

From: Rich S [REDACTED]
Sent: Wednesday, March 21, 2007 7:40 PM
To: OLPREGS
Subject: OAG Docket 117 Comment

Follow Up Flag: Follow up
Flag Status: Completed

Richard H. Schalich
[REDACTED]
[REDACTED]

RE: OAG Docket No. 117

I wish to comment on this ACT.

Comment: This Act is inherently unjust although it was justified as for the public good, is wrong. This Act being retroactive uses the umbrella effect, which has become the De Facto method of punishing people for past offenses, which they had served their time in prison, or probation. More specifically this Act treats low risk offenders the same as high-risk offenders, making no attempt at Balanced Justice.

This act is inherently unjust. Although it has been justified as being for the public good, it is wrong due to its discriminatory nature as well as its ex-post-facto implications. The act is not regulatory, it is continued punishment.

This act uses a "broad brush" approach which has become the government's de facto method to punish further for past offenses. It continues punishment anywhere from 10 years to life after a person has completed any and all prison, jail, parole or probation. Judges are now including Sex Offender Registration as part of sentencing proving and supporting the fact that it is punishment.

Most specifically, this act treats all past offenders identically with no provision for years on non-offending behavior. Someone who completed all court imposed sanctions 5, 10, 15, 20 or more years in the past is treated identically to the person on their first day of release.

Example: A person is released from prison in 2000 after a 2 year sentence. He/she is determined to a Tier I Offender by the Federal government and state of residence. The state has a 10 year registration period for Tier I, the lowest risk, offenders. Under the new provisions of the AWA, this person would automatically be increased to a Tier II, with a 25 year registration, based on prison time alone. No credence would be given to years of therapy and the psychologist's reports during those years of treatment. No credence would be given to the years of being a law abiding citizen. No credence would be given to anything but an arbitrary rule that has no basis in fact.

If a person has rebuilt their life during this period knowing that the "Scarlet Letter" of Registered Sex Offender would be removed in their productive lifetime, it all becomes moot. Suddenly, this person realizes that they will die while still on the registry and possibly remain there after death, so that a state can inflate its numbers. Where is the justice in this?

Also, whether it is admitted by the government or not, most of the 600,000 persons listed in the Registry are living with family members. If a mere 50% have a spouse and one child, that is an additional 600,000 innocents affected by this law bringing the total number of souls being subjected to further punishment to well over 1,000,000. Yes, souls, they are all human beings.

So, here we have over 1,000,000 U. S. citizens with their very lives in peril. Residency restrictions force them to the hinter lands. Presence on a public Registry puts their livelihood, if they are able to find a job, in jeopardy. Societal shunning hampers recovery. Fear of vigilantism causes undue stress on the entire family.

Punishment upon punishment on a group, according to your own Department of Justice, with the second lowest recidivism

rate of all offenders. They are alone in this. No other type of offender, even murderers of children in a drive by or DUI episode is treated like this. This is pure discrimination.

With all of this, rethink the AWA. Make it a law for the truly lawless. Either include all that offend against others or go back to the Jacob Wetterling Act and make it a law to monitor those that have a high probability of re-offending. Make it a law that works.

From: Dawn Robertson [REDACTED]
Sent: Sunday, April 29, 2007 8:54 PM
To: OLPREGS
Cc: Dawn Robertson
Subject: OAG doc#117

Follow Up Flag: Follow up
Flag Status: Completed

April 29, 2007

To whom it may concern,

I wish to state my objection to an interim rule created by US Attorney General Alberto Gonzales.

SORNA is nothing more than a politically derived and motivated piece of unconstitutional garbage! The very idea of instituting such an act is outrageous. This politically charged legislation will most certainly rip apart not only that very important document we call the US CONSTITUTION, but also punish adults and kids who have lead productive law abiding lives beyond an offense.

The sexual hysteria is just that and the truth has not been heard. Less than ten percent recommit crimes. Juveniles are unlikely to commit another sex offense.

I am appalled that my tax dollars are being spent in such an irresponsible manner. I am even more angry that the government is allowing a few individuals such as John Walsh and Mark Lungsford decide the fate of millions.

