one of three categories without taking into consideration circumstances. My husband, under WA law, is a level 1 since he committed a class C felony in the 3rd degree, indicative of the consensual relationship it was. His relationship was wrong, make no mistake, and I cannot overstate just how hurtful and wrong it was. However, we have been able to work through this horrible affair and begin the process of healing. Why, then, must my address and the address of my four children be posted on the internet for all to see? This will be the case under AWA and it opens all of us up for public scrutiny, for vandalism, for ridicule and more. In addition, this law requires that all vehicles he will have access to be listed. How will that be safe for my teen-age soon-to-be driver when she is driving a vehicle registered to a sex offender whose license plates are publicly registered? Or for me when I drive such a car to work? In addition, publishing employer information will discourage employers from providing employment which further jeopardizes our family economically. While this is not deemed "punishment" these requirements certainly do punish the innocent members of our family. Likewise, listing our ISP provider, e-mail addresses, and related information furthers the breach of safety and privacy that my children and I, as law abiding citizens, should be allowed to enjoy.

I invite you as a responsible atttorney general to visit the Department of Justice website and examine the true recidivism statistics and learn about why sex crimes should not be all lumped together. I also invite you to re-read the constitution and its stance against ex-post facto laws. WA laws work and many other states do as well. We do not need the federal government overturning states's rights. When faced with the numbers, I'm confident that you will also find that the 10% reduction in funding will be less than the amount of money it will actually take to implement this law in our state.

Below I have listed several websites that provide information about sex offender families—for my family is really not all that unique and we are banding together to protect our families since lawmakers are choosing to put us in harm's way. I pray that you choose not to be one of them. Continue to work

hard for America and work to change ineffective and expensive legislation to make it equitable, fair, and safe for ALL of America's children—including mine.

In this upcoming election year I, and thousands of citizens just like me, are watching these decisions so that we will know how to vote. While the sex offenders we care for may not be allowed to vote, we still have our rights and will exercise them.

Thank you for your time,

[redacted]
Wife, mother, and teacher

**Access to Relevant and Accurate Information About Sex Offenders, Recidivism, and Families**

U.S. Department of Justice Study: http://www.ojp.usdoj.gov/bjs/abstract/rsorp94.htm

Other sites with relevant and accurate information:
SoHopeful International (dedicated to fighting child abuse worldwide): http://www.sohopeful.org/

Legal issues and myths debunked: http://www.geocities.com/eadvocate/issues/topic-recidivism.html#studies

Astins Law (dedicated to promoting effective legislation against sex offenders):
http://www.hope4tomorrow.us/AstinsLaw.html

National Association for Criminal Defense Lawyers:
http://www.nacdl.org/public.nsf/01c1e7698280d20385256d0b007

**Rogers, Laura**

**From:** [redacted]
**Sent:** Sunday, June 24, 2007 8:22 PM
**To:** GetSMART
**Subject:** think about it

to whom it may concern,
how many times do they have to pay for there crimes. what about there families? how is that they would stay in the system longer this way? especially people charged in the military? they get punished twice or 3 times? you are getting all this info on them that is crazy are you looking for them and there families to get hurt?

**Rogers, Laura**

**From:** [redacted]
**Sent:** Tuesday, June 12, 2007 10:26 PM
**To:** GetSMART
**Subject:** Adam Walsh Proposed guidelines

SMART Office
810 7th Street, NW
Washington, DC 20531

Attention: Laura A. Rogers, Esq, Director

Dear Ms. Rogers,

I am writing with concerns about the newly proposed guidelines for the Adam Walsh Act, proposed by Attorney General Garcia.

I am a secondarily convicted registered ex-sex offender. My husband was convicted in early 1994, now 13 years ago. He has had only traffic tickets since then. He has been a great husband and father. He was originally convicted in Idaho, and then moved to Utah. Since Utah did not have an equivalent for his crime, something "as close as we can get" was used. His crime was against a 17 year old. His posted Internet crime was against someone under 14.

Our home and property in Utah were constantly vandalized. We had eggs, a dead pigeon, screws placed under tires, and "Young girls make me horny" spray painted on my son's car. We also had broken windows in our cars and feces smeared on them. All because my husband stupidly touched the breasts of his 17-year-old stepdaughter in 1993. These continued acts of vandalism influenced our decision to move somewhere not so easily accessible.

At the time of my husband's conviction, he received probation. There was no additional sentencing. However, because of the Supreme Court decision, anyone in the world can look us up. The Supreme Court deemed Internet posting was not additional punishment, and therefore could be imposed retroactively, violating our constitutional rights. We also were denied any due process to assess for danger of recidivism. The Supreme Court was wrong. The vandalism, fear and ostracism are most definitely additional punishment for my husband and myself.

I believe public access to private information is wrong. I have been unable to find anywhere in my extensive research where anyone has verification that Internet registration works to keep children safe. In fact, it has effectively created a second class citizenry--the families of the sex offenders, who often cannot find jobs and homes. This creates instability, which is the opposite of what a sex offender needs to reform and readjust to society. An unstable sex offender is much more likely to re-offend than one who has a home, a job and a steady paycheck.

The sex offender registry lumps everyone together in a one size fits all scenario. This is like someone drinking and driving and killing a family (traffic violation) lumped together with someone who got a parking ticket (still traffic violation). The offenses are just not the same.

The number of registered sex offenders in 2001 was approximately 386,000. In 2006 it was more than 600,000. Something is not working!

I believe the sex offender registry should be done away with entirely. I believe that sex offenders

should be required to undergo therapy and testing, perhaps even polygraph testing, to see if they are truly the danger the media and politicians make them out to be. I believe at the very least a tiered system should be established. I believe there should be a "way out" for a sex offender. Perhaps being "clean" for 10 years, taking and passing a therapy treatment session, checking in with a clinic or practitioner every year or two to make sure he or she is still on the right path. The 90% should not be punished for the 10% who are a danger.

There are many other options proposed by experts that work. Please take the time and effort to find a solution that will work!

Thank you for your time.

Sincerely,

[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 11:00 AM
Rosengarten, Clark
**ject:** FW: Docket No DAG 121

-----Original Message-----
From: [redacted]
Sent: Monday, July 30, 2007 6:34 PM
To: GetSMART
Cc: [redacted]
Subject: Docket No DAG 121

I am writing to give input regarding the new AWA legislation that has been passed by Congress and signed by President Bush.
Certainly everyone needs to do whatever is necessary to protect our children from sexual abuse. Unfortunately, the AWA does not do anything to address prevention of such issues - but merely tries to continue to punish, isolate, and disenfranchise anyone has been found guilty of sexual misconduct. The laws that have been passed, all though well-intended - do virtually nothing to address the fact that most cases of child sexual abuse happens to a child by someone they know and trust. It also fails to recognize that these abusers do in fact have a low recidivism rate, that families continue to be torn apart because of the laws that are continually put into place. The fact that the AWA is retroactive in application is wrong. Regardless of how the laws are defined and explained they do, in fact, add additional punishment to the offender and thus to his/her family and often time even the victim.

As the wife of a RSO in Florida I have seen first hand what these laws have done - ecially to my now adult grandson - the victim of my husbands inappropriate and illegal acts, as well as the rest of our family. The abuse occurred more than 10 years ago. My husband and grandson have a wonderful relationship now but the continuing passing of additional laws and regulations, make it ever more difficult. He never wanted his grandfather to suffer endlessly for what happened. In order to understand this you would need to fully understand my husband. He made a grave mistake but he is kind and considerate man who is doing everything asked of him - and more - to pay for this mistake. He is involved in on-going counseling. He has acknowledged his guilt. He follows every rule to the letter, he does everything he can to make amends to everyone. One of the "small" additions of the AWA will now require that his place of employment be listed on the registry....although his workplace knows of the issue and have always been supportive of him....being listed may, in fact, be more than the institution can handle. If the registry were used for law enforcement it would make sense. To publish all of the information for pure strangers to read and react to is only asking for trouble. As you are aware acts of vigilantism are not uncommon. Although my husband's entire family, circle of friends and his place of employment have stood behind him, the changes in laws and expectations are producing increasing anxiety, concern, and anger....for everyone who knows him....He has not reoffended --yet the rules keep changing. Life is no longer like it was when this abuse was first reported and dealt with - legally and within our family. Although adjudication was withheld and my husband was never incarcerated, things continually get more and more difficult. After more than 10 years that doesn't make any sense at all.

Additionally, the AWA - as well as other laws passed in many states - do little to realistically differentiate between "true" predators and those who have made mistakes in their interactions with a family member or someone they know. I urge that the AWA be re-examined in light of the many issues it is producing in our country. We need to insure that treatment is available (it does work), that prevention plans are developed and emented for children and families, and that if new legislation is passed it should be stricted to those who are newly identified and found guilty of abuse....not for those o have "paid their debt to society" or who are complying with the restrictions they agreed to at the time of a court hearing.

I could go on and on but suffice it to say the AWA in its present form will not protect children. Most children of abuse are known by the abuser....so how does the registration being made available to the general public really help? Additionally, there are many other implications of AWA that make it increasingly difficult for my grandson, his wife, the rest of our family. I live in fear everyday of my life. We have been fortunate that we only had one incident of harassment...but how long will that last???? I urge that changes be made that will truly protect children....the AWA does not do that!!!!!!

Sincerely,

[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, July 23, 2007 5:39 PM
**To:** GetSMART

My husband is a registered sex offender. As a family we have ridden waves of uncertainty and despair. We have two children. My husband is not a bad person, he made a mistake. Life is different for us. We have restrictions that are placed on us because of what he did in the past. Yes, I know I chose to be with him and accept those restrictions also. We are on a roller coaster ride never knowing if we will be able to stay at our house. You see a little backwoods chruch that only meets one Sunday a month is going to make us leave the only place my children have ever known. We live next to a network of family. His sister lives next door and parents right up the street. He has lived here his whole life and it just seems unfair to make us move because the church is 400 ft. He never denied his guilt and paid all his fines served his time. So for the rest of our lives we will suffer because he is a registered sex offender. We rack our brains to find a way to be safe and secure in our existence. We just want to raise our kids the best possible way like any good parents and live in peace. Why can't there be classifications for sex offenders? My husband is not a predator and pedophile.
Thanks, [redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Sunday, May 20, 2007 10:49 AM
**To:** GetSMART; GetSMART
**Cc:** [redacted]
**Subject:** SMART

Sirs...

I am in total agreement with what you have so far. I only have 1 MAJOR concern regarding this:

There is a DANGEROUS LACK of sex offender therapy programs in alot of states.

I am a rehabilitated, convicted level 3 sex offender who wants to see stronger laws put into place regarding sex offenders. I was convicted in 1985 of indecent assault and battery on children and spent 7 years in prison getting the therapy I needed in order to make sure that when I was released, I would never reoffend again.

The therapy that I had receieved when I was incarcerated at the Hampden County House of Correction, was VITAL to me in changing my life around and the programs for sex offenders who become incarcerated, are being eliminated due to budget cuts in the Department of Correction funding and this is a MAJOR PROBLEM.

In order for sex offenders to be rehabilitated, there needs to be 2 MAJOR factors:

1. The sex offender needs to have an honest desire and a willingness to change his/her life around to stop the offending behavior and needs to accept the responsibiility for his/her behavior and there ARE ways to see if a person is honest in his/her willingness to change, but involves the Department of Correction and thier willingness to report inappropriate behavior which may seem normal, but is inappropriate with changing behavior. These behaviors may include (but are not limitted to) yelling at people who are weaker than they are; being bullies; not concerned about the safety of others; not reporting inappropriate behavior of others; having normal conversations with people and then becoming silent when an authority figure is present, etc.

2. There HAS to be programs in all House of Corrections that begin the therapy process. When a person is arrested for a sexual offense, they are held at a local jail or House of Correction (HOC) where they await a trial. While being held, the therapy process should be started to maximize the progress that a sex offender can make during the time of incarceration. Of course, there are issues regarding this as to what can be disclosed before being sentenced as any sex offender therapist is a mandated reporter and if any additional victims are disclosed prior to being sentenced, then these can be added to the charges the sex offender would be currently facing, but these programs that could be initiated could be just to change the person's thought process (cognitive, behavioral therapy) which is an important step to change a person's thought process. One the offender is sentenced to a prison or HOC, then direct sex offender therapy can begin and the individual already has a jump start on his/her therapy due to the "pre-sentence" therapy that they had already received prior to sentencing.

These ideas are completely my ideas, but they are coming from a person who was convicted of sexual

offenses against children and wants to see this crime stopped. The rates for recidivism of sex offenders is already low (5.3%) but if there as anyway to bring it down lower or to stop it, than this is even better.

Please do not throw off my ideas because I'm a sex offender. The ideas that I just gave to you, are from the sex offender program that iwent through at the Hampden County Hose of Correction back in 1985 and it was the best thing that happened to me because if it was not for the program or the therapist who spent the time and effort to help me, than I would not have rehabilitated myself and changed my life around

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 10:55 AM
**To:** Rosengarten, Clark
**Subject:** FW: SORNA Comments and Concerns
**Attachments:** SORNA Comments and Concerns.pdf

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**From:** [redacted]
**Sent:** Monday, July 30, 2007 11:20 PM
**To:** GetSMART; AskDOJ@usdoj.gov; senator_leahy@leahy.senate.gov
**Subject:** SORNA Comments and Concerns

Dear Attorney General Hon. Alberto Gonzalez, Department of Justice SMART OFFICE Director Laura L. Rogers, Judiciary Committee Chairman Hon. Patrick Leahy:

The deadline for comments for SORNA (known as the Adam Walsh Act) is July 31st.

