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April 26, 2007

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

**Re: Comments to Sex Offender Registration and
Notification Act, OAG Docket No. 117**

Dear Mr. Karp:

The following comments submitted by the New Jersey Office of the Public Defender are in response to the United States Attorney General's published regulations providing that the Sex Offender Registration and Notification Act (hereinafter "SORNA") is to apply retroactively. The Attorney General's decision is intended to give the federal government the authority to prosecute former sexual offenders under SORNA for failure to register.

As outlined below, however, applying SORNA retroactively will create a host of negative unintended consequences. First, as compared to New Jersey's Megan's Law, SORNA's much broader community notification provisions will predictably cause many former offenders to lose housing and employment, thereby significantly increasing their risk to the community. Second, the instability in housing and employment which will follow in the wake of SORNA's broad community notification will undermine New Jersey's capacity to monitor former sexual offenders under well-established state parole programs and to encourage their successful rehabilitation. Third, SORNA's mandated notification system will, unlike New Jersey's Megan's Law, contain the same information for each offender and have no individualized assessment of risk, making it far less informative to the public and less valuable as a tool for public safety.

Although the scope of New Jersey's public notification is tailored based upon an offender's risk level, we have nevertheless seen numbers of instances where sex offender notification ignited strong public reaction. These responses

have interfered with registrants' attempts to secure and maintain steady employment and decent housing -- basic resources widely acknowledged by experts in the field as essential to reducing recidivism levels.¹

With respect to the impact of notification on employment, even employers willing to hire former convicts frequently draw the line at former sex offenders once they realize that the community will be provided notification that a sex offender is working in the business. Like employers, landlords are sensitive to the economic harm they may sustain if their tenants or the public-at-large learn they are providing housing to a former sex offender. The result has been that public notification has rendered offenders homeless and jobless.

In addition, this notification has led directly to numerous incidents of harassment, vandalism and assaults of former sex offenders, designed in many instances to drive them from their communities. In one New Jersey case, following notification five bullets were fired through the front window of a registrant's apartment by a neighbor, nearly wounding an innocent tenant.²

The Third Circuit Court of Appeals has provided the following summary of the public's response to sex offender community notification in New Jersey:

The record documents that registrants and their families have experienced profound humiliation and isolation as a result of the reaction of those notified. Employment and employment opportunities have been jeopardized or lost. Housing and housing opportunities have suffered a similar

¹ See R. Hanson and K. Morton-Bourgeron, "The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies," Journal of Consulting and Clinical Psychology 2005, vol. 73, No. 6 1158-59 (showing a 20% correlation between unemployment and re-offense rates among sex offenders); United States Department of Justice, Center for Sex Offender Management (hereinafter "CSOM") Recidivism of Sex Offenders, (May 2001) (citing six studies concluding that stable housing, employment, and sex offender treatment reduce recidivism levels); The Association for Treatment of Sexual Offenders (hereinafter "ATSA") Ten Things You Should Know about Sex Offenders and Treatment (same).

² A detailed description of incidents of dozens of cases of physical harm and threats occurring to registrants and their families following notification in New Jersey, as well as examples of instances where registrants lost jobs and housing is available upon request.

fate. Family and other personal relationships have been destroyed or severely strained. Retribution has been visited by private, unlawful violence and threats and, while such incidents of 'vigilante justice' are not common, they happen with sufficient frequency and publicity that registrants justifiably live in fear of them.

E.B. v. Verniero, 119 F3d 1077, 1102 (3d Cir. 1997)³

If applied retroactively, SORNA is even more likely to result in former offenders losing housing and employment. In New Jersey, direct notification to individual members of the public, the type most likely to impact offenders jobs and housing, typically occurs only in high risk cases, or approximately four percent of the State's overall sex offender registrant population. New Jersey Admin. Office of the Courts, Report on Implementation of Megan's Law at 17 (Nov. 2006) (hereinafter "AOC Report").

