

**From:** Nicholson, Bruce [REDACTED]  
**Sent:** Monday, April 30, 2007 12:33 PM  
**To:** OLPREGS  
**Cc:** Schwartz, Robert; Kennedy, Kristie; Hanna, Jack; Cardman, Denise  
**Subject:** ABA Comments on Interim Regulations to Adam Wals Act

**Follow Up Flag:** Follow up  
**Flag Status:** Red

**Attachments:** ABAComment AdamWalshActInterimRegs4-30-07.doc  
April 30, 2007

Mr. David J. Karp, Senior Counsel  
Office of Legal Policy  
Room 4509, Main Justice Building  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Karp:

Please accept receipt of the attached comments submitted on behalf of the American Bar Association on the interim regulations to the Adam Walsh Child Protection and Safety Act of 2006( Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA); OAG Docket No. 117. Please call me at [REDACTED] for any additional information you may require. Thank you.

E. Bruce Nicholson

E. Bruce Nicholson  
Legislative Counsel  
American Bar Association

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
E: [REDACTED]

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AMERICAN BAR ASSOCIATION

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April 30, 2007

Via Electronic Mail  
olpregs@usdoj.gov

Attn: Mr. David J. Karp, Senior Counsel  
Office of Legal Policy  
Room 4509, Main Justice Building  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

RE: Comments on the interim regulations to Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA); OAG Docket No. 117

On behalf of the American Bar Association, I am writing to express our opposition to the proposed captioned interim regulations that would apply SORNA retroactively to juvenile offenders.

ABA juvenile justice policy is set forth in 20 volumes of IJA-Juvenile Justice Standards ("Standards") developed by the Association in conjunction with the Institute of Judicial Administration. The Standards call for individualized treatment that is fair in purpose, scope and not arbitrary. These goals are set forth in the Standard Relating to Disposition:

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

The Standards set forth clear parameters for juvenile justice sanctions: the definition and application of sanctions should address public safety; give fair warning about prohibited conduct; and recognize "the unique physical, psychological, and social features of young persons."<sup>1</sup> The Standards, as well as

1. Standards Relating to Juvenile Delinquency and Sanctions, 1.1 Purposes.

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accepted research in developmental science, recognize that juveniles are generally less culpable than adults, and that their patterns of offending are different from those of adults.<sup>2</sup> Thus, ABA policy supports sanctions that vary in restrictiveness and intensity, and are developmentally appropriate and limited in duration.

Given the goals of the juvenile justice system and the transitory characteristics of juvenile offenders, ABA policy also limits the way juvenile records are compiled and disseminated. The Standards frown on “labeling” offenders, require very careful control of records, and prohibit making juvenile records public. In addition, “[a]ccess to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to juveniles, or an interference with the purposes of official intervention.”<sup>3</sup> This is so because most adolescent anti-social behavior is not predictive of future criminal activity.

Most importantly, ABA policy prohibits collateral consequences for delinquent behavior: “No collateral disabilities extending beyond the term of the disposition should be imposed by the court, by operation of law, or by any person or agency exercising authority over the juvenile.”<sup>4</sup> Lifetime registration violates this Standard and is detrimental to both rehabilitation and crime prevention.

The ABA opposed those provisions of the Adam Walsh Act that apply to juvenile offenders. A large percentage of “sex offenses” occur within families and do not rise to the level of sexual predation that is the target of the Act. The “Lifetime Registration” provisions of the Act are likely to have a chilling effect on the reporting of these crimes and will reduce admissions (guilty pleas) to the charges in the cases that do get reported. Concerns about the prospects of the retroactive application of the Walsh registration provisions already are having an adverse effect across the country with respect to admissions and delinquency adjudications in sex offense cases. As a consequence of its “Lifetime Registration” provisions, the ultimate impact of the Walsh Act here will be far more contested proceedings in these cases; far fewer delinquency adjudications; and far fewer juveniles getting the treatment they need. In addition, the fact-finding and guilty plea (admission of guilt) processes in most juvenile courts have fewer safeguards than in the adult system. Adjudications for sex offenses tend to lack the precision required by ABA policy (See Standards Relating to Adjudication). Furthermore, sex offending in adolescence has limited correlation to adult sex offending (the number of false positives close to 90 percent).<sup>5</sup>