Please find attached a .PDF file highlighting my comments and concerns about SORNA, and a brief history on how sex offender registration, offender treatment, and the legislative/judicial process has affected me personally. Please take the time to read it and feel free to respond if you have any questions and comments. Please distribute it to those involved in making policy on this very important topic.

If you are unable to open the document, please contact me and I will send it to you in a different format.

Sincerely,

[redacted]

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**********
[redacted]
**********

Monday, June 30th, 2007

[redacted]

Subject: ***Docket No. OAG 121***

***Laura L. Rogers, Director***
***SMART Office, Office of Justice Programs,***
***United States Department of Justice,***
***810 7th Street NW., Washington, DC 20531.***

**RE: SORNA Comments and Concerns**

Dear U.S. Department of Justice, Alberto R. Gonzales, Attorney General, Ms. Laura L. Rogers, Director, and all interested parties:

I have several comments and concerns about the new SORNA registration requirements, as it relates to offenders, especially young offenders, and more specifically the stigma and the restrictions placed on registrants through SORNA. I also have some concern on how the law will be implemented regarding registrants who move between jurisdictions, and how currently it is conflicting.

**PART I: About Myself and My Charges**

Let me tell you a little about myself first. My name is [redacted] In April 1998, I was convicted in Connecticut of a risk of injury to a minor charge C.G.S. § 53-21. I was a teenager, just 19 years old at the time of my conviction, when I had sexual contact with my underage girlfriend (consensual), then just shy of 14 (there was a five-odd year age difference). I had just finished high school, and my arrest turned my world upside down. At first, the

prosecutor mentioned lengthy jail time, as my crime was a felony. I was very anxious and afraid. My parents had never explained to me that there were laws forbidding such Romeo – Juliett type situations.

To avoid jail time, my lawyer suggested that I plead Guilty in exchange for a probationary term. I was placed on ten years of probation, with all jail time suspended. I was *releived*, and I decided to continue on to college, and work part time. At first my probation was pretty easy-going, except for one part. The Court ordered "sex offender treatment", and the first place that I was sent to, The Sterling Center, in Shelton, Conn , was all older men, all whom had served prison time, and most who were in for molesting children, or forcible rape. This place scared me, and it was not therapeutic, as I would rarely talk in group therapy, as I could not relate to the others.

But soon I moved away to attend school in another part of the state, and I went for treatment at Northeast Clinical, in Plainfield, Conn., where, to my surprise, the therapists were very compassionate and friendly, and all of the "sex offenders" were adolescents in my age group (17-25 years old). I related very much to the others, and readily participated in group therapy. Therapy was age-appropriate, and we were taught that since we were older than our younger girlfriends and victims, we used our age as a manipulating factor. We were also taught about victim empathy, forming healthy relationships, learning about STD's and other related topics. I want to commend Rebecca Bowen, LCSW, as an excellent therapist, who helped me in treatment when I needed help, and I soon (well after a few years) successfully completed my "sex offender treatment".

**Part II: My Introduction to the Complexities of Megan's Law**

I thought all was well, but, starting in October 1998, a new law, P.A. 98-111, C.G.S. § 54-250, *et. seq.*, known as Megan's Law, was being phased in, in Connecticut. I was informed, by my then Probation Officer, Ms. Renu Bains, under threat of arrest, that I would have to go down to the State Police Barracks at a specified time, and give a blood sample for DNA analysis, and register my name, address, identifying characteristics, and fingerprints. (Along with many others, I tried to argue that I was convicted before the law went into effect, and also that my crime was not covered by the statute, but being young I could not afford legal help, so I just "did what I was told"). I was very intimidated. But I was told that only the police will have access to this information, and this put me a little at ease. After all, how would this affect my future if only the police knew...

Yet the law changed. The U.S. Supreme Court's ruling in *Conn. Dep't of Pub. Safety v. Doe,* 538 U.S. 1 (2003), along with *Smith v. Doe,* 538 U.S. 84 (2003) allowed the registry information of all the States to be a public record, not subject to ex-post-facto invalidity, and without regard to demonstration of a registrant's dangerousness. This time, everyone's information (in Connecticut, that meant everyone who registered, from a young man with an underage girlfriend-type situation, to the most violent rapist) would be lumped toghether, for everyone to see, on the Internet.

I was afraid again. I would be shamed, stigmatized, denied employment, housing, everything, as soon as anyone with a computer and the Internet would type in my name. I would be right there, listed next to hardcore rapists and child molesters, convicts whom had served hard time.

But I did have some relief. In Justice Souter's concurrance in *Conn. Dep't of Pub. Safety v. Doe, supra,* he illustrates "[Connecticut] thus recognizes that some offenders within the publication requirement are not dangerous to others ... and the legislative decision to make

courts responsible for granting exemptions [from Internet publication] belies the State's argument that courts are unequipped to separate offenders who warrant special publication from those who do not. He points out a familiar argument, my key argument: "The refusal to allow even the possibility of relief to, say, a 19-year-old who has a consensual intercourse with a minor ... is therefore a reviewable legislative determination" *Id.* "To mitigate the retroactive effects of the statute, offenders ... who were convicted between October 1, 1988, and June 30, 1999, were allowed to petition the court for a restricted dissemination of registry information." *Footnote at Ibid.*

I petitioned the sentencing Court in 2004, and was granted, under Connecticut Law, a petition to restrict community notification (i.e. posting of my information on the internet registry is restricted) of my information (due to my low risk as an offender) under C.G.S. § 54-255(c)(5). I was *releived*, once again, as my nightmare of a 24-odd year-old kid's inclusion in a public database of child molesters and violent rapists was not to be. But I was fearful that the law might change in the future...

**Part III: Moving to New Jersey, Home of Megan's Law**

Shortly after finishing school in Connecticut, I moved to New Jersey, about halfway into my ten-year probation term, because I had found work here, and to live with family. I'm living here still today. I transferred my probation under the terms of the Interstate Compact for Adult Offender Supervision, C.G.S. § 54-133, *et seq.* and N.J.S.A. 2A:168-26. I was required by the sending state, that is, Connecticut, to register as a sexual offender upon my moving into New Jersey under its laws N.J.S.A. 2C:7-1, *et seq.* New Jersey is a "tier" state, which assigns levels to sex offenders based on their risk of re-offense. I was assigned to Tier I (Low Risk), the least likely to offend, and my registry information here, as in Connecticut, was restricted, not public, and dissemination was allowed only to law enforcement personnel.

## Part IV: Moving Forward

Currently, I have less than a year left on my probation, and have been registered under Megan's Law (both in Connecticut and New Jersey) for a combined nearly ten years. I have stayed out of jail, and have been gainfully employed, and have not been convicted of any further crime. This April, under current law, I will be heading back to Connecticut, to ask my Probation Officer for a letter stating my successful completion of probation. I will also no longer have to register as a sexual offender in Connecticut as the registration term is ten years. I will petition the Courts and the Department of Public Safety to remove all my registration information as provided by law, as that is my right. I am, and will be, a law abiding citizen and taxpayer, without the "sex offender" stigma any longer.

## Part V: Concerns About SORNA

Now, the important part: SORNA, as I see it, will have a NEGATIVE effect on low-risk sexual offenders, and former sex offenders, such as myself. It is missing the required aspects that will make sex offender laws across the country uniform, and provide the balance of safety for the public and children, as well as notification of dangerous, repetitive, and compulsive sex offenders, without causing unneeded alarm and stigmitization of low-level offenders.

**Concern 1:** SORNA assigns tiers, Tier 1 being low-risk, Tier 2 being moderate, and Tier 3 being high-risk, according to predicate crimes. This is the wrong approach. First, many high-risk rapists and child molesters plead Guilty to "lower" predicate offenses, thus leading them to be mislabeled. Also, many States have already "tiered" their offenders using scientific scales and assesment tools, and multiple criteria, see N.J.S.A. 2C:7-8. And many Courts have "restricted" sex offender information dissemination for low-risk offenders, see C.G.S. § 54-255.

SORNA will, in effect, change offenders' tiers arbitrarily, capriciously, and inaccurately. There must be a petition that can be made to the court to relax this rule. Also, tiers should transfer between States, as registrant is Tier I in State "A" and upon moving to State "B" he should expect to be Tier I also, under the Full Faith and Credit Clause, Art. IV. Sec. 1. *U.S. Const.*

**Concern 2:** SORNA assigns registration length based on the tiers. A low-level or low-risk offender has no mechanism to judicially challenge their being placed into a higher tier under SORNA. New Jersey has found this to be unconstitutional, see *Doe v. Poritz*, 142 N.J. 1 (1995), and the higher tier ranking will increase the offender's registration period, from **ten** years in most states, to **fifteen**, **twenty five**, or **lifetime**. All with no Due Process mechanisms. There must be a petition that can be made to the court to relax this rule.

**Concern 3:** SORNA states that ALL offenders whose offense is against a minor (even in cases of statutory rape, Romeo – Juliette type relationships, and perpetrators of incest or in cases where the victim can be discerned from the registration information) must be made public over the Internet. This is not prudent. There must be an exemption clause or a petition that can be made to the court that will relax this rule.

**Concern 4:** SORNA does not impose the same registration length period consistently among the States. Consequentially, some states may require lifetime registration for all registrants; thus, for example, a **fifteen** year registrant who is no longer required to register in State "A", will have to register for **life** upon moving to State "B". Similarly, State "A" might not give a registrant credit for the **five** years he had registered in State "B", thus allowing registration periods to go on in perpituity. SORNA must make registration length uniform among the States, and allow for registration "credit" under the Full Faith and Credit Clause Art. IV. Sec. 1. *U.S. Const.*

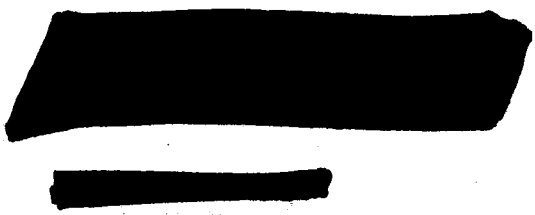
**Concern 5:** Once a registrant has fulfilled the terms of registration in the sentencing state, all other jurisdictions must remove the registrant from SORNA. An individual must not have to keep concurrent registrations in the several states which he has lived in the past. I see nothing in SORNA to prevent such a situation. This violates the Equal Protection Clause of the U.S. Constitution.

**Concern 6:** Finally, the most important – SORNA does NOTHING to prevent sexual offender registration from turning into a PUNITIVE measure. Currently, MOST states are restricting where registrants (even sex offenders who have successfully completed therapy, and probation/parole) can live (1000 feet, 2500 feet, creating sex offender clusters, banishing offenders from whole cities), purchase a home, play in a park (even with a registrant's own children), treating registrants differently under criminal sentencing schemes (for example, not allowing plea bargains for this certain category of offenders), putting the "scarlett letter": a sign in front of the offender's house, or a special symbol on the offender's driver's license, among other things. SORNA does nothing PROACTIVE to limit itself from violating the Equal Protection Clause among younger offenders and nonviolent offenders, violating the Ex-Post-Facto Clause when States enact punitive restrictions on registrants, offers no Due Process protections to registrants, and is bordering on not being a REGULATORY measure protecting the public, but an UNCONSTITUTIONAL PUNITIVE measure which will be held to many challenges.

## Conclusion

I sincerely wish to protect children from predators and pedophiles, but I want to see this done in a clear, constitutional manner, relying on facts about sexual offenders, not paranoia. Remember, most children that are sexually abused, are abused by someone they know, most often a family member. Most sexual abusers are not registered sex offenders. Most never get caught. However, it's not the kid who happened to have an underaged girlfriend ten years ago, who happened to get caught, that poses a problem. PLEASE IMPLEMENT SORNA THE RIGHT WAY.

Sincerely,



July 31, 2007

To Whom It May Concern:

There are many items in the referenced proposed regulations to which I expressly object. However, in order to ensure brevity, I will not address them individually, instead I will address the overall intent and direction therein.

People want to live in a safe society. This is a worthy goal and the ultimate expression of the function of government. Laws limiting behavior are therefore necessary. People want to live in a risk-free society. This is the ultimate folly and the source of countless revenue to the pockets of lawyers milking money from all sides, victims and victimizers as well as the general public.

These sex-offender laws restricting the otherwise legal behaviors of individuals who have been previously found guilty of a sex-related offense fall into the later category. While wrapped in the comfy-cozy language of ensuring the safety of the public, they only result in re-victimizing the offender's family while not increasing public safety one ounce.

Why will safety not be increased? Simple, recidivism statistics gathered by the office of the Illinois Attorney General show that overall recidivism for sex-offenders in Illinois is under 36% and for those that completed an approved sex-offender treatment program, the rate is well under 10%. This is far lower than any other felony conviction.

You may say, yes – but even one more victim is one too many. True, but that victim will (or will not) be there irrespective of this law. Obviously, fear of consequences was insufficient to prevent the first incident resulting in the original conviction. Why should it be sufficient to prevent the second? However, with parents and others feeling safer with this law in place, it ignores completely those individuals in public places who have not yet offended (or at least been caught). With new convictions at an all-time high, this is the greater risk – not a repeat offender. This law is a useless panacea to give people an unrealistic illusion of safety while doing nothing to actually provide that safety. The problem is far too widespread in our highly sexualized society.

