Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Tuesday, July 31, 2007 11:03 AM
To: Rosengarten, Clark
Subject: FW: The National Conference of State Legislatures' Comments to Proposed National Guidelines
Attachments: rule comments(sex offender)7.30.07.doc

From: Hirsh Kravitz [redacted]
Sent: Monday, July 30, 2007 2:44 PM
To: GetSMART
Subject: The National Conference of State Legislatures' Comments to Proposed National Guidelines

Hirsh Kravitz
Policy Associate
National Conference of State Legislatures
444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
Phone: 202-624-8695
Fax: 202-737-1069
[redacted]

July 30, 2007

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

Proposed Guidelines to interpret and implement the **Sex Offender** Registration and Notification Act.

Docket ID: OAG Docket No. 121

Dear Ms. Rogers:

I am submitting the following comments to the proposed guidelines to Public Law 109-248 for the record on behalf of The National Conference of State Legislatures (NCSL). NCSL is the nation's oldest and largest organization representing the 50 state legislatures, the District of Columbia and the U.S. Territories.

The national sex offender registration standards were first created by the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act of 1994. However, with the passage of the Adam Walsh Child Protection and Safety Act of 2006, Congress imposed new requirements on the states in an area which had been traditionally regulated by the states. P.L. 109-248 therefore, placed additional burdens on the 50 state legislatures, the District of Columbia and the U.S. Territories in order to comply with the new mandates.

NCSL states for the record that the proposed guidelines compound the burdensome, preemptive scheme of the underlying law they seek to clarify. As such, the guidelines promote a burdensome, preemptive scheme for the states. In addition, without the appropriations of funds authorized, the act and its implementation guidelines represent a large unfunded mandate for states. Further, the additional amounts and kinds of information on each registered sex offender that states are required to collect are imposed under the authority of the Attorney General, thus representing a regulatory expansion of what is already a legislative preemption of state law. It is NCSL's assessment that each and every state legislature will have to undergo detailed and extensive review of its laws against the provisions of the Act and implementation requirements of the guidelines. Required changes to state policy in areas traditionally within the purview of states will be likely in all states and extensive in some.

NCSL expresses concern that guidelines implementing the minimum sex offender registration standards being imposed on states were prepared absent any current federally funded analysis as to what extent each jurisdiction has policies and procedures that comply with Title I of Public Law 109-248, and the amount and kinds of adjustments to

state policy and practice that will be required in order to comply and avoid a 10 percent reduction to Byrne law enforcement assistance grants. Additionally, NCSL, as a representative of the entities for which these guidelines apply to, is deeply concerned by the refusal of the SMART office to include them in the drafting and decision-making process. The drafting process should be a dialogue between the SMART office personnel and the impacted stakeholders, such as NCSL, and not the product of unelected government officials' unilateral decisions. NCSL believes a group of advisors, consisting of those entities and organizations with a stake in the outcome of the drafting process, should be in place to assist the SMART office in determining the best and least preemptive impact on the 50 state legislatures, the District of Columbia and the U.S. Territories.

NCSL's specific concerns about the guidelines as drafted are: 1. the retroactivity of offender registration, 2. the definitions of the offenses for which offenders are required to register and in-person reporting requirements, 3. the penalties for failing to register, 4. the registration and publication requirements, 5. the collection of information detailing foreign convictions, 6. the requirements for the registration of juveniles, 7. the feasibility of the Indian tribes' compliance with the national registration requirements, 8. the requirements regarding digitized information, 9. the shifting of responsibility for offenders from federal or military custody to the states and 10. the issue of the sealing of criminal records. Each of these will now be discussed individually.

1. NCSL is deeply concerned about the effects that will be caused by several of the Sex Offender Registration and Notification Act (SORNA) mandates including the retroactivity of offender registration. In addition to the different state laws defining the elements of the crimes for which registration is required for offenders, states have rules in place governing the process, length and information that needs to be obtained from the offenders. Furthermore, states have differing rules in place for how long they must maintain the information on each offender who registered. The new federal registration requirement is said to <u>not</u> include offenders who were convicted pre-SORNA and who are no longer under state supervision, but if such a person ever reenters the state criminal justice system, states would be required to enter this person into the sex offender registry at that time. The National Conference of State Legislatures is firm in our belief that the retroactivity provision should only apply to currently registered sex offenders in the states and not to those no longer registered so as to respect state sovereignty over the treatment of sex offenders as laid out in each state's respective sex offender registry provisions.

2. Another troubling provision focuses on the definitions of the offenses for which offenders are required to register and the offender in-person reporting requirements. Crime classifications and definitions differ widely in each state's criminal code. For example, Idaho is struggling with how to comply with the new classification system while maintaining their current laws. Under Idaho's current law, the most serious offenders are classified as Violent Sexual Predators. Violent Sexual Predators are subject to increased supervision and a greater duty to report and keep their registration information current. However, the Idaho-specific law will be preempted by a federally mandated tier system that will classify the offenders according to different criteria. It is

unclear in the guidelines how these differences will be reconciled in determining state compliance, and in Idaho's situation, how the Violent Sexual Predator status can be maintained. Similarly, with regard to the tiers called for in the Act, the guidelines state the tiers are provided for substance, not form. However, in substantively meeting the requirements of the act in state sex offender registration law, there is little room for state flexibility in determining which offenses and categories of offenders are suitable for various requirements.

The requirements regarding immediate and in-person reporting of sex offenders are particularly burdensome for states and localities, with no flexibility built into the guidelines or funding provided for law enforcement agencies to develop this capacity.

3. Penalties for non-compliance with the registration requirements also vary by jurisdiction. For example, in North Carolina, an offender currently faces only a low-level felony for failing to register. However, under SORNA, jurisdictions are required to provide a criminal penalty that includes a maximum term of imprisonment greater than one year.

4. The registration and publication requirements mandated create a concern because every jurisdiction has laws in place detailing how offenders are to register and to what extent the registration is to be made public. For example, in New Jersey, registered sex offenders may petition court to terminate their registration and in Massachusetts, the law requires a hearing to determine whether the individual must register. In Hawaii, there is a constitutional right for notice and an opportunity to be heard prior to public notice of sex offender status, and in Iowa, an offender is entitled to an evidentiary hearing as part of the risk assessment process. SORNA would not only conflict with the constitutional provisions mentioned here but numerous others. The proposed guidelines make no attempt to account for the vast differences in registration and publication requirements in the states, and do not "guide" states in how best to reconcile their differences with the required federal scheme.

5. According to SORNA, another piece of information that must be collected is information detailing any foreign convictions if the information was not obtained with sufficient safeguards for fundamental fairness and due process for the accused. The federal government is the entity best equipped to make this determination. However, states are the ones expected to shoulder the burden of determining the validity of foreign convictions which is clearly out of the realm of their expertise. How can the Department of Justice expect states to become experts in analyzing the due process standards of other nations?

6. SORNA also does not require registration for juveniles adjudicated delinquent for all sex offenses for which an adult sex offender would be required to register, but rather requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes or child molestation offenses. This provision would create a problem for the states as many jurisdictions have statutes in place that mandate the same treatment for juveniles as they

do for adults and states would have to substantially alter their statutes in order to comply. The guidelines fail to adequately address how states should comply with this mandate when their state laws authorize similar treatment for juvenile and adult offenders. For example, the provision will have a great impact on how Ohio manages and safely supports adjudicated juvenile sex offenders in its communities. In Ohio, under their proposed new child welfare laws, the addresses, locations and other information of foster homes are not public record. Ohio's implementation of the SORNA provisions will require that the juveniles' information must be placed on the state and national registry if the juvenile offender goes back in to the child welfare system. Requiring that this information is accessible to the public will create substantial confidentiality and constitutional concerns as Ohio has privacy laws in place which would be preempted by a national registry mandating what states must make available to the public.

7. State-tribal relations issues are also raised in the guidelines, without adequate clarity. The Indian Tribes will be affected by SORNA as they must either comply with its sex offender registration by July 27, 2007 and notifications or delegate that function to the state in which it their tribe located. This would create an unfair burden on the Indian tribes by requiring them to either fully implement and fund a federal requirement in which they do not have the funds or expertise to implement, or delegate their sovereignty to the state in which they reside. Upon delegation, the state would become fully responsible for carrying out the SORNA notification and registration functions and states would have the permission, and obligation, to oversee tribal court rulings and to perform full law enforcement functions on tribal lands (for purposes of this Act.) Not only will this shift to the states the long-standing law enforcement role of the federal government on tribal lands, but it promises to be a large unfunded mandate as well.

The Act says that if the tribes do not make one of the above choices or do not comply, the state becomes responsible. The guidelines are unclear as to how adding such responsibility to states affects state compliance (or non-compliance and loss of Byrne Grant funding, as the case may be) and funding. The burden on the states in this situation would be great. Investigative caseloads could increase markedly and the costs and complications of developing and integrating the tribal electronic tracking system into the state system promises to be considerable. Even for those states not required to accept the delegation of enforcement authority, the tribes can – and most likely will – elect to join the states registries rather than create their own. Under the requirements of the Act, this means states will have to integrate into their registries the tribal offenders' physical descriptions, current photographs, criminal histories, fingerprints, palm prints, and DNA sample. In addition, many tribal lands transverse several state borders. How do the states determine which jurisdiction will be responsible for the enforcement functions on tribal lands? The challenges will be many and will, of necessity, be borne at least in part by the states.

8. The requirement regarding digitized information, the immediate transmittal of information to specified individuals and entities and the requirement regarding the search capabilities of sex offender web sites will also substantially burden the states in their attempt to comply. The National Conference of State Legislatures is concerned that

requiring the implementation of this provision necessitates adequate funding for which no money has been given. States cannot be expected to revamp their current systems to comply with a national registry if they do not have the additional funds in place to help pay for the costs of compliance. In addition, if the states do not comply with this requirement, they will be forced to use substandard equipment or possible use their Byrne Grant funds which would reduce the funding for other vital state programs.

9. NCSL also opposes the requirement in the act and the lack of clarification in the guidelines regarding the provision that sex offenders released from federal or military custody become the responsibility of states to which they are released for purposes of all of the onerous sex offender registration requirements under the Adam Walsh Act.

10. Further, the issues created by mandating the sealing of criminal records are raised in the act, indicating that an expungement of a criminal record under state law does not exclude the individual from the requirements of the Adam Walsh Act. However, the guidelines fail to address how a crime record sealed by a state at the same time is to be made available for the public, including on the internet and as part of the national sex offender registry.

The National Conference of State Legislatures believes that Congress must allow the states flexibility to shape public policy. Creative solutions to public problems can be achieved more readily when state laws are accorded due respect. State legislators believe that state laws should never be preempted without substantial justification. Preemption may be warranted in specific instances when it is clearly based upon provisions of the U.S. Constitution authorizing such preemption and only when it is clearly shown (1) that the exercise of authority in a particular area by individual states has resulted in widespread and serious conflicts imposing a severe burden on national economic activity or other national goals; (2) that solving the problem is not merely desirable, but necessary to achieve a compelling national objective; and (3) that preemption of state laws is the only reasonable means of correcting the problem.

The exercise of authority by the individual states in determining the configurations of their independent registries would not impose a severe burden on national economic activity or goals. Further, requiring all jurisdictions to comply with the national registry standard is not necessary to achieve the national objective. The important public safety purposes for which the Act is trying to achieve could still be met by allowing states more flexibility in the design of their individual registries and thus the preemption of state laws is not the only reasonable means of correcting this problem. Thus, preemption is not warranted and the state laws should be accorded due respect.

The SMART office has a duty and obligation to discuss the implementation with every impacted jurisdiction through a notice and consultation process in which all parties are equal partners. In addition, each affected jurisdiction should be provided additional notices and assurances that they have complied and the process by which compliance is determined should be made public so the jurisdiction will be able to accurately access whether they have substantially implemented SORNA. To reiterate, the process should be

a give and take and not a decision made in a bureaucratic vacuum without the knowledge and expertise of those who would be impacted the most by such an obtrusive and overtly preemptive requirement. If you have any questions or require additional information, please contact NCSL staff Susan Parnas Frederick(202)624-3566, susan.frederick@ncsl.org. Thank you.

Sincerely,

Carl Tubbesing
Deputy Executive Director
NCSL

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Tuesday, July 31, 2007 5:06 PM
To: Rosengarten, Clark
Subject: FW: SMART office comments on reg for Adam Walsh letter

Attachments: smartoffice letter.doc

smartoffice letter.doc (25 KB)...

-----Original Message-----
From: Jeanne.Smith@cdps.state.co.us [redacted]
Sent: Tuesday, July 31, 2007 2:07 PM
To: GetSMART
Subject: Fw: SMART office comments on reg for Adam Walsh letter

Attention: Laura Rogers

Please open the attachment which is Colorado's comment letter. Feel free to ignore the remaining body of this e-mail which I would normally delete except my Blackberry is not cooperating.
Thank you,
Jeanne Smith
Director, Division of Criminal Justice
Colorado Department of Public Safety

----- [redacted] -----

[redacted]

July 16, 2007

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

Re: OAG Docket No. 121

Ms. Rogers:

Thank you for the opportunity to comment on the National Guidelines for Sex Offender Registration and Notification (SORNA). In Colorado we have held meetings to study SORNA implementation issues with a group of representatives from the courts, law enforcement, social services, corrections, and other state and local agencies. Colorado is committed to the protection of the public from sex offenders and the public's right to gain knowledge of where sex offenders may be residing. While there are a number of concerns surrounding the major statutory revisions and related costs of implementing the SORNA, we believe two issues may be appropriate for your consideration at this point that warrant review without harming public safety.

First, we would like to comment on Section V (Classes of Sex Offenders) and more specifically, "The corresponding offense coverage specifications for "tier III" in section 111(4)(A)-(B) cover offenses punishable by more than one year of imprisonment in the following categories: Offenses comparable to or more severe than aggravated sexual abuse or sexual abuse as described in 18 U.S.C. 2241 and 2242, or an attempt or conspiracy to commit such an offense. Considering the definitions of the cited federal offenses, comparable offenses under the laws of other jurisdictions would be those that cover...engaging in a sexual act with a child under the age of 12 (see 18 U.S.C. 2241(c))." (Page 26).

The combination of definitions/criteria for aggravated sexual abuse and the inclusion of juveniles of the age of fourteen leads to juvenile offenders in certain situations being treated more harshly than their similarly situated adult counterparts. Specifically, a fourteen year old who has sexual contact over the clothing (per the definition of "abusive sexual contact") against an 11-year old victim is classified as a Tier III offender and required to register on a quarterly basis for a minimum of 25 years. An adult offender convicted of sexual contact with a victim of comparable age difference would not be considered a Tier III offender. There is ample justification for protecting younger victims from adult perpetrators and recognizing the danger to communities from this type of offender. However, a juvenile offender with a juvenile victim does not necessarily raise the level of risk to the community in the same fashion. Recidivism studies on juvenile sex offenders typically reflect a recidivism rate of 8-14% (Worling, 2000), which is lower than study results for adult sex offenders. Our concern is that requiring a juvenile to register quarterly as a sex offender under these circumstances may hamper rehabilitation for this population.

We recognize that the definitions and classifications that have created this situation are contained in the Act itself, not just the guidelines. The comment is offered to encourage additional review of what may have been unintended consequences of portions of the Act.

Second, we would like to comment on Section VII (Disclosure and Sharing of Information), and more specifically, the required inclusion of offender information related to address of work and school on the public sex offender website (Pages 38-39). The SORNA lists both mandatory and optional exemptions from public disclosure of registration information. On the other hand, the SORNA is silent as to the publication of other information such as criminal histories and employment and school addresses. The SORNA Guidelines extend the required publication of information to employment and school addresses, along with certain other items. This appears to be a discretionary interpretation as criminal histories are not mentioned in any category and would seem to be subject to disclosure at the jurisdiction's discretion. We are asking that school and employment addresses similarly remain at the discretion of each jurisdiction. The publication of school addresses has the potential of creating serious negative reactions focused on juvenile offenders who do not have the coping skills nor the resources to seek alternative arrangements if harassment occurs. Whatever justification existed for protecting the name of the institution should also apply to the address. The successful rehabilitation of any offender is based in significant part on the person's ability to achieve a level of education and maintain stable employment. This guideline may have a negative effect on both needs.

We appreciate your time and attention to what is certainly a complicated issue for many states.

Sincerely,

Jeanne Smith, Director
Division of Criminal Justice/Colorado Department of Public Safety
Co-Chair, Adam Walsh Act Compliance Committee

Ann Terry, Legislative Liaison
Colorado Department of Public Safety
Co-Chair, Adam Walsh Act Compliance Committee

Chris Lobanov-Rostovsky, Program Director
Sex Offender Management Unit/Division of Criminal Justice

Reference

Worling, James R. "Adolescent Sexual Offender Recidivism: 10-Year Treatment Follow-Up of Specialized Treatment & Implications for Risk Prediction." Paper

Presented at the 15th Annual Conference of the National Adolescent Perpetrator Network. Denver, CO, February 2000.

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:43 AM
To: Rosengarten, Clark
Subject: FW: Docket No. OAG 121
Attachments: Federal Register Volume 72 Number 103 Wednesday May 30 2007 Notices - Ms. Laura L. Rogers Director.tif

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From: Kemmler, Robert G., Lt. Colonel [redacted]
Sent: Wednesday, August 01, 2007 4:17 PM
To: GetSMART
Cc: Turner, Thomas W., Captain; Reed, Jr., William J., Lt.; Mann, Debbie S.
Subject: Docket No. OAG 121

Laura L. Rogers,

Attached is the response from the Virginia Department of State Police.

Bob

Lieutenant Colonel Robert G. Kemmler
Director
Virginia State Police
Bureau of Administrative and Support Services
P. O. Box 27472
Richmond, Virginia 23261
Telephone Number:(804)674-4606

Colonel W. S. (Steve) Flaherty
Superintendent

(804) 674-2000

COMMONWEALTH of VIRGINIA

DEPARTMENT OF STATE POLICE

Lt. Col. Robert B. Northern
Deputy Superintendent

P. O. BOX 27472, RICHMOND, VA 23261-7472

July 31, 2007

Ms. Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street North West
Washington DC 20531

Dear Ms. Rogers:

These comments are made in response to the Federal Register Volume 72, Number 103, Wednesday, May 30, 2007, Notices.

The Department of State Police operates the Sex Offender and Crimes Against Minors Registry for the Commonwealth of Virginia. The Department is responsible for monitoring and tracking sex offenders within Virginia and has operated a Sex Offender Registry since July 1, 1994. Virginia created a sex offender website on January 1, 1999. It has been the goal of the Virginia General Assembly and the Department of State Police to track and monitor sex offenders and inform the general public as to their whereabouts, in order to protect the Commonwealth's population.

I will address some of our concerns and issues as they relate to the aforementioned Federal Register Notices.

Section IV. Covered Sex Offenses and Sex Offenders

A. Convictions Generally

Comments: Requires that juvenile offenders 14 years of age or older convicted of sexual offenses be required to register. Current Virginia Code calls for the registration of those juvenile offenders that are tried and convicted as adults of serious violent sex offenses in the Virginia Circuit Court. This requirement eliminates the current discretionary provision that Juvenile and Domestic Court judges possess to place juveniles on the public interface. Therefore, the discretion to require a "delinquent offender" being placed on the registry is left to the judiciary who can evaluate these cases on a case-by-case basis. The covered offense, as it relates to juveniles, should be deferred to state law and should only be mandatory if not covered by a specific state statute.

Section VI. Required Registration Information

Telephone Numbers

Comments: Requires that a Registry maintain the telephone numbers for an offender, both location and cellular. This information changes more frequently than employers and presents a terrific challenge to maintain accurate information. Offenders are required to notify Registries with a number of changes. The requirement invoked under this section will increase the burden on the Registry. The requirement to obtain telephone number for both at fixed location and cell phones is a decision that should be made by the State Registry. The negative side would be that sex offenders would move towards a telephone listed in another person's name or pre-paid cellular telephone, thereby, hindering criminal investigations. The provisions of tracking and monitoring offenders who provided these numbers would be voluminous as well as the collection of evidence for the prosecution for failing to comply with supplying the correct phone number or changes. This should be optional and left to the individual states as well as local agencies that register sex offenders.

Temporary Lodging Information

Comments: Registries are maintaining information on an offender's residence location. This requirement will place a heavy burden on Registries across the nation. Registry information is required to be placed on the interface within three days of the change. In theory an offender would only have four days left in a particular jurisdiction. When an offender takes a trip or vacation, registry information would be required to be updated if the trip is seven days or more in duration. Updating registry information would be increased exponentially for an offender that travels frequently or on a contractual basis. By capturing multiple residence information and multiple work addresses an agency already has a good foothold on an offender's location. Registries cannot prevent an offender from re-offending. If a particular offender is the subject of a criminal investigation, there are other methods available for the offender to be tracked during his travel. This requirement should be left to the registry operated by local or state agencies to make determinations concerning residency requirements.