Because the Adam Walsh Act is inconsistent with ABA juvenile justice policy and because we believe the statute is overbroad in this respect, we urge you to draft the regulations so as to not further broaden the reach of the act and to minimize the harm that will result from application of the statute. The clearest way to accomplish this is to reject retroactive application of the Act to those who were under 18 at the time of their offenses. To the extent possible, the

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2. See Standards Relating to Juvenile Delinquency and Sanctions, Part III: General Principles of Liability.

3. Standards Relating to Juvenile Records and Information Services, Part XV: Access to Juvenile Records.

4. Standards Relating to Dispositions, 1.2 (I).

5. See Zimring, *The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort* (January 2007).

regulations should also provide a reasonable method for low-risk offenders to petition to be removed from federal and state sex offender registries. Finally, the ABA also suggests that the Department of Justice urge Congress to reconsider whether the Act should apply to juvenile offenders.

Sincerely,

A handwritten signature in black ink that reads "Denise A. Cardman". The signature is written in a cursive style with a horizontal line at the end.

Denise A. Cardman

Akens\_R.txt

From: no-reply@erulemaking.net  
Sent: Friday, March 09, 2007 6:56 PM  
To: OLPREGS  
Subject: Public submission

Follow Up Flag: Follow up  
Flag Status: Completed

Please Do Not Reply This Email.

Public Comments on Office of the Attorney General; Applicability of the Sex Offender  
Registration and Notification Act:=====

Title: Office of the Attorney General; Applicability of the Sex Offender  
Registration and Notification Act  
FR Document Number: E7-03063  
Legacy Document ID:  
RIN: 1105-AB22  
Publish Date: 02/28/2007 00:00:00  
Submitter Info:

First Name: R  
Last Name: Akens  
Mailing Address: [REDACTED]  
City: [REDACTED]  
Country: [REDACTED]  
State or Province: [REDACTED]  
Postal Code: [REDACTED]  
Organization Name: None

Comment Info: =====

General Comment: OAG Docket No. 117 Making a law or a rule retroactive in any way is just wrong. Those that have completed a sentence upwards of 10 to 30 years or more ago could now be forced to register under this rule. I feel this is double jeopardy. An increase in sentence for those who have already completed all requirements of a sentence that was imposed or agreed upon. I know that you think that rules like this and registration laws are in the interest of public safety. Nothing could be farther from the truth. This rule needs to be reversed or removed.

**From:** Larry [REDACTED]  
**Sent:** Sunday, April 29, 2007 10:00 PM

**To:** OLPREGS

**Subject:** [Docket No: OAG 117];[FR Doc: E7-03063];[Page 8894-8897]; Sex Offender Registration and Notification Act; applicability

**Follow Up Flag:** Follow up

**Flag Status:** Completed

It is indeed a sad state of affairs when our government passes legislation to further punish citizens who have long fulfilled their obligation to the state by doing their time whether it be in prison and/or civil commitment and/or probation and parole. To make the registration law retroactive is so short-sighted. There are individuals who were found guilty by the courts years ago, maybe even decades ago, who are now living a good solid life, respected in the community, no threat to anyone in society, well established in their job and in their community. Why dig up their past and make it common knowledge? What will happen to their families, their jobs? Will they be forced to move out of homes that they have occupied as law abiding citizens for many years? I know of two such men. They have been out of prison for 13 and 17 years respectively after spending many years behind bars. They did their time. They are living a good clean life of a law abiding citizen paying their taxes, volunteering in the community, voting, etc. They have paid their dues, it does not make sense to punish them and their families and fellow workers by forcing them to register long after the "piper was paid".