Certainly there are very high-profile cases of repeat offenders that make national headlines. These are the exceptions, not the norm and they exist within every criminal classification. Why single out these offenders? Why not a national registry of drunk drivers? More people are killed and injured annually by drunk drivers than are assaulted by sex offenders. Why not a drug dealer registry? There are more drug pushers lurking near schools than dirty old men. Psychological counseling may help a victim of abuse, but it takes much more than that to recover from heroin addiction.

Convicted sex-offenders, while detestable to many, have done what all other released offenders have done. They have paid the penalty imposed by society for their crime(s). Post release, they have the same right as every other citizen to gainful employment and to provide for their families. Preventing this ultimate right (and responsibility) re-creates

a dangerous environment for the offender causing additional risky behavior and causing greater potential for re-offending than this proposed regulation will prevent. In simpler terms, this very regulation will result in more sex-offense victims – not less.

Where does it all end? All offenders want to be able to put their past behind them and to move forward. Laws such as this make it impractical if not impossible. The rules for those who "toe-the-line" keep getting tighter. There is no let up in sight. Where is there any "reward" for good behavior? Every practitioner of counseling or motivation understands the nature of the "carrot and the stick". Both are needed to modify human behavior. Regulations like this totally eliminate the carrot. I understand John Q. Public not wanting to give any rewards to a sex offender. But why should the sex offender follow the rules if they only get tighter every year. This causes many offenders to slip out of the system altogether. It is obvious that causes a far greater risk. In the recent past, the offender knew if he behaved for ten years, he would be off the registry and "be free". This is no longer true, now it is life for nearly all.

And who pays? As previously mentioned, new convictions are at an all-time high and getting higher. All these people are entering a system they can never leave. Who is monitoring them and a what cost? The men and women in probation and parole offices around the country are doing a very commendable job. But they are overworked, understaffed, and underpaid. These are society's first tier in protection. But laws like this are making their jobs impossible. Too many are totally burnt out, too many are leaving what they know to be an impossible situation. In Illinois it is nearly August and there is still no budget approved. Even if they tripled the budget for sex-offender tracking it would not fill the gap created by this law. More offenders have slipped out of the net than they have the resources to catch.

Who to track? Obviously trying to increase the total pie to restrict all offenders, we need to look at that subset of re-offenders and focus limited resources where the greatest good is achieved. Laws already call for offenders to be counseled and treated before release from the system. Those that comply, have only one offense, and are assessed as a low-risk of re-offense should be monitored for a few years and released from the system (assuming no re-offense). This is the carrot. Laws such as this should then only apply to the remainder. Resources would then be sufficient, a carrot-and-stick approach provided, and true safety increased. This regulation, as written, provides none of this.

Respectfully,

[redacted]

registered sex offender

Respectfully,

[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Friday, June 08, 2007 1:01 PM
**To:** GetSMART
**Subject:** Please read...

To Whom It May Concern:

Let me start by saying I am one of those "sex Offenders" you hate so much. I know the thought of those two words sounds like an evil person who should be locked up forever, and I would have agreed with you about it in my past. I guess that's what I thought of it before I was charged with Possession of Child Pornography. Although now years after that conviction I understand a little more about some of the people who are identified as a sex offender. They are people too; many whom I know just like me are family men and women with kids. I know one boy who is 13 years old, he looks to be just 10 or 11 but he is a registered sex offender and all laws you come up with to make our lives harder applies to him forever also.

Please understand Im not writing this to say we are not guilty for the crimes committed, because I'm not saying that at all. What we did was wrong and most of us had to do lots of time in prison as well as live the life of a registered sex offender. In my state I have to get a new drivers license every year that says sex offender on it, reregister taking new pictures every 90 days and pay a $20.00 fee for it. Worst of all is there are millions of people out there who hate us even thought they don't know anything about us except what you decide to add to sex offender websites. So, I think most of us will be doing time forever considering I have to register for life for the 7 pictures I had many years ago.

All I ask is you think about what you are doing to people. Not all those you are adding all these restrictions to are pedophiles and most of us will never again commit a crime against a child or teen if they ever did the first time. I for example have three young children, three nephews, one niece (another coming soon), and a soon to be wife whom I love to death. I only have been in trouble with the law one time in my life and my family & I will pay for it the rest of my life. I work hard to give my family everything they need & deserve because I love them. We are building a new house next year, Im just terrified that the community may not take well to my offender registration and the kids could be affected at their new schools and neighborhood. I have a great job I only got because my friend/boss knows all about my conviction so he knows he can trust me. I am in no way attracted to any children, teens, or anyone other then my wife. This is just me but there are many others out there just like me who only want to be known as a person rather then "the sex offender on the corner".

I know there are some sex offenders who are a threat to children and should be watched. I honestly believe the sex offender registration has maybe saved a few children from being victimized. The bad thing about the program is they don't even try to find out which of those "sex offenders" are risks. When

I was in the sex offender programs there was a man who when asked if he thinks he thinks he is capable of molesting a child again, answered "yes", he knows he would. Yet this man is registered for only 4 more years grouped on the SO list with hundreds of others, many who are not any real risk at all. I would never let that man around any of my kids and I only know he is a risk because I was in that group with him, not because he is on the sex offender list. I was in those groups for two years, and all that time there was only about 6 or 7 who people need to look out for the safety of their children.

What would it take to have a nationwide level system to show who are really risks and who are not. Its not at all hard to know who are pedophiles people need to be warned about. I could tell within a few days, especially those who where trying to hide it. I had to take a polygraph every six months to find out if I was telling the truth, so was everyone else there and when someone would fail the test they would brake down and tell the truth about who they really were and so they can know if he really is some kind of risk. Although no one uses that information to classify them for notification to the public. One day the sex offender list will be so big no one will feel safe anymore thinking all those "sex offenders" are going to brake into their houses at night and rape their children!

When reading your ideas for the new federal sex offender laws you are trying to pass I seen the way you added "there will be a floor but no ceiling to laws against sex offenders". What about some kind of limit to what they can do to us? You people are playing with thousands of lives who already paid for their crimes, many 100 times over. Just an example, When I went to pick up my kids from school one day a cop pulled me over for not stopping at a stop sign for 5 seconds. When he ran my drivers license he asked me to step out of the car and asked me lots questions that had nothing to do with what I was pulled over for. Even asked me personal questions, I have never felt so violated in my life. He even checked to see if I was really registered at my home address and when he finally let me go his last words were "I can now pull you over anytime so you better do what you need to do and leave the school district". I was about 15 minutes late picking up my kids and now have other people pick them up for me when I can. I have never hurt a child; I never would and would only go back to prison if someone touched one of my kids! I feel the same about my kids safety as much as anyone else who loves their children but there has to be limits to taking away freedom.

I am 29 years old, I have been a sex offender for a long time and will always be only because the state I was convicted in gives everyone lifetime registration. The state I live in now only has a 10 year registration law; however it doesn't apply to me. I love being a family man, going to church, riding bikes with my family, skate boarding with my boy at the skate park, traveling, and most ever other fun things people like to do. Most of all I love my family and I want the best life for them. Please look at both sides before deciding thousands of people's fate. Thank you for your time!

From: A Sex Offender

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, July 19, 2007 4:37 PM
**To:** GetSMART
**Subject:** Sex offender laws

To whom it may concern,

I am a sex offender. my crime was 17 years ago when I was 16 years old. i am very remorsefull about what happened. i am 33 years old and i am married and have children of my own. i am just trying to live a normal life to provide for my family. These new laws will make it very hard for me to provide for my family and i may loose everything. i am very hard working and I try to put my past behind me. With you passing this law and making it known via the web of where I work and so forth there will not be a company out there that will give me a job. My family and I have had threats of violence and vandalism to our property and cars and repeated threats againest our lives. I have lost several jobs and have had to move numerous times because the public has saw my information on the web. I don't bother anyone and keep to myself. I paid for my crime and did everything I was asked to do. I have been released from probation for 12 years now. Why are Sex offenders the only criminals targeted. Why not DUI,Robbers,Identity thieves and so forth being targeted like Sex offenders are. I feel that a crime is a crime the more of that crime that a person has commited the harsher that sentence is to that individual. please this law would hurt every sex offender who has better their lives.

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:51 AM
**To:** Rosengarten, Clark
**Subject:** FW: Sex offender laws
**Attachments:** Fwd: Sex offender laws

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**From:** [redacted]
**Sent:** Tuesday, July 31, 2007 5:36 PM
**To:** GetSMART
**Subject:** Sex offender laws

To whom it may concern,
I am a sex offender. my crime was 17 years ago when I was 16 years old.I was 16 and my high school girlfriend was 14 it was consensual sex. It was something that her family felt wasn't appropriate so they pressed charges.I never touched a child.I am 33 years old and I am married and have children of my own. I am just trying to live a normal life to provide for my family. These new laws will make it very hard for me to provide for my family and I may loose everything. I am very hard working and I try to put my past behind me. With you passing this law and making it known via the web of where I work and so forth there will not be a company out there that will give me a job. My family and I have had threats of violence and vandalism to our property and cars and repeated threats againest our lives. I have lost several jobs and have had to move numerous times because the public has saw my information on the web. I don't bother anyone and keep to myself. I paid for my crime and did everything I was asked to do. I have been released from probation for 12 years now. Why are Sex offenders the only criminals targeted. Why not DUI,Robbers,Identity thieves and so forth being targeted like Sex offenders are. I feel that a crime is a crime the more of that crime that a person has commited the harsher that sentence is to that individual. Please this law would hurt every sex offender who has better their lives. Not every Sex Offender is a monster like John Couey.Its unfair that todays society views every sex offender as a monster. I believe that people who really do hurt children should very much be punished. When you are thinking about finalizing the AWA act,there should be certain guidelines for certain offenders maybe a tier system.Also how about offenders who really moved on with their lives and are good members of society.How about if you've been clean for say 15-20 years and have never committed another crime you then should be able to be taken off the sex offender registration. Hopefully what I say will make a differnce for the sex offenders who have truly moved on and have better their lives. Thanks for taking the time to read my story and views. Thank You!!!

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Laura L. Rogers, Director
Office of Sex Offender Monitoring,
Apprehending, Registering, and Tracking
Office of Justice Programs
USDOJ
Washington, D.C. 20530

June 03, 2007

Dear Ms. Rogers;

I am writing in reference to the sex offender registration requirements resulting from enactment of the Sex Offender Registration and Notification Act (SORNA). I obtained your address from the Federal Register, Vol. 72, No. 39. It listed you as a contact person for further information.

In 42 USCS § 16913(a), it states that " A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.." What exactly is the meaning of "each jurisdiction"? Does that mean that one must register in each county, city, and federal district in which one resides, is a student, or is employed? For instance, I live in Wood County, Texas. I may work in Smith County in the city of Tyler, and go to school part time in the city of Arlington, which is in Tarrant County. Am I supposed to register in Tyler, Arlington, Wood County, Smith County, and Tarrant County? These locations are all within a radius of 150-200 miles, so such a scenario is entirely possible, and likely in my case. Also, the town where I live has no police department (our population is about 325). Am I supposed to register with the mayor's office or the Wood County Sheriff's Office?

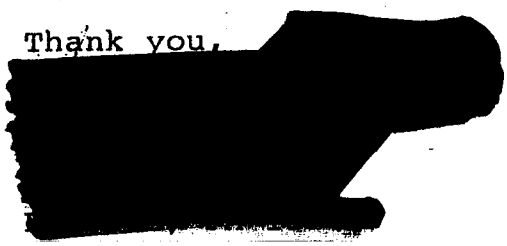
In § 16914(a)(6), it states that each registrant must provide "The license plate number and description of any vehicle owned or operated by the sex offender." Does this include fleet vehicles owned by the company where the registrant is employed? What if the registrant is assigned different vehicles? These issues could easily arise in situations where the registrant is employed as a truck driver or delivery man, or basically any situation where a company vehicle is issued for performance of one's duties.

What are the responsibilities of the local jurisdictions relating to registration due dates or expiration of registration requirements? Will the registrant be notified when his annual registration date is near or when he is no longer required to register? Is it a defense from prosecution if the registrant has made due diligence to comply with all registration requirements yet fails in some small way to meet all of the requirements? The requirements under SORNA are quite extensive, and it is always possible that at least one provision could be overlooked or not fully complied with due to extenuating circumstances or failure to understand the law.

In § 16918(f), it states that any sex offender website " shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning shall note that any such action could result in civil or criminal penalties." There is nothing in SORNA which provides for any of those "civil or criminal penalties". Is that something which is to be determined by local jurisdictions? To whom must one file a complaint if any such injury, harassment, or crime occurs? Does it include the registrant's family members as well as the registrant? My family has already been harassed and I am not even registered as yet. My children have been teased by school mates who tell them that their father is a "child molester" and a "weirdo", and my wife was accused by an individual to CPS of endangering my son's school friends because she has had them over at our house and taken them places with my kids (I am currently incarcerated at a facility over 1200 miles away.) Do those things qualify as "harassment"? I can only imagine what life will be like for them when I am registered.

I appreciate your time in considering my questions. I want to make sure I fully understand all of the requirements of SORNA before I am released. After all, most of the people who will register anyway are those who will most likely not reoffend.

Thank you,



PUBLIC COMMENT

To Whom it Concerns:

I am a registered sex offender in California. The new Adam Walsh Act greatly affects my life and the lives of my family members. I committed a shameful crime over 20 years ago. Since then, I have served my punishment, received treatment, and even had the charges against me "dismissed" by a California Court. I am a productive, law-abiding citizen. I am not a threat to anyone.