While I have much sympathy for their loss, I feel this legislation has done a great disservice to a great many more and is an injustice to those who are earnestly attempting to get their lives on track.

I believe in time served, period! This act will punish unfairly individuals and their families. Offenders find it very difficult to be gainfully employed. They risked being targeted, assaulted and even murdered. Offenders are often forced to separate from love ones and become homeless.

The registration laws are ineffective, expensive and before long will be all inclusive. This madness must stop! I say NO

to retroactive inclusion of adults and children and Yes to Constitutional protection, UNDER THE LAW as it was intended by its creators.

Respectfully submitted,
Dawn Robertson- Christian, child sexual abuse survivor and mother of two.

[REDACTED]

From: Nicole I Pittman [REDACTED]
Sent: Wednesday, April 25, 2007 10:09 AM
To: OLPREGS
Subject: Docket No: OAG 117; [FR Doc: E7-03063];[Page 8894-8897]; Sex Offender Registration and Notification Act; applicability

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Attachments: JuvJusticeComments.pdf

Juvenile Justice Advocates' Comments to the Sex Offender Registration & Notification Act

t No: OAG 117
[FR Doc: E7-03063];[Page 8894-8897]; Sex Offender Registration and
ation Act; applicability
ent ID: DOJ-2007-0032-0001
1105-AB22
al Registration No: E7-03063
'osted: 02/28/07
ents Due: 04/30/07

Dear Mr. Karp:

Attached you will find official comments to the interim rules of Title I of the Adam Walsh Child Protection and Safety Act's Sex Offender Registration and Notification Act (SORNA). As indicated by the signatures, these comments are submitted jointly by the following nationally acclaimed juvenile justice advocacy organizations:

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

We thank you in advance for your close consideration of our carefully crafted comments and vital suggestions. If you have any concerns. Please contact Nicole Pittman via email [REDACTED] or by telephone at [REDACTED].

Sincerely,

Nicole Pittman

Nicole Pittman

NICOLE PITTMAN, ESQ.
JUVENILE JUSTICE POLICY ANALYST ATTORNEY
DEFENDER ASSOCIATION OF PHILADELPHIA
1 [REDACTED] 38
R [REDACTED] 2
[REDACTED] 6

Wednesday, April 25, 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 to 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

The undersigned organizations have reviewed the interim rule regarding the Sex Offender Registration and Notification Act (SORNA) and submit the following recommendations and comments, representing the combined experience of juvenile justice and child advocates and professionals with extensive experience working on issues related to juvenile sexual offending.

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

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

Furthermore, mislabeling a juvenile as a "child sexual predator" can have lifelong, irreversible and detrimental effects on a person and his or her family members. Applying SORNA to juvenile sexual

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

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

offenders has the unique propensity to gravely harm many children in the hope of protecting an unknown few ...

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

Given the fact that juveniles are at a low risk to re-offend; the lack of safeguards to ensure confidentiality, correct errors, or remove individuals from this list; and the damage associated with being 'blacklisted' for life for a youthful offense, public safety and good policy dictate that the national sex offender registry specifically exclude persons who committed an offense prior to having attained the age of 18 years. In the alternative, we recommend adding a Tier IV classification to SORNA that will be reserved for juvenile sexual offenders only. By casting a net as wide as SORNA, the government will not achieve its stated goals of protecting the community, and it will also be causing unnecessary damage, harm and stigmatization to 98% of the juveniles required to adhere to registration and notification under the Act. Furthermore, by making the Act retroactive, the Attorney General is subjecting youth to extremely detrimental registration requirements that were never envisioned by judges, prosecutors, and defenders in the original plea, adjudication and sentencing proceedings.

GENERAL COMMENTS

The Adam Walsh Child Protective and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA), was proposed as a comprehensive revision of the national standards for sex offender registration and notification. The Act states that its purpose is to respond to “vicious attacks by violent sexual predators” by reforming, strengthening and increasing the effectiveness of sex offender registration and notification for the protection of the public^{iv}.