The current notification goes back far enough. It is hard to manage as it is; it is driving sex offenders deeper and deeper into the back ground, making it hard for them to find jobs and places to live. Why compound that problem with more names, especially of those who have put their past behind them and are doing their part to make our society work.

Larry Alley  
[REDACTED]  
[REDACTED]

April 28, 2007

TO:

David J. Karp, Senior Counsel, Office of Legal Policy, Room 4509, Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

SUBJECT: Citizen Comment on **OAG Docket No. 117**, USAG's Interim Rule DOJ-2007-0032-0001,

Dear Sir,

I am the Constitution of the United States of America, and would like to report an abuse.

The U.S. Attorney General Gonzales issued an interim ruling concerning retroactivity in OAG Docket No. 117. Any retroactive law is instinctively wrong, abusive of the constitution, and a threat to our future generation's freedom. If retroactivity is allowed to stand, it will spread. Any retroactive law is instinctively wrong, abusive of the constitution, and a threat to our future generation's freedom. If retroactivity is allowed to stand, it will spread and leave me too weak to defend against other expanding labeling systems that allow Nazi-Germany style "evacuation" of Jews, U.S. McCarthyism style communist hysteria, slavery, and "No Blacks Allowed" bigotry.

#### **RETROACTIVITY IS AN ATTACK AGAINST THE U.S. CONSTITUTION**

Applying a law retroactively (regardless of it's intent) is a direct attack against the United States constitution. It is wrong, abusive, and a threat to all citizen's rights. It sets a precedence that erodes the foundation of our civilization.

This ruling amounts to a Bill of Attainder by way of congress abdicating its responsibility of determining a law and passing it to a non-elected official.

#### **RETROACTIVITY IGNORES STATES INTENT**

OAG Docket No. 117 conflicts with varying state laws and intents regarding registration. This federal law can and will be imposed upon residents of a state that travels to or through other states. Citizens can be prosecuted under a federal law for failing to register even when the state law explicitly disallows retroactive registration laws. There is no rational sense to enforcing a federal penalty upon a some citizens and not others simply due to the varying state laws.

#### **DANGEROUS, DANGEROUS PRECEDENCE!**

Retroactivity is immoral and unconstitutional. As applied to this latest knee-jerk anti-rights craze, it is inefficient at obtaining the intent of protecting other citizens as it will force many model citizens to be labeled. Once that occurs, those citizens and their families will be subject to an array of hysteria laws that strips them of their citizenship by forcing them out of their homes (residency restrictions), out of their neighborhoods, and eventually, into prison (for forgetting to register on their 95th birthday) or out of the country.

Once retroactivity is allowed to stand, it will spread to other areas of law. It will erode hard-earned freedom for our children and future generations.

#### **FOUNDATION OF LIES**

The facts are ignored: 97% of sex offenders never re-offend. The rights I guaranteed my citizens are being tread upon by politicians chanting media-driven lies.

#### **THE FOUNDERS OF OUR DEMOCRACY CONCUR**

"People willing to trade their freedom for temporary security deserve neither and will lose both"  
**Benjamin Franklin**

If you want to be free, there is but one way; it is to guarantee an equally full measure of liberty to all your neighbors. There is no other. **Carl Schurz**

I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it. **Thomas Jefferson**

Sincerely,  
Your Constitution of the United States of America



**From:** Cheryl Best [REDACTED]  
**Sent:** Wednesday, March 28, 2007 4:26 PM  
**To:** OLPREGS  
**Subject:** retroactivity of Adam Walsh Act

**Follow Up Flag:** Follow up

**Flag Status:** Completed

There is no justice in continuing to add penalties to persons convicted and sentenced already. I urge you to represent fairness in relation to ALL Americans, convicted or not in refusing to bow to political pressure to further penalize those who have already received sentences. Thank you.