The Adam Walsh Act is very confusing, disturbing, and (I believe) counter-productive. Several aspects require clarification. Here are some:

- Registration Exceptions
  You should list valid exceptions from registration compliance, including, for example hospitalization, disability, old age, etc. There is no way a registrant can know, in advance, if his excuse will be deemed valid. If it isn't deemed valid, he may be sentenced to ten years in jail. It would seem that it is your duty to define the acceptable excuses, so we can comply with confidence.

- Definition of Residence
  Your guidelines require information about any place where a registrant stays for 7 or more days, but the guidelines define as a residence a place that a registrant stays 30 or more days. These are in conflict. Does either require in-person reporting? How do you report that you are staying in a hotel in Chicago for 10 days and to whom?

- Business Travel
  I work for a corporation that has me visiting vendors, sales offices, and customer at various places across the nation and sometime internationally. These trips are, at best, semi-planned. How do I comply with reporting my employment? Surely you do not require potential customers to be listed as a place of employment, do you? Would a diary suffice? Is registering my home office sufficient?

- Certification of Understanding
  Your guidelines require registrants to sign a form stating they understand the registration requirements. How can you require understanding? I could not sign that form in good faith because the rules are incomprehensible to me. For example, your retroactive classes, and the three examples, are totally not understandable to me. But if I don't certify that I understand these rules, I am subject to ten years in prison for not complying with the registration process. This seems wrong. Don't you want to know that we don't understand?

- New Employment
  You require a registrant to register within 3 business days of employment, but a new employee can't get off work to do so. How about a requirement that the government provide online registration for those that can't get off work to

register. In California, registration is only open from 9 to 4 -- with one hour closed (usually more) for lunch. I once waited four hours to register before they announced that we had to come back in the morning. One individual was at the end of his five day registration period, so, through no fault of his, he committed a registration crime.

- Vehicle Registration
  Your guidelines require that registrants notify authorities of any change in vehicle "immediately." I would think you should give some defined time limit, like 5 days. I'm sure no one can report immediately, especially if it requires in-person reporting. Immediate is not a good legal term.

- International Travel
  The international travel clauses are not understandable. If I travel to Europe or Asia for a short period, what do I have to do? If I move to Europe, it seems that I would de-register upon leaving and re-register when I moved back to the U.S. I have no idea what the requirements are for foreign travel if I am continuing to live in my current residence in the U.S. What if I travel to Mexico for a day? Or for six days? Or for two weeks?

Sorry to be so picky, but I fully intend to comply with any and all laws, I just wish they were simple and not subject to after the fact interpretation. The clearer you are the more compliance you'll get.

Sincerely,
Name Withheld

Public Comment Section
Adam Wash Law

Dear Department of Justice,

As a Registered Sex Offender, the new Adam Walsh Law greatly affects my life and lives of others in my situation. For the record, I plead nolo contendre to kissing a 13 year old over twenty years ago, the biggest mistake of my life. Since then I have lived as a productive law abiding citizen. There is a zero chance that I would reoffend.

Some aspects of the new law that you may want to clarify are:

1. **Visiting family.** As best I can interpret the law, if you go to your direct relative's (parents, brother, sister, son, daughter) home every Christmas and stay for more than eight days, you would have to un-register at your residence and re-register at your relative's home. This will stop me from joining my family for holidays at my daughter home. I would never want to register at her home and shame her in her community. I would suggest a 30-day stay without registration for direct relative visits so that the support structure and family ties can be maintained.
2. **Traveling Occupation.** My occupation requires me to travel for two to four weeks at a time. I'm sure I am not in a unique situation. I would think that if travel was a part of your occupation, especially if you go to one city for a few days, followed by another city for a few days, in total adding up to more than seven days, that you wouldn't have to de-register and re-register at each location. I'm sure the hotel I stay in wouldn't like to be on the sex offender registry either. I would suggest you exempt hotels and normal business travel if the stays or trips are under 30 days. You may not realize it but registration takes over four hours in California. To de-register and re-register in each city would be very difficult. Another alternative is to allow internet based registration, then you could both keep track of offenders without either the cost or inconvenience. You would get a higher compliance.
3. **Tier definition.** It appears since my offense involved a person under 14, but above 13, I automatically go into Tier III, the worst of all offenders. I would think you would want to limit Tier III to those offenses that included "substantial sexual conduct".
4. **Clarity**. On the surface, it appears that this law is very complicated and almost impossible to both carry on a normal life and comply with it. It can substantially isolate offenders from their families and occupations. There are a lot of ill defined requirements. For example, if I de-register and re-register for an eight-day trip, does this restart the clock on the quarterly registration requirement? Or do I have to do both? One could conceive of registering a return from travel and two days later have to register again to meet the quarterly requirement. It is almost as if someone was trying to put all sex offenders back in to prison by coming up with an impossible-to-comply with law. The penalties for not complying with these registration requirements exceed the penalties that I was subject to for my crime. If my lawyer can't tell me how to comply, I don't know how I can actually comply except my making registration my new occupation.

Sincerely,
Name Withheld

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
Thursday, July 26, 2007 3:45 PM
Rosengarten, Clark
**Subject:** FW: Sex Offender Registration and Notification Act

-----Original Message-----
From: [redacted]
Sent: Wednesday, July 25, 2007 2:45 PM
To: GetSMART
Subject: Sex Offender Registration and Notification Act

In regards to,
Reference: DEPARTMENT OF JUSTICE
[Docket No. OAG 121; A.G. Order No. 2880-2007] RIN 1105-AB28

I am more then sure you are receiving a large amount of emails, phone calls and letters concerning how wrong this law is. While I agree that this is a very wrong direction to go in I also want to add this.

I am a registered sex offender. A crime that happened almost 13 years ago. I did my time and have lived crime free ever since. I am also a voter, a loyal voter who believes it is every Americans right and obligation to vote, not to do so is very Anti-American.

I have many friends and family who are tired of these laws. They see the impact on generalizing all sex crimes and sex offenders as the same, which is very inaccurate. My ly and friends vote as well and their votes, as well as mine, will be influenced by illogical actions of law makers and the laws they pass, this law being one of them. My step-daughter is also going to be voting in a few months when she turns 18. My step-son a year later. They are both very angry at whats going on and I have taught them to take that anger to the polls and vote for the right people, the ones THEY feel are the best for this country and real
Americans.) These laws are not making things any more safer. They are having the opposite affect.

Now I am sure you have received a lot of information on how to better improve things. I know the Department of Justice itself has facts that point to the truth of what is going on, rather then political lies and exaggerations. I am sure that you have received much information from professionals stating whats is wrong with all of this and what they recommend. But I am not writing about that, what I am writing about is this.

Including myself, I know my voting friends and family will voice their outrage at this insanity and vote accordingly. To continue with this insanity in the extreme nature is Anti-American. But it has been shown time and time again that some politicians do not care about what the American people think or say, especially when those politicians think they have it all figured out and know everything (even when professionals trained in various areas say they are wrong.) They also don't seem to care what is right, wrong or in the best interest of the American people, only what is best for their own personal interest or their parties interest.

In the future 20/20 hindsight will show them their mistakes when they are voted out of office and their party looses influence and members.
That is the power of voting. In some cases some law makers may be held accountable by the American People in a court of law for their actions.

m an American Voter,
[redacted]

**Rosengarten, Clark**

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Tuesday, July 31, 2007 5:11 PM
**To:** Rosengarten, Clark
**Subject:** FW: OAG Docket No121

**From:** [redacted]
**Sent:** Tuesday, July 31, 2007 4:19 PM
**To:** GetSMART
**Subject:** OAG Docket No121

RE: SORNA

To whom it may concern,

I am a citizen who is required to register as a sex offender. Eight years ago I did something stupid with a person under age eighteen. I paid dearly for my crime of prostitution. I want now to simply put the past behind me and move on.

I have read the SORNA in detail and conclude that the government will be punishing me again despite my doing everything that was asked of me. SORNA is bad law - simple as that. Here are the reasons that SORNA makes bad law:

1. It will tear apart families of Registered Sex Offenders (RSO) where that RSO has been living a lawful and productive life since paying his debt to society.
2. SORNA violates the US Constitution by ignoring ex-post facto, double jepardy, due process and equal protection under the law.
3. SORNA treats all Registered Sex Offenders the same without any consideration given to those who have long since straightened their lives out and have become productive members of society.
4. SORNA is based on emotion and hysteria based legislation and has no place in our American democracy since it undermines the US Constitution by establishing punishment before any crime may be committed.
5. SORNA assumes that Registered Sex Offenders are "incurable" and these laws are needed to protect the public. This is non-sense because those who say "incurable" are using a very old road map that is badly out of date given the wide net of crimes that will qualify for the sex offender registry. How do you make sense out of a former sex offender now age 40 who 20 years ago had sexual relations with a sixteen year old girl friend. How much sense does it make to say this RSO is "incurable". Incurable of WHAT??? The notion of "incurable sex offenders" is obsolete except for the less than 2 percent on the registry that do need watching.

I am now threatened with more sanctions against my freedom and liberties. Who speaks for my family? Who is responsible for my children when I cannot bring home the needed income or live in a home of our choosing because of the discrimination against anyone with a sex offense in the workplace or living in the community?

I still thought we lived in a country that respected the US Constitution, fairness and balance. I guess that I was wrong.

Best regards,

[redacted]

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, June 25, 2007 12:04 AM
**To:** GetSMART
**Subject:** Sex Offender Laws

I have spent much of a year grabbing articles off the Internet and posting them on my wiki and blog sites, along with my comments. But now, I am going to write my own article here, to hopefully wake some people up and see what is going on in America by ostracizing millions of people and making it impossible for sex offenders to even breath without violating some law. Just click here to see the bills for a specific state. How can anyone pass so many laws for one class of person? This is insane!

First, let me get this out. **I am totally against ANY physical or verbal abuse to any human being.** And I believe anyone who murders another human being should be in prison for the rest of their life (until they die). **I do not believe in the death penalty for anyone.** Also, I believe that once a person has been in and out of prison and has served their probation and parole, done everything required of them, and what was signed on the "contract" when they took the plea, none of this should be required of them, none of it. The state cannot tear up a contract like this, which they are basically doing, it's unconstitutional. Many people, if they had known they would be faced with all this, they would have NOT taken a plea deal. And the courts are very aware of this, and is why they made it retroactive; thus violating ex-post facto laws! They should be allowed to get on with their life as if nothing happened. I'm not saying for it to be removed from their record, but, the crime should be removed from public view and background checks, they should not have any more restrictions, shaming, etc. If they commit another crime, then they face a lot more punishment. Like everything else, except sex offender laws work.

# QUOTES:

- Benjamin Franklin
    - They who can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.
    - Even peace may be purchased at too high a price.
    - The man who trades freedom for security does not deserve nor will he ever receive either.
    - The strictest law sometimes becomes the severest injustice.
    - Whatever is begun in anger ends in shame.
    - Half a truth is often a great lie.
- Thomas Jefferson
    - Our principles are founded on the immovable basis of equal right and reason.
    - An equal application of law to every condition of man is fundamental.
    - The most sacred of the duties of a government is to do equal and impartial justice to all its citizens.
    - The best principles of our republic is secure to all its citizens a perfect equality of rights.
    - What is true of every member of the society, individually, is true of them all collectively; since the rights of the whole can be no more than the sum of the rights of the individuals.
    - I would rather be exposed to the inconveniences attending too much liberty than to those

attending too small a degree of it.
  - Laws abridging the natural right of the citizen should be restrained by rigorous constructions within their narrowest limits.

- Adolph Hitler (Mein Kampf) (Click here to see what else he did!)
  - The state must declare the child to be the most precious treasure of the people. As long as the government is perceived as working for the benefit of the children, the people will happily endure almost any curtailment of liberty and almost any deprivation.

With that being said, now I want to show various aspects of the sex offender laws and briefly explain how I feel about each.

## Online Registry

Originally the registry was only used by law enforcement and was not made available to the public on the Internet. It was still available to the public, but they had to go down to the court house to look up offenders by name. Now, due to a few high profile cases (Adam Walsh, Megan Kanka, Jessica Lunsford), the registry has been placed online for the general public to have easy access to.

The intent was so that the public could easily go to a web site, enter a persons name or address and pull up a list of sex offenders who live near by, so the public was aware and able to take the necessary steps to protect themselves. But, this has only added to the "fear factor" and has made many people scared to death of each other.

Yet, it has been proven, that people cannot handle the registry. People look up someone on the registry, and when they see the sex offenders who live near them, they start some vigilante scheme to get the neighborhood up in a panic to force the person from the place they are living, or, they throw bricks through the offenders window, damage their vehicles, burn down their homes or break into the persons home and kill them. Below are a few examples. You will notice that many were simply put on probation or sentence to 9 months in jail or something like 10 years in prison for MURDER. Murderers should be in prison for the rest of their lives, period.

So far, vigilantism is not rampant, but it is on the rise, and I fear that the more laws that are passed, the more vigilantism will occur. Just check out the following links.

- Example 1
- Example 2
- Example 3
- Example 4
- Example 5
- Example 6
- Example 7
- Example 8
- Tons of deaths, murders, suicides
- Mark Lunsford even making death threats to sex offenders
- A Voice of Reason: On Murders
- A Voice of Reason: On Vigilantism

The registry is just another Scarlet Letter (i.e. public shaming) and does not protect anyone. It only shames the offender, their husband or wife, and also their children. The husband or wife is humiliated in public by neighbors, harassed at work and some have lost their jobs because someone in their family is a sex offender. Their children are picked on at school by bullies, and are often humiliated to the point that the parents are forced to withdrawal them from school due to the harassment.