Considering the stated purpose of SORNA, as currently constructed, the Act is overly inclusive and excessively broad and, therefore, ineffective. Considered facially, SORNA requires all individuals convicted of sex offenses to register in relevant jurisdictions, with no exception for

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

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

sex offenders whose convictions predate the enactment of SORNA. *See* SORNA §§ 111(1), (5)-(8), 113(a). In fact, by including “virtually the entire existing sex offender population,” SORNA will affect a vast majority who are not in fact violent sexual predators and do not pose a substantial risk of re-offending, namely juvenile sex offenders^v.

Over time, more states have increasingly subjected juvenile sexual offenders to differing sex offender registration and notification requirements. Additionally, more punitive legislative reforms regarding juvenile offenders have been implemented in more than 90% of the states. These legislative trends were intended to shift the balance of interests in juvenile justice to emphasize public safety and encourage individual responsibility of juvenile offenders for their own actions. Despite these reforms in law, the numbers of juvenile sexual offenders in the juvenile justice system have remained relatively constant over time^{vi}.

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

For many years, science had assumed that the adolescent brain was fully developed by the age of 14. It was thought that developmental changes in the brain occurred in the first few “formative” years of life. However recent scientific advancements indicate that the adolescent brain undergoes rapid change and does not fully develop adult capacity until the early twenties.^{ix} The 2005 Supreme Court case, Roper v. Simmons, introduced research regarding the dynamic nature of adolescent development^x. It is now an accepted notion among professionals that personality traits of juveniles are less fixed than those of adults. One of the nation’s leading neurologists, National Institute of Mental Health’s Dr. Jay Giedd, says it’s “unfair to expect [adolescents] to have adult levels of organizational skills or decision-making before their brain is finished being built.”^{xi} Courts around

v Department of Justice. 28 CFR Part 72. Docket No. OAG 117; A.G. Order No. 2868-2007.

vi Grotmeter, Jennifer K (2002). *Violent Sexual Offending*. Boulder, CO: University of Colorado, Center for the Study and Prevention of Violence, Institute of Behavioral Science, Pg. 36; Center for Sex Offender Management (1999). *Understanding juvenile sexual offending behavior: Emerging research, treatment approaches and management practices*.

vii America’s Most Wanted Website. “John Walsh: Adam Walsh Act is not doing Enough.” www.amw.com/features/feature_story_detail.cfm?id=1603

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

ix Giedd, J., <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain>

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

xi Giedd, J., <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain>

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

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

Therefore, we offer the following recommendations for the application of SORNA to juvenile sexual offenders, all of which can be supported by recent, validated scientific studies:

1. Adopt a definition for the term “sexual predator” that is consistent with legal and scientific standards by excluding individuals with juvenile adjudications from the Act.
2. In the alternative to recommendation 1, add a Tier IV to SORNA that will be reserved solely for and tailored to the specific needs of juvenile sex offenders, who are completely different from adult sex offenders in both their responses to treatment and their risk of continued re-offending.
3. Add a reasonable process by which all low risk offenders can petition to be removed from state and federal registries.
4. Delete juvenile sexual offenders from the retroactive provision that makes it “indisputably clear that SORNA applies to all sex offenders regardless of when they were convicted.” Make it a requirement that all Tier IV juvenile offenders (including youth adjudicated before and after the enactment of SORNA) be afforded a full evidentiary hearing to determine if they are at a high risk to re-offend and in need of monitoring under Tier IV of the SORNA.

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

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

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

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

xvi See Appendix I

Specific Recommendations with Supporting Evidence

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

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

- The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) defines a ‘Pedophile’ as a “child predator.”
- The DSM-IV clearly recognizes the need for caution when applying any diagnosis of pedophilia to a juvenile. It is well accepted in the mental health community that diagnosing a child as a pedophile requires the clinician to fully defend the diagnosis with “clear and convincing” evidence.
- Under SORNA, a juvenile is a Tier III “child predator” if he engages in sexual misconduct at a time when he is 4 years older than any victim who is at least 13 years old. However, the DSM-IV explicitly states that a youth can ONLY be diagnosed as a ‘pedophile’ if the offender is 16 (or older) at the time of the offense AND the child victim is AT LEAST 5 or more years younger. Furthermore, the DSM-IV states that:
 - If the youthful offender is 15 years of age, he can NOT be diagnosed as a pedophile.
 - If the youthful offender is 16 years of age, the child victim MUST be 11 years old or younger.
 - A late adolescent (age 17 or 18) is not a pedophile, when they are involved in an *ongoing* sexual relationship with a 12 or 13 year old.