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Anonymous\_1.txt

From: no-reply@erulemaking.net  
Sent: Saturday, April 28, 2007 5:43 PM  
To: OLPREGS  
Subject: Public Submission

Follow Up Flag: Follow up  
Flag Status: Completed

Attachments: C\_\_US Constitution\_Comment on OAG Docket No. 117.doc

Please Do Not Reply This Email.

Public Comments on Office of the Attorney General; Applicability of the Sex Offender  
Registration and Notification Act:=====

Title: Office of the Attorney General; Applicability of the Sex Offender  
Registration and Notification Act  
FR Document Number: E7-03063  
Legacy Document ID:  
RIN: 1105-AB22  
Publish Date: 02/28/2007 00:00:00  
Submitter Info:

First Name: United States of America  
Last Name: Constitution  
Mailing Address: anywhere in the U.S  
City: all U.S. Cities  
Country: United States  
State or Province: WA  
Postal Code:  
Organization Name:

Comment Info: =====

General Comment: OAG Docket No. 117  
April 28, 2007

TO:  
David J. Karp, Senior Counsel, Office of Legal Policy, Room 4509, Main Justice  
Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

SUBJECT: Citizen Comment on OAG Docket No. 117, USAG's Interim Rule  
DOJ-2007-0032-0001,

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Sincerely,  
Your Constitution of the United States of America

**From:** [REDACTED]  
**Sent:** Tuesday, May 01, 2007 8:51 AM  
**To:** OLPREGS  
**Subject:** OAG Docket No. 117

**Follow Up Flag:** Follow up  
**Flag Status:** Red

When creating laws directed at sex offenders please keep in mind that the creation of a witch hunt is not far away.

The government is blind as is justice. My son was a 20-year old who had child porn dumped into his web site. He did not seek it out. Within 4 days the State Police showed up to haul him away as a sex offender. We were told that he would spend 12 years in jail if we did not plead guilty, and that he would NOT have to register. That promise has been broken many times over as I watch my son having to comply with registering. There are many young men in this situation. Some have committed suicide due to the stigma attached.

Until the government prosecutes only sex offenders it should not create blanket laws which are applied retroactively. Let these boys get on with their lives. Additionally the real offenders are hidden within a registry overloaded with innocent, curious young men. I would like to meet the male who didnot seek out pornography as 20-year olds. To them I say: Quit being a hypocrite! Please prioritize who these laws apply to: sex offenders who have sought out children!  
Thank you.

Black\_Shannon.txt

From: no-reply@erulemaking.net  
Sent: Thursday, March 22, 2007 5:09 PM  
To: OLPREGS  
Subject: Public Submission

Follow Up Flag: Follow up  
Flag Status: Completed

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Public Comments on Office of the Attorney General; Applicability of the Sex Offender  
Registration and Notification Act:=====

Title: Office of the Attorney General; Applicability of the sex offender  
Registration and Notification Act  
FR Document Number: E7-03063  
Legacy Document ID:  
RIN: 1105-AB22  
Publish Date: 02/28/2007 00:00:00  
Submitter Info:

First Name: Shannon  
Last Name: Black  
Mailing Address: [REDACTED]  
City: [REDACTED]  
Country: [REDACTED]  
State or Province: [REDACTED]  
Postal Code: [REDACTED]  
Organization Name: [REDACTED]

Comment Info: =====

General Comment: Does this rule only impact those moving from state to state and those convicted federally? Will people be required to register regardless of date of conviction or end of sentence, e.g. someone convicted in 1970 and released in 1980? Do you know when the rules and regulations will be published to clarify the state compliance requirements for community notification per the new tier levels which are substantially different from our 3 levels of risk? We would like to start working on legislative proposals but are unsure what the changes will need to be. Thank you for your time.

**From:** Wayne Bowers [REDACTED]  
**Sent:** Monday, April 30, 2007 11:12 PM  
**To:** OLPREGS  
**Subject:** OAG Docket No. 117

**Follow Up Flag:** Follow up  
**Flag Status:** Red  
Hello:

In regard to the Attorney General's ruling on the interim rules on retroactivity of the Adam Walsh Act's Sex Offender Registry and Notificaton Act (SORNA), I am writing to express my disapproval of this interpretation and disgust that it would be considered.