> *In Nathaniel Hawthorne's "The Scarlet Letter," Hester Prynne is forced to wear a red letter 'A' on her chest after she commits adultery. Throughout the novel, she is scorned, humiliated and never given a chance to prove she has changed for the better.*

Now, I'm sure this may be hard for you to understand unless you were labeled as a sex offender, but how would you like to live in fear for yours and your families lives daily from the hysteria these laws have caused? All for the sake of a couple high profile cases! The offender, their significant other and any children they may have are harassed and humiliated as well.

If we MUST have the registries, they need to be for predators only and everyone else removed from them to protect their privacy (See Registry section below). If we do not do this, it's discrimination. To prevent discrimination, I recommend we have a CRIMINAL REGISTRY, so everyone can see all the criminals who live among them, besides, it's the American peoples' right to know if a murderer, gang member, drug dealer/user, thief, DUI offender live in their neighborhood, right? If it protects one child, it's worth it, right? They do not want to do this, because then we'd know all the peoples' backgrounds of those who are running for office, if they are a drunk, thief, adulterer and we'd all live in fear for the rest of our lived, but it's only fair, right?

Instead of creating one registry to save millions of dollars, they create many registries which waste millions of dollars. They have a National Sex Offender Registry, and also each state has a sex offender registry, and in some cases, each county has their own registry. Why do we need so many registries? We could take a billion or so dollars off the American budget and put it to good use with therapy for offenders and other ways to prevent crime. But, the government is not worried about your children, they are more interested in oil in Iraq and starving people in other parts of the country. Why not help this country first?

So the American tax payers are paying for all of this, thus wasting millions and millions of dollars, when none of the laws will work in the first place.

If the zones must be enforced, and since about 100% of the sex offenders are not land surveyors, the state should make it clear where sex offenders can and cannot live. And if someone near by decides they don't like a sex offender living near them, it's too bad, the sex offender has just as much right as the average citizen to live there, if it's within the law. So if you do not like it, move! The sex offender has very little places they can live that are within the law, they have to live somewhere.

In Georgia for example, there is over **13,000** sex offenders and **30** are predators. So why are they passing laws punishing all 13,000 offenders when they should be monitoring 30 people? This is a major waste of money and time. All sex offenders are lumped into one group (high risk) and are all treated as if they are like John Couey. Even kids under 13 and as young as 4 are being convicted of sex crimes!!! More of this further below.

## Residency Restrictions (Buffer Zones)

These so called "buffer zones" vary from state to state. They are buffer zones around places where children congregate, like bus stops (which are constantly changing), schools, libraries, parks, burger joints with play grounds, malls, movie theaters, amusement parks, then list is endless. They range from 300 feet to 2,500 feet from the above mentioned, and are measured as the crow flies, which is a straight line, from property line to property line.

The intent is good, but it will not work. This is just a "false sense" of security and does nothing to prevent another crime. The buffer zone could be 50 or 100 miles, but if an offender really was determined to commit another crime, they would either walk or drive somewhere. Also, with the offenders who must wear GPS tracking devices, where are you going to be able to walk or drive without being in violation of one of these zones? Plus GPS won't stop another crime from being committed, if the person is determined to commit another crime. Another "false sense" of security.

Why don't you just make exclusion zones on where sex offenders cannot go? That makes more sense, but, it will not prevent a person from committing another crime either, if they are intent of committing another crime. Some states are making buffer zones so large, that there is not a single place in the whole state a sex offender can live, which is basically their intent anyway, banishment! So the state is basically saying, "I don't want to deal with you, so we'll push you out of the state, and let another state deal with it!" What would happen if all states did this? Then they'd be pushed out of the country. If this is the intent, why not just pay the sex offenders some money and I'm sure about 100% of them would be very glad to leave this country, due to what it is becoming.

It's just another "feel good" law to make you "feel safe" when in fact it does nothing to keep you safe.

Now, consider this. If the buffer zone in your area is 1,000 feet, does it make you safe now if they are 1,001 feet away from you? Think about it!

## Therapy

Almost every single prison in this country, when sex offenders are locked up, whether it is in jail or prison, they do not get therapy. None whatsoever! Why? Therapy has been proven to help a majority of sex offenders, but not all. A lot of people are in denial and do not think they need help. We need to spend more money on therapy and ways to prevent these crimes, not "feel good" laws which do nothing in the long run. You do not have to take my word for it, just call up some therapists who deal with sex offenders and I'm sure they'll tell you the same thing.

But, instead, society has become one that doesn't want to deal with issues, they want the government to tell them what to do and they just want to lock all criminals up and forget about them. And I am talking about all criminals here, not just sex offenders. If this is true, then why don't we shred the Bill of Rights and Constitution and become a communist country now, since that is apparently what the general public wants?

This may sound harsh to some, but you could kill every single person in prison at this moment and you'd still have murderers, sex offenders, gang members, drug dealers/users,

DUI offenders, thief's, etc.

It should be made mandatory that ALL criminals (who need it) get some form of therapy in prison and jail, and if they deny it, then they will stay in prison or jail. Eventually they will agree to get help. A majority of the people in prison are homeless or have some other illness. Drugs and therapy would help them, yet we just want to lock them up and forget about them, like the lepers were treated back in Jesus' time, exiled and forgotten about. There is some people in prison right this moment, who were arrested a year or more ago for some small crime like theft and haven't even seen a judge or anyone yet, a lot of illegal immigrants are treated like this.

Then you can give them the help they need after the first crime they've committed, by giving them the tools to change their ways and thought patterns. Yes, there is not a "cure", I'll admit that, but like alcoholics, drug users and other diseases, they can be helped. Before each person is released back into the public, they should be reviewed by a fair jury of professionals to determine if they are a risk to society still, and if so, they should be put back before the court to decide on the next steps to be taken against the offender, you cannot just throw them back into prison without due process of law. Then they stay in prison or jail until they are no longer a threat. This would reduce recidivism rates drastically. And once they are deemed not a threat, they should be allowed to live anywhere they want like any other normal citizen, and not be again punished for life with residency restrictions and be on a registry. That is totally unfair.

Right now, the review board that is suppose to review prisoners coming out of prison to determine if they are a risk and should be civilly committed, they are not doing this (not in all states that is), and this seems backwards to me. You should review the person before they are convicted to help determine the punishment for the crime, and once again before being released from prison. The review is done by a civil jury, which is unfair. With the current fear and hysteria, nobody is going to want to let a sex offender out of prison or jail at all, because they think all sex offenders are a threat, which is false! So basically the civil commitment is prison all over again without due process of law. That is why it needs to be a jury of professionals and also a couple human rights personnel.

## Shaming

By having the registry, neon green license plates, wearing of an "I am a sex offender" t-shirt, signs posted in the yard or neighborhood, or being placed into the paper, this is all shaming. And by doing so, it puts major stress on the offender, their family and children due to the harassment they receive from many people.

A lot of people think shaming is a good idea and protects them, but it does not. Think back in your life, were you ever harassed or shamed? How did you like it? Didn't feel good did it?

By shaming people in this manner, it makes it impossible for them to keep a job, find a new job, find housing, etc. A lot of times it forces the husband or wife to leave them due to the stress of the situation, thus increasing the offenders stress levels. And by doing this, without any support from the public or family, the likelihood of someone re-offending increases drastically. Now how is that protecting anyone? Now the child is missing a mother or father whom they need.

It may seem like a good idea, but it's another "feel good" issue which does nothing to protect the public and in the long run, puts them more at risk. And in a way, is another way of entertainment. Like the shaming of people on TV which everyone loves. You may be next!

How would a sign in the persons' front yard protect anyone? Yeah, you know who they are, but, it only opens that person up to constant harassment from "friends", neighbors and anyone else who may be passing by. If a person who had a sign in their yard really wanted to commit another crime, this will not stop them.

The same goes for the neon green license plates and GPS. It's just more public humiliation. Many families can only afford one car, so what if the husband, wife or children were driving the car and some vigilante seen the green neon plate and harassed them, ran them off the road, or worse? Then what?

If a person, who had the plate, really wanted to commit another crime, all they would have to do is walk, ride a bicycle or borrow another car. Even if they drove the car with the plate, do you think if they pulled up next to a child, that child would walk behind the car to see if the plate was neon green? Does this give the kids the impression that if the plate is not neon green, it's ok to ride with that person?

## Legislation

Children are good ploys to get votes and that is why you always hear of someone passing a law in a child' name. They know if a child' name is attached to it, nobody will vote against it. They could deny you the right to bear arms by attaching some child' name to it whom was killed by a gun and you would vote for it, besides, if it protects one child, it's worth it, right?

But, while they are protecting one child, they are ruining thousands more. Here is a couple examples, which I'm sure will shock you.

- Young Lives Destroyed
- War on Toddlerism
- 8 Year Old Charged For Sexual Conduct
- Young Boy Faces Rape Allegation
- Evil In The USA
- Sexually Aggressive Children
- Underage Sex Authorities Grapple With

Also, why do you think you always see people running for some office, have their children on the commercial or stage with them? It's so you will see the children and think they are great, are doing it for the children, so you will vote for them and makes their wallets fatter. Follow the money trail.

Can't you see this? Eventually they will attach some kids name to a bill which violates one of your rights. Then I'll bet you see my point of view.

In my opinion it should be illegal to attach some child' name to a bill.

It's a game to the state politicians. Each one says they have the strictest laws in the country, and it's like a race to see who can punish sex offenders the most. Again, they do this for votes and to "look good" in your eyes, all the while, knowing the laws will not work.

They are always throwing out statistics and are never telling you where they got the information from. Anyone can throw out some number on the news and everyone doesn't even question where the facts came from, so they believe them. If you do your own home work, you will see they are flat out lying. They exaggerate these numbers for ratings and to keep you glued to the screen, and to instill fear and hysteria for their own agenda and ratings. It's like sex, it sells.

Just recently I heard a video online with Mark Lunsford. He said "repeat offenders always repeat". Duh, that is why they are called repeat offenders, but he didn't tell you that not all sex offenders reoffend. Just look at the Bureau of Justice Statistics (also below), it's there in plain English. Again, he doesn't want you to know the truth, so he can get your sympathy and bring more money to his business, even though it's a "non-profit". He also didn't tell you, nor did the media, that child porn was found on his machine (Click here). So why was he never investigated? Where did the child porn vanish to? Also John Couey mentioned that she did not appear to be a virgin (Click here). I'm not sure if that is true or not, but did they investigate it? Probably not. I personally feel like he's using his daughters death to benefit himself to make him rich and famous like John Walsh. He's even wanting to run for office. Give me a break! Also, on this same video, he said "never in the history of man kind has anyone ever been cured." No where did he get that from? Nobody is cured, it's like alcoholism or drug issues, but, if a person is given therapy one the first offense, I can almost guarantee you the rate of sexual abuse will go down drastically. But he doesn't want that because then he'd not have a business now would he and a lot more would be shut down as well. Same with John Walsh, he's been blaming a sex offender for his sons death, and it has never been proven that it was a sex offender.

If they were truly there to provide realistic news instead of some entertainment, then they'd show you where the statistics come from, like reporters did in the past. But the media is about entertainment now and money, not about true news. They also find people who will support what they want you to believe instead of getting several professionals with various views so you can decide for yourself. They should also have sex offenders on so that the other point of view can be shown as well. Many sex offenders have sent email after email to these people, and they simple delete it and never let you hear what other people are saying.

Many sex offenders will admit what they did was wrong, and provide you with what they think would work to help decrease the recidivism rates, but that doesn't bring good ratings, so it is squashed. People love to see sex, people being busted by the "COPS", humiliated on TV, horror and death, etc, just open your eyes. What are you watching on TV?

All I ask is do NOT believe everything you are hearing from people, get on Google and look for yourself! You will see what I am saying is true.

## Housing

People are being evicted from their homes which they have bought and paid for and lived in for many years, most since childhood. And when they are evicted, it is nearly impossible to find another place which is within the law. Almost 99% of hotels, motels and lodges have swimming pools, which a sex offender can not be around, so those are off limits. Some

states say you cannot be XX feet from a bus stop. Bus stops are constantly changing; therefore sex offenders will constantly have to move over and over and over again. With the buffer zones being enforced, almost 80% or more of the county or state is off limits. They have to live somewhere. Just look at Florida, they are forcing many offenders to live under a bridge. This is just so wrong.

Also, now, when someone goes to get another place to stay, that person who owns the house or runs the hotel or motel, look the person up on the sex offender registry, and the person is then denied. This is discrimination. You cannot deny someone from living somewhere because of their race, sex, religion or criminal history. Yeah, I know, sex offenders do not fit this agenda, but it's still illegal. But it's being done on a daily basis.

If you don't want them "in your backyard" then the state should pay for a place for them to stay. Or pay for them a plane ticket and enough money to leave this country. I'm sure every one of them would leave in a heart beat.

Housing prices will also drop due to a sex offender(s) living in the neighborhood and nobody wants to buy a home near a sex offender. People will not be able to sell their homes either and their house value will drop. So, the neighborhood bitches and screams until they person is forced to move, or, if they stay, they are harassed and/or beaten, or killed.

Also, if a sex offender is mentally ill like many people say, where is their disability checks? Do they get tax breaks due to not being able to use the parks, live in hotels, motels, etc? If not, why not?