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

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

- a. Before any children can be classified as a Tier IV Juvenile Offender under SORNA, they must have been (1) adjudicated delinquent of an enumerated sex offense; (2) evaluated by a forensic psychologist who

is trained to assess risk in juvenile sexual offenders using scientifically sound methods; and (3) afforded a full evidentiary “sexually violent predator” hearing in which a judge decides that the child is at a high risk to re-offend and in need of supervision under Tier IV of SORNA.

- b. Adopt a scientifically sound approach to identifying “high risk” juvenile sexual offenders using research-based risk factors, validated instruments and afford each juvenile a full evidentiary hearing in which a judge decides whether the offender is a “high risk” sex offender in need of monitoring under the SORNA Tier IV provision.
- c. Tier IV juveniles would be maintained under a separate registry until age 21.
- d. Tier IV youth would be required to register, but notification would be limited to law enforcement agencies only.
- e. When a juvenile is approaching age 21, a hearing should be conducted in juvenile court to determine whether the child poses a safety threat to the community. If so, the juvenile may be transferred to the adult registry under SORNA. If not, the juvenile should be released from the Tier IV juvenile registry and provisions made to permit the expungement of the registration.

Rationale: This federal legislation is overbroad and based on misconceptions about juvenile sexual offending. There are critical differences between youth who sexually assault other children and adult offenders who sexually assault children. Childhood and adolescent sexual offending is different from adult sexual offending in its motivation, nature, extent, and response to intervention. These important distinctions have been reported by panels commissioned by the U.S. Department of Justice, by public information resources, including the Center for Sex Offender Management, the National Center on the Sexual Behavior of Youth, and by professional and research organizations.^{xvii} Despite these widely established differences, SORNA subjects both juvenile and adult sex offenders to the same provisions.^{xviii}

A number of re-compiled youth cohort studies over the last few decades provide us with an opportunity to obtain valid and comprehensive data on patterns of juvenile sexual offenders and these youths’ transitions into adulthood^{xix, xx}. The studies

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

xviii Supra.

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

compiled by University of California-Berkeley Professor of Law Franklin E. Zimring explored whether juvenile sexual offenders continue their sexual offending careers into adulthood. In the “Wolfgang Phenomenon” Philadelphia Cohort study, researchers analyzed the offense patterns of 3,655 offenders in a large city as they moved from age 10 to 20. In the Racine, Wisconsin study, researchers analyzed the offense patterns of over 6,000 adolescents in a more rural environment from age 10 to 30. The general patterns discovered by these studies are as follows:

- (1) The majority of children and teenagers adjudicated for sex offenses do not become adult sex offenders;
- (2) Juveniles with sexually-based police contacts have a high volume of non-sexual contacts, a low-volume of sexual recidivism during their juvenile careers, and an even lower propensity for sexual offending during adulthood.
- (3) The best predictor of whether a juvenile will sexually offend as an adult is the length of the juvenile record, rather than whether a boy committed a sexual offense. **These findings indicate that concentrating effort and focus on those who were juvenile sex offenders will ignore more than 90% of the cohort members who commit sexual offenses as adults and will, therefore, misidentify 90% of the juveniles who will become adult sexual offenders^{xxi}.**
- (4) Age appears to bring about a decline in criminal versatility; offenders tend to develop a “specialization” in a few types of offenses as they get older. Criminal versatility in juvenile sexual offenders may reduce the risk of future sexual offending, though not other types of offending. **Further examination of the data reveals that the high proportion of juvenile sexual offenders may specialize out of sexual offending even while persisting in other offenses.**

The cohort data provides a valuable opportunity to estimate the adverse impact that requiring juvenile offenders to participate in the new federal sex offender registration and notification program will have. Using the data reported in these studies,

Figlio and T. Sellin. *Delinquency in a Birth Cohort*. Chicago: University of Chicago Press. 1972]. (December 2006.)