First of all, so much of the present tracking laws in place are pointed at the wrong persons, putting the emphasis so much on "stranger danger" and the person not known to young people. Statistics are available and therapists and researchers agree that the majority of sexual exploitation is done by someone the person knows or is related to. We have made this element of scrutiny and hysteria into a profession and business for so many people, at the mercy of people who have worked hard to gain control of their lives from the previous inappropriate action through therapy and self help work and with good family and social support. They want to move on. Yet these laws prevent it from occurring.

These laws are causing more victims. Family members of the offender are being harassed. The bread winner of the family is not allowed to get a decent (if any) job and is in many instances not allowed to live with the family. A new level of homelessness is developing.

And now the new ruling toward someone who has offended pre-Megan's Law? People have their lives re-directed, and have moved past the "old self" and are doing well. The thought of this law would disrupt countless families. Putting people in this position brings back the shame and therein lies the majority of the emotion that led to acting out. It could cause many to go secret and move about, not be in touch with loved ones, and this brings on a dangerous level for them, for seclusion was part of the problem in the past in most instances.

Law enforcement, parole and social service agencies are strapped with responsibilities, most suffer from under-budgetng in local and state levels, and to add more duties and responsibilities only would lower the effectiveness of ther department even more.

When will this nation realize the concept of retribution is a failure? Have you seen the wide disparity in numbers of prisoners in this nation compared to other so-called civilized countries? How can we claim to be a nation pushing for fair human rights when we have selected an element of society, which by researchers shows an extremely high success rate of NOT re-offending, and make their lives miserable and impossible?

Please consider this phase of the Walsh Act as a futile look at just continuing to punish -- and nothing more!

Sincerely,

Wayne Bowers, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Boyd\_Brian.txt

From: [REDACTED]  
Sent: Sunday, April 15, 2007 9:52 PM  
To: OLPREGS  
Subject: OAG Docket No. 117

Follow Up Flag: Follow up  
Flag Status: Completed

That a retroactively applied law would even be considered in the United States is a sign that our Constitution is being attacked by both liberal and conservative extremists.

What next? Apply the death penalty to all convicted murderers? Or establish a death penalty for tax evaders and kill those in prison already?

Please see that the Constitution is defended by all enemies domestic and foreign as you have sworn to do. Do not make a "sex offender registry", as vague as that already is, more heinous and unconstitutional.

Sincerely,  
Brian Boyd  
[REDACTED]

Brown\_Jeff.txt

From: no-reply@erulemaking.net  
Sent: Sunday, April 29, 2007 2:05 PM  
To: OLPREGS  
Subject: Public Submission

Follow Up Flag: Follow up  
Flag Status: Completed

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Public Comments on Office of the Attorney General; Applicability of the Sex Offender  
Registration and Notification Act:=====

Title: Office of the Attorney General; Applicability of the Sex Offender  
Registration and Notification Act  
FR Document Number: E7-03063  
Legacy Document ID:  
RIN: 1105-AB22  
Publish Date: 02/28/2007 00:00:00  
Submitter Info:

First Name: Jeff  
Last Name: Brown  
Mailing Address: [REDACTED]  
City: [REDACTED]  
Country: [REDACTED]  
State or Province:  
Postal Code: [REDACTED]  
Organization Name: Brown Counseling & Consulting

Comment Info: =====

General Comment: Sir  
I work every day with convicted adult and juvenile sexual offenders; I believe that there is some value to the rational use of a Registry. I do not believe that every person convicted or adjudicated for a sexual crime should be managed and monitored the same way. Although I sympathize with Mr. Walsh's loss, I do not share his passion and zeal that the solution is spending more on a system that has no demonstrated history of reducing recidivism. I certainly do not believe that in any form of retroactive registration rules we apply it equally to the other, (much higher recidivism) crimes such as domestic violence, assault, etc. Thank you!  
Jeff Brown, ACSW, LCSW, CADC III, CSAYC/P  
Clinical Member of ATSA