Travel and Immigration Documents

Comments: Registries are maintaining information that is available from other sources. Provided that an offender is properly registered this information can be obtained from contacting the State Department or the Department of Homeland Security. This duplication of work effort should not be enacted, since resources for all Registries are limited. Registry information is provided to the Department of Justice and the FBI and they could develop an interface with the aforementioned agencies to acquire and populate the national sex offender databases.

Professional Licenses

Comments: Registries are being asked to maintain information that is available from other sources. If an offender becomes the target of an investigation, this information can be obtained from the proper licensing agency. Creating additional databases of existing information does not use resources effectively. This information is obtainable through the requirement of place of employment. If the sex offender allowed the professional license to expire, this information would not be submitted to the registry.

Vehicle Information

Comments: Registries are being required to maintain information on vehicles owned or regularly operated by an offender. This is once again a duplication of information that is available from another source. However, maintaining information about vehicles owned by an offender is a relatively easy task, since most state's motor vehicle files contain this information. However, requiring offender to report where they regularly park their vehicle and any vehicle that they regularly operate is not enforceable and relies on a high degree of offender compliance. This requirement will place an undue burden on Registries who will have the task of maintaining the accuracy of this dynamic information. Maintaining information on an offender's watercraft and aircraft serves no useful purpose. This information can be obtained from other sources.

Criminal History

Comments: Non-sexual criminal convictions pertaining to the sex offender is available to criminal justice agencies and has no value being collected by the sex offender registry.

Text of Registration Offense

Comments: Requiring Registries to maintain the text of an affected section as of the date of conviction is not possible. Research would be too extensive going back decades through a manual search for those sections. This section should be revised to include affected sections since the enactment of the Adam Walsh Act on July 27, 2006. This would allow Registries to begin building a database of offenses from that date forward. Otherwise, the current codified section should be sufficient to satisfy the requirement.

VII. Disclosure and Sharing of Information

The local or state website should be required to carry the amount of information necessary to identify a sex offender, his place of employment, and school of attendance.

Discretionary Exemptions and Required Inclusions

Vehicles

Comments: Regarding the requirement to include the license plate number of any vehicle owned or operated by the defendant: If this information is provided to the general public, it will establish a false sense of security that a particular sex offender operates a specific vehicle. This process may hinder investigations rather than helping. Sex offenders may resort to licensing vehicles in someone else's name. The information is not going to substantially provide the public with information that is usable as well as it is going to create numerous complaints about vehicles being in locations where they may have a lawful right to be. Law enforcement agencies are going to find the number of suspicious vehicle calls growing drastically due to the publication of this information. Vehicle information should remain for law enforcement purposes only and not visible on the public interface.

Community Notification and Targeted Disclosure

Comments: Currently, Virginia law enforcement agencies process the paperwork associated with registration of an offender at the local law enforcement level. Once that paperwork is completed, it is mailed to the Registry for entry into the database. At times, the mail coming from the western part of the state cannot be entered in accordance with the defined three day "immediate" deadline. Additionally, many of these cases require research to determine if the offender is required to register based on an out of state conviction. Three days is not enough time to perform this function. It is recommended that the term "immediately" be defined to be seven days. The requirement for posting this information within three days is not a problem for local agencies that support a website, but it is not realistic for State agencies that operate a site. A realistic time should be considered.

Geographic Radius

Comments: To allow the general public to decide what radius should be established for searches is not a workable solution, this should be a decision left to the Registry. Limiting or expanding the community notification process is a Registry function.

X. Keeping the Registration Current

Comments: The task of electronic submission by local agencies to a central repository to include in the registry is not available to local agencies.

Verification/Appearance Requirements

Comments: To require the offender to appear at the local agency every 90 days will not serve a useful purpose if agencies physically check on the offender more frequently at his place of employment or his residence. This should be left to the discretion of the Registry. A recommendation is to physically check on the Tier III offender at least twice a year and annually for Tier I and II offenders.

XIII. Enforcement of Registration Requirements

Comments: If the registry determines that the individual sex offender has absconded or is unable to locate the offender, a notice that a warrant has been obtained or the offender is wanted should be sufficient.

The Department of State Police has always taken a proactive approach in the registration and tracking of sex offenders in the Commonwealth. The approach has been developed by a task force, within the Commonwealth, which has implemented certain provisions which we feel give the greatest benefit to the citizens. We believe that the aforementioned proposed regulations would be extremely cumbersome to implement and cause Virginia to devote significant resources to the collection of information which would be of limited use. Those states with strong registration programs should have the options of implementing the proposed regulations.

I ask that you take our outlined comments into consideration when developing final regulations. If you should have any questions, please contact my office.

Sincerely,

W S Flaherty

Superintendent

WSF/TWT/vs

Rosengarten, Clark

From: Rogers, Laura
Sent: Wednesday, August 01, 2007 8:24 PM
To: Rosengarten, Clark
Subject: Fw: Comments/Questions ref Proposed Guidelines for SORNA

Attachments: SORNA Guidelines_Comments.doc

More comments

----- Original Message -----
From: Terry Gibbons <Terry.Gibbons@gbi.state.ga.us>
To: Rogers, Laura
Cc: Terry Gibbons <Terry.Gibbons@gbi.state.ga.us>; Marsha O'Neal <Marsha.Oneal@gbi.state.ga.us>; Paul Heppner <Paul.Heppner@gbi.state.ga.us>
Sent: Wed Aug 01 12:30:31 2007
Subject: Comments/Questions ref Proposed Guidelines for SORNA

SORNA
elines_Comments.d

Hi Lau a,

First I would like to thank you for the opportunity to attend both the Registry Workshop and National Symposium on Sex Offender Management and Accountability last week. The cussions were very informative and I appreciate that both the SMART Office and DOJ were to questions and discussion on a number of issues. I know you took a lot of the estions and requests for clarification back with you, but there were several omments/questions that I specifically wanted to forward to you from Georgia. These are attached as our comments to the Attorney General's Proposed Guidelines.

If you have any questions or need additional information, please let me know.

Thanks again,

Terry Gibbons

Assistant Deputy Director
Georgia Bureau of Investigation

Comments/Questions Regarding Attorney General's Proposed Guidelines for Implementation of SORNA

Georgia Bureau of Investigation/Sex Offender Registry

1. Page 8 (Retroactivity) – Reference offenders who are required to register when they re-enter the justice system because of conviction for ***some other crime*** (whether or not a sex offense). Recommend consideration to change the requirement from ***some other crime*** to convictions for any sex offense, felony offense or specified misdemeanor offenses. As currently indicated, a conviction for a charge such as DUI would trigger the requirement to register as a sex offender ***regardless*** of when the sex offense conviction occurred.

2. Page 8 (Retroactivity) – Request confirmation that the three instances indicated for registration of offenders whose predicate sex offense conviction predates SORNA applies to both juvenile and adult offenders

3. Page 8 (Retroactivity) – Reference "credit" for sex offense convictions which predate SORNA. The example provided in the guidelines provides that a jurisdiction can give "credit" to an offender who was released from imprisonment in 1980 and met "tier II" criteria requiring him to register for 25 years. Since it has been more than 25 years from the offender's release, the jurisdiction may credit the offender with the time elapsed and not require the sex offender to register. How would "credit" (or would it) be provided to such an offender whose release occurred in 1984 and they have now "re-entered" the judicial system because of a conviction for an offense other than a sex offense. Their requirement to register under "tier II" criteria is 25 years, of which only 23 has elapsed. Does this offender, upon re-entry into the judicial system, now register for the full 25 years? Can a jurisdiction require him to register for only the remaining two years? Recommend clarification regarding jurisdictions providing "credit" to offenders. Additionally, recommend consideration that how/if credit is allowed be mandated so that it is consistent among jurisdictions.

4. Page 30 (Residence address) – How should addresses for safe houses, foster homes (juvenile offenders), drug rehabilitation centers, etc. be listed?

5. Page 31 (Travel and Immigration Documents) - How is "critical information" for passports and immigration documents defined? And is it sufficient to key that information in to the register (vs. capturing a digitized image)? Is there a link that can be provided to any federal database?

6. Pages 31 and 46 (Employment) – Request confirmation that if an offender does not have a fixed place of employment, information should be obtained and included in the registry with whatever definitiveness is possible (normal travel routes, etc.) BUT the offender is *not* required to register in each jurisdiction through which he travels, unless the jurisdiction makes that requirement.

7. Page 32 (Professional Licenses) – What type of information regarding professional licenses should be captured and included in the registry?

8. Page 33 (Date of Birth) – is the full date of birth to be disclosed to the public or just the year of birth?

9. Page 34 (Criminal History and Criminal Justice Information) – with regards to providing criminal history record information and warrants for law enforcement, is an actual link to the appropriate state or FBI database required or is the entry of the State Identification Number (SID) or FBI Number (FNU) sufficient? If an actual link is required, how will this be handled by the FBI?

10. Page 34 (Fingerprints and Palm Prints) – Has there been any consideration for storing them on the FBI's IAFIS so that they can also be searched? Or within the NCIC National Sex Offender Registry (NSOR) for sharing across jurisdictions? If states only collect digitized images – they can be used for verification purposes, but not necessarily for identification purposes. Again, if an identifying number is sufficient, does this refer to the SID or FNU?

11. Page 34 (DNA) – As with fingerprints and palm prints, has there been any consideration for how this information can be shared among jurisdictions, especially if an offender moves from jurisdiction A to B? For example, if the offender initially registers in Georgia, but 5 years later decides to move to Montana, will Montana need to collect fingerprints, palm prints and DNA again? Can/should that information be provided by Georgia? If states enter their offenders in to the NCIC's NSOR, could not that file include images of fingerprints, palm prints and a pointer to the DNA that all state registries could reference and/or point to?

12. Page 35 (Driver's License or Identification Card) - Request confirmation that including the information from a driver's license or identification card is a sufficient alternative to providing a digitized photocopy of the card.

13. Page 37 (Discretionary Exemptions and Required Inclusions) – With regards to the requirement to include information on the public site on the sex offense for which the offender is registered and any other sex offense for which the offender has been convicted, does that include a requirement to include sex offense convictions that occurred outside the registering jurisdiction? If so, is it envisioned that the registering jurisdiction(s) would collect that (via self disclosure from offender and a criminal history records check) and populate registry? If so, presumably an FBI criminal history record query utilizing Purpose Code "C" for criminal justice administration would be appropriate. If purpose code C is not permitted, will the FBI establish a new and specific purpose code? How often would the registering jurisdiction be required to update this portion of the registry? During re-registration? Or could there be a real time query (to state and FBI criminal history

files) generated based on the request of the public at the time the offender record is reviewed? If so, again would the FBI establish a new and specific purpose code? A real time query would ensure that any new convictions received after the point of registration would be captured. Likewise, if there are any changes to previously reported convictions, these too would be accurate at the time of inquiry.

14. Page 37 (Discretionary Exemptions and Required Inclusions) - What is the minimum information to be posted on the public view reference the sex offense convictions – offense, date of conviction, agency of conviction, case number, etc.?

15. Pages 45 and 55 (Where Registration is Required) – An offender is required to register and keep registration current in each jurisdiction where sex offender resides, is employed or is a student. Request clarification that the offender must report initially and periodically to each jurisdiction, but it is the responsibility of the residence jurisdiction to maintain the employment and school address.

16. (Other) Regarding "Keeping the Registration Current" per H.R. 4472 SEX 113. (3) A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction involved pursuant to (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall provide that information to all other jurisdictions in which the offender is required to register. Could "3 business days" or just "business days "be defined in the guidelines" "Business days are generally thought to be Monday through Friday, but tin the criminal justice/law enforcement community it is 24 x 7.

17. (Other) – As SORNA is understood, jurisdictions will need to create electronic databases to assist with tracking offenders from one jurisdiction to another. Additionally, information collected should be immediately available to the public. Certain components of the required registration information are intended for law enforcement view only. But much of this information will be maintained only on the state registry and not necessarily within the NCIC's National Sex Offender Registry (NSOR), even though records entered on the registry should be forwarded to the NCIC NSOR. Is there any contemplation to increase the utility of the NSOR so that all information collected by the registering jurisdiction is available through the NCIC file so that an officer on the street completing a person's query will receive the full amount of information on a registered sex offender? Or will there need to be secondary checks – the initial "hit" from NCIC NSOR and then the need to query either the NSOPR or the individual jurisdiction's registry?

Rosengarten, Clark

From: Rogers, Laura
Sent: Wednesday, August 01, 2007 8:55 PM
To: Rosengarten, Clark
Subject: Fw: Comments

Attachments: SORNA Guidelines Comment.doc

More comments

----- Original Message -----
From: Jill Rockey <jrockey@safety.state.nh.us>
To: Rogers, Laura
Cc: jrockey@safety.state.nh.us <jrockey@safety.state.nh.us>
Sent: Wed Aug 01 20:54:26 2007
Subject: Comments

SORNA Guidelines Comment.doc (...

Please see attached.

State of New Hampshire

DEPARTMENT OF SAFETY
Richard M. Flynn, Commissioner of Safety
Division of State Police
James H. Hayes Safety Building, 10 Hazen Drive, Concord, NH 03305

271-2575

Speech/Hearing Impaired
TDD Access: Relay NH
1-800-735-2964

Colonel Frederick H. Booth

Trooper First Class Jill C. Rockey
New Hampshire State Police/HQ
SOR
33 Hazen Drive
Concord, New Hampshire 03305

August 1, 2007

Director Laura L. Rogers
SMART Office
810 7th Street, NW
Washington, DC 20531

RE: Comments regarding the National Guidelines for Sex Offender Registration and Notification

Dear Director Rogers,

I apologize that you are receiving these comments at this hour. This was the first opportunity I had to work on them. After the symposium last week Denise Perry and I are playing catch up. I would like to thank you on behalf of the New Hampshire SOR. Denise and I found the symposium both informative and inspiring, particularly when listening to Mr. Smart and Mr. Walsh. It is also nice to get to meet people you have worked with in the past, face to face. We also made several new contacts who we will be able to use as resources in the future.

Regarding the guidelines, overall, I found them to be very straightforward. I just had a few areas of concern:

- **II. General Principles, C. Retroactivity** (p. 8) – I am concerned about implementing the portion that states we can register someone once they re-enter the criminal justice system. While my con□erns aren't necessarily legal, it's a question of being able to capture these individuals within the system. I was hoping the Attorney General would give us an effective date (ex. convictions after January 1, 1970) to fall back on. While this would have been more difficult initially, in the long run I feel it would have been easier for us to implement. By requiring the re-entry, we will have to rely on courts, prosecutors or prisons to be vigilant in checking every criminal convicted of an offense for a prior sexual assault or other registerable conviction. I am not sure as a state we can guarantee this will happen in every instance. However we will strive to put procedures in place to come into compliance with this guideline.
- **V. Classes of Sex Offenders** (p. 26) – Regarding kidnapping of a minor, someone stated during the symposium parents/guardians who kidnap a child shouldn't be excluded from registering if the child is taken for the purposes of a sexual assault, prostitution, etc. This should be added to the guidelines to clarify that point.

State of New Hampshire

DEPARTMENT OF SAFETY
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Colonel Frederick H. Booth

- **VI. Required Registration Information, Temporary Lodging Information** (p. 30 – 31) – it references any place an offender is staying for seven days or more. I suggest you put parameters on the 7 day period. Is it seven days in a row? Seven days in a 30 day period? Seven days or more in a year? Right now in New Hampshire it's 5 days in a 30 day period. Some examples of why this is important. You have a registered sex offender who lives and works in Massachusetts. His girlfriend resides in New Hampshire. He stays at her residence 2 nights a week. Another example is an offender who lives in Maine but has a camp in New Hampshire. He spends every weekend there in the summer. Under the proposed guidelines would they have to register in New Hampshire? Our state statute reads:

> **"RSA 651-B:1 VIII.** Notwithstanding RSA 21:6-a, ""residence" means a place where a person is living or temporarily staying for more than a total of 5 days during a one-month period, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles."

While this guideline doesn't impact us directly in New Hampshire it does indirectly. By clarifying it in the guidelines it will require bordering jurisdictions to adequately define temporary lodging and inform us if an offender is coming into our jurisdiction.

I appreciate the opportunity to comment on the guidelines. I hope you find my input useful.

Sincerely,
Jill C. Rockey

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:40 AM
To: Rosengarten, Clark
Subject: FW: Comments on Proposed Guidelines
Attachments: FL SORNA Guidelines Comments.doc

From: Coffee, Mary [mailto:MaryCoffee@fdle.state.fl.us]
Sent: Wednesday, August 01, 2007 11:44 PM
To: GetSMART
Cc: Rogers, Laura; Uzzell, Donna; Zadra, Mark
Subject: Comments on Proposed Guidelines

Please find attached the Florida Department of Law Enforcement comments and suggestions regarding the proposed SORNA Guidelines. Thanks for all you are doing to assist and coordinate the nation on these issues!

Take care,
Mary

Mary Coffee
Planning and Policy Administrator
Career Offender and Sexual Offender/Predator Registration
Florida Department of Law Enforcement
www.fdle.state.fl.us
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(850) 410-8572

SORNA Proposed Guidelines Comments
Florida Department of Law Enforcement
August 1, 2007

Many of the questions and concerns previously noted by FDLE were addressed during the symposium in Indianapolis the week of July 23rd. The attached list represents official documentation of several discussion points made during the symposium that are requested to be addressed in the updated guidelines. In addition, as requested at the symposium, it is requested that specific and ready access and updates to the election status of the Indian Tribal Authorities for each State be made available to the states and registries in order to navigate the intricacies of adding the new responsibilities involved in registering those on tribal lands and/or interacting with tribal registries as required.

It is recognized that:

1. the numbers of individuals required to register will grow faster than they might ever be expected to decrease and,
2. the general trend over the past decade has consistently been towards increasing both the amount of information required as well as the frequency of updates required to complete and keep a registration current.

Therefore it is suggested that serious consideration be given to allow the flexibility of applying technology such as two-form-factor authentication or other acceptable alternatives to the "in person" registration requirements where it seems reasonable to allow such flexibility. This will allow for fiscally efficient, appropriate and feasible application solutions to this ever growing task. Specifically it is suggested that this alternative be applied to the reporting of employment and intended employment changes and locations in addition to various other reporting and updating requirements as determined practical and reasonable.

The two issues of retroactively applied registration requirements and juvenile registration were discussed within the guidelines. It is requested that consideration be given to minimize any overbroad application of retroactivity or registration in general and specifically in regards to juveniles. Delinquents who have a sexual offense in their history and are convicted of some other, non-sexual offense later in life, perhaps much later, do not necessarily pose a significant danger to society nor merit the extra time and expense of registration and monitoring as those who recidivate sexually or commit sexual offenses as adults.

Beyond the current guidance offered in the guidelines, it is requested that clarity in a simplified format (i.e. table, chart etc.) be given regarding the specific items that must be published and available to the public via the Internet or other means and those items that are to be available, gathered, linkable etc. for law enforcement and registry use only.

In regards to the collection of palm prints, it would be useful if the collection of palm prints be in accordance with the NIST standards as referenced by the FBI. This will allow for palm prints to be stored in a consistent and accessible manner, allowing them to be searched upon in the future. It is important to know that implementation of such collection and storage systems are not an overnight fix. As such, collection of palm

prints should be one of the areas that are not required for substantial implementation until the last year of SORNA as well as an allowable basis for the two one-year extensions. However, to be of most benefit, palm prints should be collected and stored according to the NIST standard which should be referenced and outlined within the guidelines with the allowable extensions for proper acquisition and implementation.

Local agencies will need to collect several additional fields as part of the requirements. Areas of concern include the places where vehicles are parked, the route that the offender drives if in a mobile job, the volunteer information treated the same as employment. While all potentially useful information to be collected, the SMART office should consider the benefits of collecting this information and the ability to retrieve it, against the cost of time and resources to collect it. One option regarding vehicles would be to only require such additional information regarding where a vehicle is parked under the following special circumstances: boats, trailers or aircraft; or any other vehicle that is not normally parked at or around the location where the offender resides.

Please include in the guidelines an expanded definition and basis for intent for the phrase regarding registration where the offender "is a student or will be a student, or will be employed." While it is agreed that the term "will be" is for those being released from incarceration, the guidelines should specify that for clarity.

