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 AdamWalshActIinterimRegs4-30-07.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] or any additional information you may require. Thank you.

E. Bruce Nicholson

E. Bruce Nicholson
Legislative Counsel
American Bar Association
[redacted]

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Defending Liberty
Pursuing Justice

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."[1] The Standards, as well as

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

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.[2] 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."[3] 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." [4] 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).[5]

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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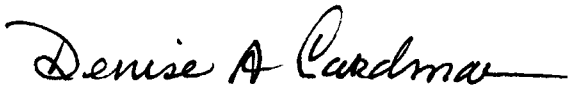
2. See Standards Relating to Juvenile Delinquency and Sanctions, Part III: General Principles of Liability.
3. Standards Relating to Juvenile Records and Information Services, Part XV: Access to Juvenile Records.
4. Standards Relating to Dispositions, 1.2 (I).
5 See Zimring, *The Predictive Power of 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,



Denise A. Cardman

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 committment 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]

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 PRECENDENCE!
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.

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.

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

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: 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 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 responsibilties, 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]

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]

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

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: 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 concvited or adjudicated for a sexual crime should be managed and monitored the same way. Although I symapthize 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 ules 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]
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%).[1] This Center, the Center for Sex Offender Management (an institute created by the Office of Justice Programs, the National Institute of Corrections and

[1] National Center on Sexual Behavior of Youth (NCSBY)

the State Justice Institute) and OJJDP have all found that youth sexual offenders are highly responsive to treatment.[2]

Moreover, juveniles are not fixed in their sexual offending behavior. Juvenile offenders who act out sexually do not tend to eroticize aggression, nor are they aroused by child sex stimuli.[3] Mental health professionals regard this juvenile behavior as much less dangerous. When applying the American Psychiatric Association diagnostic criteria for pedophilia (abusive sexual uses of children) to the juvenile arrests included in the National Incident Based Reporting System, only 8% of these incidents would even be *considered* as evidence of a pedophilia disorder.[4] More than nine out of ten times the arrest of a juvenile for a sex offense is a one-time event, even though the juvenile may be apprehended for non-sex offenses typical of other juvenile delinquents.[5]

Finally, given that the vast majority of sexual offenses occur within families, SORNA may actually serve to decrease appropriate intervention and treatment. If families are fearful of the public registration and notification requirements of SORNA they may be less willing to come forward to public officials to seek treatment and intervention when there is an incident within the family. Thus more children may continue to be harmed as families hide from public eye their "private" family business.

Thus, children convicted of sex offenses pose an extremely low threat to public safety and the onerous and difficult task of tracking these youth on public registries and publicly notifying relevant agencies for a minimum of 25 years will only serve to waste public dollars and destroy children's lives. Additionally, the public registration and notification requirements may actually serve to decrease overall public safety as families may choose to hide from public view sexual offenses that occur within the family.

Applying SORNA Retroactively Imposes an Ex Post Facto Punishment for Previously Confidential Adjudications

In most states, juvenile adjudications are confidential. Imposing community notification and placing adjudicated youth from these states on a sex offender website would impose a substantial punishment not imposed on adults, whose convictions were matters of public record already. For this reason, courts could not analyze the ex post facto application of community notification to juveniles in the same way as they have for adults. *See, e.g., State v. C.M.*, 746 So.2d 410 (Ala. Crim. App. 1999) (holding that, as applied to juveniles whose adjudications were confidential under state law, Alabama's community notification act violated prohibition on ex post facto laws).

Youth who would be affected by this retroactive rule would have had no opportunity at the time of their adjudication to properly weigh the consequences of community notification in court. Thus these youth may have chosen to accept responsibility for an action for which, at the time, the consequences were understood to be far different than public registration and notification. Given the profound impact that the public registration and notification requirements of SORNA have on youth and their families, the attorneys for these youth may have recommended a different course of action, an option that is unavailable to these youth if SORNA is applied retroactively.

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[2] NCSBY, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report;* available at http://www.ojjdp.ncjrs.org/.

[3] NCSBY

[4] Zimring, F.E. (2004). An American Travesty. University of Chicago Press, p. 8.

[5] Ibid, p. 66.

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.[6] 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[7] destroying the social networks necessary for rehabilitation[8]

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[9]. 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

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

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

[8] Rasmussen, cited in Garfinkle.

[9] 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 <u>one-time event</u>, 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 25th 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.[1]
- In New Jersey, the State Supreme Court ruled that registration requirements for juveniles had to include more due process protections.[2]
- 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.

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[1] *State v. C.M.*, 746 So.2d 410 (1999).
[2] *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 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

JON S. CORZINE
Governor

State of New Jersey
Office of the Public Defender
Special Hearings Unit
MICHAEL Z. BUNCHER, *Chief Counsel*
[redacted]

YVONNE SMITH SEGARS
Public Defender

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

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[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

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[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

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"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.

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[5] R.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,

YVONNE SMITH SEGARS
PUBLIC DEFENDER

By: _____
Michael Z. Buncher
Deputy Public Defender

From: Michael Buncher [redacted]
Sent: Monday, April 30, 2007 9:38 AM
To: OLPREGS
Subject: OAG Docket No. 117

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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.