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

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

researchers extrapolated and compared a registration and notification system, identical to SORNA, which requires all juvenile sex offenders to register for life. This juvenile registration system proved to be a poor identifier of adult sex offenders; failing to identify 92% of the true adult sexual offenders.

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

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

3. **Recommendation:** Delete juvenile sexual offenders from the retroactive provision that makes it “indisputably clear that SORNA applies to all sex offenders regardless of when they were convicted” and add a reasonable process by which all low risk juvenile offenders can petition to be removed from state and federal sex offender registries.

Rationale: SORNA requires all sex offenders who were convicted of sex offenses in its registration categories register in relevant jurisdictions, with no exception for sex offenders whose convictions predate the enactment of SORNA, nor for sex offenders who have successfully completed treatment. A number of published, clinical reports on the treatment of juvenile sex offenders empirically support the belief that the majority of juvenile sex offenders are amenable to various methods of interventions and achieve positive treatment outcomes^{xxii}. Furthermore, a plethora of federal and state courts have upheld decisions to exempt certain sex offenders from registration because of preexisting state laws that exempted certain offenders from registration or because some ex-offenders have earned the right to no longer register. For example, the State of California issued Certificates of Rehabilitation to offenders, granting them the right to no longer have to register^{xxiii}. By mandating registration of all such

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

xxiii California Penal Code § 4852.01

sex offenders, SORNA will directly conflict with judicial decisions and laws considered and passed by state legislators, thereby creating confusion and inconsistency at the state level. For example, the proposed retroactive reach of SORNA will create severe conflicts for juvenile offenders who entered admissions to predicate sex offenses before the enactment of SORNA. Our country's historically protective approach to minors only recognizes what almost every adult, and certainly every parent, knows: that minors are particularly vulnerable to poor judgment and often plead guilty to charges that they did not commit. The proposed SORNA regulations do not consider juvenile sexual offenders who were not advised by the Court, his or her counsel or the prosecutor, of the possibility of a sex offender registration and notification. Nor was the youth notified that such registration and notification could be for a lifetime.

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

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

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

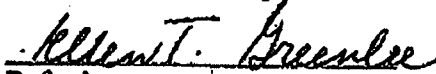
Under Megan's Law, several states have held that because adult sex offenders receive their due process at the criminal trial, no additional hearing is required to determine dangerousness. *See Connecticut Department of Safety v. Doe*, 538 U.S. 1, 123 S.Ct 1160 (2003) and *Doe v. Pryor*, 61 F.Supp. 2d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

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

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

Sincerely,

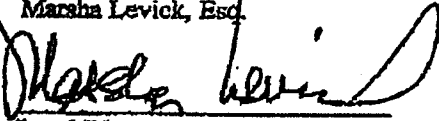
Ellen T. Greenlee, Esq.



Defender

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APPENDIX I

Table: Forty – three (43) follow-up studies of re-arrest rates of 7690 juvenile sexual offenders, followed for an average of 5 years. The weighted average sexual recidivism rate is 7.78%.