In regards to offenders who go on vacation or travel and are required to provide information about any place in which the offender is staying for seven or more days, including identifying the place and the period of time the sex offender is staying there. While certainly having merit in concept, it must be recognized that fulfillment of this will be resource intensive for local agencies and/or registries that must capture and maintain the information. It might be equally effective and more feasible to require registrants to report any temporary address of a certain number of days where they are located consecutively or cumulatively in a certain month period. (i.e. 5 or more consecutive or nonconsecutive days in a calendar month) If registrants intend to leave the state during that set amount of days, they should be required to notify the registry of their intention to leave the state and identify the state(s) to which they will be going and when they plan to return.

Rogers, Laura

From: Conlon, Steve [DPS] [conlon@dps.state.ia.us]
Sent: Wednesday, August 01, 2007 6:08 PM
To: Rogers, Laura
Subject: Comments on Adam Walsh Guidelines

Director Rodgers:
I would like to first express my appreciation to you for conducting the SMART conference in Indianapolis. It was extremely beneficial and all of our staff came away from the conference with a much better understanding of the Adam Walsh Act. It was a pleasure having an opportunity to meet yourself as well as the entire staff at the conference.

We would like to offer the following brief comments regarding the Adam Walsh Act for your consideration.

1. The Tier system has the ability to provide standardized criteria for all states to use and follow. Having a standardized tier system would be beneficial to the states to use as the registrant moves from state to state the tier classification "could" follow them and save time in the determination of which tier the person will be in the new state. This "national" tier category will be more effective if mandatory use is required by all states and determined by the offense of conviction and not individual state laws that determine duration of registration. I would encourage use of the tier system by all states.
2. There may be some additional comment from your office regarding the reduction of registration time and if other states are required to honor the reduction if the registrant moves into a new state that does not offer or provide for a reduction of registration time from 15 years. When a state decides to reduce the time period (from 15 to 10 years) for not re-offending and removes a registrant as they have now completed the registration period (for that state) then the registrant moves into a state that does not provide for a reduction of registration period, does the registrant now "owe" the new state 5 years of registration or since they completed the registration period for the first state does this satisfy the requirement?
3. The capture of information concerning the vehicles "operated by" will need criteria either by the states or the SMART office to identify any time periods that constitute "operated by" and the time in which a registrant has to report these vehicles to registry officials.

We had many more comments and questions but felt you did a great job in answering them at the conference. Thank you again for your efforts and we look forward to working with you in the future. Please do not hesitate to contact this office if we can be of any assistance.

Steven R. Conlon
Assistant Director
Iowa Division of Criminal Investigation
215 East 7th Street
Des Moines, Iowa 50319

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Monday, August 06, 2007 10:35 AM
Rosengarten, Clark
Subject: FW: Michigan Rule Comments

Attachments: Rule comments.doc

Rule comments.doc
(26 KB)

-----Original Message-----
From: Diane Sherman [mailto:ShermaDL@michigan.gov]
Sent: Thursday, August 02, 2007 5:52 PM
To: GetSMART
Cc: Katie Bower; Karen Johnson; Charlotte Kilvington; Edward Pitts
Subject: Michigan Rule Comments

See attached.

Diane Sherman
Criminal Justice Information Center
(517) 322-5511

UD-40 (2/90)
MEMORANDUM

STATE OF MICHIGAN

DEPARTMENT OF STATE POLICE

Comments on SORNA Proposed Guidelines

1. Must a search function on the public website include a **radius** search as long as we have a search option by zip code, county, city, offender, and school?

2. How do we address HIPPA issues on the public website with offenders who are in treatment facilities?

3. Do we have to honor the "clean records" provision for other states if Michigan decides not to implement the "clean records' provision clause?

4. The catch-all provision wording for covered offenses was changed and now focuses on the "conduct" of the sex offender rather than the sexual offense that predicated arrest. Does this now include the registration of non-covered offenses based on the court documents and the pre-sentence investigation report?

5. Many states do not collect electronic palm prints. The required link to palm prints should be required only for electronic palm prints.

6. More detail is needed regarding duration begin dates since each state is different, or is the final decision to be left up to the states? Many states are very concerned about this as it would affect registration requirements if the offender moved substantially from state to state.

7. Is Michigan required to enact legislation for civil commitment of dangerous sex offenders under the Jimmy Ryce Civil Commitment Act or can the state choose to forgo such an option?

8. Must states require the retroactive submission of DNA samples for sex offenders who have not yet provided such if the DNA requirement standard for the state was enacted January 1, 2000?

9. While the collection of Internet names sounds like a good idea, in reality, because they are self reported, are meaningless.

10. The 3 day change of address requirement is overly restrictive, especially for those who typically do not have identification or the funds to obtain identification. We recommend that it be changed to 5 days. The SORNA should make it easier to register not harder.

11. Retroactivity puts a work load burden on states. Much research will be needed on old laws to determine whether they apply to SOR registration.

FEEDBACK ON PROPOSED GUIDELINES

Submitted by:

Cpl. Jeff Shimkus
Allen County Sheriff's Department
Sex Offender Registration and Notification Team
101 E. Superior St Room B-25
Fort Wayne, In 46802
(260) 449-8611 office
(260) 449-7985 fax

After reviewing the proposed guidelines for Adam Walsh I offer the following thoughts:

Section IV (A) Juveniles **Page 17**

This section raises some concern in the area of juvenile adjudications. Currently under Indiana law juveniles are required to register as sex offenders if the juvenile is over the age of 14 and is found, by a court, likely to re-offend based on clear and convincing evidence. The fact that Adam Walsh will require registration of juveniles simply based the age of the offender and a crime comparable to aggravated sexual abuse is in stark contrast to our state law. Currently Indiana law protects the community from juvenile sex offenders deemed likely to re-offend by requiring these offenders to register for at least10 years, and the law also protects the juvenile offender from the mistakes of youth

Based on the definition in 18 U.S.C. 2241, engaging in a sexual act with a child under the age of 12 constitutes "aggravated sexual abuse". Therefore, a 14 or 15 year old offender who "engages in a sexual act" with an 11 year old could be guilty of "aggravated sexual abuse," and required to register for 25 years as a tier II offender. In some situations an offender like this should be required to register, however by not allowing the court to review the totality of the circumstances, we could label a 14 year old child as a sex offender based on an exploratory sexual experience with another child only 3 years junior.

The other issue is the confidentiality of juvenile records themselves; for instance a juvenile is adjudicated at the age of 15 for an offense similar to aggravated sexual abuse in 1997. He is not required to register at that time based on Indiana law. 20 years later he is arrested for drunk driving and therefore re-enters the criminal justice system. Based on Adam Walsh, he is a tier II offender and must register for 5 more years. This person has not committed any other sex offense, but now the juvenile record which had been sealed for 20 years is now open to the public and this person labeled as a sex offender.

Section IV (D) Specified Offenses against Minors Pages 19-22

There are several issues with the "specified offense against a minor". Most notable are the charges of kidnapping and false imprisonment. In Indiana these charges correspond to kidnapping and criminal confinement.

Under Adam Walsh and Wetterling, a jurisdiction cannot exempt a person convicted of these offenses from the requirement to register as a sex offender. Adam Walsh has given jurisdictions the discretion to exempt parents and guardians from the registry if they were convicted of kidnapping or criminal confinement.

At first glance excluding parents and or guardians in these situations makes sense, and many jurisdictions were pleased with this new change in Adam Walsh because persons convicted of theses offenses as a result of custody disputes could be removed from the registry. In these situations there was no sexual intent and the "victims" involved were in no danger of a sexual assault. Therefore there is no need to label the offender as a "sex offender".

However, automatically protecting an offender from the requirement to register based solely on his or her relationship to the victim is simply bad law. Cases involving parents or guardians may or may not be sexual in nature. In some of these cases there may have been a clear intent to commit a sexual assault but the victim was found or the perpetrator was unable to commit the assault. In these situations the sentencing court should be given the discretion to require these offenders to register as sex offenders based on a conviction for kidnapping or criminal confinement.

The issue of plea agreements is another concern. For instance, a parent or guardian charged with child molesting and criminal confinement would eagerly sign a plea agreement that dismissed the molesting charge for a guilty plea on the confinement charge. Armed with the knowledge that the offender's relationship to the victim will exclude him or her from the sex offender registry, offenders would be eager to plead guilty to kidnapping or criminal confinement so that they could live undetected in the community.

At the other end of the spectrum are cases involving domestic disputes involving persons who are not parents or guardians of the victim. Cases involving burglaries, and even suicidal subjects involved in barricaded subject situations continue to result in persons being required to register as sex offenders. These cases were not sexual nature. However because the offender was convicted of kidnapping or criminal confinement against a minor, this offender is a sex offender by law and in most cases is required to register for life based on the age of the victim and / or the element of force used during the confinement.

Indiana attempted to address this issue in 2006 by changing the language of the law. This issue became moot when it was learned that under Adam Walsh, Indiana could only exempt persons convicted of a "specified offense against a minor" if the person was a parent or guardian. Since Indiana could not address the complete issue of the kidnapping/criminal confinement dilemma, legislators compromised and simply incorporated the poor wording of Adam Walsh into Indiana law.

The original intent was to require ANY person convicted of kidnapping or criminal confinement against a victim who was < 18 to register as a sex offender; **unless the sentencing court finds by clear and convincing evidence that the kidnapping was not for sexual purposes.**

If Indiana and the federal government adopt this or similar language, the following issues could be remedied:

1. Offenders currently on the registry for these charges would be able to petition the court to look at the totality of the circumstances surrounding their convictions. If the court found no sexual intent, these offenders could be removed from the sex offender registry so that they would not be falsely labeled as "sex offenders" for the rest of their lives.

2. By stating that the court must find "by clear and convincing evidence" that the offense was not committed for sexual purposes, we will place the burden on the defendant to prove his or her intent. This will ensure that the community is protected from offenders who kidnap or confine children for questionable or unknown reasons. As it stands now, the law allows us to err on the side of caution and require registration of the offender based simply on a conviction for kidnapping or criminally confining a minor.

3. Parents and guardians will not be automatically exempted from the requirement to register based solely on their relationship to the victim.

Section VI Required Information; internet identifiers and addresses Page 29

While having this type of information on registered sex offenders would undoubtedly assist in investigations, this will be nearly impossible to effectively enforce. The internet provides any person the ability become someone other than themselves. Therefore sex offenders often use the internet to find new victims. Law enforcement uses this same aspect of anonymity to successfully locate and prosecute pedophiles by pretending to be either children or other pedophiles hoping to trade pornography.

Offenders could easily provide registry officials with legitimate email addresses to comply with the mandate and create new undetected identifiers under a separate identity. Offenders would not use the disclosed identities for illegal purposes, knowing that law

enforcement would monitor those addresses. An offender could easily create an infinite number of pseudo-identities to use for illegal activities.

I agree that local law enforcement should be encouraged to collect this information for intelligence purposes. However I do not believe that local jurisdictions should be mandated to collect information that would be compromised from the start because of the offender's knowledge that the internet identifiers will be monitored.

Section VII Mandatory Public Information **Pages 38 – 39**

I do not believe offender vehicle information and license plate should be placed on the public registry. I believe strongly that information on all vehicles that an offender owns or operates on a regular basis should be required at registration and entered into the database. However I believe this information should be for law enforcement only.

I am afraid that supplying the public with vehicle information could have unintended consequences such as creating panic every time a "green minivan" drives by a playground (because the sex offender on Main Street drives a green minivan...)

I also fear that by providing the license plate information we could actually taint eyewitness accounts by providing them with an entire license plate. Most witnesses would eagerly identify an offender's vehicle as suspect in a missing child case. That fact that they would provide an accurate plate number to police would make the testimony appear to be very credible. However based on the fact that the information was posted on the internet, the "witness" could provide an accurate and seemingly credible description of an offender's vehicle from the comfort of their own home, miles from the alleged abduction site.

Section VII Disclosure and sharing of information **Pages 41-42**

I am somewhat confused on this section dealing with the dissemination of offender information to other law enforcement agencies and supervision agencies. If I understand correctly NSOR is the NCIC sex offender file. If this is correct the file will have to be modified to accept employment and school information. Currently we enter offender address, vehicles, descriptors, and conviction information into NCIC. However there are no fields for employment or school addresses.

The other issue to be addressed is ownership of the NCIC record. Take for instance an offender who resides in Allen County Indiana and works in Huntington County. There is an NCIC record showing the offender's registered home address with Allen County. In order for Huntington County to add the employer address to NCIC, they must add a new record. If the offender attends school in a third jurisdiction we must add another record. NCIC would be become cluttered with multiple records on each offender.

This currently happens now to some extent with offenders who move from one state to another. For example an offender registers with State A and is required to register for life. The offender moves to State B where he is required to register for 10 years.

The police officer on the street stops this offender and receives two NCIC hits, each with different information. In some cases the registered addresses are the same and current. In other cases the registered addresses differ because State A has not updated its record with State B's more recent information.

The second issue with dissemination concerns exactly how we will notify other agencies in our jurisdiction. Does this have to be an active notification i.e. "John Smith moved from 123 Main Street to 123 Smith Street"? Or will granting "read only access" to our database suffice?

Section VIII Registration locations Page 45

Requiring registration in the county of conviction makes sense in new cases; however it will be very problematic to require offenders already on the registry, or offenders with old convictions that are newly discovered by registration officials, to return to the county of conviction and register.

We must be able to "grandfather" current registered offenders, as well as those offenders whose convictions pre-date the state's adoption of Adam Walsh. These offenders should be required to register in their county of residence as well as employment and schooling locations. The other issue we must address is the issue of requiring "conviction" jurisdictions to supply the court documents free of charge to the registering agency. There are still jurisdictions that will charge law enforcement agencies a fee for those documents required to properly register and classify a sex offender.

Section IX Initial registration Page 48

Are local jurisdictions required to inform an offender of his duties under Adam Walsh in addition to informing the offender or his duties under State law? If this is the case then the federal government must provide each jurisdiction with a standardized form outlining the offender duties under Adam Walsh.

Retroactive cases **Page 50-51**

This area will be extremely problematic when dealing with offenders who "slip through the cracks". For example an offender convicted of rape in 1975 is arrested in 2007 for robbery. Many times local jurisdictions do not learn of the 1975 rape conviction because it was never entered into the offender's NCIC criminal history. How can a jurisdiction implement and comply with this section of Adam Walsh if the rape occurred in California and the robbery in Ohio? How can California enter the offender's information into NSOR showing the offender as a registered offender without first notifying the offender of his requirement to register? How will Ohio learn of the rape conviction if it does not appear in the criminal history?

"No Shows" **Page 51**

This section deals with situations where federal authorities notify a local jurisdiction that an offender is being released to their jurisdiction but the offender fails to appear in person and register. As stated in this section the local jurisdiction must proceed as discussed in Part XIII to file fail to register charges.

This will be problematic in some cases where the local jurisdiction cannot show that the offender is actually in their jurisdiction or if he ever was. How can Indiana file for a warrant for failure to register when we cannot prove that the offender ever actually arrived and stayed in Indiana for more than the allotted three days?

We must add clear language to Adam Walsh and each State's law to clearly state that if an offender changes his plans and does not move to his stated address, the offender must notify the agency with whom his is currently registered with and provide them with a new intended address. For example, an offender is incarcerated in Virginia and prior to his release he registers and states he's moving to Indiana. Virginia notifies Indiana and we wait for the offender to arrive but he never arrives. After being released from Virginia the offender decided to travel to Maine and live with a relative.

In this case how can Indiana file for any warrant when no crime occurred in Indiana? Maine will have jurisdiction, provided they become aware of the offender's presence and they can how he has resided in Maine for more than three days, but Virginia should be responsible for seeking the warrant. However they will not be able to prosecute unless there is clear language stating that it is a crime for an offender to change his mind and not move to the stated destination.

Section X Keeping registration current **Page 54**

I expressed my concern with this section earlier in this document; specifically how are local jurisdictions to be expected to notify ALL law enforcement and supervision agencies within the jurisdiction each time n offender moves? Will access to the database

suffice or will the registering agency be required to actively notify each affected agency on each change in employment, residence, vehicle, or schooling information. Registering agencies will be overwhelmed if this is not automated.

Section XIII Enforcement **Page** 64

This area has several problems:

1. Establishing jurisdiction - As I stated earlier, jurisdiction can be problematic when offenders change their travel or residency plans and fail to notify the agency with whom they are currently registered. Technically the offender is compliant when he notifies the agency that he is relocating to destination X.

2. Extradition limits and the costs associated with transporting offenders back to the area where a "fail to register" offense occurred must be addressed. Many jurisdictions will only extradite from surrounding states or within a specified mile radius. This has resulted in areas of the country where offenders can live with active warrants knowing that their home state will not extradite them from such a far distance.

3. Many jurisdictions across the country have the attitude that once an offender moves to another state, he is the receiving State's problem; they do not want to bring the offender back to face failure to register charges because by not extraditing him, they have one less sex offender to worry about. At the same time, the new jurisdiction wants to send the offender back to his home state so they don't have a new offender to worry about.

Some of the above issues will be resolved by charging offenders federally if they cross state lines; however there are still issues with federal prosecutors having to prove that the inter-state travel occurred after the passage of Adam Walsh.

I believe all jurisdictions should be encouraged to extradite offenders across the country. However if this were to be done, there must be funding available to local jurisdictions to cover the costs of nationwide extradition.

In summary, there are many issues that need to be addressed and standardized prior to the full adoption of Adam Walsh by all local jurisdictions.

Jeff Shimkus
Allen County Sheriff's Dept.

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:44 AM
To: Rosengarten, Clark
Subject: FW: Docket No. OAG 121
Attachments: AdamWalsh-comments.doc

From: Beaty, Louis [mailto:Louis.Beaty@txdps.state.tx.us]
Sent: Wednesday, August 01, 2007 3:50 PM
To: GetSMART
Cc: Gavin, David; Lesko, Mike; Castilleja, Vincent; Merchant, Scott; Batten, Randy
Subject: Docket No. OAG 121

Docket No. OAG 121

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Comments on Guidelines for implementing the programs of the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office.

submitted by the Texas Department of Public Safety

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PALM COLLECTION

1) Standards - Jurisdictions using digitized images to fulfill the palm requirements should be required to capture and store the palms utilizing national standards.

a) Image Capture - The FBI approves scanners in compliance with the image quality standard (IQS) as promulgated in Appendix "F" of the Electronic Biometric Transmission Specification v 8 (EBTS).

A list of approved scanners may be found at http://www.fbi.gov/hq/cjisd/iafis/cert.htm

b) Storage and Transmission - The storage of the palms should be consistent with the ANSI/NIST- ITL 1-2007 standard "Data Format for the Interchange of Fingerprint, Facial & Other Biometric Information".

The FBI's transmission format (EBTS 8.0) is also based upon the ANSI/NIST- ITL 1-2007 standard.

c) Best practices - No best practices are available to guide the user in determining what parts of the palm constitute a "palm" for Walsh purposes. The FBI APB asked the IAFIS Interface Evaluation Task Force (IIETF) to develop these best practices for the criminal justice community. The best practices will probably require a palm transmission to contain, at the very least, a full left and right palm (captured in top and bottom palm halves or a single full palm capture), and left and right writer's palms.

2) Substantial Compliance - There are many factors involved with the capture, transmission and storage of palm images. The guidelines should reflect these factors by allowing for substantial compliance if a jurisdiction can demonstrate a realistic plan for implementation of the palm requirement in a useful manner. Jurisdictions should be able to provide a date for when they would become fully compliant with the palm requirement.

Some of the gates for palm compliance are:

a) Updating capture equipment - All livescan devices do not have palm capabilities. To capture palms, a larger platen is required than that used for finger capture. Many jurisdictions may be required to retro-fit current devices with a palm attachment. Depending on the jurisdiction, this could be a significant project. (For instance, Texas has 254 counties with over 1,100 law enforcement agencies registering sex offenders).

b) Adding palms to transmissions - Software associated with livescans must be modified to include the palm prints.

c) Telecommunications infrastructure – Many jurisdictions must upgrade their telecommunications infrastructure to accommodate the large file size associated with palm prints.

d) Receipt of the images - The receiving entity may or may not have the ability to accept and process the palm transmissions. At the very least, AFIS software must be able to accommodate the images and spin them to an electronic archive if unable to process the palms themselves.

e) Storage of palms - Palms are not generally useful unless they are resident in an AFIS. Not all jurisdictions have palm AFIS devices. The FBI does not have a palm AFIS, but will implement one in conjunction with the Next Generation Identification (NGI) initiative. Currently, the FBI is capturing and storing palm images from only three states (Texas, Oklahoma and Kansas). As a Quick Win for NGI, the FBI will start to pull palms for requesting states beginning in December. After NGI implementation, the FBI will be able to go to their archive and harvest the previously submitted palms, but there is no plan to allow states automated access to the palms submitted prior to NGI implementation.

The goal is to create flexible guidelines to allow jurisdictions to capture and store the palms in a usable manner. This cannot happen overnight, and rushing to enter data just to be compliant could have the unintended consequence of making the data unusable.