Notice:

[redacted].txt

From: no-reply@erulemaking.net
Sent: Wednesday, March 07, 2007 8:13 PM
To: OLPREGS
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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: [redacted]
Last Name: [redacted]
Mailing Address:
City:
Country: United States
State or Province: [redacted]
Postal Code:
Organization Name:

Comment Info: ==========

General Comment:This can not be allowed to be applied retroactively. The manner in which one is
classified has to be Unconstitutional. The law does not take past criminal history into consideration or if the offender has a spouse and children. Each offender should be assessed using a risk assessment tool before being placed on a tier. California already requires all sex offenders to register for life. With your Tier I & II these people will not have to register for life. The law will also have a flip flop effect of sorts because many of the offenses committed against children here in California classify the perpetrator as high risk. You law will change the status of many, in the wrong direction. Way too many laws attacking the sex offender has recently come to light and just when former offenders here in California were getting over the fact that Jessica's Law will not apply to them, you hit the entire nation with new registration requirements that will cause many people to lose homes and jobs. No one thought this through because everyone in the political arena are afraid to say that these requirements are too harsh especially for those that have complied with the California registration requirements. Please change your opinion on making this law retroactive or at least take into consideration the current laws that each state has and honor what they have in place now. If this doesn't happen a dear family member will have to comply to a whole new set of laws that currently don't apply to him here. Here in California the only offenders that are required to register every 3 months are those that deemed sexually violent predators by a court of law. Your Tier III will unjustly be applied to my family member even though he is not a monster. Please think about his spouse and children in your decision, this law will have horrible consequences on them too. Many victims right groups oppose the new laws that are being passed as counter productive to the rehabilitation of a former offender.

From: no-reply@erulemaking.net
Sent: Wednesday, April 04, 2007 4:08 PM
To: OLPREGS
Subject: Public Submission

Follow Up Flag: Follow up
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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
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Submitter Info:

First Name: R. Steven
Last Name: Coleman
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State or Province: [redacted]
Postal Code: [redacted]
Organization Name: Mississippi Department of Public Safety

Comment Info: ==========

General Comment:Wednesday, April 4, 2007

SEX OFFENDER REGISTRATION AND NOTIFICATION

Reference Proposed Rule: OAG Docket No. 117

The Mississippi Department of Public Safety, Crime Information Center, Sex Offender Registry comments that the proposed rule ? 72.1 which specifies the applicability of the requirements of the Sex Offender Registration and Notification Act to include sex offenders convicted prior to the enactment of that Act, is well considered and therefore, should become a part of the Federal requirements governing sex offender registration and notification.

We also agree that these requirements must include registering and keeping the registration current in each jurisdiction in which a sex offender resides, is an employee, or is a student. Thus, we also indorse the proposed ? 72.3 which will govern the state?s applicability of the Sex Offender Registration and
Notification Act. If finally approved, those requirements of the Sex Offender Registration and Notification Act would apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act.

In the year 2000, the Mississippi Legislature enacted the Mississippi Sex Offenders Registration Law which became effective from and after July 1, 2000. MCA ? 45-33-25 requires any person residing within this state, who has been convicted of any enumerated sex offense, to register with the Department of Public Safety. The Mississippi Department of Public Safety (DPS) maintains the Sex Offender Registry (SOR) which is used to compile and publish information on convicted sex offenders residing, working, or attending school in Mississippi. This

SOR law applies to all such convictions, regardless of the date, even if occurring prior to the statute?s effective date of July 1, 2000. Therefore, state law in Mississippi is compatible with the proposed federal rule.

We sincerely trust this brief comment will be beneficial to the gathering of information pertaining to the proposed federal rule of OAG Docket No. 117.

Respectfully,

R. Steven Coleman
Attorney, Senior
Miss. Bar # 6365

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Dated: February 16, 2007.
Alberto R. Gonzales,
Attorney General.
[FR Doc. E7?3063 Filed 2?27?07; 8:45 am]
BILLING CODE 4410?18?P

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DEPARTMENT OF JUSTICE
28 CFR Part 72
[Docket No. OAG 117; A.G. Order No. 2868?
2007]
RIN 1105?AB22
Office of the Attorney General;

Applicability of the Sex Offender
Registration and Notification Act
AGENCY: Department of Justice.
ACTION: Interim rule with request for
comments.

SUMMARY: The Department of Justice is
publishing this interim rule to specify
that the requirements of the Sex
Offender Registration and Notification
Act, title I of Public Law 109?248, apply
to sex offenders convicted of the offense
for which registration is required before
the enactment of that Act. These
VerDate Aug<31>2005 15:10 Feb 27, 2007 Jkt 211001 PO 00000 Frm 00016 Fmt
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RULES

requirements include registration by a
sex offender in each jurisdiction in
which the sex offender resides, is an
employee, or is a student. The Attorney
General has the authority to make this
specification pursuant to sections 112(b)
and 113(d) of the Sex Offender
Registration and Notification Act.

DATES: Effective Date: This interim rule
is effective February 28, 2007.
Comment Date: Comments must be
received by April 30, 2007.

[redacted]

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

Re: OAG Docket No. 117

Dear Senior Counsel Karp:

I am opposed to the Interim Rule issued as a result of the Adam Walsh Act (AWA) and SORNA by Attorney General Gonzales.