However, SORNA's notification is not tailored to risk. For every offender subject to SORNA (tiers 1,2 and 3), identical information is authorized to be disseminated directly to a substantially broader segment of the public than under New Jersey law, increasing the risks of lost housing and employment. Unlike Megan's Law, SORNA will include both a state and a national Internet website, and will provide direct notice to every individual or organization who requests it in the jurisdiction where a registrant lives, works and attends school. As in New Jersey, notification will also go to schools; however, under SORNA it will also include public housing agencies, social service agencies, agencies that do background checks, and volunteer organizations in which contact with minors might occur, and will be re-disseminated in those three jurisdictions each

³ These sorts of problems are not unique to New Jersey. A Department of Justice study of the impact of Wisconsin's notification law summarized interviews with thirty offenders. Eighty-three percent of the offenders said that notification resulted in "exclusion from residence"; seventy-seven percent reported "threats/harassment"; sixty-six percent reported "emotional harm to family members" and "ostracized by neighbors neighbors/acquaintances"; and fifty percent reported "loss of employment." U.S. Dep't of Justice, National Institute of Justice, "Sex offender Community Notification: Assessing the Impact in Wisconsin," at 10 (Dec. 2000); see also Doe v. Pataki, 120 F.3d 1263, 1279 (2nd Cir. 1997) (noting "numerous incidents in which sex offenders have suffered harm in the aftermath of notification.")

time the individual changes one of his three addresses. 42 USC. § 16914. Moreover, we are also concerned that simply disseminating another round of sex offender notifications (this time pursuant to SORNA) will, for the reasons outlined above, lead to evictions and job terminations. Finally, in addition to its much broader scope of notification, SORNA allows states to include an employer's name and address in the public notification (Id. at § 16914), a provision which will virtually ensure that employment loss becomes even more prevalent.

SORNA's retroactive application will also impact the lives of persons who are not subject to sex offender notification in New Jersey, jeopardizing their housing and employment as well as the progress they have made rehabilitating their lives. This will occur in cases where a New Jersey Court or County Prosecutor determined, following a thorough case review, that a person did not pose a risk justifying community notification. See AOC Report at 21 (describing that in 597 cases a New Jersey Superior Court judge determined, following a hearing that no sex offender notification was required.)

Similarly, the Attorney General's decision will require sex offender notification in cases where the New Jersey legislature considered a person's offense so remote in time as to make notification unnecessary. N.J.S.A. 2C:7-2(b)(2) (establishing the cutoff for sex offender registration). Others will be subject to SORNA notification despite having satisfied to a court the statutory prerequisites for being relieved of further public notification. See N.J.S.A. 2C:7-2(g) (demonstrating the passage of "15 years following release from prison" and proving that the applicant is "not likely to pose a threat to the safety of others.") In addition, under SORNA, persons will be subject to public notice despite the New Jersey legislature's determination that their offense did not require sex offender notification. Compare 42 U.S.C. § 16911 (including offenses such as exhibitionism and possession of child pornography) with N.J.S.A. 2C:7-2 (excluding these offenses under New Jersey's Megan's Law.)

Furthermore, SORNA's retroactive application would replace New Jersey's notification system with a scheme of far less value to the public. The State has successfully employed its risk-based approach to public notification for the past thirteen years. N.J.S.A. 2C:7-8. As part of that system, New Jersey is careful to include an individualized determination of a person's risk level so the public can be alerted to those persons most likely to reoffend. This tailored system is the notification scheme recommended by experts in the field.⁴

⁴ CSOM, Community Notification and Education at 13 (April 2001) (concluding that due to the considerable consequences that occur

However, should SORNA be applied retroactively the public will receive identical, broadly disseminated community notification for thousands of individuals, regardless of the person's tier level. Moreover, the notice will not contain an individualized assessment of risk. By removing this aspect of New Jersey's notification and disseminating the identical notice for all offenders, SORNA will make the public far less able to differentiate between offenders, making the notification scheme far less effective.

Other beneficial aspects of New Jersey's system will be lost through SORNA's retroactivity. By impacting a registrant's ability to provide for basic needs, SORNA will also impede implementation of effective sex offender monitoring systems, like New Jersey's Community/Parole Supervision for Life program. See N.J.A.S. 2C:43-6.4. This program prevents new offenses by closely supervising former offenders in the community. However, in order for the State's monitoring program to be successful it is critical that former offenders have a job and a place to live. Given SORNA's likely impact on offenders' housing and employment, we have considerable concern whether this important monitoring program can continue to be effective.