JUVENILES

The Texas legislature and other jurisdictions are hesitant to pass legislation imposing a lifetime registration for juvenile offenders. A possible compromise would allow for lifetime registration in cases of use of extreme force on the victim and cases involving a very young victim.

E-MAIL ADDRESSES

The capture of e-mail addresses creates a significant resource for law enforcement. The Texas Registration Program anticipates the capture of email addresses in the registry, but will not publish the addresses. The public will be allowed to inquire if a particular e-mail address is associated with a registrant and the relevant registration information will then be provided to the inquirer.

SOCIAL NETWORKING SITES

Given the prevalence of social networking internet sites such as MySpace.com and Facebook.com, the guidelines should require these ID's to be included in the state's registry.

VEHICLE INFORMATION

Vehicle information, specifically, the inclusion of place or places where the registrant's vehicle or vehicles are habitually parked, docked, or otherwise kept could of great benefit to criminal justice agencies. However, entering this type of information in the registry will be a burdensome process considering the limited resources of local law enforcement to verify the reported information. In addition, without guidelines on how to classify the collected information for possible automated searches or investigations, the benefit to law enforcement is greatly reduced.

TEMPORARY LODGING INFORMATION

The guidelines require jurisdictions to capture information pertaining to any place the offender stays for seven or more days, including identifying the place and the time period of the stay. The purpose of the registration program is to provide notification of the places where the offender frequents, but the guidelines do not designate whether the stay must be seven or more consecutive days or seven or more days within a specific time period, such as one month, three months or a year.

Rosengarten, Clark

From: Rogers, Laura
Sent: Wednesday, August 01, 2007 8:36 PM
Rosengarten, Clark
Subject: Fw: ICJC "Business" Response & Comments to SORNA Guidelines atSMART Office

Attachments: ICJC Chair Signed SORNA Guidelines Comment Letter 7-31-07.doc

lore comments.

:an you print a copy of all of these that I am forwarding. Thanks

---- Original Message -----
'rom: Tony Wilkerson <twilkers@idoc.idaho.gov>
'o: Rogers, Laura
'c: stephen.bywater@ag.idaho.gov <stephen.bywater@ag.idaho.gov>; Brent Reinke
:breinke@idoc.idaho.gov>; Rhonda.Morton@isp.idaho.gov <Rhonda.Morton@isp.idaho.gov>
ent: Tue Jul 31 15:36:15 2007
ubject: ICJC "Business" Response & Comments to SORNA Guidelines atSMART Office

ICJC Chair Signed SORNA Guidel...

aura L. Rogers
irector, SMART Office
ffice of Justice Programs,
nited States Department of Justice
7th Street N.W.
ington, DC 20531

eference: OAG Docket No. 121 - Comments to SORNA Guidelines.

s. Rogers,

s an attachment to this email, please find the Response & Comments letter to the SORNA uidelines from Chairman Brent D. Reinke and Idaho Criminal Justice Commission, State of daho. For your convenience this letter is also being sent, to your office via fax number 202) 514-7805, as well as an or originally signed hard copy of your Idaho file.

hank you for your continued assistance and service.

incere thanks,
ony

ony L. Wilkerson, Project Manager
daho Criminal Justice Commission
299 N Orchard Street, Suite 110
oise, Idaho, USA 83706

ffice: (208) 658-2071
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IDAHO CRIMINAL JUSTICE COMMISSION

"Collaborating for a Safer Idaho"
Established 2005

C.L. "BUTCH" OTTER
Governor

July 31, 2007

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

Reference: OAG Docket No. 121 – Comments to SORNA Guidelines

Dear Ms. Rogers:

I am writing on behalf of the Idaho Criminal Justice Commission with regard to the National Guidelines for Sex Offender Registration and Notification issued on May 30, 2007. The Idaho Criminal Justice Commission is a state-wide commission established in Idaho by executive order with representatives from a broad cross-section of agencies and interests in the criminal justice system of Idaho.

One of the original directives to the Commission was to review the current laws and nationwide "best practices" with regard to sex offender management and regulation and provide guidance and direction to the Governor and the Legislature on this issue. The Commission has devoted a significant amount of time in the past years to a study of this issue and in reviewing the various approaches, both legislative and correctional, that are being implemented around the country.

At the Commission's meeting on July 27, 2007, we reviewed the proposed comments to the guidelines prepared by the sub-committee we have established with regard to SORNA implementation and compliance. Our review of the comments led to considerable discussion among the members of the Commission and consensus on the comments included herein regarding the Guidelines that we want to convey to you.

Comment (1): Comment on proposed guideline regarding scope of retroactive application. The state is concerned about the breadth of the duties of the state regarding the scope of retroactive application of the guidelines. More specifically, requiring the state to register all individuals who have been convicted of a sex offense who are not currently incarcerated or otherwise under supervision imposes an onerous and unworkable burden on the state and its limited resources.

the state appreciates the need to know all locations where an offender resides, the breadth of information required for offenders who are homeless or transient poses some difficulties and appears to impose a greater burden on tracking a homeless or transient offender's whereabouts than it imposes upon an offender who has a more permanent residence. Most notably, the guidelines require tracking where a homeless or transient offender "frequents," a requirement that is not applicable to other offenders. Trying to track and verify this information, much less prosecute an offender for failing to comply with the registration requirements pertaining to such will be tremendously difficult. It seems that simply requiring a homeless or transient offender to provide the location(s) where he or she habitually lives, and eliminating the requirement that he or she report places he or she "frequents", should be sufficient.

Comment (3): Comment on failure to recognize the existence of a separate juvenile registry as substantially complying with SORNA. Idaho has serious concerns about the approaches taken in the federal law and guidelines relating to registration requirements for juvenile sex offenders. As you know, Idaho Law provides for separate registries for adult and juvenile offenders. It also provides a mechanism for the transfer of a juvenile registrant to the adult system in appropriate cases when the juvenile reaches the age of majority. SORNA mentions only one registry and requires that juvenile sex offenders 14 years of age and older convicted of "Tier III" offenses be included on that registry. The Guidelines do not explicitly recognize that a state may maintain a juvenile registry, and provide a mechanism for the transfer of juveniles to the adult registry. However, we believe that the current Idaho system substantially complies with the requirements of SORNA and meets the stated policy objectives behind the law. We would therefore strongly encourage you to recognize this in the guidelines and consider explicitly acknowledging Idaho's "two registry" approach with a mechanism for the transfer of a juvenile to the adult registry as being in substantial compliance with SORNA. We believe that this approach would be consistent with the research on the effectiveness of registration requirements for juvenile sex offenders and would strike an appropriate balance between the community's right to know and the need to prevent the stigmatization of those juvenile offenders who are highly unlikely to re-offend.

Comment (4): Need for a comprehensive, federally created and maintained resource reference for the applicable laws in all jurisdictions. Since the purpose of SORNA is to have all states' sex offender registration relatively the same, it will be essential for the states to have as a reference a matrix of all state statutes corresponding to the federal statute. This would assist the registries in each state by having a source to consult to see how the provisions of different state statutes relate to one another. We believe that the DOJ should prepare a matrix in consultation with each state. The matrix will require updating as new statutes are passed. The matrix that the U.S. Probation Office does on the various state statutes would be a good example to follow.

Thank you for your consideration of the views of the Idaho Criminal Justice Commission on this important issue.

Sincerely,

Brent D. Reinke, Chairman
Idaho Criminal Justice Commission

Cc: Senator Larry Craig, Senator Mike Crapo, Congressman Mike Simpson, Congressman Bill Sali

July 30, 2007

Laura L. Rogers, Director
SMART Office
810 7th Street, NW
Washington, D.C. 20531

Re: Adam Walsh Guidelines

Dear Ms. Rogers:

I write as Chairman of the New Mexico Sex Offender Management Board to express my stringent opposition to the proposed inclusion of certain juvenile offenders on the various state and the national sex offender registry. Further, I strongly urge that the U.S. Department of Justice and Congress revisit the Adam Walsh Child Protection and Safety Act of 2006 and reconsider your respective positions with regard to children who have committed sexual offenses.

The New Mexico Sex Offender Management Board is composed of experts from the fields of law enforcement, law, treatment, victims' rights and corrections. We advise the Office of the Governor and the New Mexico Legislature regarding sex offender policy. While the Board has not taken a formal position on the above referenced issue, in Board meetings, our members have consistently expressed unanimous opposition to lifetime and twenty-five year sex offender registration for children who have committed sexual offenses, but who have not been convicted as adults.

I am certain that, based upon the same rationale, our members will likewise oppose your determination that Title I of the Adam Walsh Child Protection and Safety Act of 2006 applies retroactively to all children who have committed sex offenses, regardless of when they were adjudicated.

It is our opinion that the registration provisions of the Act generally should not apply to children adjudicated within the juvenile system. Such application flies in the face of the purpose, function and objective of this system. By deliberate design, our children are adjudicated delinquent and, thus, by definition are considered at least potentially amenable to change. In fact, I am aware of studies that indicate that the recidivism rate among children who have sexually offended is between 5 and 11%. Thus, the vast majority of these children will never commit another sexual offense regardless of registration.

I further believe that registration for children will prove counterproductive. The stigma and perpetual collateral consequences that will no doubt accompany

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aff:
Randall Cherry, Esq.
Julie Frendle
Nancy Gettings
Jennifer Honey
LaDonna LaRan

registration will almost certainly interfere with treatment and the normal socialization experiences critical to addressing these children's needs.

Finally, as a former prosecutor, you know the prospect of registration will unquestionably result in numerous cases being plead down from sexual crimes to nonsexual crimes. This will leave the offender, and probably the victim, with no treatment and might result in an increase in recidivism and collateral consequences for all concerned.

For these reasons, I join with my colleagues on the Juvenile Committee of the New Mexico Sentencing Commission in opposing extending registration to children adjudicated within the juvenile system in general.

Thank you for the opportunity to comment. I trust that my comments will be given serious and thoughtful consideration.

Respectfully,

By: General Counsel

Michael Vigil, Judge, Second Judicial District
Chairman, New Mexico Sex Offender Management Board

New Mexico Sentencing Commission

July 30, 2007

Laura L. Rogers. Director
SMART Office
810 7th Street, NW
Washington, D.C. 20531

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

Dear Ms Rogers:

The Juvenile Committee of the New Mexico Sentencing Commission voted unanimously at its regular meeting on April 16, 2007 to express its opposition to the interim rule RIN 1.105--AB22. Further, the Committee strongly urges the U.S. Department of Justice and Congress to revisit the Adam Walsh Child Protection and Safety Act of 2006 and work diligently to strike a more compassionate and productive balance between victims of sexual abuse, particularly children, and child victims of sexual abuse who sadly exhibit abusive behaviors.

The Juvenile Committee of the New Mexico Sentencing Commission is comprised of many of the state's leaders in juvenile justice, including its chairman Robert Cleavall, former deputy director of juvenile justice, Dorian Dodson, Secretary of Children, Youth and Families, Lemuel Martinez, Appointed by District Attorneys Association, Angie Vachio, Appointed by the Governor, Hon. Jerry Ritter District Court Judge, Suellyn Scarnecchia, Dean of University of New Mexico School of Law, David Schmidt, Chairman of New Mexico's Juvenile Justice Advisory Committee as well as citizen members appointed by the Senate President Pro-Tempore.

The New Mexico Sentencing Commission also oversees the state Sex Offender Management Board, which will be sending its input to you under separate letter.

Our Juvenile Committee is opposed to the U.S. Department of Justice's interim determination that Title I of the Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration and Notification Act (SORNA), applies retroactively to all sex offenders as defined by the Act regardless of when they were convicted. The committee also expressed its concern about the applicability of Title I to children who have been adjudicated within the juvenile system and not convicted as adults.

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SORNA as applied to juveniles flies in the face of the purpose, function and objective of our nation's juvenile justice systems in that it strips away the confidentiality that helps form the basis of effective intervention and treatment for youthful offenders.

This stripping away of confidentiality as it applies to children under the age of 18 cannot be taken lightly. It cannot be too strongly emphasized that the children implicated by this provision have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

For all of these reasons, Juvenile Committee of the New Mexico Sentencing Commission asserts that it is poor public policy for SORNA to be applied retroactively to children adjudicated within the juvenile system.

Conclusion

In closing, we thank you for the opportunity to comment on the Interim Rule for the Applicability of the Sex Offender Registration and Notification Act of 2006 and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Michael Hall
Executive Director, New Mexico Sentencing Commission

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Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:39 AM
To: Rosengarten, Clark
Subject: FW: OAG Docket No. 121
Attachments: DNA Forensics Expanding Uses and Information Sharing Published April 30, 2007 to BJS Website.pdf

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From: Owen Greenspan [redacted]
Sent: Thursday, August 02, 2007 12:01 AM
To: GetSMART
Subject: OAG Docket No. 121

Thank you for the opportunity to comment on the Proposed National Guidelines for Sex Offender Registration and Notification as required in section 112(b) of Title 1 of the Adam Walsh Child Protection and Safety Act of 2006. Generally, I found the Guidelines to be an effective path to implementation of the Sex Offender Registration and Notification Act (SORNA) requirements. Congratulations on what I believe is a comprehensive effort that will, with some minor modifications, lead to fully workable solutions for the statutorily defined jurisdictions that are either required to implement the SORNA provisions or who may elect to do so.

The comments which follow selectively respond to both the Guidelines and implementation scenarios discussed at the 2007 National Symposium on Sex Offender Management and Accountability, held July 24-27, 2007 in Indianapolis, IN.

Re II General Principles – Terminology and IV Covered Sex Offenses and Offenders

- The provision that allows a tribal jurisdiction to choose not to require registration based on a tribal court conviction resulting from proceedings in which the defendant was denied the right to counsel, etc. may pose problems for all other jurisdictions (and ultimately even the convicting jurisdiction) as well as the convicted person. The Bureau of Justice Statistics Tribal Criminal History Record Improvement Program and various BJA efforts focused on information sharing are encouraging tribes to report (share) information with state criminal record repositories and the FBI. Increasingly tribes are being provided with funds to acquire live scan fingerprint devices to facilitate this process. It is easy to foresee situations in which a criminal history record will show a conviction for a sex offense but their will be no corresponding entry on any sex offender registry. This is sure to cause confusion and additional work. For example a child care agency, authorized under PL92-544 submits a fingerprint based inquiry to the state repository and learns that the applicant has a sex offense conviction in a tribal court. Typically either the state process or an independent query by the agency to the state sex offender registry should also reveal the applicant's conviction information. Is the criminal record in error? Did the applicant fail to satisfy registration requirements? Is there an administrative error here? Investigating these questions will be labor intensive and time consuming unless a way is found to indicate that registration was not required in this instance while still respecting the privacy that this provision affords. I suggest that a potential field or flag be added to the NCIC sex offender registry record – information that is only available to law enforcement (and which already has access to the criminal history record for investigation purposes) – that signifies that under SORNA registration for this conviction was not required.

Re II General Principles – Retroactivity and IX Initial Registration

- The guidelines talk about the potential difficulties of registering sex offenders with pre-SORNA or pre-SORNA-implementation convictions. The guidelines do not appear to recognize the difficulties of identifying these convictions. Clearly there are many instances where states will not be in compliance with SORNA requirements for current registrants and those who have moved to another jurisdiction and were no longer required to register but under SORNA would be required to register again. It seems to me that in the former instance a program will need to be written and run that looks for all state statutory codes that represent sex offenses, including those that have been amended over some reasonable period of time,

against the state's computerized criminal history file and those federal offender files held by the FBI. This may well require some funding. I suggest that this issue be required to be addressed as states develop SORNA implementation plans.

e II General Principles – Automation – Electronic Databases and Software and related provisions in Sections VI, √II, and X

- It was indicated at the Indianapolis Symposium that the software required under Section 123 would be developed in consultation with the jurisdictions. Consequently, rather than speculate about the issues associated with the software I will comment on a related issue – RISS versus LEO. It was suggested at the symposium that the decision as to the data communications network has been made with the Regional Information Sharing System (RISS) being the choice. Several members of the audience expressed a preference for the FBI administered Law Enforcement on Line (LEO). There are probably relative advantages and disadvantages to each with perhaps differing perspectives between the registry agencies and the administrators of the national public sex offender registry. As I understand it the national public registry is not a database but rather accesses the state registry web sites. If that is essentially correct that the bulk of the information that needs to move from the state registry goes to the FBI NCIC file. A lesser amount of information can be expected to move between repositories when a registrant moves between jurisdictions. In most, if not all instances the state repositories already are LEO users while many of them may not be RISS users. I suggest that this remain an open issue until such time as it is discussed with the advisory group that will be empanelled by the SMART Office to address software requirements.

Re II General Principles – Implementation and III Covered Jurisdictions

- Section 124 addresses the circumstances that would cause a 10% reduction in Byrne Justice Assistance funding. I suggest that some clarification would be helpful? As this section refers to funding being withheld from jurisdictions because of noncompliance it should be made clear as to the extent that this penalty may be imposed on tribal jurisdictions. Further, in view of the provision which allows tribal jurisdictions to signify their intention of establishing a registry and then subsequently entering into a cooperative agreement with a state that could include provision of registry services it would be appropriate to indicate awareness or not resolution of the possibility that a state could be deemed not to be in substantial compliance should a tribal jurisdiction fail to meet its obligations under the cooperative agreement. In addition, the Guidelines treat all optional PL 280 States as if they are non PL 280 States. Given the possibility that some tribal jurisdictions in optional PL 280 States may be providing some information to state registries already or that such tribal jurisdictions may already have registries perhaps it would be helpful for the guidelines to discuss the status of tribal jurisdictions in optional PL 280 States.

Re V Classes of Sex Offenders

- At the Indianapolis symposium it was indicated that the SMART Offenses plans to establish a database of state sex offense statute and has invited states to forward this information. Will provision be made and a effort extended to include in the database appropriate federal offenses, military offenses and tribal code violations?

Re VI Required Registration Information

- Re Text of registration offense – see comment under V Classes of Sex Offenders
- Re Fingerprints and Palm Prints – ANSI NIST standards for capture and transmission of this information exists and should be required by the guidelines if this information is to be retained in a usable and transmittable form. The guidelines might also wish to recognize that at this point in time palm print are largely unsearchable in an automated fashion at local, state and federal levels so the utility of the palm print is apt to grow over time.
- Re DNA – this section should be reexamined as most registry agencies do not have access to CODIS to confirm the absence or presence of DNA sample. There are several related issues here. Please see attached report DNA Forensics Expanding Uses and information Sharing which I coauthored.

Re VII Disclosure and Sharing of Information

- Re National Child Protection Act Agencies (Section 121(b)(4)) – the guidelines appear to address the background check that is conducted at the time background check is conducted as part of a fitness determination. I suggest this section discuss and encourage implementation of applicant fingerprint card retention (many states already do this to some extent) and the associated procedure often referred to as "rap back" or "hit notice." This procedure provides a agency with a criminal history record whenever a subject of interest is arrested – in effect a perpetual background check.

Re In-person appearance requirements

- There is a range of purposes and information to be captured during required in-person appearances. These appearances will likely be time consuming and labor intensive (read costly) for the registry personnel. I suggest that jurisdictions be allowed to include in their implementation plans provisions which would allow the use of biometric technologies (e.g., fingerprint, voice, iris scan etc.) to satisfy some of the

conditions for in-person appearance. With this authorization the SMART Office could then assess whether this use of technology was substantially compliant with the intent of SORNA.