Posting places of employment in a federal database will stand in the way of any sex offender being able to earn a living, no matter how minor their crime. This is counterproductive to the goal of reintegrating ex-felons back into society as self supporting, productive citizens.

The Attorney General Gonzales said that SORNA's applicability will be to "virtually the entire existing sex offender population". There is no mention about whether Congress specifically limits what Mr. Gonzales can do.

In California, there are already laws in effect to handle the truly high risk offender and considering all sex offenders one and the same makes no sense.

Of course we all want to prevent sex crimes. However, SORNA is an ill conceived, poorly thought out Rule that should be discarded immediately

Sincerely,

Marie Callahan

Marie Callahan

New Mexico Sentencing Commission

April 29, 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 Attorney General Gonzales:

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

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

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

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

2808 Central Avenue SE, Room 114 ✦ Albuquerque, New Mexico 87106
(505) 277-3494 ✦ FAX (505) 277-4215 ✦ Toll Free: 1-888-466-2552
www.nmsc.state.nm.us ✦ nmsc@unm.edu

April 28, 2007

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

OAG Docket No. 117

My concerns regarding the interim decision by the U.S. Attorney General regarding the retroactivity of the Adam Walsh Act (AWA) are documented below, along with my concerns about the juvenile component, and the punitive effects of the SORNA.

Should Not Retroactively Include Those Not Previously Required to Register Per the Jacob Wetterling Act

The interim decision states:

> "The current rulemaking serves the narrower, immediately necessary purpose of foreclosing any dispute as to whether SORNA is applicable where the conviction for the predicate offense occurred prior to the enactment of SORNA. This issue is of fundamental importance to the initial operation of SORNA, and to its practical scope for many years, since it determines the applicability of SORNA's requirements to virtually the entire existing sex offender population."

Differentiation needs to be made however between those that previously were required to register per the Jacob Wetterling Act, and those that did not. **The AWA should NOT be retroactively applied to those that were not required to register per the Wetterling Act.** It should only be applied retroactively to those that met the definition in the Wetterling Act, including those currently released into the community, and those incarcerated, at the time the AWA took effect. **The Attorney General's decision is not one that should be "all or none". It requires differentiation.** One cannot assume, nor should that imply that if the AWA is not made retroactive to all past offenders that the entire existing sex offender population would not be subject to the AWA. Instead, the Attorney General needs greater differentiation, so that those that previously were required to per the definition in the Wetterling Act would continue to do so as part of the requirements of the AWA; but those that did not, would not be subject to the AWA. Moving forward, obviously, all new offenders that meet the definition of sex offender as defined in the AWA would be included.

There are many important reasons why this should be the case:

1. Some individuals were determined by a judge to not be deemed a sexual offender, and were not required to register. There are several states that make this a judicious decision. (Which is a much more appropriate method of labeling than a categorical offense based decision.)
2. Some have already completed their term of registration
3. Some have had their offenses expunged or pardoned.

4. Some were not required to register by law, including the Jacob Wetterling Act. This is especially significant because many states do not place persons < 18 years of age at the time of the offense on the sex offender registry.
5. Some were allowed by law to petition the court for removal from the registry, and that request was successfully granted after judicious review by the court.

The interim decision on retroactivity will pose the following implementation problems within states, and may even jeopardize its implementation:

1. How will states find those persons above that either did not have to register, or no longer have to register?
2. How will these individuals be notified of their new requirements under the AWA?
3. Lengthy and time consuming processes way have to be implemented to review past cases to determine if an individual meets the new definition for a sexual offender per the AWA. This decision could not be done without proper representation of the offender, and the ability to challenge any decision
4. Increased costs to states to determine who retroactively meets the definition in the new law
5. Increased costs to the states to locate and notify those individual who retroactively meet the definition in the law.

AWA Should Not Include Juveniles

The AWA never should have been applied to juveniles. As a long-time advocate for juveniles, and particularly those with learning disabilities, I am disappointed that any juveniles are included in the definition of a sexual offender per the AWA. I am not alone; many professional organizations oppose the inclusion of juveniles on a sexual offender registry (SOR). It is important to consider that the members of these organizations work with both victims and offenders; they understand the developmental differences of juveniles; they know the distinct differences in the nature of sexual contact by a juvenile versus that of an adult; and they know the impact to a child victim by a juvenile is significantly different than when contact is done by an adult. Below a just some of the organizations that wrote letters or positions statements opposing the inclusion of juveniles on a sexual offender registry, and sought to have them excluded from legislation that became the Adam Walsh Act.

1. American Psychological Association
2. Clinical Social Work Federation.
3. National Association of Social Workers
4. National Association of School Psychologists
5. School Social Work Association of America
6. Society for Research in Child Development
7. Association for the Treatment of Sexual Abusers
8. National Mental Health Association
9. American Academy of Child and Adolescent Psychiatry
10. Federation of Families for Children's Mental Health
11. National Juvenile Justice and Delinquency Prevention Coalition
12. National Consortium for Child and Adolescent Mental Health Services

If you would like copies of any of these position statements, please feel free to contact me, and I will assure that you get it.