Another New Jersey sex offender management practice which will be negatively impacted by SORNA involves our courts. As an incentive, prosecutors, with a court's consent, currently use the offer of a lower risk level and narrower forms of public notification to encourage former sexual offenders to remain employed and in treatment. If SORNA applies retroactively and the same notification is always mandated, New Jersey will lose a highly effective means of motivating registrants to continue abstinence from drugs, and further rehabilitation and therapy. Instead, these same individuals, despite their best efforts, will be made to face a very real threat of homelessness and unemployment.

New Jersey's means of managing former sexual offenders in the community has been highly successful. In the time since New Jersey's Megan's Law was enacted the State's Department of Corrections has conducted a number of studies of the recidivism rates of the State's sexual offenders. Those studies demonstrate that New Jersey has a sex offender recidivism rate far below the

"community notification may best be reserved for those offenders at greatest risk to reoffend.") ATSA, Comments Submitted to the House and Senate Judiciary Committees regarding SORNA, March 7, 2006.

overall national average rate of 13%.⁵ It would be manifestly wrong in such an important area of child and community safety to alter New Jersey's successful approach with a system that is untested and will predictably increase the number of jobless and homeless former sexual offenders.

Having increasing numbers of offenders facing the prospect of eviction and termination from employment will likewise undermine the Internet registration scheme that is at the heart of SORNA. This will occur as increasing numbers of homeless registrants will have no addresses to post for the purpose of law enforcement and public information. Moreover, under these circumstances there is a likelihood that, out of frustration, persons will refuse to register, further undermining the public safety purpose of the legislation.

Also, New Jersey will not be able to continue to encourage incest victims to report sexual abuse by utilizing exceptions to public notification for this low risk group. With these exceptions, New Jersey avoids advertising the name and family relations of incest victims on the Internet. N.J.S.A. 2C:7-13. Under SORNA, there are virtually no exceptions to such notice.

⁵R.K. Hanson, & M. Bussiere, Predicting relapse: A meta-analysis of sexual offender recidivism studies. Journal of Consulting and Clinical Psychology, 66 (2), 348-362 (1998).

The conclusions reached by New Jersey's studies included the following:

Of the 115 inmates released in 1994 from the sex offender treatment facility ("Avenel") where offenders found to be repetitive and compulsive are incarcerated, 7 (6%) were reconvicted of a sex offense in the five year period following their release.

Of the 123 inmates released from Avenel in 1995, 8 (6.5%) were re-convicted of a sex offense in the five year period following their release.

Of the 79 inmates released from Avenel in 1990, only 3 (3.8%) were re-convicted of a sex offense in the ten year period following their release.

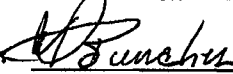
Of the 507 inmates released from Avenel during the years 1994 through 1997, 34 (6.7%) were re-arrested for a sex offense in the three year period following their release. For the group of offenders who spent their time in general population, rather than at Avenel, and maxed out on their sentences, 14 (6.2%) were re-arrested for a sex offense in the three year period following their release.

We are concerned that this may prevent children from reporting abuse, since parents with the same surname as the victim are likely to be advertised in notices throughout their communities.

In sum, for the forgoing reasons we respectfully request that the Attorney General reconsider his decision to have SORNA apply retroactively. Doing so will predictably up-root former sex offenders from stable housing and jobs after years of rehabilitation, and will undercut effective means of community supervision. It will impose a one-size-fits-all approach to notification, unrelated to a person's risk level, depriving the community of New Jersey's far more effective and efficient risk based notification system. In short, the decision to apply SORNA's notification retroactively should be reversed as it will undermine, not heighten, community safety.

Respectfully submitted,

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PUBLIC DEFENDER

By 
Michael Z. Buncher
Deputy Public Defender

Buncher_Michael 2007_04_30_2.txt

From: Michael Buncher [redacted]
Sent: Monday, April 30, 2007 9:38 AM
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Attachments: comments to retroactive app of adam walsh final ltr head.doc

Attached are comments from the New Jersey Office of the Public Defender in response to the U.S. Attorney General's proposed regulations providing that the Adam Walsh Sex Offender Registration and Notification Act (SORNA) is to apply retroactively.

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