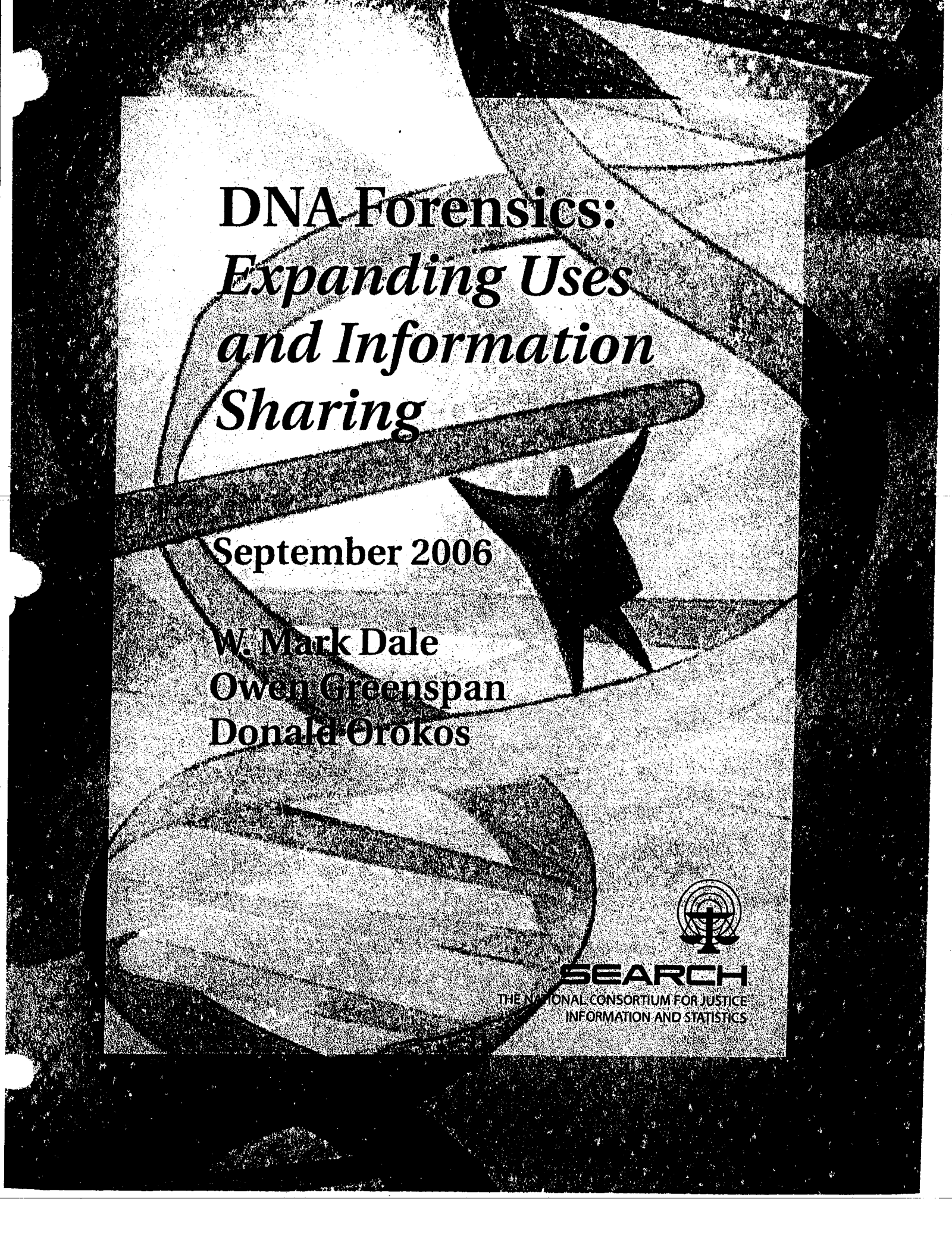
Other Thoughts

- It would be helpful if the SMART Office were to develop a set of "FAQs" to address state questions that will arise as tribes and states discuss the possibility of cooperative agreements that would alter the tribes election to create a registry.
- How will "time" for period of registration be calculated when a tribal member registrant moves from a tribal jurisdiction with a registry but remains in the same state and that state has a registration requirement different than the tribal jurisdiction? Same question and the offender moves to a different state?

Again, thank you for the opportunity to comment and please let me know if I can clarify any of the above.

Owen Greenspan

Owen Greenspan
Director, Law and Policy Program
SEARCH, the National Consortium for Justice
Information and Statistics
Owen.Greenspan@SEARCH.org



DNA Forensics: *Expanding Uses and Information Sharing*

September 2006

W. Mark Dale
Owen Greenspan
Donald Orokos

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THE NATIONAL CONSORTIUM FOR JUSTICE INFORMATION AND STATISTICS

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DNA Forensics: *Expanding Uses and Information Sharing*

September 2006

W. Mark Dale
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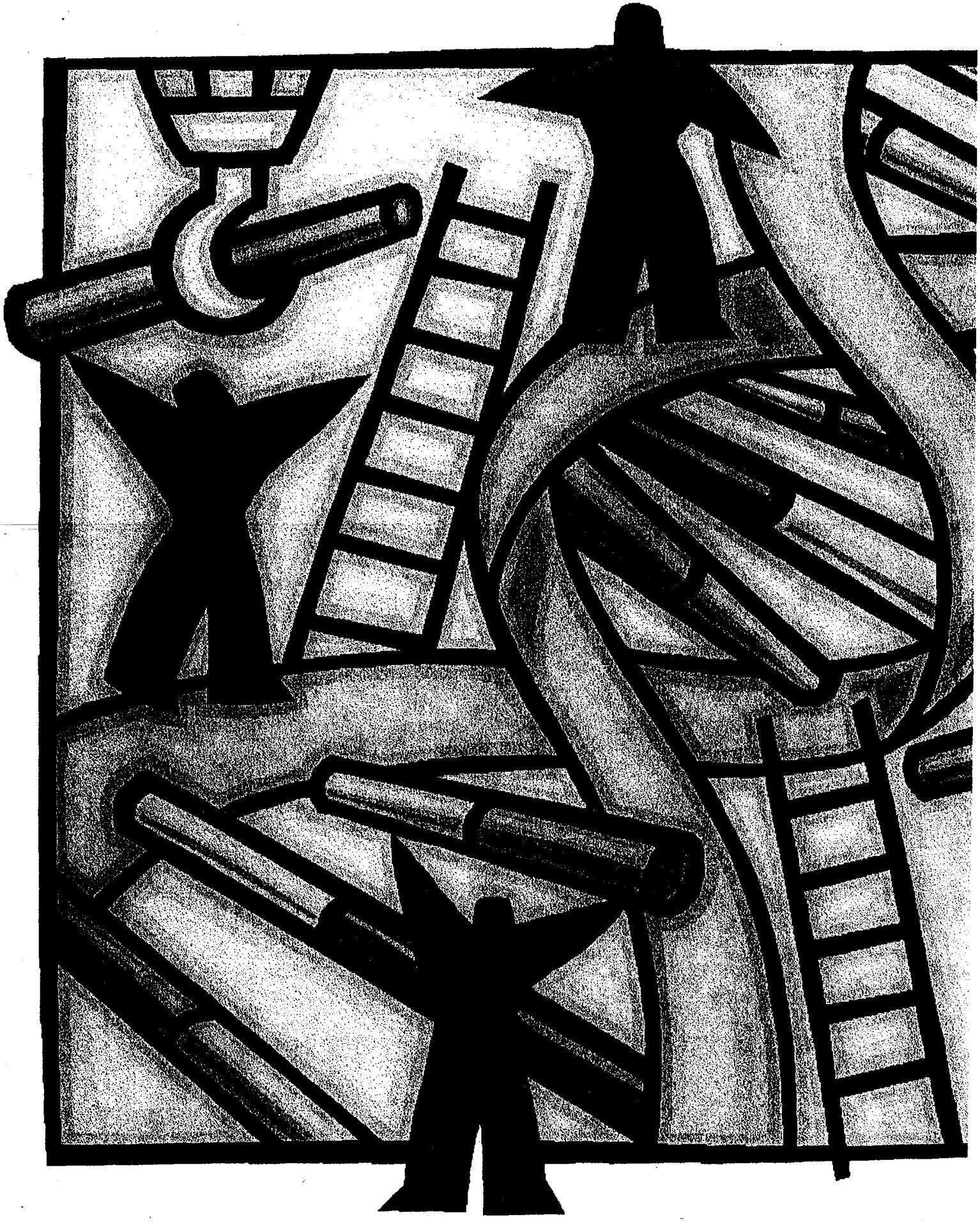
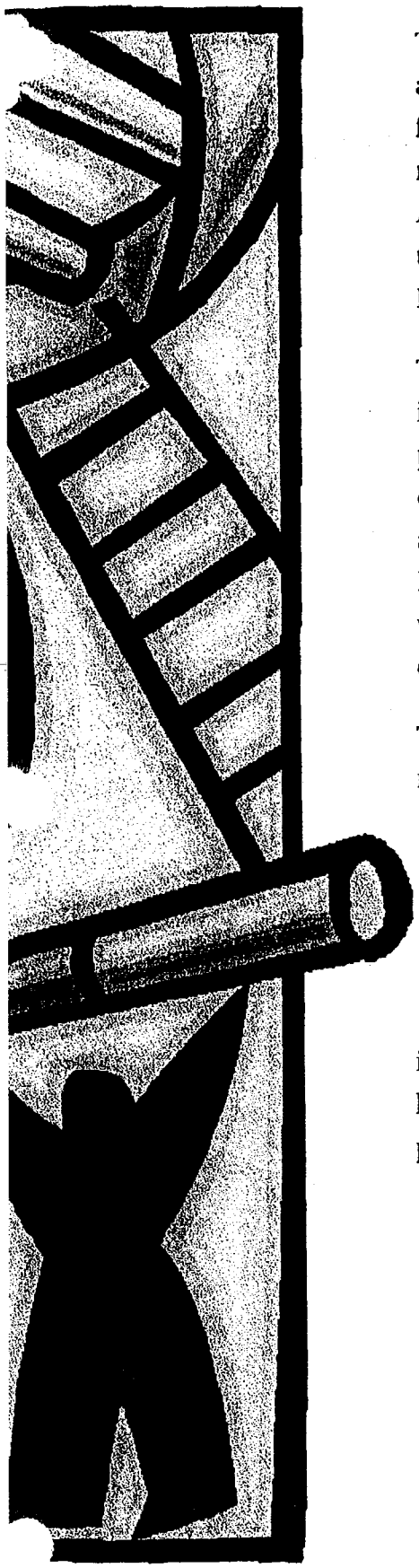
Acknowledgments. This report was prepared by SEARCH, The National Consortium for Justice Information and Statistics, Francis X. Aumand III, Chairman, and Ronald P. Hawley, Executive Director. Owen M. Greenspan, Director, Law and Policy, of SEARCH, project director and author, W. Mark Dale, Director of the Northeast Regional Forensics Institute (NERFI) at the University at Albany, State University of New York and Donald D. Orokos, Instructor in Biology and Associate Director, Forensic Molecular Biology Program at the University at Albany, State University of New York, authors. Dr. Gerard F. Ramker, Chief, National Criminal History Improvement Programs, Bureau of Justice Statistics, Federal project monitor.

This report was produced as a product of a project funded by the Bureau of Justice Statistics (BJS), Office of Justice Programs, U.S. Department of Justice, under Cooperative Agreement No. 2006-BJ-CX-K013, awarded to SEARCH Group, Incorporated, 7311 Greenhaven Drive, Suite 145, Sacramento, California 95831. Contents of this document do not necessarily reflect the views or policies of BJS or the U.S. Department of Justice.

Contents



Preface



The value of DNA in verifying identities, excluding suspects, and solving crimes—particularly those that have gone unsolved for years—has far exceeded the expectations of those who first noticed its forensic potential more than 20 years ago. *DNA Forensics: Expanding Uses and Information Sharing* was prepared to inform the broad justice community about the evolution of DNA identification and its expanding uses.

The report examines the history of DNA use by forensic investigators, considers the economics of DNA use as it relates to public safety, and reviews privacy concerns relating to the release of an individual's genetic information. The report explores issues associated with the coupling of criminal history information with DNA data and recommends that mechanisms be put in place that would make for a more efficient justice system while effectively continuing to address privacy concerns.

The report utilizes some terms that may not be familiar to those not associated with the DNA forensics community. Therefore, this report includes a glossary to assist readers.

Dramatic advances in DNA forensics will continue to propel this once-exotic science into more mainstream criminal justice applications, perhaps even allowing it to someday replace the fingerprint as the primary tool for verifying identities. It is hoped that this report allows readers to understand how these developments have occurred, and to monitor the progress of DNA forensics in a more informed capacity.

Glossary

While the science of DNA is replete with complicated concepts, components, and procedures, this report was written with the layman in mind; thus, scientific jargon was kept to a minimum. However, it would be difficult, if not impossible, to write a report such as this without including some of the terminology common to forensic DNA use. The following list is provided to assist readers in understanding the processes through which forensic investigators use DNA to identify perpetrators when traditional crime-solving methods have failed.

ABO blood typing
A human blood-typing test that uses antibodies from bodily fluids to determine whether an individual has A, B, O, or AB type blood. ABO typing was commonly used in the past, before the implementation of DNA analyses.

Combined DNA Index System (CODIS)
An electronic database of DNA profiles obtained from unsolved crimes and from individuals convicted of particular crimes. CODIS contributors include the Local DNA Index System (LDIS), the State DNA Index System (SDIS), and the National DNA Index System (NDIS). CODIS is maintained by the FBI.

Deoxyribonucleic acid (DNA)
A nucleic acid that contains genetic instructions for the biological development of all cellular forms of life. DNA is responsible for most inherited traits in humans. Forensic scientists use DNA from blood, semen, skin, saliva, or hair recovered from crime scenes to identify possible suspects through DNA profiling, during which the length of repetitive DNA sections are compared. An individual's DNA is unique except for identical twins.

DNA polymerase
An enzyme that assists in DNA replication.

Electrophoresis
A process that occurs when molecules placed in an electronic field migrate toward either the positive or negative pole according to their charge. The process is used to separate and sometimes purify macromolecules that differ in size, charge, or conformation. Electrophoresis is one of the most widely used techniques in biochemistry and molecular biology.

Mitochondrial DNA (MtDNA)
Differs from nuclear DNA in location, sequence, quantity in the cell, and mode of inheritance. MtDNA is found in a cell's cytoplasm and is present in much greater numbers than nuclear DNA, which is found in a cell's nucleus. In humans, MtDNA is inherited strictly from the mother. It is useful in identifying individuals in areas not conducive to nuclear DNA analyses, such as when nuclear DNA cannot be obtained in sufficient quantities or quality. Also, MtDNA use in identification is less efficient than nuclear DNA analysis in that it cannot differentiate between individuals who share the same mother. The statistical probabilities for identification from MtDNA are not as unique as nuclear DNA.

Polymerase Chain Reaction (PCR)
A process through which millions of copies of a single DNA segment are produced in a matter of hours without using living organisms like E. coli or yeast. The process relies on several basic components, including a DNA template, which contains the DNA segment to be amplified; two primers, which determine the beginning and end of the region to be amplified; DNA polymerase, which copies the region to be amplified; Deoxynucleotides-triphosphate, from which the DNA polymerase builds the new DNA; and a buffer, which provides an appropriate chemical environment for the DNA polymerase. PCR occurs when the components are combined in a test tube, which is then heated and cooled to different temperatures to encourage various chemical reactions.

Restriction Fragment Length Polymorphism (RFLP)
A process through which DNA is cut by restriction enzymes into restriction fragments. The enzymes only cut when they recognize specific DNA sequences. The distance between the locations cut by restriction enzymes varies between individuals, allowing their genetic identification.

Single Tandem Repeats (STR)
Small DNA regions that contain DNA segments that repeat several times in tandem. Repeated sequences are a fundamental feature of genomes, such as DNA, and play an important role in genomic fingerprinting. CODIS uses 13 STR sequences as genetic markers.

Variable Number of Tandem Repeats (VNTR)
Short DNA sequences ranging from 14 to 40 nucleotides organized into clusters of tandem repeats of between 4 and 40 repeats per occurrence. VNTRs cut by restriction enzymes reveal a pattern of bands unique to each individual. They play an important role in forensic crime investigations.

Overview

The application of DNA technology to the biological evidence in criminal casework has revolutionized forensic science. The ability to identify, with a high degree of certainty, a suspect in violent crimes now routinely provides valuable leads to criminal investigators worldwide, often in circumstances where there are no eyewitnesses. Forensic DNA technology is a very sensitive and universally accepted scientific technique. The **Combined DNA Index System** (CODIS), administered by the Federal Bureau of Investigation (FBI), is a distributed database with three hierarchical tiers enabling local, statewide, and national comparisons among convicted offender profiles and with crime scene samples. As of June 2006, it contains more than 3.3 million convicted offender profiles and more than 142,000 profiles from crime scenes, and has produced 36,000 "investigation-aided" matches in 49 States and 2 Federal laboratories.[1] DNA analysis also benefits the innocent. Suspects may be eliminated before arrest or exonerated even after conviction.

Information is the lifeblood of the criminal justice system. Despite the wonders of DNA science and technology, DNA use cannot achieve its full promise in the context of criminal justice applications unless there are efficient means in place for criminal investigators to obtain the criminal history information of a suspect when a match is made between physical evidence collected at the crime scene and a profile stored in a local, State, or national database. Once the crime lab completes its work, should it report a match, the investigator must learn as much as possible about the suspect. Traditionally, the criminal history record (or "rap sheet") is a primary source for learning about the nature of the suspect's past offenses and provides a path to physical description information, a "mugshot" photograph, past modus operandi information, and known associates, and is often of considerable value in locating the suspect.

Privacy advocates have consistently raised concerns about linkages between personal identifying information and an individual's DNA, which can reveal genetic information about the individual and his/her family members. This issue has led to policies and practices whereby there is no formal interface between CODIS and any criminal history record information systems. Further, CODIS does not store criminal history information, nor was it designed to include any personally identifying information about the subject of the DNA sample.[2] States have tended to follow the FBI's lead in this area. In fact, a number of the State laws expressly prohibit the linking of criminal history record information with an offender's DNA profile.[3]

Yet establishing linkages between DNA databases and State and Federal criminal history databases would enable an investigator to know that a suspect's DNA profile is available for comparison. Perhaps just as important, a linkage mechanism could serve as a flag to indicate that an offender's DNA sample has *not* been obtained, although required by law. Consequently, the offender's DNA profile would be unavailable for comparison with material recovered from a crime scene. The challenge for the criminal justice community is to create an environment that efficiently leverages the power of DNA technology, while allowing for sharing (or at least access to) essential information in a manner that respects privacy concerns.

Source: FBI CODIS web site at **http://www.fbi.gov/hq/lab/codis**.

2 Letter from Thomas F. Callaghan, Ph.D., Chief, CODIS Unit, FBI Laboratory, to Owen Greenspan, Director, Law and Policy Program, SEARCH, The National Consortium for Justice Information and Statistics, dated June 16, 2005. Hereafter, Callaghan Letter.

3 Ibid.

DNA Collection Legislation

The FBI is responsible for the administration and upport of the **National DNA Index System** (NDIS) in accordance with Federal law.[4]

All States have enacted laws requiring the collection of DNA from offenders convicted of specified crimes. Many States are moving to expand the circumstances mandating collection and retention to include more or all convicted felony offenders and some convicted misdemeanor offenders, extending or eliminating the statute of limitations for certain offenses where DNA evidence exists, and even requiring the taking of DNA samples subsequent to arrest but before disposition.

For example, the enactment of California Proposition 69 in November 2004 authorized the collection of DNA samples from adults and juveniles convicted of any felony offense, as well as adults and juveniles arrested for or charged with felony sex offenses, murder, or voluntary manslaughter.

Table 1[5]

Database Criteria	Number of Jurisdictions*
Sex Offenses	55
Murder	54
Offenses Against Children	54
Kidnapping	54
Assault and Battery	53
Robbery	53
Burglary	52
All Felonies	44
Juveniles	31

* The 55 jurisdictions referenced include the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Federal Offenders under authority of 42 U.S.C. § 14135a, and persons charged by the U.S. Department of Defense under authority of 10 U.S.C. § 1565.

4 42 U.S.C. § 14132.

allaghan Letter.

Effective in 2009, all adults arrested for or charged with any felony offense in California will be subject to DNA sample collection. The trend toward increasing the number and types of designated offenses that require the taking of DNA samples will significantly increase local, State, and national database populations. Table 1 summarizes the frequency with which State laws direct or authorize the taking of DNA samples for certain convictions.

DNA, Economics, and Public Safety

Recidivism is the fundamental factor that provides the underlying rationale for the DNA database program. As noted in a 2003 report on sex offender recidivism:

- "Within 3 years following their release, 38.6% (3,741) of the 9,691 released sex offenders were returned to prison."[6]
- "The first 12 months following their release from a State prison was the period when 40% of sex crimes were allegedly committed by the released sex offenders."[7]

The *National Forensic DNA Study Report* found that there is a backlog of over one-half million criminal cases containing unanalyzed DNA evidence.[8] These cases either have not been sent to laboratories, or are in laboratories awaiting analyses. A 1996 report, *Victim Costs and Consequences: A New Look,* examines the many tangible and intangible costs of crime as it pertains to victims in the United States.[9] The authors estimate the tangible costs of rape to be approximately $5,000 per assault. When intangible costs that affect the victim's quality of life

6 Patrick A. Langan, Erica L. Schmitt, and Matthew R. Durose, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, November 2003) at p. 2. Hereafter, Langan report.

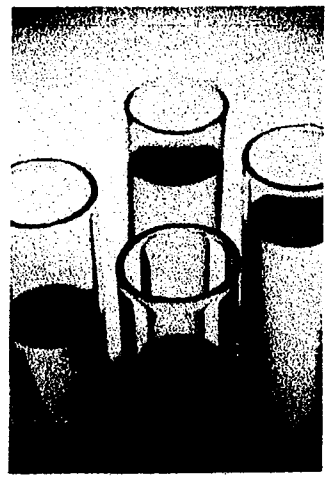
7 Ibid., p. 1.