Given the rehabilitative nature of our juvenile court system; the fact that these individuals do not have a conviction on their record; the fact that effective intervention and treatment is the basis of our juvenile court system; that fact that state laws and court decisions chose to address an individual's issues as a juvenile; and the fact that confidentiality in juvenile matters should be maintained, **juveniles should not be subjected to the stigma and unintended consequences that accompanying being labeled a sexual offender.**

Punitive Effects of the SORNA

Having worked closely with individuals that have been placed on the SOR, I can tell you this label is definitely punitive. These individuals lose jobs, housing, schooling and scholarship opportunities, and normal socialization opportunities. It fractures the family, and places them at risk for divorce, suicide and depression. Registration requirements are "not just an inconvenience" - they are detrimentally life altering. I know of 2 that have committed suicide because they could not live with a label that inappropriately defined them. Both were 14 – 18 at the time of the offense. Sadly, a few states already place juveniles on their registry. It is heartbreaking to see the negative impact to their life for offenses that sometimes occurred when they were as young as 10 years old. I work with states to change such irrational laws. Regardless, as any juvenile moves into adulthood, their offense is treated in the same manner as an adult offender when it comes to the SOR. The impact on these young offenders is devastating (and I consider young as 21 years old or less because late adolescence isn't complete until approximately 21 or 22). Research shows us this labeling is rarely justified. A juvenile court judge from Kent County Michigan said it best. "It should be reserved for only those juveniles that commit the most heinous of crimes, and show no remorse, and no response to intervention".

It's disheartening to think that 14 – 18 year olds will be subject to the AWA because of the acts of Joshua Wade, the offender in the Amy Zyla case. Joshua Wade stands apart from most juveniles because he refused to participate in his therapy and treatment program. When discharged from the state, it was known that he did not respond to intervention. Sadly, so many other juveniles are being wrongly labeled because of him, and will be subjected to the unintended punitive effects of being labeled a "sexual offender". If you think the SORNA is not punitive, I challenge you to live a few days in the life of someone that bears the label of sex offender – even that of a young person. You will be shocked to see the negative impacts of such a label. That's why over-inclusion is a problem. It doesn't make society safer, and at the same time these punitive effects will incur even greater financial burden to society.

Thank you for this opportunity to be heard as the Attorney General considers this important decision.

Sharon Denniston, Juvenile Advocate, [redacted]

From: Eric Eads [redacted]
Sent: Thursday, March 01, 2007 10:40 PM
To: OLPREGS
Subject: SORNA

Follow Up Flag: Follow up
Flag Status: Completed

I have some concerns regarding safety and well being of family members of those individuals that SORNA applies to such as their children, spouses, parents, ect. For example all vehicles operated by those SORNA applies to will be listed on the internet. Often times the vehicle may not be driven by the offender but rather a family member, friend spouse, parent, ect. How will they be protect by vigilantes? How can they protect themselves against attacks? I also believe publicly publishing an offenders employer may cause potential problems for the employer. It will also increase unemployment for offenders and their families, thus leading to a less stable, less positive enviorment. Regardless of what the AG states I believe that SORNA is punitive in nature not only to the offender, but to his family as well. It violates ex post facto statutes as well in my opionion. I believe there also needs to be more clarification on the tier levels as there is some confusion regarding registration time frame, classification, ect. I look forward to any comments you may have, Sincerely, Eric Eads

From: no-reply@erulemaking.net
Sent: Saturday, April 28, 2007 12:16 AM
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: Kathie
Last Name: Gourlay
Mailing Address:
City:
Country: United States
State or Province:
Postal Code:
Organization Name:

Comment Info: ==========

General Comment:Regarding OAG Docket 117 - I don't think it is right to make this sex offender registration law
retroactive to people who may have offended many years ago, performed any punishment

mandated by the government, and then not reoffended. Also, when they did commit an offense,
they did not realize there might be this type of punishment.

From: H/E Haws [redacted]
Sent: Tuesday, May 01, 2007 2:44 AM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Red

Attachments: Fact Sheet on Juvenile SO's.doc
It is wrong to make Adam Walsh Act registration and notification retroactive. Please, please pay attention to the attached Fact Sheet and realize how grossly unfair it is to lump all of our youthful sex offenders into the category of "predators". We live in America!! What is the heavy hand of the Government doing? What about Due Process and Ex Post Facto?

Oh, the unintended consequences of "do-good", "feel-good" rules . . .

Edna Haws
[redacted]

From: Brent Gunnell [redacted]
Sent: Friday, April 27, 2007 7:03 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Completed
Re:OAG Docket No. 117

What in the world are some of you people thinking. The way the laws are written, the penalty for almost any sexual contact is already grounds for a lifetime of consequences for every offender regardless of the significance or gravity of the event.

Every "sex offender" is pronounced a predator!! This takes away from the small number of actual deviants and creates hysteria for all.

You cannot win the war on Drugs!!
You have not won the war on Terror!!
You allow alcohol to plague the roads and homes of America!!
You incarcerate four times the number of people than the almost any other country in the world!!

And then you come up with this kind of ruling and believe you will solve the problem of sexual predators in this country!!!