## Employment

Anytime you go to get a new job and fill out an application for employment, there is this little box which asks if you've ever been convicted of a felony. Most sex offenders leave that empty, because they know if you say yes, you will be denied a job.

So the above makes it almost impossible to find any job. And if they do find a job, then it's some job which barely pays enough to even live by.

For people who are currently employed, many employers now, due to the hysteria, are doing background checks. Once the background check is done, and they know you are a sex offender, you will almost 100% of the time loose your job, unless you have a boss who is willing to work with you, which is rare. I know of one person who was a programmer for 11 years and their boss knew everything about them, but when the company was bought out, the new owner did background checks, and this person lost a highly paid job, which had nothing to do with children at all. This is total discrimination.

## Myths, Facts & Statistics

The links below are to various sites which explain to you the facts about sex offenders. I do not personally agree with 100% of these, but they are provided for your education.

Since the media and politicians do not use the facts and distort the truth, how can they really expect the public to act rationally when they are given lies? Oh I forgot, they do that because fear and hysteria bring more ratings and more money. So hopefully these links will

open your eyes.

- ABC News: Five Myths About Sex Offender Registries
- Bureau of Justice Statistics
- CSOM Publications - Myths and Facts About Sex Offenders
- Facts About Adult Sex Offenders
- Factoids and the Sex Abuse Panic
- Office of the Attorney General - Megan's Law - Facts about Sex Offenders
- SEX CRIMES - FEARS & FACTS!
- Sex Offender Management in the Federal Probation and Pretrial Services System
- Sex Offenders Myths And Facts
- Reality vs Myth
- Twenty Findings of Research on Residential Restrictions for Sex Offenders
- Sex offenders: Throwing away the key
- Sexual Violence: Fact Sheet
- Sex Offender Resources

And here is a quick extract from the Department of Justice web site.

**NOTE:** Keep in mind, these are **overall crime statistics**, not just related to sex offenders.

- Child Victimizers
    - Approximately 4,300 child molesters were released from prisons in 15 States in 1994. An estimated 3.3% of these 4,300 were rearrested for another sex crime against a child within 3 years of release from prison.
    - Among child molesters released from prison in 1994, 60% had been in prison for molesting a child 13 years old or younger.
    - Offenders who had victimized a child were on average 5 years older than the violent offenders who had committed their crimes against adults. Nearly 25% of child victimizers were age 40 or older, but about 10% of the inmates with adult victims fell in that age range.
- Recidivism
    - Of the 272,111 persons released from prisons in 15 States in 1994, an estimated 67.5% were rearrested for a felony or serious misdemeanor within 3 years, 46.9% were re-convicted, and 25.4% re-sentenced to prison for a new crime.
    - The 272,111 offenders discharged in 1994 accounted for nearly 4,877,000 arrest charges over their recorded careers.
    - Within 3 years of release, 2.5% of released rapists were rearrested for another rape, and 1.2% of those who had served time for homicide were arrested for a new homicide.
    - **Sex offenders were less likely than non-sex offenders to be rearrested for any offense** — 43 percent of sex offenders versus 68 percent of non-sex offenders.
    - Sex offenders were about four times more likely than non-sex offenders to be arrested for another sex crime after their discharge from prison — 5.3 percent of sex offenders versus 1.3 percent of non-sex offenders.
- Sex Offenders

- On a given day in 1994 there were approximately 234,000 offenders convicted of rape or sexual assault under the care, custody, or control of corrections agencies; nearly 60% of these sex offenders are under conditional supervision in the community.
- The median age of the victims of imprisoned sexual assaulters was less than 13 years old; the median age of rape victims was about 22 years.
- An estimated 24% of those serving time for rape and 19% of those serving time for sexual assault had been on probation or parole at the time of the offense for which they were in State prison in 1991.
- Of the 9,691 male sex offenders released from prisons in 15 States in 1994, 5.3% were rearrested for a new sex crime within 3 years of release.
- Of released sex offenders who **allegedly** committed another sex crime, 40% perpetrated the new offense within a year or less from their prison discharge.

## Media

The media, as well as uneducated politicians are to blame for the "sex hysteria" which has whipped the public into a panic. Now, anytime a man is seen with young children, even if they do not have anything bad in mind, people freak out and call the cops, thus wasting law enforcements time on checking into stuff and making sure someone is or isn't a sex offender.

They constantly demonize sex offenders so it's easier to hate them and get laws passed, or for vigilante justice.

The media is constantly throwing out statistics without providing sources to those statistics. Anybody can throw out some numbers to scare people and bring them more ratings and money. You can look at the Bureau of Justice web site (or above) to see statistics from a 1994 study, or other sites with facts about sex offenders (some above), and you will see what they are saying is incorrect. It brings more viewers and more ratings, thus more money. The intent is good, but when you do not have the true statistics, you make things look worse than they really are. Children are abducted by strangers, but the overall "stranger danger" is a myth. Most sexual related crimes that involve children occur by someone the child knows, like a family member or close friend. Just look.

The media is always using the words sex offender, predator, child molester and pedophile as if they all mean the same thing. The label "sex offender" covers many different kinds of people, like people urinating behind a building, due to a bathroom not being nearby, or the restroom is occupied. People who also streak in public, like football or tennis matches are now being labeled a sex offender. Also mooning will get you labeled a sex offender. Young children, playing doctor, like a 8 year old and a 10 year old, are being labeled a sex offender, or, a 15 year old and a 18 year old who are both willing partners in sex, when later someone finds out and the parents call the police, now the kids life is ruined and he'll be a sex offender for life. And lately prostitu

Here are a couple examples:

- Example 1
- Example 2

- Example 3
- Example 4
- Example 5
- Example 6
- Example 7

## Other Comments

- When will people ever realize no matter how tough on crime, all the zero tolerance, all the registries in the world will not prevent a murderer from murdering, a thief from stealing, a dealer from dealing, a user from using, a rapist from raping? Accusations on any sex crime, child abuse, or domestic violence will literally nail your butt to the wall! No DNA has to be present, no violence has to be present, HEARSAY ALONE IS LITERALLY NAILING THOUSANDS AND THOUSANDS OF PEOPLE TO THE WALL BECAUSE OF THE BIASNESS IN THE LAWS.
- We need to **not group all sex offenders into one group** as if they are all like John Couey. They are not all the same and sex crimes cover a wide range of offenses.

## Videos

- Click here to view the videos.

## Possible Solutions

1. Buy every sex offender in this country a passport and a one way ticket out of the country so you can push the problem off to someone else who has more of a brain. Then you'd be rid of the problem. I'm sure 100% of the offenders would leave Communist USSA in the blink of an eye. No more problem!
2. If we must keep the online registry, then only those who are deemed high-risk should be on the registry, all others should be removed from the online portion of the registry. I'd rather see the registry be removed off line completely, but I know that will not occur. The reason is due to harassment the high-risk offenders will be enduring. Let the police monitor it, like it was before. Every 5 or 10 years, the high-risk offenders should be allowed to be re-evaluated to determine if they are still a high-risk, and if not, then they should be allowed to go before the court and petition the court to be taken off the registry. Low and medium risk offenders, who are off the online registry, but on the registry monitored by law enforcement, should be allowed every year or two to petition the court to be re-evaluated and re-categorized or removed from the registry and restrictions all together, but nobody, even violent predators should be punished for life.

   I also think, if we must have a registry, we really just need a general registry for all violent crimes, like murder, DUI, drugs, high-risk sex offenders. I think the public has a right to know about these folks as well as sex offenders.

   But again, I think if society knew about all these people, everyone would live in a constant state of fear, which is not good.
3. Instead of making buffer zones, designate places sex offenders cannot go to. This way, at least they can walk or drive without violating some law. The buffer zones do not work, and make it impossible to find a place to live that is within the law. You

can also make it so they cannot loiter, or cruise around these places. But simply driving by is fine. The buffer zones also force many into homelessness or to go underground, or unable to live with family where support is, and endangers society. You cannot just say "any place kids congregate", this is far and wide, and you need to designate places offenders cannot go, do not leave it up to them to guess if something is legal or not. The law should tell you where you cannot go so there is no question about it.

4. Therapy should be mandatory in prison and jail for ALL criminals deemed to need it. If they do not get the treatment, then they will remain in prison or jail. Before they get out of prison or jail, they need to be fairly evaluated by a professional staff of a couple therapists, DOJ staff and a human rights worker. And if they are deemed a high-risk still, then they should be allowed to go before the court again and get another trial to determine what the new sentence is to be. If they are not a high-risk, then they should be let free to be able to live their life as any other citizen and without the constant monitoring for life.

5. For people who go to prison for any sexual crime toward a child, they should be segregated from the general population. Otherwise, they will be harassed, beaten and possibly killed, and I'm sure everyone is aware of this. Also young offenders should be separated from older offenders so more victims are not created.

6. GPS should only be placed on high-risk offenders. GPS is very expensive and most offenders are poor and cannot afford to pay the extensive fees associated with GPS. This would save a lot of money and time, due to having to only monitor a couple offenders instead of thousands. Also, if the public wants GPS on offenders, then the public should pay for it. Why should the offender be made to pay to obey the law?

I personally think that if we implemented the above, life would be better on everyone. No matter how many laws you pass, it will NOT prevent future crimes, that is a proven fact.

## Final thoughts

All these laws should only apply to **repeat offenders** (people who've committed more than one sexual crime), for those who only made a bad mistake once, they should not be punished by these laws just because of a couple idiots. How would you like to be banished from your town because some Nazi starting causing trouble or you could no longer drink alcohol because so many people are getting DUI's and killing people? Isn't fair is it! That is all I'm asking. Only for repeat offenders, leave the rest of the people alone!!

We must put aside anger, fear and hate and think rationally and logically to come up with solutions that last, not have "knee-jerk" reactions to violent crimes and pass 100 more laws. Please consider what I have mentioned.

Have you read Joe Duncan' blog which he commented on before he killed Dylan Groene and his parents? Check it out here:

- http://www.cnn.com/2005/US/07/04/duncan.blog/index.html

We won't tell. Get more on shows you hate to love (and love to hate): Yahoo! TV's Guilty Pleasures list.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Saturday, July 28, 2007 2:43 PM
**To:** GetSMART
**Subject:** Public comment on the propsed Adam Walsh Act
**Attachments:** SEX OFFENDER LAWS.doc

The Adam Walsh Act is one of the most ill-conceived acts ever considered. The following article by Amanda Rogers sums up the issues using logic, rather than political motivation or media ratings hype.

SEX OFFENDER LAWS PUMMELED

**View the article here**

**http://www.americanchronicle.com/articles/viewArticle.asp?articleID=31444**

**07/07/2007**

SEX OFFENDER LAWS PUMMELED AS GAP BETWEEN BEING TOUGH ON CRIME AND BEING SMART ON CRIME WIDENS

Washington D.C.: In a desperate attempt to keep the flow of misinformation alive, John Walsh of America's Most Wanted - who has always sought vengeance over prevention (and makes a ton of money doing it) assembled a small group of parents whose children have been murdered, whether by a registered sex offender or not and went to Capitol Hill last week to push for yet even more ineffective and blatantly vindictive laws in the name of a handful of murdered children.

The group called "The Surviving Parents Coalition," enlisted the services of a PR (public relations) firm. This is important to note as, in the words of Eugene Kennedy, quoted from the New York Times: " You call in public relations operatives when the truth won't do."

The coalition's PR company: ( R.M.S. PR) sent out a press release that the group would be meeting with a few "fools on the hill" last week in Washington urging them to "declare war on sex offenders." Declare war? There was also to be a press conference. To date, I have seen only one single article covering this event - evidence that Mr. Walsh and his entourage have pushed the envelope too far. Vengeance against 600,000 plus people for the actions of the handful responsible for the despicable crimes which took the lives of these parents' children cannot continue. The silence upon Capitol Hill last week spoke volumes and sends a clear and powerful message: It is no longer enough for the American people for elected

officials to look "tough" on crime. The American people want legislators to be "smart" on crime - to focus on prevention, not retribution.

Across the nation, a growing number of top mental health experts, law enforcement agencies, and victim advocacy groups are becoming fed up with costly, ineffective, and counter-productive sex offender laws, and they are speaking out. The over-inflated balloon of hype and hysteria which has been the platform for creating and passing much of the legislation is deflating as factual data on the issues surrounding sex crimes comes to the forefront.

**For example, ALL of these laws focus on former registered sex offenders who statistically are responsible for a miniscule 3% of new sex crimes. That means that 97% of new sex crimes will be committed by someone who is NOT a registered sex offender.** To put it in perspective, out of the 400 Dateline " To Catch A Predator" stings only 4 out of the over 400 caught were actually registered sex offenders. So then, WHY are all these laws only targeting those on the registry that pose the lowest risk to society?

The tide is turning and lawmakers who don't want to be left holding the bag for the miserable failures that have been created in the name of protecting the public are taking notice. With the exception of the three "fools on the hill" that are still trying to make a name for themselves via deception and who have obviously not done their homework. Those lawmakers being: Senator Joe Biden-(D) DE, Congresswoman Debbie Wasserman-Schultz -(D) FL , and Congressman Al Green-(D) TX.

Multiple states across the nation are delaying and in some cases even outright refusing to comply with the Federal government's mandate of the Adam Walsh Act passed last year in a closed door session, at the bequest of Rep. James Sensenbrenner.