8 Nicholas P. Lovrich, et al. (Pullman, WA: Washington State University and London: Smith Alling Lane, February 2004) at p. 3.

9 Ted R. Miller, Mark A. Cohen, and Brian Wiersema (Washington, DC: U.S. Department of Justice, National Institute of Justice, January 1996) at p. 1.

are considered, the cost estimate rises to $87,000 per assault. The report also projects that violent crime leads to 3% of all medical spending and 14% of injury-related medical spending. The aggregate tangible costs of medical spending for rape is $7.5 billion per year. When pain, suffering, and lost quality of life are considered as well as out-of-pocket expenses, the aggregate annual cost of rape is estimated to be $127 billion. Personal crime medical costs total $105 billion per year, with total intangible quality of life costs totaling $450 billion per year. There is a clear cost benefit for timely DNA analyses for violent crime cases. For example, a Master of Business Administration thesis, "Business Case for Forensic DNA,"[10] discussed how solving sexual assaults with DNA analyses would eventually lessen recidivism and be cost effective.

DNA technology is expensive, but the potential cost benefits are staggering—given both the tangible (DNA analyses and victim's medical treatment) and intangible (quality of life for victim and community) costs incurred because of crime that can be solved with the aid of DNA technology. The national United Kingdom (UK) DNA database contains 3.5% of its population in the convicted offender index and yields a 40% hit rate. The UK Forensic Science Service's DNA database of 3 million convicted offender samples not only has the probability of delivering a hit 40% of the time, but it solves .8 additional cases per hit and prevents 7.8 crimes for every hit.[11] The UK system operates under a legal system significantly different from that of the United States—it is one that allows DNA collection from arrestees and even in the course of neighborhood sweeps.



The growth in reliance on forensic DNA programs has led to significant casework backlogs in public laboratories. A Bureau of Justice Statistics census of publicly funded forensic crime laboratories, *50 Largest Crime Labs, 2002*, identified compelling data for the ever-increasing caseloads on public DNA laboratories.[12] Only one-third of the DNA cases submitted to public laboratories are analyzed. Most public forensic laboratories can only analyze the most serious cases that are scheduled for court. This leaves potential evidence from many other cases unanalyzed. A study in one State indicated that lesser offense cases provide the majority (81%) of hits in CODIS rather than homicides and rapes.[13] There is a 1.69 ratio of backlogged to completed DNA cases per year. Simply stated, if a laboratory analyzes 1,000 DNA cases, the same laboratory carries a backlog of 1,690 cases, or 1.69 years of work.

The Science and Evolving Technology of DNA

Comparisons between latent prints left at crime scenes and known fingerprints from suspects had been the traditional method for using physical evidence to place individuals at the scenes of crimes. Manual searching of fingerprint files in the absence of a suspect, known as "cold searching," was a tedious, challenging, and often impractical process. In the 1980s, with the advent of **automated fingerprint identification systems** (AFIS), police departments no longer needed a suspect. Partial fingerprints recovered from a crime scene could be automatically searched against massive databases of arrest fingerprints with greater accuracy and

10 Ray A. Wickenheiser, University of Louisiana, Lafayette (2002).

11 Christopher H. Asplen, *The Application of DNA in England and Wales* (London: 9th Alling Lane, January 2004) at p. 1.

12 Matthew J. Hickman and Joseph L. Peterson (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, September 2004).

13 Virginia Department of Forensic Science, "DNA Database Statistics," (2005).

James Watson

speed than previously imaginable.

The scientific technology of DNA profiles has added a new dimension to the melding of crime scene evidence with biometric information. DNA technology uses statistical probabilities to determine the rarity of one random person having a specific genetic profile. This is done using the different sizes of 13 locations (**loci**) found in human DNA. The probabilities of an individual having a unique DNA profile can be one in a billion or more. These probabilities are so rare that they can be used as a statement of identification. Latent fingerprint comparisons rely on the expertise and experience of the latent fingerprint examiner. DNA forensic profiling and comparisons rely on statistical probabilities to determine the uniqueness of the profile.

Over some 20 years, forensic laboratories have evolved from using traditional ABO blood-typing methods to eliminate or include suspects to progressively more efficient methods of forensic DNA analyses. The earlier methods of ABO and electrophoresis could categorically exclude suspects but were of little value as methods for determining positive identification.[14] Today, the newest DNA analysis method—multiplex **polymerase chain reaction single tandem repeat** (PCR STR)—is capable of producing sole-source attribution probability of one in a trillion or more.

In the early 1950s, James Watson and Francis Crick first described the structure and a possible role for the double-stranded DNA molecule. The first DNA typing technology used successfully in forensic laboratories was originally described in 1985 as "DNA fingerprinting" by Dr. Alec Jeffreys.[15] Dr. Jeffreys recognized that certain regions of DNA contained repeats of the same sequences, and that these repeat regions, or **variable number of tandem repeats** (VNTR), vary in length from one individual to the next. Dr. Jeffreys used a molecular biology technique, referred to as **restriction fragment length polymorphism** (RFLP). At that time RFLP, in conjunction with VNTR, provided a powerful tool for forensic DNA typing. However, it was expensive, time-consuming (6–8 weeks), a safety hazard due to the use of radioactive probes, and required a relatively large amount of intact DNA.

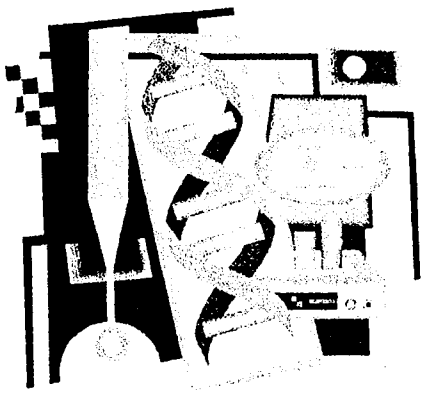
Francis Crick

In 1986, a molecular DNA technique known as PCR was developed.[16] PCR helped revolutionize forensic DNA typing by amplifying very small amounts of DNA recovered from crime scenes. In this highly sensitive amplification technique, a DNA molecule is synthesized and replicated. Each newly synthesized DNA molecule can also serve as template DNA in future cycles, thus producing millions of copies of specific target DNA in a three-hour run. Overall, PCR technology is a sensitive, safe, fast, robust, and economical method. The PCR DNA technology relates specifically to the DNA that is located in the nucleus of human cells. Typically, the majority of crime scene evidence suitable for nuclear PCR DNA techniques is blood, saliva, and semen.

14 J.M. Butler, *Forensic DNA Typing: Biology, Technology, and Genetics of STR Markers*, 2nd ed. (Burlington, MA: Elsevier Academic Press, 2005). Hereafter, Butler report.

15 Alec J. Jeffreys, V. Wilson, and S.L. Thein, "Individual-specific 'fingerprints' of human DNA," *Nature* 316: 76–79 (July 4–10, 1985).

16 K. Mullis, et al., "Specific enzymatic amplification in vitro: the polymerase chain reaction," *Cold Spring Harbor Symposium on Quantitative Biology* 51: 263–273 (1986).



A second type of forensic analyses is **mitochondrial** DNA (mtDNA), which is found outside of the cell nucleus in the cytoplasm. MtDNA is present in much higher volumes and is less susceptible to environmental degradation. It is also possible to obtain an mtDNA profile from cells without nuclei, such as hair shafts. This type of DNA is helpful in severely degraded evidence, such as decomposed tissue and bone. However, the statistical probabilities derived from mitochondrial analyses are not as unique or rare as nuclear DNA at present and the technique is costly and time-consuming. It is hoped that automation and efficiencies gained from economies of scale will decrease the cycle time and costs, and increase the uniqueness of the statistical probabilities of this very useful technique.

MtDNA testing has been popularized owing to its ability to provide results when other specimens may not yield typical nuclear DNA results. For example, with highly charred remains, it is oftentimes not possible to obtain a full profile using other methods. However, with this approach it is frequently possible to recover a sufficient quantity of mtDNA for analysis. Further, even degraded specimens, either through environmental insults or exposure to chemical challenges, can produce a mitochondrial DNA profile. MtDNA is also better suited for recovering useful material from dried skeletal remains, older fingernails, and smaller sample sizes than other methods.

Another distinct feature of mtDNA is that it is maternally inherited. When the egg and sperm meet, only nuclear DNA is contributed from the spermatozoon to the fertilized egg. This characteristic can be helpful in forensic cases, such as analysis of the remains of a missing person, where known maternal relatives can provide reference samples for direct comparisons to the mtDNA profile generated from the questioned remains. A mother passes her mtDNA profile to her children and shares her mtDNA with her mother, her siblings (both male and female), and her biological maternal relatives (male or female). Mitochondrial DNA testing has been successful in identifying soldiers from the Vietnam War and World War II by comparison to distant maternal relatives; identifying remains recovered from historical casework such as those of Tsar Nicholas II and his family; identifying the victims of mass disasters; and identifying missing persons.

Table 2 illustrates the rapid evolution of DNA analysis by the FBI.

Table 2: The Rapid Evolution of DNA Analysis by the FBI

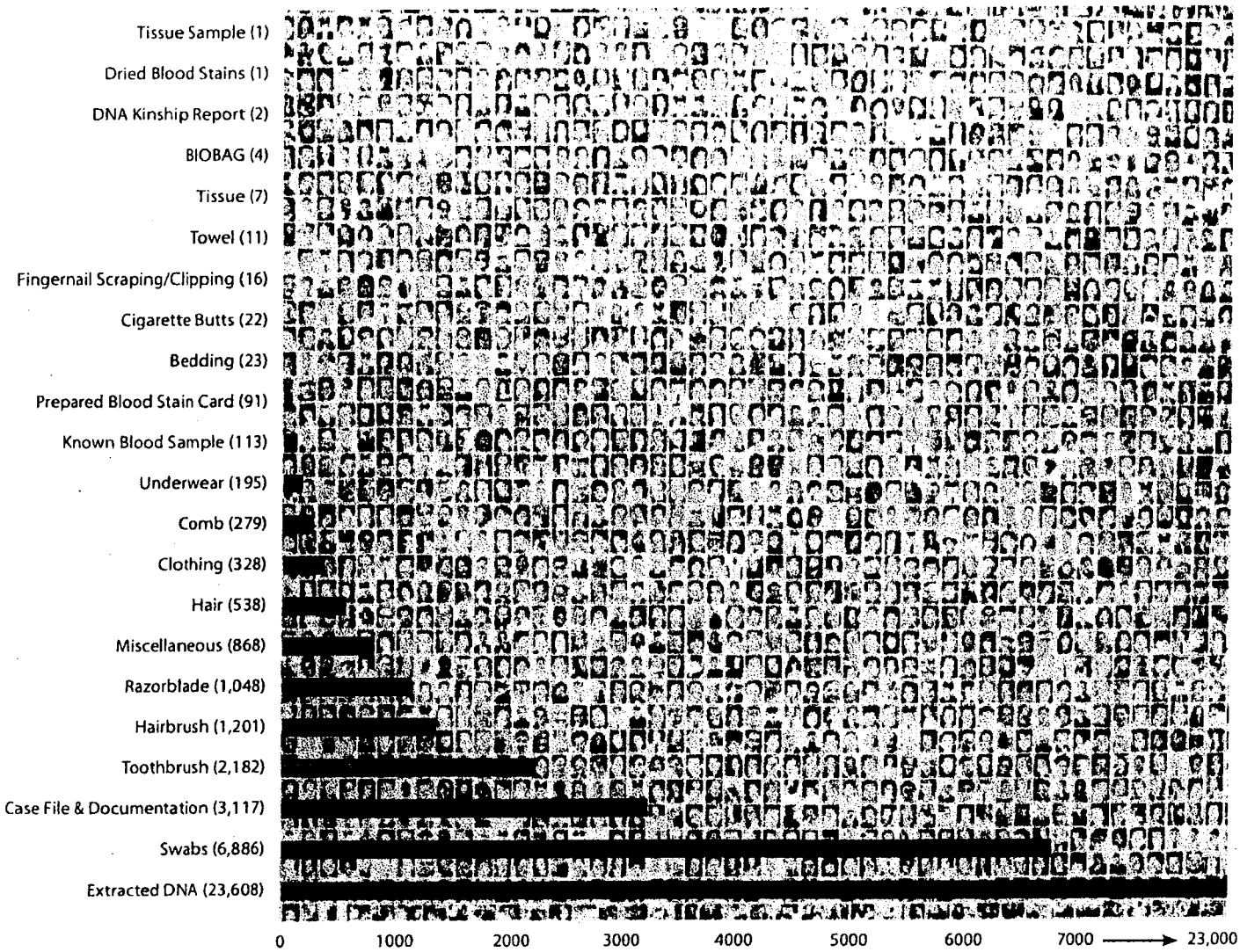
1985	Dr. Alex Jeffreys develops RFLP probes
1988	FBI begins RFLP casework
1993	FBI begins PCR STR casework
1998	FBI initiates CODIS with 13 STR loci
1999	FBI and other labs stop RFLP casework
2002	FBI initiates mtDNA casework
2004	FBI initiates mtDNA regional labs

Forensic labs continue to push the sensitivity threshold even lower by performing PCR amplification on select regions of the DNA molecule. A number of benefits arise as analysis techniques improve. These include high throughput potential and an overall decrease in turnaround time for most DNA typing casework. Before recent improvements in the technology (known as STR/PCR technology, referred to earlier as PCR STR on page 4), attempts in profiling degraded DNA samples usually produced inconclusive results. Now, forensic labs even have some success in obtaining profiles from fragmented and degraded DNA samples at disaster sites such as TWA Flight 800[17] and Swiss Air Flight 111.[18]

17 Jack Ballantyne, "Mass disaster genetics," *Nature Genetics* 15(4):329–331 (1997).

18 Butler report.

Figure 1: Personal Effects of World Trade Center Victims Collected for DNA Analysis



The World Trade Center (WTC) disaster of September 11, 2001, presented the forensic science community with the challenge of analyzing a large number of seriously degraded victim samples. Developing profiles from victims of the WTC with **single nucleotide polymorphism** (SNPs) and mitochondrial technology lowered the sensitivity threshold bar even further. Personal effects from victims were collected from around the world to analyze and compare to victim DNA profiles (see Figure 1).[19] It was agreed by the New York City Office of the Chief Medical Examiner (NYCOCME) and the New York State Police (NYSP) that the personal effects would be analyzed at the NYSP Forensic Investigation Center in Albany. The NYCOCME would analyze the victim samples. The two agencies also worked together to design and implement an evidence bar code tracking system and an intralaboratory network to compare victim and personal effect profiles. On April 3, 2005, four years and at least $80 million later, this unprecedented identification effort ended. Of the 2,749 victims, 1,592 were identified by a variety of forensic techniques. Only 111 identifications were made

19 President's DNA Initiative, *Lessons Learned From 9/11: DNA Identification Mass Fatality Incidents*, NCJ 214781 (Washington, D.C.: U.S. Department of tice, National Institute of Justice, September 2006) at p. 59.

in the last 2 years from the 19,915 tissue samples recovered from the WTC site. The remaining samples have been archived in climate-controlled storage awaiting even more sensitive DNA techniques in the future.[20]

The latest forensic technology that shows considerable promise in exploiting greater sensitivity in DNA typing is **low copy number** (LCN). Armed with this latest technology, forensic scientists in the near future may be able to routinely obtain a complete DNA profile from only a suspect's fingerprint.[21] Skin cells from a latent fingerprint can yield a DNA profile. An unidentifiable latent fingerprint could then be used to identify a suspect at a crime scene through the use of DNA. The DNA profile from the latent print could also be used to add probative weight to a latent print that is identified to a suspect. There are also partially degraded DNA profiles that could be compared to a suspect's CODIS DNA if the law enforcement agency has established identification with fingerprints.

In the future, we may see well educated and highly trained investigators or forensic scientists arrive at a crime scene equipped with an ultramodern hand-held "laboratory on a chip" DNA profiling device. Researchers are already in the early stages of validating such prototypes of a portable DNA profiling unit.[22] It is a short leap to envisioning the possibility of recovering physical evidence and processing it on-site. At the crime scene, a DNA profile will be produced, and through interface with flagged criminal history databases, the case detective is informed of the identity of a prime suspect.

Legal Strategies to Obtain DNA Samples

A DNA sample can be obtained by any of four basic legal strategies:[23]

Voluntary

A suspect may be asked to voluntarily submit a DNA sample to be compared to a casework forensic sample. A blood draw was originally used for the sample, but now it is more common to use a **buccal swab**: a small toothbrush or cotton swab that is rubbed against the inside of the cheek to collect inner-mouth epithelial cells for DNA analyses.

Court Order

A court determines that there is reasonable cause to authorize a law enforcement agency to collect a DNA sample from a suspect for comparison to a forensic sample.

Law

A statute authorizes the collection of a DNA sample from a defined group of individuals, such as convicted offenders or arrestees, for inclusion in the State DNA database.

Abandonment

The suspect gives up control and possession of an item that contains his DNA. For example, a cigarette butt is smoked by a suspect and then discarded. A detective observes the suspect abandon the cigarette butt and leave the immediate area. The detective recovers the cigarette butt.

20 Eric Lipton, "At Limits of Science, 9/11 ID Effort Comes to End," *New York Times*, April 3, 2005, Section I, Page 29.

21 F. Alessandrini, et al., "Fingerprints as evidence for a genetic profile morphological study on fingerprints and analysis of exogenous and individual factors affecting DNA typing," *J. Forensic Science* 48(3): 1–7 (2003); and A. Barbaro, et al., "Anonymous letters? DNA and fingerprints technologies combined to solve a case," *Forensic Science International* 146 Suppl: S133–S134 (2004).

22 Cheuk-Wai Kan, et al., "DNA sequencing and genotyping in miniaturized electrophoresis systems," *Electrophoresis* 25: 3564–3588 (November 2004).

23 Steve Hogan, Deputy Counsel, New York State Police, personal conversation with Mark Dale, Director, Northeast Regional Forensic Institute, May 25, 2005.

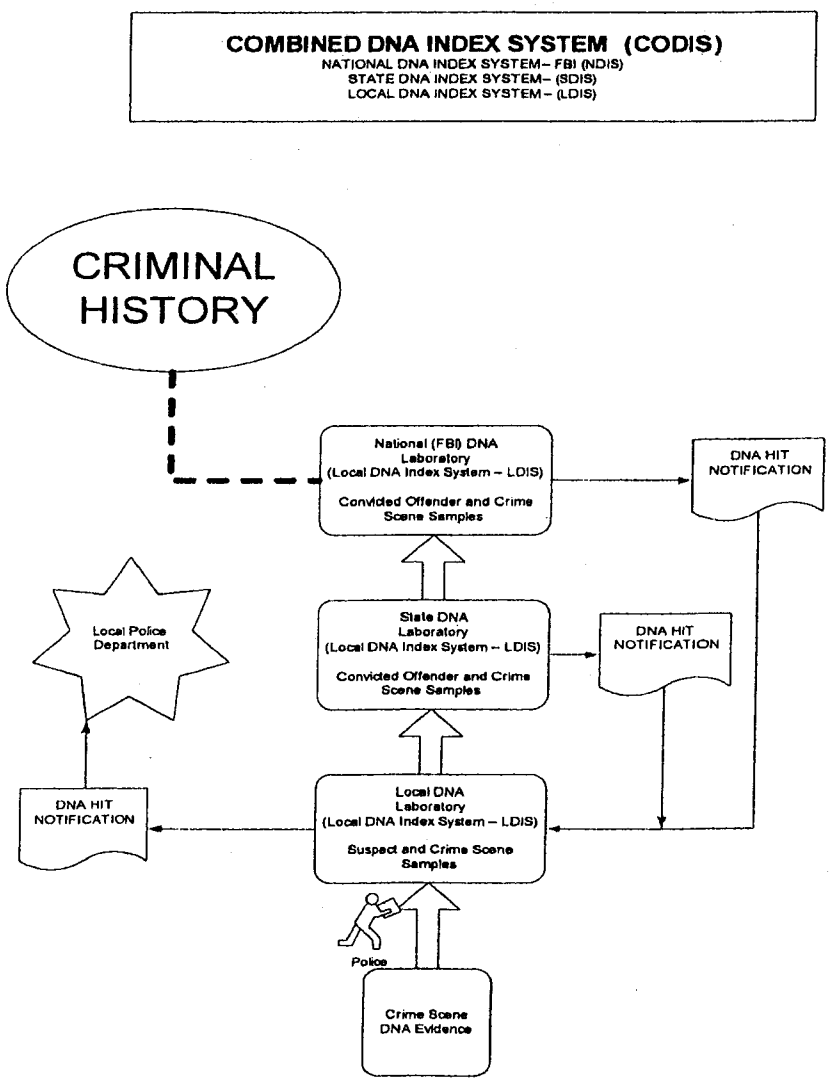
CODIS: The Combined DNA Index System

Sponsored by the FBI, the Combined DNA Index System—CODIS—began as a pilot project with 14 participant State and local laboratories in 1990. Today, the FBI Laboratory's CODIS Unit is responsible for the software used by 177 Federal, State, and local forensic DNA laboratories that participate in the National DNA Index System (NDIS), for the operation of the National DNA Index, and for the support of the NDIS Procedures Board. Participation in NDIS is governed by a Memorandum of Understanding between the States and the FBI, as well as NDIS Operational Procedures.[24]

The primary performance measure for CODIS is a "confirmed match," commonly referred to as an "Investigation Aided" match, due to the inherent complexity in determining the results that arise from follow-up to the DNA hit report. For example, although a DNA database match may have identified a possible assailant, the police or prosecutor may elect not to arrest due to lack of cooperation from the victim, or because of the time barrier imposed by a statute of limitations, or because further investigation might reveal that the suspect identified through the DNA match could not have committed the crime, but may have had access to the crime scene or related physical evidence.