You ought to know by now: There is no end to treatment, because the concept foisted on the public is; **THERE IS NO CURE FOR ANY LEVEL OF SEX OFFENDERS!!!**

Treatment is undergoing many changes and there is no real evidence any kind of treatment has been effect in reducing recidivism. In fact the rate of recidivism is virtually the same with or without treatment and that level is LOW!!!!! Those running therapeutic and probationary programs admit they have no real evidence of their programs reducing recidivism, but they continue to run them as if they are working!!!

So in my opinion, adding another layer of retroactive rulings for **all** sex offenders makes little sense and is bad policy, as probation and therapy currently required of all plea bargains, already amounts to **PROBATIONARY AND THERAPEUTIC JURISPRUDENCE**. If you don't understand this it means, additional punish beyond jail sentences and the thousands of dollars offenders currently spend to defend themselves.

Spend your time and efforts on the real bad guys. There are predators. Concentrate on those 5 or 6% of all sex offenders who have problems and need more treatment and jail time than all the others put together.

Brent Gunnell
Arizona Resident

From: Virginia Davis [redacted]
Sent: Monday, April 30, 2007 6:19 PM
To: OLPREGS
Subject: OAG Docket No. 117

Importance: High

Follow Up Flag: Follow up
Flag Status: Red

Attachments: awa interim rule comments.pdf
Attached please find comments from the National Congress of American Indians in response to OAG Docket No. 117.

Virginia Davis
Associate Counsel
National Congress of American Indians
1301 Connecticut Avenue, NW Suite 200
Washington, DC 20036
[redacted]

NATIONAL CONGRESS OF AMERICAN INDIANS

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PACIFIC
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Ute Mountain Ute Tribe

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EXECUTIVE DIRECTOR
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Tlingit

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April 30, 2007

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

RE: OAG Docket No. 117

Dear Mr. Karp:

I am writing on behalf of the National Congress of American Indians, the nation's oldest and largest organization of American Indian and Alaska Native tribal governments, to comment on the interim rule announced in OAG Docket No. 117.

The tribal governments represented by NCAI share the federal government's commitment to protecting our communities and citizens from sexual predators. Prior to the Adam Walsh Act, a number of Indian tribes had adopted sex offender registry codes. These codes take a variety of forms that reflect the remote rural nature of many Indian communities where oftentimes access to technology is low, but community knowledge and cohesiveness is high. The approach taken by the tribes also varies depending on how the federal government is meeting its responsibility to provide law enforcement services to tribal communities.[1] NCAI and our tribal members also worked successfully to include a provision in the Violence Against Women Act of 2005 to create a National Tribal Sex Offender Registry so that Indian tribes could share information with one another and improve our ability to track dangerous offenders.

We have grave concerns, however, that the Adam Walsh Act was written without adequate consideration of current tribal practices and the unique circumstances in Native communities, and as a result, enforcement of the Act in Indian Country will be undermined (please see the attached NCAI resolution for an additional discussion of these concerns). After reviewing the interim rule, we are concerned that the Department of Justice is now compounding the problem by drafting rules and guidelines for implementation of the Act without consultation with tribal governments, as required by federal law, and therefore without sufficient knowledge of the circumstances in Indian Country.

Executive Order No. 13175 (attached) requires all federal agencies to consult with Indian tribes on a government-to-government basis before proposing legislation or promulgating rules and regulations that will have a substantial impact in Indian Country. While different agencies may interpret the consultation responsibility in

[1] In many areas the federal law enforcement responsibility is met directly by the Bureau of Indian Affairs (BIA), whereas in others the tribe has taken over this responsibility from the BIA pursuant to a 638 contract. In still others, the federal government has delegated its law enforcement responsibility to the state.

different ways, it is clear that "meaningful" consultation means something more than the opportunity afforded to the general public to participate in notice and comment rulemaking. The consultation requirement is one way in which the federal government gives effect to its unique responsibilities to the Indian nations. Moreover, it is the best way to develop effective policies given the complex and unique legal status, histories, and present-day circumstances of Indian peoples.

Because Indian tribes were not consulted in the development of the Adam Walsh Act or the interim rule, the comprehensive nature of the National Sex Offender Registration system will likely be compromised. Neither the interim rule nor the Federal Register notice accompanying the interim rule give any guidance about how the rule will be applied in Indian Country. The remarkable complexity of the existing division of law enforcement responsibilities among federal, state, and tribal authorities is not reflected in tribal provisions of the Adam Walsh Act, not is it addressed in the interim rule. The federal government has the primary responsibility for providing law enforcement services to tribal communities. In many areas this federal law enforcement responsibility is met directly by the Bureau of Indian Affairs (BIA), whereas in others the tribe has contracted to provide for this responsibility pursuant to a 638 contract. In still others, the federal government has delegated its law enforcement responsibility to the state. Despite its significant role in providing law enforcement and judicial services on tribal lands, it is unclear what role the Bureau of Indian Affairs will play in the implementation and enforcement of the Act.