Community notification laws, residency restrictions, and all the other "one up man-ship" policies that have been set into law to date haven't protected a single child and it has cost the American people dearly. These laws have torn a huge hole in the fabric of our society. ALL of these laws have been based on a handful of tragic and brutal crimes, some involving someone with a previous sex offense and some not. **America's children have a greater chance of being struck by lightening than by having their child abducted.** The crimes are horrific but they are in fact, extremely rare. **The majority of sex crimes are not committed by strangers or even registered sex offenders, yet that is who John Walsh and others constantly focus on when lobbying for laws against everyone and anyone with a past sex charge, whether for Romeo and Juliet relationships or kids caught playing doctor. Everyone has been lumped together and publicly slandered by vote hungry politicians and the ratings hungry media, trying to convince us that everyone on the sex offender registry is a child molesting, incurable pedophile capable of murdering a child at any given moment. Bulls**t.** If all registered sex offenders posed that kind of threat to the public, we'd be neck deep in the bodies of murdered children just by walking out our front door. Think about it.

Lawmakers are (finally) doing their homework. They are finally beginning to pour over the numerous reports which government agencies and mental health experts have compiled and that the taxpayers have paid for regarding recidivism, types of offenders, factual data and the negative consequences of the plethora of ill thought out legislation.

Sex crimes are down? That's no surprise. I wonder how many cases will never see the light of day because family members fear the wrath of these laws and keep sexual abuse "within the family" to themselves instead of reporting it? How is this protecting children or helping to solve the problem?

The ever growing group of organizations and individuals who have read the mountains of data and oppose laws like community notification, residency restrictions, and the Adam Walsh Act include, but are not limited to:

Patty Wetterling

Nancy Sabin

The Jacob Wetterling Foundation

Franklin Zimring, law professor University of California at Berkeley

Scott Poland, past president of the National Association of School Psychologists

Robert Prentky, a psychologist and nationally renowned expert on sex offenders in Bridgewater, Massachusetts

Kansas department of Corrections

Iowa County Attorney's Association

Colorado Department of Public Safety

Iowa Coalition Against Sexual Assault

Minnesota Department of Corrections

NACDL

Montana Treatment Association

California Coalition on Sex Offending

Therapy Key

SATA

ETAY

My5th.org

NAESV

American Bar Association

JJAG

Dr; Jill Levinson PhD

Dr. Fred Berlin

I don't know what's worse, someone who exploits a child sexually or someone who makes a career out of exploiting their own child's tragic death for personal gain at the expense of thousands of others (and their families,) who had nothing to do with the perpetration of these heinous crimes.

Amanda Rogers - 7/03/2007

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, July 30, 2007 11:47 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121

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**From:** Mark Levine [redacted]
**Sent:** Sunday, July 29, 2007 6:02 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

***Response to the USAG/SMART Office Proposed Guidelines***

I have just read the proposed guidelines. There are so many absurd statements, conclusions and proposals that I don't know where to begin. First of all there's this...

"The availability of such information helps members of the public to take common sense measures for the protection of themselves and their families, such as declining the offer of a convicted child molester to watch their children or head a youth group, or reporting to the authorities approaches to children or other suspicious activities by such a sex offender. Here as well, the effect is salutary in relation to the sex offenders themselves, since knowledge by those around them of their sex offense histories reduces the likelihood that they will be presented with opportunities to reoffend."

The public doesn't need help in making *common sense* decisions, that's because common sense is, by definition, something that people use intuitively! Simply repeating fear promoting statements over and over again does not make them true. We learned that about Iraq. THE FACTS ARE that there are absolutely NO (and I do mean none, zero, nada, zilch) studies that have demonstrated that public notification of sex offenders leads to a reduction in sex offenses. The above assumption is just that, an assumption. If you take the time to read the scientific literature you will find that public notification does not and has not protected one single child from molestation any more than plain old common sense.

These proposals make several other erroneous assumptions. One is that every sex offender is a pedophile. And there is a huge difference between sex offenses involving teenagers and those involving pre-adolescent children. The latter are pedophiles, the former are not. (Look it up in the DSM-IV- TR).

These proposals build erroneous conclusions on top of erroneous conclusions. We already know that public notification does not prevent child abuse. For one thing 90% of sexual abuse are by people well known to the child. Public notification only leads to harassment of the offender and THEIR CHILDREN. Now these guidelines want to make it easy to terrorize vehicles that might be driven by the offenders teenage child or spouse or parent. Not only are these guidelines implying that individuals should be researching government websites every time they meet someone new, but now they are supposed to be memorizing license plates and vehicle descriptions of every one on the list (and review it daily!!!) WHERE IS THE DATA TO SUPPORT THIS GUIDELINE?????????
You are taking a bad law that doesn't work and throwing more junk on top of it.

Under mandatory exclusions I did not see "telephone numbers." Are you serious????? You want to publish telephone numbers so families can be harassed all day at work (cell phone) and home??!!!! Do you want people adjust to society or are you simply trying to isolate individuals and families further, something that ALL experts in the mental health profession know leads to greater recidivism, not less.

And emails.....??? Clearly the people who wrote these guidelines never use the Internet. So you want EVERY email address used? So if an offender creates several hundred or thousand of emails (only takes two minutes for each one), you want to keep track of every one (because local law enforcement agencies have nothing better to do) and have someone appear in person every time they create a new email address? And then you will list all hundred (or thousand) of email addresses? And then you seriously want to give this information to the public so that offenders personal computers (used at home by their children and spouse and parents, etc) and their computers at worked can be targeted for every disabling virus known by man.

Has anyone read the studies or listened to the Congressional testimony from the experts from the University of New Hampshire? **They spell it out clearly that the children who succumb to online advances are the same children who are having problems offline.** In other words, if parents abuse their children, emotionally, physically or sexually they will be at high risk for online seduction. Healthy children from well adjusted families have never been reported to meet a "predator" offline. The other fact the University of NH experts reported was that people talking to teenagers online almost never hide their real age. This is why although there are thousands of online contacts each day, it is extremely rare that a teenager engages with a person offline.

Then there's that last line in the paragraph I quoted above from the proposed guidelines. Public shaming and isolation are the two most effective means of INCREASING recidivism. It's almost as if increased recidivism was the intended consequence of these proposals. The reasons why these laws keep getting updated is because the original law doesn't work. And the original law was based on faulty assumptions so of course adding more junk to the original law will not help. Then a few years from now, people will be trying to come up with more laws, equally absurd as these. STOP IT NOW!

Thank you.

Mark Levine

**Rogers, Laura**

**From:** Wayne Goodman [redacted]
**Sent:** Wednesday, July 18, 2007 8:08 PM
**To:** GetSMART
**Subject:** Docket No. OAG 121

**Docket No. OAG 121**

**To Whom It May Concern:**
**RE: Comments on SMART**

I recently read about the proposed guidelines concerning sex offender registration. I do not support many of the requirements in this legislation because most offenders who have "paid" the price for their crime have re-integrated back into society as productive, law abiding citizens. This proposal contains many requirements whose effect is to "undo" the progress made by those who committed a sex crime in the past, and perpetuate the societal "red scarlet" for life. People in our society commit many crimes for which they are punished. But a sex crime is the only one that carries essentially "lifetime" registration and banishment. This legislation is well-intended but ill-advised. DOJ statistics show sex offenders have a lower recidivism rate than most other offenders. Most offenses are committed by someone already known to the victim. This legislation jumps on the "bandwagon" of public sentiment, but it is not good public policy.

W.S. Goodman
[redacted]

## Rosengarten, Clark

**From:** Rogers, Laura on behalf of GetSMART
**Sent:** Monday, August 06, 2007 10:46 AM
**To:** Rosengarten, Clark
**Subject:** FW: Docket No. OAG 121
**Importance:** High
**Attachments:** Response to proposed regulation.doc

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**From:** Joel Falco [redacted]
**Sent:** Wednesday, August 01, 2007 12:16 PM
**To:** GetSMART
**Subject:** FW: Docket No. OAG 121
**Importance:** High

-----Text Version Below-----

July 31, 2007

To Whom It May Concern:

There are many items in the referenced proposed regulations to which I expressly object. However, in order to ensure brevity, I will not address them individually, instead I will address the overall intent and direction therein.

People want to live in a safe society. This is a worthy goal and the ultimate expression of the function of government. Laws limiting behavior are therefore necessary. People want to live in a risk-free society. This is the ultimate folly and the source of countless revenue to the pockets of lawyers milking money from all sides, victims and victimizers as well as the general public.

These sex-offender laws restricting the otherwise legal behaviors of individuals who have been previously found guilty of a sex-related offense fall into the later category. While wrapped in the comfy-cozy language of ensuring the safety of the public, they only result in re-victimizing the offender's family while not increasing public safety one ounce.

Why will safety not be increased? Simple, recidivism statistics gathered by the office of the Illinois Attorney General show that overall recidivism for sex-offenders in Illinois is under 36% and for those that completed an approved sex-offender treatment program, the rate is well under 10%. This is far lower than any other felony conviction.

You may say, yes - but even one more victim is one too many. True, but that victim will (or will not) be there irrespective of this law. Obviously, fear of consequences was insufficient to prevent the first incident resulting in the original conviction. Why should it be sufficient to prevent the second? However, with parents and others feeling safer with this law in place, it ignores completely those individuals in public places who have not yet offended (or at least been caught). With new convictions

at an all-time high, this is the greater risk - not a repeat offender. This law is a useless panacea to give people an unrealistic illusion of safety while doing nothing to actually provide that safety. The problem is far too widespread in our highly sexualized society.

Certainly there are very high-profile cases of repeat offenders that make national headlines. These are the exceptions, not the norm and they exist within every criminal classification. Why single out these offenders? Why not a national registry of drunk drivers? More people are killed and injured annually by drunk drivers than are assaulted by sex offenders. Why not a drug dealer registry? There are more drug pushers lurking near schools than dirty old men. Psychological counseling may help a victim of abuse, but it takes much more than that to recover from heroin addiction.

Convicted sex-offenders, while detestable to many, have done what all other released offenders have done. They have paid the penalty imposed by society for their crime(s). Post release, they have the same right as every other citizen to gainful employment and to provide for their families. Preventing this ultimate right (and responsibility) re-creates a dangerous environment for the offender causing additional risky behavior and causing greater potential for re-offending than this proposed regulation will prevent. In simpler terms, this very regulation will result in more sex-offense victims - not less.

Where does it all end? All offenders want to be able to put their past behind them and to move forward. Laws such as this make it impractical if not impossible. The rules for those who "toe-the-line" keep getting tighter. There is no let up in sight. Where is there any "reward" for good behavior? Every practitioner of counseling or motivation understands the nature of the "carrot and the stick". Both are needed to modify human behavior. Regulations like this totally eliminate the carrot. I understand John Q. Public not wanting to give any rewards to a sex offender. But why should the sex offender follow the rules if they only get tighter every year. This causes many offenders to slip out of the system altogether. It is obvious that causes a far greater risk. In the recent past, the offender knew if he behaved for ten years, he would be off the registry and "be free". This is no longer true, now it is life for nearly all.

And who pays? As previously mentioned, new convictions are at an all-time high and getting higher. All these people are entering a system they can never leave. Who is monitoring them and a what cost? The men and women in probation and parole offices around the country are doing a very commendable job. But they are overworked, understaffed, and underpaid. These are society's first tier in protection. But laws like this are making their jobs impossible. Too many are totally burnt out, too many are leaving what they know to be an impossible situation. In Illinois it is nearly August and there is still no budget approved. Even if they tripled the budget for sex-offender tracking it would not fill the gap created by this law. More offenders have slipped out of the net than they have the resources to catch.

Who to track? Obviously trying to increase the total pie to restrict all offenders, we need to look at that subset of re-offenders and focus limited resources where the greatest good is achieved. Laws already call for offenders to be counseled and treated before release from the system. Those that comply, have only one offense, and are assessed as a low-risk of re-offense should be monitored for a few years and released from the system (assuming no re-offense). This is the carrot. Laws such as this should then only apply to the remainder. Resources would then be sufficient, a carrot-and-stick approach provided, and true safety increased. This regulation, as written, provides none of this.

**Rogers, Laura**

**From:** [redacted]
**Sent:** Thursday, May 24, 2007 6:31 AM
**To:** GetSMART
**Subject:** Adam Walsh law

The laws proposed are too long and complicated. It might make more offenders go underground. Keep it simple. Just do a connection with existing laws, so that the information can be shared with all the states. Making it too public endangers the public.

Ron Burns

[redacted]

general

**Rogers, Laura**

**From:** Connie S. Norris [redacted]
**Sent:** Thursday, July 19, 2007 5:01 PM
**To:** GetSMART
**Subject:** SORNA

Please reconsider passing this bill. It does not help or protect any of us. We are suspose to be a country with rights and fair and just laws, but with all the new laws and rules regarding sex offenders our rights are disappearing. These people have families and children, they need homes to live in and jobes to provide for them, to get on with their lives and make something of themselves. Taking away a place for them to live or not being able to find a good job, or being treated like scum is not helping them and will only make them want to lash out at someone. Not all people are a danger to children, most of these so called sex offenders just made a mistake, they deserve to have a second chance.We need to go after the ones who are a real danger the ones that kill, or rape a child.,then they need to be kept in prison. All this other they keep passing, in the name of a child needs to stop.... just to get more money for the states and to look good it is just causing kids to be afraid of everyone. I am sorry this may be too long, and I am not good at writing. I want to be proud of living in America but right now I am ashamed of our country.