**From:** Sarah Bryer [REDACTED]  
**Sent:** Monday, April 30, 2007 11:23 AM  
**To:** OLPREGS  
**Subject:** OAG Docket # 117

**Follow Up Flag:** Follow up  
**Flag Status:** Red

**Attachments:** sorna fin.doc

Please see the attached letter in response to OAG Docket No 117,  
Comments in Opposition to Interim Rule RIN 1.105--AB22

Thank you,  
Sarah Bryer

**Sarah Bryer**  
Director  
National Juvenile Justice Network  
at the Coalition for Juvenile Justice

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[www.njjn.org](http://www.njjn.org)



# National Juvenile Justice Network

April 30, 2007

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



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

Dear Mr. Karp,

Thank you for the opportunity to comment on the above-referenced rule. For the reasons that follow, the National Juvenile Justice Network (NJJN) recommends that interim rule RIN 1.105 – AB22 be withdrawn. Further, NJJN strongly urges the U.S. Department of Justice and Congress to revisit the Adam Walsh Child Protection and Safety Act of 2006 (also known as the Sex Offender Registration and Notification Act, SORNA) and work diligently to craft legislation that protects and defends all of our nation's children, including those who are victims of sexual abuse and assault, as well as children and youth who are adjudicated for sexual offenses.

**SORNA Should Not Be Applied Retroactively to Children Adjudicated Within the Juvenile System**

Applying SORNA retroactively to youth adjudicated with a sexual offense is not productive public policy for three reasons. Firstly, SORNA does not protect public safety. Secondly, as applied to juveniles whose adjudications were previously confidential under state law, SORNA would impose an ex post facto punishment not contemplated at the time the youth was adjudicated. And thirdly, SORNA fundamentally fails to protect our children who have been victims of sexual abuse and assault.

Public Safety is Not Improved

Public safety is not enhanced by placing juveniles on sex offender registries. Youth who commit sex offenses are very unlikely to recidivate and are extremely amenable to treatment. According to the National Center of Sexual Behavior of Youth, a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center, the recidivism rate among juvenile sex offenders is substantially lower than that of other delinquent behavior (5-14% vs. 8- 58%).<sup>1</sup> This Center, the Center for Sex Offender Management (an institute created by the Office of Justice Programs, the National Institute of Corrections and

<sup>1</sup> National Center on Sexual Behavior of Youth (NCSBY)



The impact of SORNA's abrogation of confidentiality for young people and their families is noteworthy. In some states, youth who are placed on public sex offender registries have found it impossible to carry on their normal lives and be productive citizens. They can be denied fair opportunities for housing, employment and education. They are routinely harassed and assaulted; many have had to be removed from their school for their own safety.<sup>6</sup> Community notification requirements can complicate the rehabilitation and treatment of these youth. This stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess<sup>7</sup> destroying the social networks necessary for rehabilitation<sup>8</sup>

Because youth's home addresses are made public, they and their families become potential targets for vigilante acts of violence. Families also may find that in many states their "registered sex offender" child who lives with them makes their residence illegal, as registered sex offenders cannot live within certain distances from schools and parks. Thus SORNA stigmatizes and negatively affects the entire family, including the parents and other children in the home.

### Children are Not Protected

Youth who sexually abuse are far more likely than the general population to have been physically, sexually, or otherwise abused themselves. Studies indicate that between 40% and 80% of sexually abusive youth have themselves been sexually abused, and that 20% to 50% have been physically abused<sup>9</sup>. As a result of this victimization, these youth may have impaired social skills and may associate with younger children or may be desperate for companionship and incorrectly interpret subtle communication from others. While these youth need to be held accountable, they also need treatment and care so that they can recover from their own trauma and lead productive lives. Placing these youth on public registries will only harm them further and will impede their recovery.