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

Source	N	Ages	Follow-up months	Sexual recidivism %	Total recidivism %	Number sexual recidivists
Allan & Allan (2003)	326	15.1	50.4	9.50%	67.9%	31
Atcheson & Williams (1954)	116	12 to 16	12	2.59%	40.5%	3
Auslander (1998)	124	13 to 18 (15)	34.3	8.06%	62.9%	10
Boyd (1994)	73	13 to 16	34.3	10.96%	n/r	8
Broadhurst & Loh (1997)	410		68.4	6.80%	n/r	28
Brannon & Troyer (1995)	36	14 to 19	60	2.78%	16.7%	1
Bremer (1992)	193	14 to 16 (15)	48	7.77%	n/r	15
Comm. Change Consult. (1998)	138		54	5.00%	n/r	7
Doshay (1943)	256		72	6.25%	n/r	16
Driessen (2002)	303	11 to 22	60	13.86%	72.3%	42
Epperson, et.al. (2002)	637	12 to 18	168	6.60%	n/r	42
Gfellner (2000)	75		51	2.67%	n/r	2
Gretton, et. al. (2001)	220	14.7	55	15.00%	50.9%	33
Hagan, Cho, et.al. (2001)	100	12 to 19	96	18.00%	n/r	18
Hecker, et. al. (2002)	54	15	132	11.11%	37.0%	6
Kahn & Chambers (1991)	221	14.7	20.4	7.69%	44.8%	17
Kahn & LaFond (1988)	350	14.5	36	9.14%	17.1%	32
Kennedy & Hume (1998)	114		34.3	4.39%	n/r	5
Lab Shields, Schondel (1993)	155		36	4.52%	18.7%	7
Leidecke, Marbibi (2000)	72		36	4.17%	n/r	3
Milloy, (1994)	59	16.5	36	1.69%	44.1%	1
Miner (2001)	86	14.1	51.6	8.14%	54.7%	7
Miner, Siekert, Ackland (1997)	96		19.3	8.33%	36.5%	8
Nesbit (2004)	292	16.05	87.6	8.90%	61.3%	26
Parks (2004)	156		53.5	6.41%	36.5%	10
Putnam (2002)	177	12 -		9.6%*	n/r	
Prentky et. al. (2000)	75	14.2	12	4.00%	10.7%	3
Rasmussen (1999)	170	14	60	14.12%	54.1%	24
Schmidt & Heinz (1996)	33		54	9.00%	n/r	3
Santman, (1998)	114		60	7.89%	n/r	9
Schram, Milloy, Rowe (1991)	197	14.5	82	12.18%	62.9%	24
Seabloom et.al. (2003)	122		220	4.92%	18.9%	6
Sipe & Jensen (1998)	164		72	9.76%	24.4%	16
Smets & Cebula (1987)	21	13 to 18	36	4.76%	n/r	1
Smith (1984)	223	14.1	20	7.17%	30.0%	16
Smith & Monastersky, (1986)	112	14.1	28.9	11.61%	49.1%	13
Steiger & Dizon (1991)	105		78	11.43%	68.6%	12
Vandiver (2006)	300	10 to 17	72	4.33%	52.7%	13

Walker (1998)	138		54	5.00%	n/r	7
Waite, Pinkerton et.al. (2002)	253	8 to 18	55.8	4.35%	60.1%	11
Weibush (1996)	492		35	4.07%	n/r	20
Worling & Cruwen, (2000)	148	15.5	75	12.84%	46.6%	19
Wolk (2005)	184	10 to 17	35	3.80%	37.9%	7

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The new American witch hunt

Demonizing sex offenders by passing tough, mindless laws rather than treating them makes little sense.

By Richard B. Krueger

Richard B. Krueger is a psychiatrist and an associate clinical professor of psychiatry at Columbia University's College of Physicians and Surgeons.

March 11, 2007

INCREASINGLY, legislation dealing with sex offenders is being passed that is punitive, untested, expensive and, in many cases, counterproductive — demonizing people who commit sexual offenses without offering any empirical information that the new laws will reduce sexually violent crime.

Last week, for instance, New York became the 19th state to enact so-called sexually violent predator legislation. This legislation provides for the indefinite "civil commitment" of sexual offenders who have served their time in prison and are about to be released.

The legislation was passed despite a lack of evidence that such laws actually reduce sexual violence and despite recent reports of warehousing and chaos in some programs and relentlessly rising costs in others.

It is just one example of the kind of punitive laws being passed across the country. Other measures include increasingly strict residency restrictions (such as those imposed by Proposition 83 in California, approved by the voters in November), more stringent rules for community notification regarding sexual offenders and monitoring by GPS (also mandated under Proposition 83, with cost projections of \$100 million annually, according to the state's legislative analyst).

In many states, politicians are eager to pass such legislation, which is enthusiastically supported by the public. Indeed, ask citizens what they think and you're likely to hear that they support laws to "get rid of perverts" who, in the eyes of many people, "deserve what they get."

This is not new. In general, dispassionate discussion of sexuality is difficult, even more so when it comes to sexual crimes. Ebbs and flows of public attention and vilification have often occurred in this country.