When a hit occurs in CODIS between laboratories within a State or between profiles contributed from different States, the CODIS Administrator for the State laboratory first confirms the identity and the underlying qualifying offense for which the DNA sample of the convicted offender was taken. In some jurisdictions, the State DNA Index System (SDIS) laboratory may conduct additional confirmatory analyses of the convicted offender DNA sample. A notification is then made to the two laboratories that they have a hit in CODIS. Laboratories then contact the respective police departments and prosecutors and inform them of the hit. (See Figure 2.) The hit provides reasonable cause to collect a final confirmatory DNA sample from the convicted offender, once identified and located, usually with the assistance of the criminal history record. This DNA sample is then compared to the actual evidence in the case as the final quality control check for the entire CODIS system. The hit could also provide linkage to other unsolved or solved cases.

Figure 2: The CODIS System



[24] Callaghan letter.

Scientific Advances and Expanded Applications of DNA Analysis

Although the nation's justice system has placed greater emphasis on DNA identification over the past 20 years, in crimes of violence the utility of DNA typing reaches further. The use of DNA testing for linking a suspect to a violent crime, determining serial crimes, reconstructing an accident, and exculpating the innocent is powerful technology. However, DNA is proving to be an ever more remarkable tool as its potential to be applied in other criminal justice-related situations is increasingly being explored. This section explores some nontraditional applications of DNA technology that may assist in investigations today and in the future.

Lesser Offenses

The New York City Police Department (NYPD) leveraged DNA technology to solve crimes not usually associated with DNA analysis, such as burglary, assault, and larceny.[25] Conceptualized from data presented in the Bureau of Justice Statistics report *Recidivism of Sex Offenders Released from Prison in 1994*,[26] the NYPD Laboratory's Biotracks program is a pilot project focused on one particular geographic area: Queens County. Crime scene response teams were trained to identify probative items that might contain biological evidence (e.g., cigarette butts, clothing, and drink containers with possible saliva) and to submit them to the laboratory for processing. The goals of the Biotracks program were to (1) solve crimes involving the commission of lesser offenses—crimes for which physical evidence is often not collected or, when collected, is not usually subjected to DNA analysis; and (2) determine the extent to which DNA from these crime scenes could be linked to more serious crimes such as rapes or homicides. The program obtained a hit rate of over 30% and identified linkages between lesser offenses with open rape and homicide cases. Due in part to the success and lessons learned from Biotracks, the New York City Medical Examiner's Office is planning to "vastly expand its forensic biology laboratory, which will ultimately redefine the way difficult-to-solve crimes, such as home burglaries and stolen property offenses, are investigated and prosecuted."[27]

Table 3 depicts the number of arrests for lesser and violent offenses attributed to the 38 offenders identified in the Biotracks program. The offenders clearly possessed a history of both violent and lesser offenses. Table 4 depicts the prior convictions for the 38 offenders identified in the Biotracks program. There was a clear history of convictions from both lesser offense and violent crimes. Case-to-case linkages were developed between a violent crime and lesser offenses (2004 burglary/1994 rape), and between a burglary and a robbery. The Biotracks program has provided valuable leads for law enforcement that have resulted in arrests and convictions. The 29 arrestees from the Biotracks program resulted in 18 guilty pleas to 27 offenses, while 3 were indicted for 4 offenses each. Eighty percent of these individuals were convicted of violent felonies, one individual for homicide, and one individual for four sexual offenses.[28]

25 *DNA in "Minor" Crimes Yields Major Benefits in Public Safety* (Washington, DC: U.S. Department of Justice, National Institute of Justice, November 2004).

5 Langan report.

27 Reuven Blau, "City ME's Office Expands Crime Evidence Duties," *The Chief-Leader* (New York City), September 2, 2005, at p.1.

28 Source: New York City Police Department Laboratory.

Table 3: Recidivism Prior Arrests of Offenders in Biotracks Program

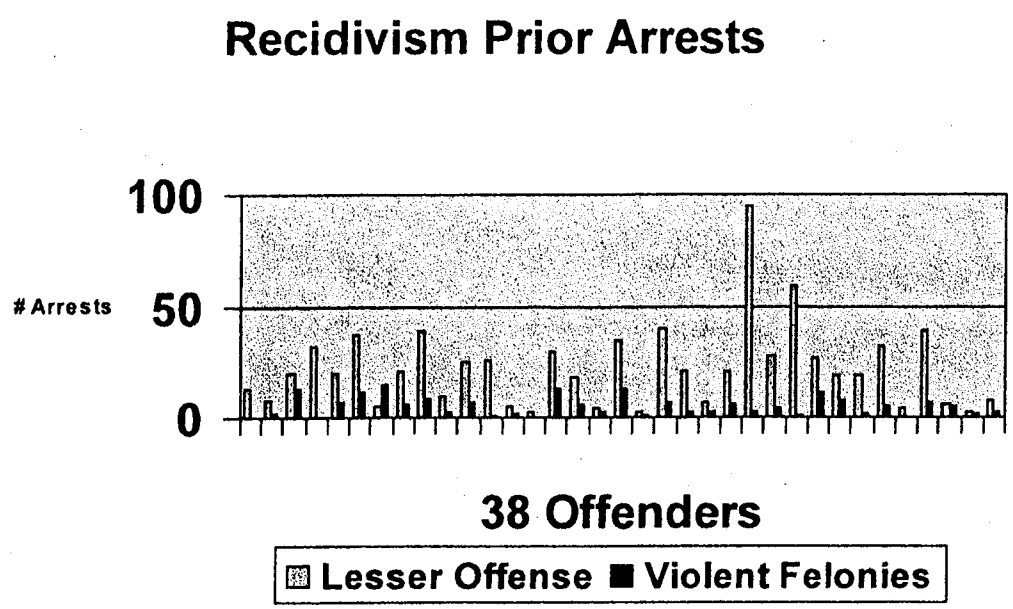
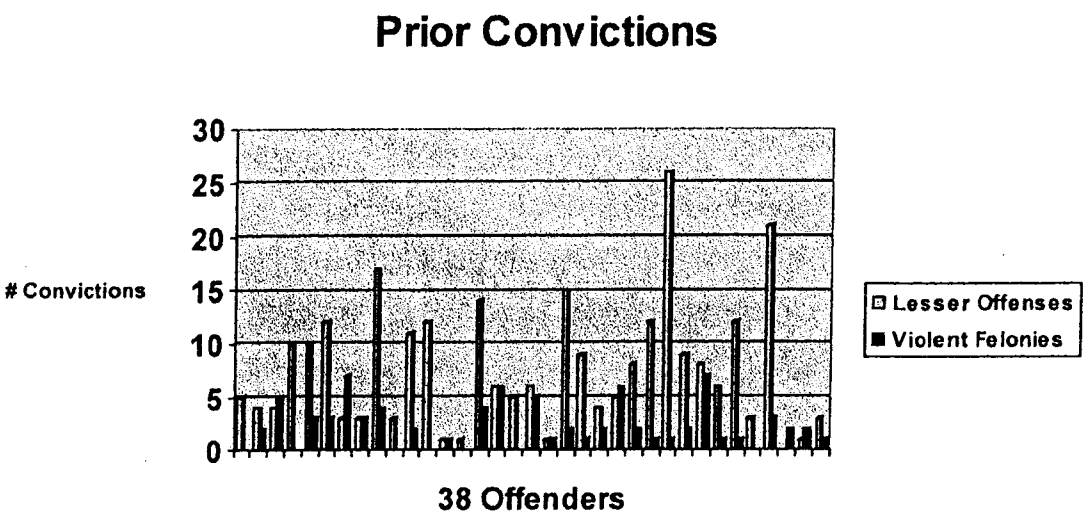


Table 4: Prior Convictions of Offenders in Biotracks Program



Feline and Canine DNA

The American Pet Products Manufacturers ssociation's (APPMA) *2003/2004 National Pet Owners Survey* reports that the number of U.S. pet-owning households has increased by more than 10 million since 1992. Current methods used to identify dog and cat biological material are nuclear STR analysis and mitochondrial (mtDNA) analysis. These techniques use the same procedures that are used by crime laboratories worldwide to identify human biological material. Animal DNA evidence is most often contributed when the animal falls victim to a crime, e.g., shooting death of a dog during a burglary, or when the animal is a companion to a suspect, e.g., shedding of animal hair at the crime scene.

In 2002, Danielle Van Dam was reported missing from her home in San Diego, California. She was found dead in a remote area 25 days later. David Westerfield, the Van Dam family's neighbor, was arrested. Among other evidence, investigators had recovered dog hairs similar to the Van Dams' Weimaraner dog in Westerfield's motor home, on quilt, and in the lint trap of his dryer. Canine fR typing, performed by the Veterinary Genetics Laboratory at the University of California at Davis, was unsuccessful. An mtDNA match between the evidence hairs and the Van Dam family dog was entered as evidence.

Hair, of both human and animal origin, is a common piece of evidence from a crime scene. Because people and their pets live in close proximity, the recovery of animal hair evidence is quite possible. However, animal hair evidence is often overlooked as a critical form of evidence. Animal hair, in particular, can be found on clothing, in homes, and in cars. Because hair is easily transferred in daily activities, transfer of evidence occurs at every crime scene. The challenge is to identify this useful evidence. The passive transfer of animal hair can show a link to a crime scene. Analysis of canine evidence has been reported in scores of criminal investigations and trials nationwide.

Missing Persons DNA Databases

The University of North Texas Health Science Center has created the Texas Missing Persons DNA Database, an mtDNA database that contributes mtDNA data to the national database for searches of missing persons. The objective of this database is to assist in the identification of kidnapped children, runaway children, and skeletal unidentified human remains. The Missing Persons Clearinghouse for the State of Texas reports that 70,000 people are reported missing each year in that State, with approximately 7,000 active cases at any given time.

A national missing persons DNA database is administered by the FBI. DNA exemplars from missing persons are searched against unidentified human remains. For example, a crime victim's remains are uncovered in a shallow grave, or a deceased victim is found with no form of identification with the body. The DNA from the unknown victim is searched against the missing person DNA data in the hopes of making an identification.

Near-match Searching

Close biological relatives—parents, children, and siblings—are known to often have similar DNA profiles. Near-match searching linked two of the September 11, 2001, American Airlines Flight 11 hijackers as being brothers. Florida has employed near-match searching to identify the fathers of several babies born to rape victims. The Denver District Attorney's Office, in the first case in which the FBI has allowed near-match search information to be shared between States, is using identifying information for a convicted Oregon felon as an investigative lead to try to identify a suspect in a rape case that occurred three years earlier.[29]

29 Richard Willing, "DNA database can flag suspects through relatives," *USA Today*, August 23, 2006, page 2A.

Is the DNA Match Linked with the Criminal History Record Information?

No. Because an individual's DNA has the potential to reveal genetic information about that individual and his/her family, privacy advocates continue to voice concerns about the proliferation of DNA offender databases and access to the DNA data in those databases. The "eugenics" argument is that genes, unlike fingerprint patterns, contain information about an individual's racial and ethnic heritage, disease susceptibility, and even behavioral propensities.[30] Insurance companies, employers, or government agencies might raid the data for health-related information, leading to genetic discrimination against individuals or groups. Behavioral researchers will not be able to resist a database of convicted criminals.

The FBI Laboratory Division sponsored meetings with privacy and defense advocates during the information gathering stages for CODIS. As early as 1991, the FBI laboratory issued "Legislative Guidelines for DNA Databases," stating that personal information stored in CODIS will be limited ...CODIS will not store criminal history information." The policy of maintaining limited information in CODIS remains today.[31]

A similar policy has been adopted by many States. Illustrative of State DNA databases laws are:

- The California Penal Code provides that "DNA and other forensic identification information retained by the Department of Justice ...shall not be included in the state summary criminal history information."[32]
- A Florida statute provides that "any analysis, when completed, shall be entered into the automated data maintained by the Department of Law Enforcement ... and shall not be included in the state central criminal justice information repository."[33]
- A Rhode Island law provides that "all DNA typing results and the DNA records shall be stored in a computer database after all personal identifiers have been removed."[34]

Clearly, there is considerable agreement at both the national and State levels that it is inappropriate to include personal information in DNA databases, including criminal history record information that typically includes physical, biographic, and other descriptive data.

Is the Criminal History Record Information Linked with the DNA Match?

Again, the answer is no. In May 2005 none of the 31 State criminal history repositories responding to a survey by SEARCH, The National Consortium for Justice Information and Statistics, reported making provision for the inclusion of a subject's DNA profile on the criminal history record. However, 13 of the 31 States reported employing a flag on the criminal history record to indicate that a sample had been collected, including 6 States that indicate whether the profile is located on a local, State, or national database.[35]

30 Simon A. Cole, "Fingerprint Identification and the Criminal Justice System: Historical Lessons for the DNA Debate," in *The Technology of Justice: DNA and the Criminal Justice System*, David Lazer (ed.) (Cambridge, MA: John F. Kennedy School of Government, Harvard University, June 2003) at p. 19.

31 Callaghan letter.

California Penal Code § 299.5(d)).

33 Florida Statutes § 943.325(1)(d)(6)).

34 Rhode Island General Laws § 12-1.5-10 (1).

35 The 13 States were California, Illinois, Kansas, Kentucky, Maine, Michigan, New Jersey, New York, Oregon, Pennsylvania, South Carolina, Tennessee, and Washington.

It is not surprising that a reference to personal identifying information is found on the rap sheet. State criminal history records typically include an identification segment with a provision to record and display some, if not all, of the following personally identifying descriptive elements:

- Name
- FBI Number
- State Identification Number
- Correctional Number
- Social Security Number
- Miscellaneous Identification Number
- Driver's License Number
- Place of Birth
- Date of Birth
- Country of Citizenship
- Sex
- Race
- Height
- Weight
- Eye Color
- Hair Color
- Skin Tone
- Fingerprint Pattern
- Photo Available
- Scars, Marks, and Tattoos
- Employment Information
- Residence

In its December 1995 report, the National Task Force on Increasing the Utility of the Criminal History Record (Criminal History Utility Task Force) recognized the growing use of DNA evidence in criminal cases and the emergence of databases of DNA information. Among its recommendations, the Task Force proposed that a data element be added to the identification data on the criminal history record to indicate the existence and location of DNA samples or profile data. For this data element, location would be indicated by the name and the Originating Agency Identifier (ORI) of the agency holding the information.[36]

In 1996, the Joint Task Force (JTF) on Rap Sheet Standardization, with representation from the FBI Criminal Justice Information Services Division and its Advisory Policy Board, the National Law Enforcement Telecommunications System, and SEARCH, was formed to implement the recommendations of the Criminal History Utility Task Force by developing a standardized criminal history format for interstate transmission. After much discussion, the JTF opted to establish an element that allows for two kinds of reporting relating to DNA. First, the most common and useful is to report that a DNA sample has been taken from the subject, has been coded, and is available from a specific agency. Second, and not normally included in a criminal history response, is the optional ability to transmit the actual detail of the DNA profile. The latter capability was included should implementations evolve that would be facilitated by the transmittal of the detail code.[37] Some States that have yet to adopt the standardized criminal history record have instead opted to note on the rap sheet when an inmate has been convicted of a designated offense, and if a DNA profile is available in CODIS.[38]

36 SEARCH, The National Consortium for Justice Information and Statistics, *Increasing the Utility of the Criminal History Record: Report of the National Task Force* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, December 1995).

37 This specification is available at **http://it.ojp.gov/jsr/common/list1.jsp?keyword=1&forlist=1&community=yes**.

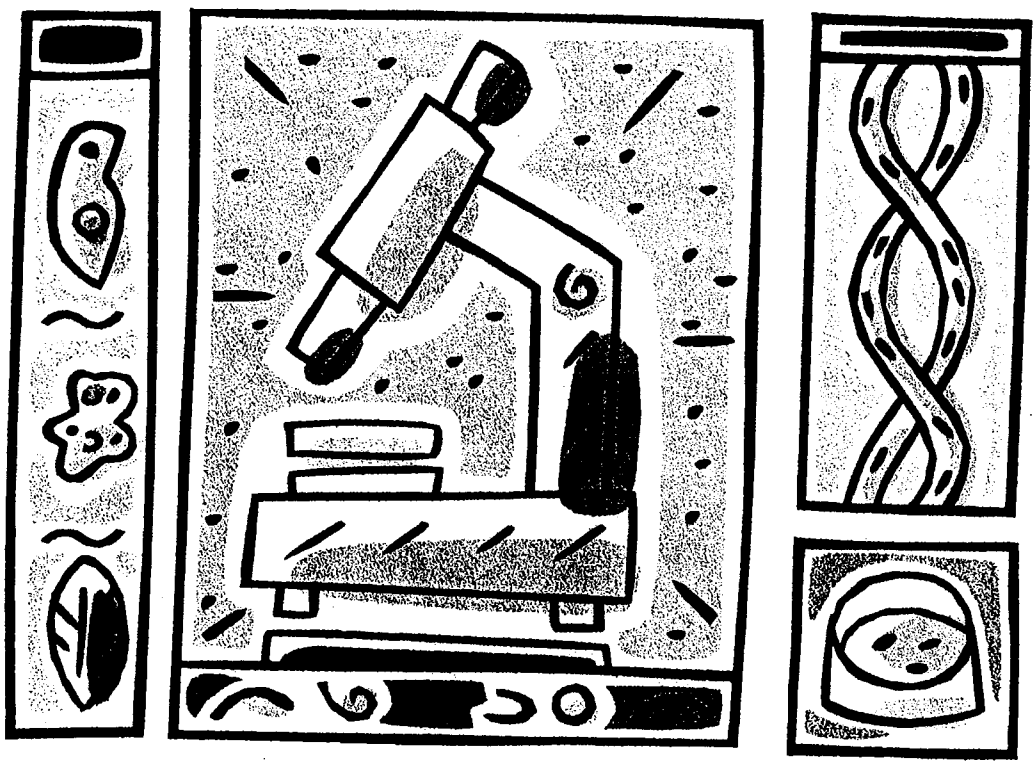
38 Source: New York State Division of Criminal Justice Services, 2005.

Sharing Information between CODIS, AFIS, and Criminal History Systems: Potential Benefits

The technologies of the DNA database (CODIS), fingerprint comparison (AFIS), and criminal history record systems are highly effective, albeit costly, tools for law enforcement. A detective no longer needs to identify a suspect before a latent fingerprint recovered from a crime scene is compared against a file of fingerprints of persons previously arrested in the jurisdiction, State, or nation. These automated searches and comparisons have become routine. The exchange of limited information among CODIS, AFIS, and criminal history records would provide law enforcement with the awareness that potential probative forensic evidence exists that involves a convicted or arrested offender.

Benefits derived from increased connectivity among different forensic technologies should be explored further. Of major benefit is the potential to increase the accuracy, timeliness, and utility of information provided to the criminal justice community. More hits, more exclusions, and a higher certainty of identification can be realized by combining two identification technologies (CODIS and AFIS) with criminal history databases.

Legislation authorizing the expansion of DNA databases to include new offenses often includes two components. The first is an effective date at which time all persons convicted of the new offenses are required to provide a DNA sample. The second provision may be retroactive and requires the police to have knowledge of past convictions for the newly authorized offenses. An accurate identity and criminal history of the offender is critical for the acquisition of the DNA sample. Technology can provide an electronic comparison of the databases (criminal history, CODIS, and AFIS) to identify who is required to provide samples, and who has already provided samples for the database. This connection of the AFIS, CODIS, and criminal history databases is even more critical when applied to violent crime and sexual offender registries. Law enforcement can then work more efficiently and accurately to obtain DNA samples, providing more timely leads to criminal investigators.