Thank you,,
Connie S. Norris

**Rogers, Laura**

**From:** [redacted]
**Sent:** Monday, July 30, 2007 7:27 AM
**To:** GetSMART
**Subject:** Docket #OAG121 -opposed

As a Viet Nam era veteran and mother of three, I am apalled at the absurd and cruel intentions of this proposal.

Not only does this legislation fail to protect children, it in fact endangers children further. No research has been shown these laws are effective. They punish families and innocent children. This is the United States of America. Surely we can do better.

Thank you. Alyce Wenger
Denver Colorado.

**Rogers, Laura** general

**From:** [redacted]
**Sent:** Tuesday, July 24, 2007 11:29 PM
**To:** GetSMART
**Subject:** Sex offenders

To whom this may concern,

I just have to begin by saying that I am so angry at the way things have, are and always will be handled by the government. I am a victom of sexual abuse and I am so sick and tired of hearing all these new laws and guidlines. It doesn't really matter anyway how much you do it is never going to stop this from happening. I have never had the chance to just get closer from had happened to me because I hear about things like this everyday. I have two daughters and I am very careful with them and teach them well. That is what is going to stop sex offenders. NOt some stupid licsense plate. Educate!!!!! I am sure we can all think of something better to spend tax dollars on.

**Rogers, Laura**

**From:** [redacted]
**nt:** Thursday, July 26, 2007 12:23 AM
**:** GetSMART
**Subject:** DEPARTMENT OF JUSTICE Docket No. OAG 121; A.G. Order No. 2880–2007 RIN 1105–AB28

DEPARTMENT OF JUSTICE Docket No. OAG 121; A.G. Order No. 2880–2007 RIN 1105–AB28 is a waste of tax payers money and a waste of time. There is not one instance where sex offender registration has helped one child.
Moreover, the sex offender registry only causes more people to be victimized and compromises the rights of the people. I am a registered sex offender and this has only caused me to be homeless, present condition, and has caused me to loose jobs in the past. My children suffer as dose my wife; be aware that this is a problem for many people.

Please don't implement Docket No. OAG 121; A.G. Order No. 2880–2007 RIN 1105–AB28, the SOR hasn't helped to protect children in 13 years and it will never work. Look at your own numbers, child sex offenders re offend at a rate of only 3.3%, this means that 96.7% never re offend.

By supporting this you will be misleading the public to believe that these crimes are committed by strangers, this is not the case: in 95%
(19 in 20)of all cases the perpetrator is well known by the victim, they are usually a close family friend, relative, or significant other to the victim's parent.

Yes we need to get smart about this and the only way to get smart is to educate the public about the facts of child sexual abuse and steer them away from the stranger danger myth that is endangering the lives of our children.

General

**Rogers, Laura**

**From:** [redacted]
**Sent:** Wednesday, June 06, 2007 10:18 AM
**To:** GetSMART
**Subject:** Adam Walsh Act

This act did not stop Joshua Lunsford from putting his hands down his girlfriends pants!! How is it going to stop anybody else? These laws are not protecting anybody!! If you are going to talk about child safety - how do you explain the former [redacted] who had sex with a 16 year old girl (consent age is 18) and then had someone take pictures!! He only got a slap on the wrist!! Explain to the common folk who have to live under a bridge the logic in that???

This is nothing but a bunch of dirty tricks
1.
H.R. 4472 never debated in the full US House!

2.
H.R. 3132 is repackaged by the House

3.
The Childrens Safety Act must be approved by the Senate which is stalled on S. 1086 and cannot go to the Senate floor, per Frist, unless or until the hate amendment is withdrawn.

4.
Tier levels - Utah Department of Corrections, studies show from 1992 to 2004 out of 400 offenders, only two offenders reoffended! Majority of offenders are not dangerous, this is a public safety issue!

We can do better.

dphoebe

**Rogers, Laura**

**From:** [redacted]
**Sent:** Tuesday, June 12, 2007 12:01 PM
**To:** GetSMART
**Subject:** OAG Docket No 121

There are so many problems associated with this proposal its hard to know where to begin. First comment; Why would you require all offenders who are registered to comply with this? According to your own DOJ study, RSO's have the lowest recidivism rate of all offenders. [%5.3 according to your own study] If an offender has complied with all requirements during sentencing and probation and has not reoffended, why would you require additional requirements? Those offenders should gradually be released from the registry and its requirements. Instead they are in a climate that, regardless of how well they comply they, continue to have more restrictions and requirements heaped apoun them. Many of these SMART proposals are difficult to understand and comply with, thus making rearrest more likely.This creates an atmosphere of bitterness and hopelessness. Many RSO's had an onetime, youthful, relationship with an underage partner and have moved on in life with a spouse, children, employment, and live a stable, productive, lifestyle. Years have passed and they have payed their debt to society. These proposals would destroy that. Second comment; Some of these proposals would list private information of individuals who are not on the registry, such as email addresses, license plate information of vehicles, telephone numbers ect. This information will make it much easier to harass or harm offenders and their friends and family. Where are their rights in these proposals? Third comment; Listing publicly an offenders place of employment will cause a huge jump in offender unemployment. RSO's have a difficult time obtaining employment allready and employers will be reluctant to hire offenders due to the associated stigma if that employment is made public. I need not explain all the problems unemployment causes. Finally I believe that, if these proposals are enacted, they will create a climate in which offenders will harbor resentment, bitterness, and fear and they may act out in a violent rage. I believe that will be inevitable unfortunately with these proposals. Particularly those who have their lives back on track. These guidelines lump all offenders together as violent predators who will reoffend, when in fact your own study states otherwise. Modify these guideline to where they only apply to the really dangerous offenders most likely to reoffend. Gerda Eads

## Rogers, Laura

**From:** Eric Eads [redacted]
**Sent:** Thursday, July 19, 2007 6:06 PM
**To:** GetSMART
**Subject:** Comments

There are so many problems associated with this proposal its hard to know where to begin. First comment; Why would you require all offenders who are registered to comply with this? According to your own DOJ study, RSO's have the lowest recidivism rate of all offenders. [%5.3 according to your own study] If an offender has complied with all requirements during sentencing and probation and has not reoffended, why would you require additional requirements? Those offenders should gradually be released from the registry and its requirements. Instead they are in a climate that, regardless of how well they comply they, continue to have more restrictions and requirements heaped apoun them. Many of these SMART proposals are difficult to understand and comply with, thus making rearrest more likely.This creates an atmosphere of bitterness and hopelessness. Many RSO's had an onetime, youthful, relationship with an underage partner and have moved on in life with a spouse, children, employment, and live a stable, productive, lifestyle. Years have passed and they have payed their debt to society. These proposals would destroy that. Second comment; Some of these proposals would list private information of individuals who are not on the registry, such as email addresses, license plate information of vehicles, telephone numbers ect. This information will make it much easier to harass or harm offenders and their friends and family. Where are their rights in these proposals? Third comment; Listing publicly an offenders place of employment will cause a huge jump in offender unemployment. RSO's have a difficult time obtaining employment allready and employers will be reluctant to hire offenders due to the associated stigma if that employment is made public. I need not explain all the problems unemployment causes. Finally I believe that, if these proposals are enacted, they will create a climate in which offenders will harbor resentment, bitterness, and fear and they may act out in a violent rage. I believe that will be inevitable unfortunately with these proposals. Particularly those who have their lives back on track. These guidelines lump all offenders together as violent predators who will reoffend, when in fact your own study states otherwise. Modify these guideline to where they only apply to the really dangerous offenders most likely to reoffend

who

are not

**Rogers, Laura**

**From:** [redacted]
**ent:** Saturday, July 07, 2007 7:14 PM
**:** GetSMART
**Subject:** Docket No. OAG 121

I have grave concerns about the Sex Offender Registration and Notification Act and its implifications for adolescents and adults with developmental, cognitive and mental disabilities. As a member of a support group for adoptive families who are parenting children/adults whose brains were damaged by prenatal alcohol exposure, I have seen several cases of adolescents and adults, who because of acts which the legal system deemed inappropriate sexual behaviors, are now sex offender list registrants. Some have no understanding of why they must register or why there are now restrictions on where they can live or work.
One has threatened to kill himself, saying his life is over.

Elizabeth Soden

**Rogers, Laura**

risk assmt
Multi-prong

**From:** [redacted]
**Sent:** Tuesday, July 31, 2007 6:19 PM
**To:** GetSMART
**Subject:** Comments on proposed guidelines

The most unacceptable portions of these guidelines are based on the tier designations, which have little relationship to actual risk. Designations should be based on professional risk assessment, not on the opinions of legislators.

Risk assessment should be subject to change according to increased stability or destabilization of registrants, psychiantric assessments, current family and community assessment, and other factors shown to be important to risk.

Too much of this is based on false data. Recidivism of sex offenders is low (as verified by Department of Justice data), but the assumption seems to be that all registrants are looking for a chance to reoffend, and to do so more dangerously than before.

I am the wife of a registered offender whose crimes were committed 19 years ago. He touched an 11-year-old through her clothes, and thus he cannot be classified as Tier I. He also "failed" initial probation, primarily because of symptoms of depression (he was not allowed treatment for this--they said treating the depression would "reward" him for offending). His probation was revoked because of "lack of enthusiasm" for the "treatment." Notably, after prison, he did not do well in a second treatment program until he was allowed to receive appropriate psychiatric treatment. Why should he be punished for his feelings of failure, guilt, and uselessness by Tier II designation?

It is well known that parole or probation violation may be technical, sometimes depending more on the attitude of the parole or probation officer than on the actions of the parolee, and may have nothing to do with criminal inclination.

Most important, and probably like many registered offenders, he avoids relationships and situations where reoffence could be a temptation. Furthermore, like most of those who have offended against someone living in the same household (although not legally related), he has NEVER, even before he was caught, when his behavior was escalating, been a danger to anyone outside of our home. Had he not been caught, he would have been a danger to our grandchildren. Had he not been caught, he could have entered into Internet pornography. He was caught and he took responsibility for what he had done.

Having to register anywhere he spends 7 days means we cannot visit our family as we would like to because we will not do anything that requires their addresses to be listed on the Internet. The daughter who rents her home could conceivably be evicted if it were known that her father, a registered offender, visits her. How does interfering with relationships serve to protect the children of the community?

These rules make no allowance that I can see for the problems of aging. Within a few years, neither he nor I will be driving. At some point, we will be more-or-less home bound. With the length of required registration, you will have more and more registrants who are unable to present themselves in person anywhere. And you will have a percentage who, because of age-related dementia, cannot remember either that they have to register, or when. Is dementia to be considered a felony? And of course there is the problem of housing--will registrants be allowed in assisted living or nursing homes?

There is concern about publishing e-mail addresses, not for the loss of privacy of people who have never committed an offence via computer, but for those who could conceivably get together in a pornography or enticement scheme. Yet most who molest children do so secretly; this is not normally a group crime. Meanwhile, my husband cannot legally participate in education or family communication via the computer because I refuse to have our privacy violated by giving out my address, etc.

Publishing car licences likewise poses a danger, both to the registrant and to the family. Our daughter and granddaughter sometimes borrow our van. I am nearly always with my husband in that same van because neither of us likes to drive alone. It's one thing for

the police to have a record of that license, but publishing it on the Internet is totally unacceptable.

Another point: The statement that the registration information is not to be used wrongly is completely useless. We know. There was several thousand dollar's worth of vandalism to our home by a neighbor (known to be psychotic--he believed we sprayed poison from our attic vents). The police knew who did it. We knew. But there was no evidence and he did not physically attack--he only terrorized us in subtle ways. There are always unstable people who will take advantage of the published lists for vandalism, harrassment, or murder.

And how does the registry protect against the 95% of sex crimes committed by those who have never been caught?

This law clearly assumes that registrants have no family, and serves to isolate registrants from family, friends, and community in such a way that it may well exacerbate the very behavior it is intended to prevent.

[redacted]

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**Rogers, Laura** Multi-private

**From:** [redacted]
**Sent:** Tuesday, July 31, 2007 11:23 PM
**To:** GetSMART
**Subject:** Docket Number: OAG 121

**Importance:** High

I would like to submit the following comments for consideration by the Attorney General regarding The National Guidelines for Sex Offender Registration and Notification, A.G. Order No. 2880-2007, RIN 1105-AB28.

As the wife of an individual who was wrongly accused and is now forced to comply with the never-ending always changing laws that only apply to the middle class and below! The Sex Offender Registration and Notification Act (SORNA) guidelines don't work.

Since the enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C. 14071) in 1994, thousands of individuals were grand-fathered into a registration system that was broken from the beginning.

Based on my research in the State of Illinois, there are people listed as non-complaint who are dead. Others are in jail, but the registration system still shows them out in public.

Instead of changing the rules using the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), why not fix the existing system.

Allow the individuals who have never committed another sex crime to be removed from the registration system.

Also, take into consideration the "She Said, He Said" factor.

What is the "She Said, He Said" factor?

The "She Said, He Said" factor is NEVER discussed because the actual criminal is the 13-14-15 year old girls who file false charges against their fathers just because they are mad at them. There is NO DNA available so guess who goes to jail - He does!

Don't get me wrong, if the individual has committed a number of sex crimes and/or killed someone regardless of age of the victim - they belong on the registration list.

Stop punishing the "TIER I" offenders and their families.

I am a victim of the punishment of a "TIER I" offender! Stop changing the rules because I feel like I'm living a NAZI state - the State of Illinois.

Thank you for your time.

[redacted]