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

For all of these reasons, NJJN asserts that it is bad public policy for SORNA to be applied to children adjudicated within the juvenile system and 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

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

<sup>7</sup> Earl-Hubbard cited in Garfinkle, E., Comment, 2003. Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles. 91 California Law Review 163.

<sup>8</sup> Rasmussen, cited in Garfinkle.

<sup>9</sup> Center on Sex Offender Management

compassionate and productive balance between victims of sexual abuse, particularly children, and child victims of sexual abuse who sadly exhibit abusive behaviors.

## **Conclusion**

In closing, we urge the Attorney General to withdraw the interim rule, or alternatively, to exclude juveniles in its application.

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.

Sincerely,

Beth Arnovits  
Co-Chair, National Juvenile Justice Network  
Executive Director, Michigan Council on Crime and Delinquency

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

Sarah Bryer  
Director  
National Juvenile Justice Network



# National Juvenile Justice Network

## Fact Sheet on Youth Who Commit Sex Offenses

### **Youth Sex Offenders Have a Low Recidivism Rate**

- Youth who commit sex offenses are highly unlikely to commit another sexual offense (OJJDP, December 2001; 30-31).
- Multiple studies have demonstrated extremely low rates for sexual reoffending for juveniles convicted of sex offenses.
  - A 2000 study by the Texas Youth Commission of 72 young offenders who were released from state correctional facilities for sexual offenses (their incarceration suggests that judges considered these youth as posing a greater risk) found a re-arrest rate of 4.2% for a sexual offense. (Zimring, Appendix C)
  - A 1996 study found similarly low sex offense recidivism rates in Baltimore (3.3-4.2%), San Francisco (5.5%) and Lucas County, Ohio (3.2%). (Zimring, Appendix C)
  - A 2000 study of 96 juvenile sexual offenders in Philadelphia showed a 3% sexual re-offense rate. (Zimring, Appendix C)

### **Youth are Highly Responsive to Treatment**

Youth sexual offenders are amendable to treatment.

- Sexual recidivism rate for juveniles treated in specialized programs range from approximately 7-13%. (Center for Sex Offender Management, December 1999; pg. 5)
- In addition, a study by the Texas Youth Commission found that specialized sexual behavior treatment *reduced* recidivism for a sex offense by 52% from the basic re-socialization program. (Texas Youth Commission, Review of Agency Treatment; 2004)

### **Youth Sexual Offending Behavior Is Not Fixed**

The vast scientific literature on this issue distinguishes the behavior of juveniles from adults.

- Juveniles are not fixed in their sexual offending behavior. Juvenile offenders who act out sexually do not tend to eroticize aggression, nor are they aroused by child sex stimuli. Mental health professionals regard this juvenile behavior as much less dangerous.
- When applying the American Psychiatric Association diagnostic criteria for pedophilia (abusive sexual uses of children) to the juvenile arrests included in the National Incident Based Reporting System, only 8% of these incidents would even be *considered* as evidence of a pedophilia disorder. (Zimring; pg. 8)
- More than nine out of ten times the arrest of a juvenile for a sex offense is a one-time event, even though the juvenile may be apprehended for non-sex offenses typical of other juvenile delinquents. (Zimring, p. 66)

### **Youth Sex Offenders Commonly Suffer from an Abusive Childhood**

- Youth who commit sex offenses have frequently been sexually abused themselves; approximately 40 to 80 % of juvenile sex offenders have been sexually abused as children. (Becker and Hunter, 1997; cited in OJJDP, 2001; pg. 3)



- As a result of this victimization, these youth may have impaired social skills and may associate with younger children or may be desperate for companionship and incorrectly interpret subtle communication from others.

### **Juvenile Sex Offenders Constitute a Low Percentage of Sex Offenses**

Juveniles commit a small percentage of overall sexual assaults, and of these, the most common fall in the least coercive categories.