Conclusion

The power of DNA technology both identifies and excludes suspects. In criminal justice applications, the data contained in the DNA profile is held separate and apart from the identification and other information, which constitute the criminal history record, a circumstance that reflects broad-based privacy concerns about the potential for misuse of DNA profile information. While there is clear consensus that personally identifying information should not be present in DNA databases, it is that very identifying information that an investigator needs to connect the DNA match to a suspect.

The inclusion of DNA profile availability and location information within the criminal history record holds out the promise of several significant operational and public safety benefits. If a suspect has a DNA profile on the State DNA database and the evidence in that case has been entered into the database with no resulting matches, then law enforcement may need to consider directing investigative efforts elsewhere. Knowledge that a DNA sample has not been provided when one is statutorily required is also beneficial, as it will promote the collection of samples without which a correspondent reduction in public safety could occur, or more recidivistic crimes remain unsolved.

Mechanisms for coupling criminal history information with select information about the availability of DNA data are readily available but have not been widely implemented—to the detriment of a more efficient justice system. The Interstate Criminal History Transmission Specification provides for an indication on the rap sheet that a DNA sample has been taken from the subject, has been coded, and is available from a specific agency. Similarly, several States, without implementing the transfer of standardized criminal history, have opted to flag the rap sheet with some or all of this information.

At its December 2005 meeting, the FBI Criminal Justice Information Services (CJIS) Advisory Policy Board (APB)[39] recommended to the FBI Director several enhancements to address the inclusion of DNA flags within the Interstate Identification Index, the national criminal history record exchange system administered by the FBI, including:

(1) allowing States to flag whether a subject's DNA profile is registered, and where that profile is located;

(2) allowing a DNA indicator to be used to indicate that DNA profiles are available at both the State and national levels;

(3) a proposed protocol for the FBI Laboratory Division to inform the Criminal Justice Information Services Division of Federal convicted offender DNA registration status data; and

(4) the inclusion of DNA indicator information on the criminal history record information response to select inquiries.

In sum, these approaches respect privacy concerns by keeping the barrier in place that prevents criminal history information and other personally identifying information from being included in DNA databases, while at the same time enhancing investigative capabilities through a more informative criminal history record.

39 The FBI CJIS APB is chartered under provisions of the Federal Advisory Committee Act of 1972 to advise the FBI Director on criminal justice information services issues. The APB is comprised of a network of working groups and subcommittees. The members represent local, State, and Federal law enforcement and criminal justice agencies throughout the United States, its territories, and Canada. Source: *CJIS Advisory Policy Board Advisory Process Information Handbook*, 2005.

Bibliography

American Society of Crime Laboratory Directors Laboratory Accreditation Board International (ASCLD/LAB), ISO 17025 program (2003). See http://www.ascld-lab.org.

Alessandrini, F., M. Cecati, M. Pesaresi, C. Turchi, F. Carle, and A. Tagliabracci, "Fingerprints as evidence for a genetic profile morphological study on fingerprints and analysis of exogenous and individual factors affecting DNA typing," *J. Forensic Science* 48(3): 1–7 (2003).

Asplen, Christopher H., *The Application of DNA in England and Wales*, NCJ 203971 (London: Smith Alling Lane, January 2004). Available through the National Criminal Justice Reference Service of the U.S. Department of Justice at http://www.ncjrs.gov/pdffiles1/nij/grants/203971.pdf.

Ballantyne, Jack, "Mass disaster genetics," *Nature Genetics* 15(4): 329–331 (1997).

Barbaro, A., P. Cormaci, A. Teatino, A. La Marca, and A. Barbaro, "Anonymous letters? DNA and fingerprints technologies combined to solve a case," *Forensic Science International* 146 Suppl: S133–S134 (2004).

Blau, Reuven, "City ME's Office Expands Crime Evidence Duties," *The Chief-Leader* (New York City), September 2, 2005, at p.1.

Butler, J.M., *Forensic DNA Typing: Biology, Technology, and Genetics of STR Markers*, 2nd ed. (Burlington, MA: Elsevier Academic Press, 2005).

Callaghan, Thomas F., Letter to Owen M. Greenspan, June 16, 2005.

Cole, Simon A., "Fingerprint Identification and the Criminal Justice System: Historical Lessons for the DNA Debate," in *The Technology of Justice: DNA and the Criminal Justice System*, David Lazer (ed.) (Cambridge, MA: John F. Kennedy School of Government, Harvard University, June 2003). Available at http://www.ksg.harvard.edu/dnabook/.

Federal Bureau of Investigation, "CODIS, Combined DNA Index System" (2005). See http://www.fbi.gov/hq/lab/codis.

Federal Bureau of Investigation, Criminal Justice Information Services Division, *CJIS Advisory Policy Board Advisory Process Information Handbook* (Clarksburg, WV: 2005). Available at http://www.fbi.gov/hq/cjisd/web%20page/pdf/cchandbook.pdf.

Hickman, Matthew J. and Joseph L. Peterson, *Census of Publicly Funded Forensic Crime Laboratories: 50 Largest Crime Labs, 2002*, Fact Sheet series, NCJ 205988 (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, September 2004). Available at http://www.ojp.usdoj.gov/bjs/abstract/50lcl02.htm.

Hogan, Steve, J.D., Deputy Counsel, New York State Police, personal conversation with Mark Dale, May 25, 2005.

Jeffreys, Alec J., V. Wilson, and S.L. Thein, "Individual-specific 'fingerprints' of human DNA," *Nature* 316: 76–79 (July 4–10, 1985).

Kan, Cheuk-Wai, Christopher P. Fredlake, Erin A.S. Doherty, and Annelise E. Barron, "DNA sequencing and genotyping in miniaturized electrophoresis systems," *Electrophoresis* 25: 3564–3588 (November 2004). Abstract available at http://www3.interscience.wiley.com/cgi-bin/abstract/109800906/ABSTRACT.

Langan, Patrick A., Erica L. Schmitt, and Matthew R. Durose, *Recidivism of Sex Offenders Released from Prison in 1994*, NCJ 198281 (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, November 2003). Available at http://www.ojp.usdoj.gov/bjs/abstract/rsorp94.htm.

Lipton, Eric, "At Limits of Science, 9/11 ID Effort Come to End," *New York Times*, April 3, 2005, Section I, Page 29.

Lovrich, Nicholas P., Travis C. Pratt, Michael J. Gaffney, Charles L. Johnson, Christopher H. Asplen, Lisa H. Hurst, and Timothy M. Shellberg, *National Forensic DNA Study Report: Final Report*, NCJ 203970 (Pullman, WA: Washington State University and London: Smith Alling Lane, February 2004). Available through the National Criminal Justice Reference Service of the U.S. Department of Justice at **http://www.ncjrs.gov/pdffiles1/nij/grants/203970.pdf.**

Miller, Ted R., Mark A. Cohen, and Brian Wiersema, *Victim Costs and Consequences: A New Look*, Research Report series, NCJ 155282 (Washington, DC: U.S. Department of Justice, National Institute of Justice, January 1996). Available at **http://www.ojp.usdoj.gov/nij/pubs-sum/155282.htm.**

Mullis, K., F. Faloona, S. Scharf, R. Saiki, G. Horn, and H. Erlich, "Specific enzymatic amplification in vitro: the polymerase chain reaction," *Cold Spring Harbor Symposium on Quantitative Biology* 51: 263–273 (1986).

New York City Police Department Laboratory, Biotracks Program, 2005. This pilot project is now being expanded to all boroughs of New York City under the direction of Dr. Peter Pizzola, Director of the New York City Police Department Laboratory.

Parker, Chauncey G., Memorandum to all New York State Criminal Justice Agencies (2005).

President's DNA Initiative, *Lessons Learned From 9/11: DNA Identification in Mass Fatality Incidents*, NCJ 214781 (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, September 2006). Available at **http://massfatality.dna.gov/.**

SEARCH, The National Consortium for Justice Information and Statistics, *Increasing the Utility of the Criminal History Record: Report of the National Task Force*, NCJ 156922 (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, December 1995). Available at **http://www.ojp.usdoj.gov/bjs/abstract/iuchr.htm.**

U.S. Department of Justice, National Institute of Justice, *DNA in "Minor" Crimes Yields Major Benefits in Public Safety*, NCJ 207203 (Washington, DC: November 2004). Available at **http://www.ojp.usdoj.gov/nij/pubs-sum/207203.htm.**

Virginia Department of Forensic Science, "DNA Database Statistics" (2005). For current data, see **http://www.dfs.state.va.us/statistics/index.cfm.**

Wickenheiser, Ray A., "Business Case for Forensic DNA," Master's Thesis, Master of Business Administration, University at Louisiana, Lafayette (2002).

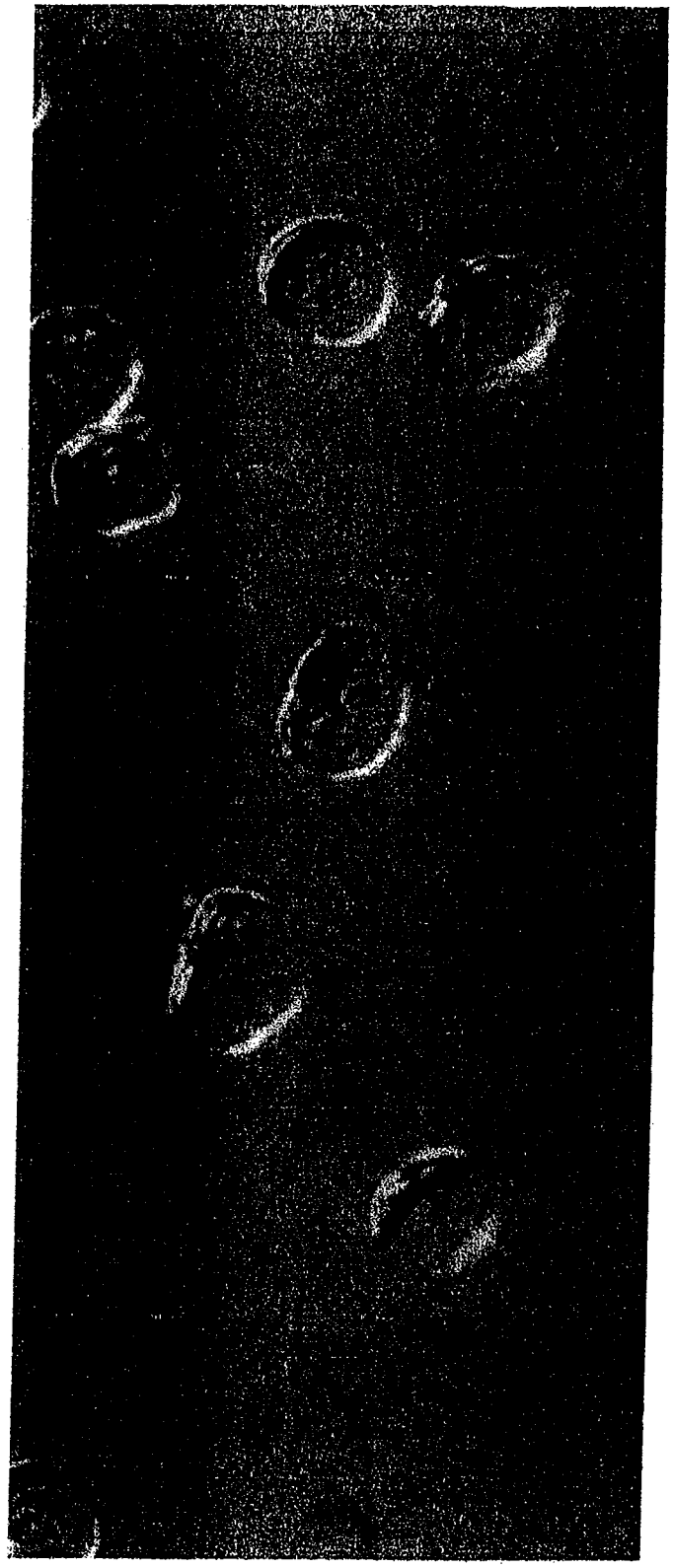
Willing, Richard, "DNA database can flag suspects through relatives," *USA Today*, August 23, 2006, page 2A.

About the Authors

W. Mark Dale is Director of the Northeast Regional Forensic Institute (NERFI) located at the State University of New York at Albany. NERFI provides graduate-level training and instruction in forensic DNA programs and serves as a resource for law enforcement and other governmental forensic laboratories through development of customized DNA academies. Mr. Dale previously was Director of the New York City Police Department Laboratory, Director of the New York State Police Laboratory System, and Director of the Washington State Patrol Laboratory System, and is a past President of the American Society of Crime Laboratory Directors.

Owen Greenspan is Director of the Law and Policy Program for SEARCH, The National Consortium for Justice Information and Statistics. SEARCH, a nonprofit organization of the States, is dedicated to improving the quality of justice and public safety through the use, management, and exchange of information; application of new technologies; and responsible law and policy, while safeguarding security and privacy. Mr. Greenspan previously was Deputy Commissioner with the New York State Division of Criminal Justice Services responsible for the operation of the State's criminal records repository, provision of information technology services to the State's justice agencies, and certification of police training. He is retired from the New York City Police Department, where he last served as Commanding Officer of the Identification Section.

Dr. Donald Orokos is a tenured faculty member at the State University of New York at Albany in the Department of Biology, where he teaches cell biology and immunology. Dr. Orokos also serves as the Associate Director of NERFI, and provides administrative oversight to all academic forensic programs.



Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:41 AM
To: Rosengarten, Clark
Subject: FW: Docket # OAG 121

Attachments: 07.31.07 AWA Guidelines Comments.doc

07.31.07 AWA Guidelines Commen..

-----Original Message-----
From: Kay Cohen [redacted]
Sent: Wednesday, August 01, 2007 7:01 PM
To: GetSMART
Subject: Docket # OAG 121

Please accept these comments on the Guidelines for implementation of the ADam Walsh Act from the National Criminal Justice Association.

Docket No. OAG 121

NCJA National Criminal Justice Association

July 31, 2007

Ms. Laura L. Rogers
Director
SMART Office
Office of Justice Programs
U.S. Department of Justice
810 Seventh Street, NW
Washington, DC 20531

Dear Ms. Rogers:

On behalf of the National Criminal Justice Association (NCJA), I would like to offer comments on the proposed National Guidelines for Sex Offender Registration and Notification (Guidelines). We embrace the goals of the Adam Walsh Act and its implementation and applaud the work of the SMART Office of the U.S. Depart of Justice (Department) in drafting these proposed guidelines with limited resources and within severe time constraints. We thank you for this opportunity to suggest that some public policy decisions encompassed in the proposed guidelines should be reconsidered and restructured.

State-Tribal Collaboration

The lynch pin of the successful implementation of the Adam Walsh Act will be strong and effective collaboration between state and tribal governments. Whether tribes opt to exercise their right to be a registration jurisdiction or not, states and tribes within their jurisdictional boundaries will be required to partner on many aspects of the Act's implementation. For instance, even for tribes which become a registration jurisdiction, the Act provides that they are not required to duplicate notification and registration functions. There is a strong likelihood that tribes will chose to partner or share duties with the state in fulfillment of the requirements of the Act and we would support and encourage that type of state-tribal collaboration. Of necessity under any circumstance, tribes and states must work out the details of the process of initial registration, digitization of information required to be collected, procedures for verification in Indian Country, and linkages between the two systems. Since historically the federal government has functioned on a government-to-government basis with the tribes and provided criminal justice services and functions in Indian Country, most states and tribes have not developed systems and processes for working together in the justice setting. Furthermore, a tribe may choose to rescind their election at anytime

in the future, immediately and abruptly sending delegation of the Act to the state. Therefore, we believe it is critically important that states and tribes work together on implementation of the Act from the outset. We strongly encourage the U.S. Department of Justice to take a leadership role in fostering communication and coordination between states and tribes to ensure development of meaningful, effective and efficient collaboration.

State Notification Process

As mentioned above states will automatically be delegated authority over tribes which rescind their election at any time during the life of the Act. However, states will also be delegated authority over any tribe found in non-compliance any time in the future. Yet, the Guidance offers no mechanism for states to be kept informed of a tribe's election status and, hence, given no warning for when that shift in delegation authority could occur. Therefore, we request a process to be included in the Guidelines which allow states to be routinely and continually apprized of the status of the tribes within their jurisdictional boundaries.

Notice Requirements and the Definition of Jurisdiction

The Act defines a jurisdiction to include only tribes which have elected to become a Sex Offender Registration and Notification Act (SORNA) registration jurisdiction. The Guidelines provide for notification requirements to these tribes. We would strongly encourage the Department to broaden the Guidelines to include all tribes regardless of their registration status as jurisdictions who should receive communication and notification by the Department and by the states. We support strong communication and notice that is inclusive rather than exclusive and keeps all parties regardless of registration status in the communication loop and full process.

Process for Determining Substantial Compliance

Typically, federal laws requiring action and compliance on the part of states specify considerable detail on the process for coming into compliance, opportunities to cure non-compliance and for communication mechanisms among the federal and state governments on process. These Guidelines however offer minimal direction to benchmarks and performance measures for the states and tribes. This could have particularly deleterious effects in the implementation of the Adam Walsh Act because of the complex relationship between the tribal and state entities and their roles in compliance. Since it is the state that will be assessed the financial penalties for non-compliance, including in the extreme for tribes found out of compliance with their registration election revoked, it is imperative the process and standards for determining substantial compliance be articulated and delineated as clearly as possible.

Role of Federal Prisons

The Guidelines state that federal prisons will not be required to conduct the initial registration on sex offenders as they are released from custody including the collecting of DNA samples, fingerprinting, photographing, and securing a digitized copy of the statute under which they were convicted. They will also not be required as state, local and tribal detention facilities will be to enter this information into the registry system. The Act requires offenders to register within three days in the jurisdiction where they will reside, are employed or attend school. Therefore those localities will

have to bear the burden of the initial processing costs for all offenders released from federal prisons. We urge instead that federal prisons be required to meet the initial registration requirements for all offenders released from federal custody as required of state and local detention facilities.

Creation of an Advisory Group

The Department of Justice should regularly convene an advisory group made up of state, tribal and local representatives to offer expertise and guidance in the many complex issues surrounding final implementation of the Act in the states and Indian Country. Other working group or subgroups should also be created as needed and determined by the larger advisory group to work with the Department in the implementation of SORNA. The issues require a further discussion among state, tribal, local and federal partners.

Technical Assistance and Training

We support the creation of the Sex Offender Management Assistance (SOMA) program under the Act to offset the costs of its implementation. To implement SORNA successfully state and tribes will need as much technical assistance and training as possible. We would encourage the Department to find ways to provide these services since it will likely result in higher compliance rates in all jurisdictions and implementation that is closer to the goals of SORNA as a whole.

We are concerned, however, with the concept of a bonus payment to states for "prompt compliance" with the Act. Particularly given the difficulty and complexity of developing a registry process between tribes and states we think this bonus payment system, no matter how worthy in concept, will disadvantage states with tribes in their boundaries. We are also concerned that the bonus payment will encourage states to adopt an exception to registration based on tribal court convictions for denial of a right to counsel which the language of the Guidelines permit with out an explanation of process, standards, documentation, redress, or review. We fear that this bonus payment concept, therefore, will serve to discourage real state/tribal collaboration and have the effect of further eroding tribal sovereignty.

Determination of Acceptance of Tribal Court Convictions

The Guidelines as mentioned previously permit the state to make a determination not to accept tribal court orders based upon a denial of right to counsel in the proceedings of the conviction. We encourage the Department to remove that authority from the states as it could invite abuse and undermines the respect and partnership that needs to exist between states and tribes in order to create an effective registry system. This authority also flies in the face of the work done to grant full faith and credit of tribal orders in the Violence Against Women Act and the work of domestic violence law for the last several years. No standards, documentation requirements, process for redress, or method for holding states accountable for such decisions is absent and is required if such authority remains in the Guidelines.

We appreciate this opportunity to comment on the Guidelines for implementation of the Adam Walsh Act. We would be remiss, however, if we did not indicate our overriding concern with the erosion of tribal sovereignty embedded in the Act. Tribes are not jurisdictions of the state. Rather, throughout American history, tribes have been recognized as having nation status. The Adam

Walsh Act implies a reduction in tribal sovereignty by delegating to the state enforcement of the Act on tribal lands and substituting state government for an historical federal government role.

If you have questions or would like to discuss any of these points further, please contact Kay Chopard Cohen at 202-448-1722 or kcohen@ncja.org.

Sincerely,

Cabell C. Cropper
Executive Director