ORRIN G. HATCH
UTAH

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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

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

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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

Room 401, Finance Buildin
Harrisburg, PA 17120-001
(717) 787-6910
(717) 783-6266 Fax
www.jcjc.state.pa.us

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

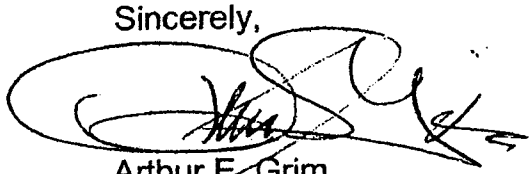
of contested proceedings in cases of this type will inevitably result in fewer juvenile sex offenders receiving the treatment and supervision they require.

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.

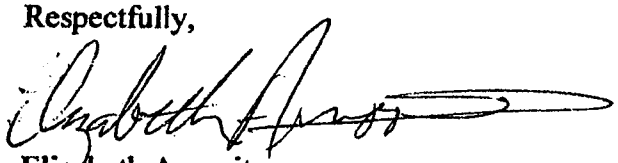
It must be noted that youth adjudicated in juvenile court not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment 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

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

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
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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
NATIONAL CENTER FOR YOUTH LAW

Patricia Puritz, Esq.
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Danielle Lipow, Esq.

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Rhonda Brownstein, Esq.

Director of Litigation and Legal Affairs
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Staff Attorney
YOUTH LAW CENTER

Rosengarten, Clark

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
Executive Director
Clifford Rodman
Associate Director

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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

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

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]

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

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

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]

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

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

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]