- Between 1998-1999, juveniles accounted for only 5.6% of the arrests for sex crime killings, which is one half of one percent of all the homicides committed by juveniles. (Zimring, p. 51)
- Juveniles are responsible for only 12% of rape incidents. (Zimring p. 50)
- Juveniles accounted for 19% of all non-rape, other sex-crime arrests. One possible explanation for this is that adults escape detection for predatory sex crimes more easily than juveniles. (Zimring, p. 50)

### **Youth can be Labeled Sexual Offenders because of Age of Consent Laws**

Age of consent laws can unfairly criminalize adolescent behavior. Almost all sexual behavior by children who are below the age of consent is against the law.

- An adjudication of sexual abuse against a 16 year-old boy for consensually caressing a 13 year-old girl's breasts required him to register as a sex offender until his 25<sup>th</sup> birthday; a disposition upheld by the Supreme Court of Arizona ( In Re Prima County Juvenile Appeal cited in Garfinkle 2003).
- Under the Idaho Code, two fifteen year olds engaged in "heavy petting" would be guilty of a felony requiring them to register on the state's sex offender list.

### **Youth are Significantly and Negatively Impacted by Registration and Community Notification Laws**

- 38 states now extend coverage to include juveniles in their sex offender registries and at least 6 states have laws with no specific reference to juveniles (Zimring, 2004; pg. 148).
- Youth required to register and notify the community about their offense can be hindered from becoming productive citizens by being denied fair opportunities for employment, education, and housing.
- Community notification requirements can complicate the rehabilitation and treatment of these youth. Youth have been known to be harassed at school, forcing them to drop out (Freeman-Longo pg. 9). This stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess (Earl-Hubbard cited in Garfinkel, 2003), destroying the social networks necessary for rehabilitation (Rasmussen, 1999; cited in Garfinkel 2003).

### **Successful Legal Challenges to Registries**

- In Alabama juveniles successfully mounted an equal protection and ex post facto challenge against the notification requirements and other provisions of the state's Megan's Law.<sup>1</sup>
- In New Jersey, the State Supreme Court ruled that registration requirements for juveniles had to include more due process protections.<sup>2</sup>
- In Massachusetts, advocates successfully amended the proposed sex offender bill to apply to only "convicted" offenders, thereby excluding "adjudicated" delinquents.

### **Recommendations:**

Federal and state justice systems have a long tradition of treating juvenile offenders differently than adult offenders. Given the scientific research over the past several decades revealing that the human brain takes much longer to mature than originally suspected, it is even more imperative that policy reflects these developmental differences between youth and adults.

<sup>1</sup> *State v. C.M.*, 746 So.2d 410 (1999).

<sup>2</sup> *In re Registrant J.G.*, 777 A.2d 891 (N.J. 2001).

- Treatment and assessment should be prioritized over registration and notification.
  - Treatment should be tailored to the individual case.
  - The treatment used should be the least invasive possible.
- Registration and notification of juvenile sex offenders should happen rarely and with caution.
  - There should be a legal presumption against registration and notification of juveniles.
  - There should be risk classification procedures.
  - There should be judicial review for all youth to be placed on sex offender registries.
  - For non-coercive and non-forceful behavior (i.e. status crimes) registration and notification should be barred.
  - There should always be a juvenile court procedure to contest registration and notification.





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**From:** Deborah Brent [REDACTED]  
**Sent:** Monday, April 16, 2007 1:34 AM  
**To:** OLPREGS  
**Subject:** OAG Docket No. 117

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**I am totally opposed to the retroactivity proposed to the Adam Walsh Sexual Offender Registry Act. These people have been found guilty and punished. To my mind this would be a violation of their civil rights.**

**I think every sex offender should be punished to the full extent of the law, but not at the expense of the Constitution.**

**Deborah Ledgerwood**  
[REDACTED]

**Pain is inevitable, suffering is optional.**

**--M. Kathleen Casey**