In the 1930s and '40s, castration was practiced in California, where sex offenders and homosexuals received this "treatment." Also, the first generation of sexual psychopath laws was passed during this time, mandating indefinite commitment for sexually violent predators. In the 1980s, society was roiled by a series of high-profile day-care-center abuse cases (such as the McMartin case and others that proved later to be unfounded). In the 1990s, there was a media uproar over supposed "ritualistic" and "satanic" sexual abuse.

These days, the pendulum continues to swing further toward the punitive end of the spectrum, with ever more draconian sentencing and post-release conditions. Under the federal Adam Walsh Child Protection Act, signed into law by President Bush in July, all sex offenders will be listed on the Internet, making information on offenders, regardless of whether they belong to a low-, medium- or high-risk category, publicly accessible; this includes people, for example, whose only crime is the possession of child pornography.

Obviously, this makes it increasingly difficult for ex-offenders to obtain residences or jobs — the mainstays of stability — and it subjects them to ongoing vigilantism and public censure. Although notification may make sense for some, it does not make sense for all.

In California, the most recent debate has been over whether Proposition 83, the law passed last year banning registered sex offenders from living within 2,000 feet of a school or park, can be retroactively applied to the 90,000 offenders who have already been released from prison. (Two federal judges ruled last month that it may not.)

What is being created is a class of individuals that is progressively demonized by society and treated in such a way that a meaningful reintegration into society is impossible.

Yes, sexual abuse is a serious matter. Yes, individuals who commit sexual crimes should be punished. Unquestionably, a small percentage of sex offenders are very dangerous and must be removed from society. What's more, we know that sexual crimes are devastating to victims and their families and that we must do all we can to protect ourselves from "predators."

But demonizing people rather than treating them makes little sense, and passing laws that are tough but mindless in response to political pressure won't solve the problem either.

The reality is that, despite the popular perception to the contrary, recidivism rates for sexual offenders are among the lowest of any class of criminals. What's more, 90% of sex offenders in prison will eventually be released back into the community — and 90% of sexual offenses are

committed by people known to their victim, such as family members or trusted members of the community — so rehabilitation is critical. It is not possible, affordable, constitutional or reasonable to lock up all sex offenders all of the time.

Society's efforts to segregate sex offenders are backfiring, resulting in unintended consequences. Homelessness is increasing among sex offenders, for instance, making it harder to monitor them and causing some law enforcement officials to call for a repeal of residency restrictions.

One of the greatest challenges to workable civil commitment programs is that offenders are so feared that, when they are ready to be reintroduced into society, no community will accept them — so instead they remain institutionalized indefinitely, creating ever-increasing costs without an end in sight.

Why has this demonization occurred? One reason is that offenders are hot news, and the more heinous the sexual crime, the more the media focus on it. Thus, our minds create a stereotype of egregious evil with respect to all sex offenders. We no longer distinguish between the most egregious cases and the others, despite the fact that the most terrible crimes represent only a small proportion of all sexual offenses.

But there *are* less serious crimes, and we should acknowledge that. Possession of child pornography is categorically different from a sexual assault. So is exhibitionism. The wife of a man who committed a hands-off crime involving possession of child pornography put it this way: "Each of these horrendous crimes drives another nail into our coffin."

Another reason for the demonization is that society has failed to fund research on the treatment and management of people convicted of sexual crimes — despite the fact that states are willing to spend hundreds of millions of dollars on unproven programs for treatment and containment.

The current public discourse on sex offenders is, therefore, without a base of empirical studies. Psychiatry, psychology and our national research institutes have eschewed involvement with such research.

No one is suggesting that sexual crimes should go unpunished or that some of the newer approaches — such as medication, intensive community supervision or even carefully considered civil commitment — are without value. What is becoming clearer, however, is that the climate in the United States makes reasonable discussion difficult.

What can be done? Some scholars, in an effort to interpose rationality between public fear and legislation, have suggested the concept of "evidence-based legislation." This is analogous to "evidence-based medicine" and would call on legislative bodies to inform their proposed laws with the best available scientific evidence — something that is rarely done now.

What is happening now with individuals who have committed sexual crimes is the modern-day equivalent of a witch hunt. Our images of the worst determine what we mete out to all sex offenders. It is time to reexamine our approaches and develop empirically based, scientifically sound measures and treatments to bring rationality back to this discussion.

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