Section 127 of the Adam Walsh Act gives tribal governments the option of electing to be a registration and enforcement "jurisdiction" for purposes of the Act, and many tribes have elected to do so. Unlike the states, however, there are many tribes that do not currently have a sex offender registration and notification program in place, and it will likely take considerable time for these tribal registration systems to come online. It is unclear from the interim rule where an offender who lives or works on tribal lands where a registry does not currently exist is expected to register for the next two years (the permissible time for jurisdictions to come into compliance under the statute). As a result, it is likely that the Act's purpose of "eliminating potential gaps and loopholes" will likely be compromised in the short term. As leaders who want to keep our communities safe, this is very concerning.

We are also concerned that individuals, Indian and non-Indian alike, who have been convicted of qualifying offenses will technically be in violation of federal law despite the fact that it is a practical impossibility for them to comply if they live or work on tribal lands and that tribe does not yet have a registry. Clearly there is something wrong if federal law criminalizes the failure to do something that it is impossible for an individual to do.

Additionally, notifying tribal offenders of the retroactivity rule has the potential to place a substantial burden on tribal and Bureau of Indian Affairs law enforcement agencies. Under the Adam Walsh Act, tribal court convictions for certain offenses now trigger a federal registration requirement. Because many tribes who plan to participate under the Adam Walsh Act do not currently have a sex offender registry code in place, many of the tribal offenders to whom the Adam Walsh Act provisions now apply are required to register for the first time. In addition to the problem raised above regarding where these offenders are to register, it is unclear from the rule how these offenders are to be notified of this new requirement.

Tribal courts and tribal and BIA law enforcement services are severely under-funded and lack the resources that would be required to track-down offenders who are no longer incarcerated and notify them of the new registration requirement. A recent Bureau of Indian Affairs study concluded that the police-to-citizen ratio in Indian Country is less than one-half of what it is nationally. In many areas, there may be just a few officers on duty each shift charged with patrolling an area as large as the State of Connecticut. Although we understand that financial assistance will be available to tribes under the Adam Walsh Act, no such monies have yet been made available. Tribal governments have many pressing public safety needs that will go unmet if scarce tribal and BIA resources are diverted to a notification program.

We have no doubt that there are solutions to the implementation challenges outlined above, but it is imperative that Indian tribes are given an opportunity to provide input into developing those solutions. Unfortunately, Indian tribes were not consulted during the development of the Adam Walsh Act or the interim rule, and have not been asked to give input into other guidelines that are currently being developed by the Department of Justice. We strongly urge the DOJ to comply with the consultation requirement set forth in EO 13175.

We recommend and request that a meeting be held as soon as possible with representatives from Indian tribes, the Department of Justice, and the Department of Interior to begin discussing how best to integrate Indian tribes into the national sex offender registration and notification system. This meeting should take place as soon as is practicable to allow tribes to make informed decisions prior to the July 27, 2007 deadline. Please contact me or NCAI Associate Counsel Virginia Davis, 2[redacted] to follow-up on this request and with any questions.

Sincerely,

Joe Garcia
President

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

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Ohkay Owingeh
(Pueblo of San Juan)

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The National Congress of American Indians
Resolution #ECWS-07-003

Title: Urging Congress to Amend Section 127 of the Adam Walsh Act

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, according to Department of Justice statistics, 1 in 3 Native women will be sexually assaulted in her lifetime; and

WHEREAS, tribal governments are committed to fulfilling their responsibility to protect and promote public safety on tribal lands and a number of tribes have developed innovative strategies for tracking sex offenders on tribal lands; and

WHEREAS, on July 27, 2006 Congress passed the Adam Walsh Act, which created a National Sex Offender Registry and Notification System; and

WHEREAS, Section 127 of the Adam Walsh Act addresses Indian tribes and was included without any hearings, consultation or consideration of the views of tribal governments and current tribal practices; and

WHEREAS, Section 127 forces tribal governments to affirmatively elect to comply with the mandates of the Act by July 27, 2007 or *the state in which the tribe is located will be given jurisdiction to enforce the Act and would then have the right to enter tribal lands to carry out and enforce the requirements of the Act*; and

WHEREAS, tribal governments in the mandatory P.L. 280 states would be forced to relinquish civil jurisdiction to the states for limited purposes under the Act; and

WHEREAS, the Act requires tribes who elect to comply with the Act, to maintain a sex offender registry that includes a physical description, current photograph, criminal history, fingerprints, palm prints, and a DNA sample of the sex offender; and

WHEREAS, the tribal provisions of the Adam Walsh Act make no reference to the National Tribal Sex Offender Registry authorized in Title IX of the reauthorization of the Violence Against Women Act passed in 2005 that was developed in consultation with Tribal governments and is more consistent with principles of tribal sovereignty; and

WHEREAS, Congress has failed to appropriate any money to develop the National Tribal Sex Offender Registry, nor to assist tribes into developing the systems necessary to comply with the mandates of the Adam Walsh Act and is unlikely to do so prior to the July 27, 2007 deadline for tribes to opt-in; and

WHEREAS, the Department of Justice has not yet issued any regulations or guidance for implementation of the Act and it seems increasingly unlikely that any such guidance will be promulgated prior to the July 27, 2007 deadline; and

WHEREAS, the provision in the Adam Walsh Act that gives states enforcement authority essentially delegates federal law enforcement authority on many reservations where no such delegation has occurred for any other area of law and states are not currently exercising criminal jurisdiction; and

WHEREAS, requiring tribes to take affirmative action to avoid an expansion of state jurisdiction on tribal lands represents an unprecedented diminishment of tribal sovereignty and will likely result in an expansion of state jurisdiction that will unnecessarily complicate the already confusing system of criminal jurisdiction on tribal lands and diminish cooperation between states and tribes on law enforcement; and

WHEREAS, the existing scheme of criminal jurisdiction on tribal lands is sufficient to fully enforce the registration requirements of the Adam Walsh Act without the provision delegating federal enforcement authority to the state in places where states do not currently have this authority; and

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby call upon the Congress to amend the Adam Walsh Act to remove the existing tribal provisions and engage in a process of consultation with tribal governments to determine how best to include tribal nations in the national sex offender registry; and

BE IT FURTHER RESOLVED, that the NCAI does hereby call upon the Congress to remove the arbitrary July 27, 2007 deadline for tribes to elect to participate; and

BE IT FURTHER RESOLVED, that NCAI calls upon Congress to strike the portion of the Adam Walsh Act that delegates federal enforcement authority under the statute to the states; and

BE IT FINALLY RESOLVED, that NCAI calls upon Congress to appropriate sufficient funds for tribes to develop registration systems that will comply with the mandates of the Adam Walsh Act and for the development of the National Tribal Sex Offender Registry, and calls upon the Department of Justice to authorize tribal registration numbers.

CERTIFICATION

The foregoing resolution was adopted by the Executive Council at the 2007 Executive Council Winter Session of the National Congress of American Indians, held at the Wyndham Washington and Convention Center on February 26-28, 2007 with a quorum present.

President

ATTEST:

Recording Secretary

Federal Register
Vol. 65, No. 218
Thursday, November 9, 2000

Presidential Documents

Title 3—

The President

Executive Order 13175 of November 6, 2000

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the

need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

THE WHITE HOUSE,
November 6, 2000.

[FR Doc. 00–29003
Filed 11–8–00; 8:45 am]
Billing code 3195–01–P

From: Candace Faverty [redacted]
Sent: Monday, March 05, 2007 2:42 PM
To: OLPREGS
Subject: Concerning 28 CFR Part 72 -- ACTION: Interim rule with request for comments.

Follow Up Flag: Follow up
Flag Status: Completed
There has been questions of offenders and parents of juvenile offenders concerning the Adam Walsh Act (HR 4472) pertaining to the definition of Offenses Involving Consensual Sexual Conduct as defined in Subtitle A - Sec. 111 (5)(C)

Subtitle A--Sex Offender Registration and Notification
SEC. 111. RELEVANT DEFINITIONS, INCLUDING AMIE ZYLA EXPANSION OF SEX OFFENDER DEFINITION AND EXPANDED INCLUSION OF CHILD PREDATORS

which contains the following

(5) AMIE ZYLA EXPANSION OF SEX OFFENSE DEFINITION-

(A) GENERALLY- Except as limited by subparagraph (B) or (C), the term `sex offense' means--

(i) a criminal offense that has an element involving a sexual act or sexual contact with another;
(ii) a criminal offense that is a specified offense against a minor;
(iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of title 18, United States Code) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of title 18, United States Code;
(iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or
(v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

(B) FOREIGN CONVICTIONS- A foreign conviction is not a sex offense for the purposes of this title if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under section 112.

And specifically this section

(C) OFFENSES INVOLVING CONSENSUAL SEXUAL CONDUCT- An offense involving consensual sexual conduct is not a sex offense for the purposes of this title if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

DEPARTMENT OF JUSTICE
28 CFR Part 72
[Docket No. OAG 117; A.G. Order No. 2868-2007]

RIN 1105-AB22
Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act
AGENCY: Department of Justice.
ACTION: Interim rule with request for comments.

The Interim rule with requests for comments does not address the issue of "**OFFENSES INVOLVING CONSENSUAL SEXUAL CONDUCT**" There are many young men ages 17-21 who are currently required to register in various States and Jurisdictions across the United States, who by this definition would not be required to register. What is the intent with this definition?

1. Does it only pertain to Federal Offenses?
2. Does it perta in to all Jurisdictions?
3. Does it only pertain to Consensual sex acts occuring after the enactment of the Adam Walsh Act?
4. Does it perta in retroactively thereby allowing these young men to be removed from the registries?
5. W ill States retain the option of having these young men on their State/Local registries while not including them in the National Registry?
6. I f retroactive, how does one get themselves removed, will they have to petition the court of their conviction for removal?

There are so many young men whose lives are ruined due to this type of sexual misconduct, some resorting to suicide as they see no future for themselves. These questions require addressing sooner than later before more young men end their lives.

Thank you,

Candace Faverty

From: Families for Fairness [redacted]
Sent: Sunday, April 15, 2007 5:25 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Completed

Att: Mr. David J. Karp, Senior Counsel
Office of Legal Policy.

DEPARTMENT OF JUSTICE
28 CFR Part 72
[Docket No. OAG 117; A.G. Order No. 2868-2007]

RIN 1105-AB22

Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act
Department of Justice.
Interim rule with request for comments.

Dear Mr. Karp,

We respectfully submit our suggestions for rules in the implementation of the Adam Walsh Act. We represent young **first offenders**, those ages 18-19, still teenagers, yet prosecuted as adults, for experimental sexual experiences.

1. We recommend that there be a tiered system allowing leniency for your first offenders -- those who are lowest risk of re-offending.

2. We recommend that juveniles and **first offenders** under age 20 at the time of offense be on a **private registry**, available only to law enforcement, thus not labeled and have their lives ruined.
Let them have a second chance.

3. Young offenders usually mature out of their unacceptable sexual behaviours. Most of the time their offenses do not involve weapons, true violence, abduction, etc. yet they are classed the same as true violent predators. A registry with several tiers dilutes it's usefulness.

4. Definitions such a predator, violent, etc. need to mean just that, and not casually used for young people who are experimenting with sexuality. Again, it dilutes the usefulness of the registry.

5. Massive education campaign to let kids know what the **legal consequences** of underage sex in their states. This is vital. Most kids haven't any idea what they are facing, legally.

6. There is no evidence registry does anything to prevent future crime. Thus any use, should be for only those who are dangerous, most likely to re-offend: Victims are boys, strangers, weapons are used, abduction involved, multiple offenses, etc.

7. Treatment works. The idea of "no cure' is only true for some mentally disordered folks who suffer from such things as pedophilia. Don't clutter up the registry with others.

8. It's more a function of parents, not government, to protect their children as nearly all sex offenses
against children are in the child's own home, or by someone close to the family. No registry or laws will stop this unfortunately.

Thank you.

Lynn Hughes

Director
Families for Fairness

[redacted]
[redacted]14
[redacted]
[redacted]
[redacted]
Lynn Hughes

Director
Families for Fairness

[redacted]
[redacted]4
[redacted]
[redacted]
[redacted]

From: jean watson[redacted]
Sent: Monday, April 30, 2007 3:54 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Red

We are very concerned about the ruling that will allow states to retroactively publish the address for the place of employment of sex offenders. There are many sex offenders in our nation who have put their lives together and not offended again. To publish the work addresses of these people will ensure that many of them lose their jobs. Jobs are extremely difficult for these people to find in the first place. Experts agree that stable employment is one of the most important factors in preventing recidivism for offenders. We own a company and have found that persons with criminal backgrounds can make excellent employees when they are given the chance to turn their lives around. It would be a major disadvantage to our company to retroactively publish our address because we have given an offender stable employment. We are asking that this ruling be overturned and this information not be allowed to be made public.

Thank you.

Jim and Beverly Elam

[redacted]

From: Anita DiMarino [redacted]
Sent: Saturday, April 28, 2007 11:42 AM
To: OLPREGS
Subject: OAG docket # 117- Retroactivity

Follow Up Flag: Follow up
Flag Status: Completed

No retroactivity on registers!!!
Better yet, No Public Registers!!!
They are more dangerous to society than the crimes from which you think you are "protecting society!!!
These public registries are Hate Laws at their finest and will produce a fear-filled and angry society. An angry society can easily be manipulated into violent retribution against the innocent family and landlords of the accused.
Come to your senses and stop this legislation immediately!!!

04/25/07

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

Dear Mr Karp

Today I am writing to you to voice my concern and opposition for the Interim Rule issued as a result of the Adam Walsh Act and SORNA by the Attorney General Gonzales. This act is wrong, being used as a method of punishing people for past offenses after which they had served their time in prison or probation. It lumps low risk offenders the same as high risk and this is not balanced justice but a public safety issue.

Please consider the effect this will have on the one million families attached to a sex offender when they cannot earn a living. We now have offenders living under a bridge in Florida..they must value animals more than men! This is not right or just, and will open up an invitation for more violence.

There is a lie that has been told to the public that sex offenders cannot be rehabilitated and that they have a high rate of recidivism. This is unfair and untrue. Why is it that a murder, drug addict or arsonist can be rehabilitated but a sex offender cannot?

This is not Nazi Germany but sadly I see many of our rights being taken away, this is only the beginning unless we wake up and realize that the start of removing a persons rights under these conditions will soon lead to more and more of all persons losing their rights! This is a frightening state of affairs and SORNA should be disbanded and done away with now!!

Thank you
Linda Clarke
Linda Clarke
[redacted]

From: no-reply@erulemaking.net
Sent: Monday, April 23, 2007 1:22 PM
To: OLPREGS
Subject: Public Submission

Attachments: P__Lawjus_rule comments(sex offender).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: Hirsh
Last Name: Kravitz
Mailing Address: [redacted]
City: Washington
Country: United States
State or Province: DC
Postal Code: 20005
Organization Name: National Conference of State Legislatures

Comment Info: ==========

General Comment:See Attached

April 23, 2007

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

Interim Rule: Applicability of the Sex Offender Registration and Notification Act
Docket ID: OAG 117; A.G. Order No. 2868-2007

To Whom It May Concern:

Thank you for providing this opportunity for the public to express concerns about the Applicability of the Sex Offender Registration and Notification Act as found in Title I of Public Law 109-248.

The language is said to apply to sex offenders convicted of the offense for which registration is required before the enactment of the Sex Offender Registration and Notification Act. The requirements include registration by a sex offender in each jurisdiction in which the sex offender resides, is an employee, or a student. The National Conference of State Legislatures (NCSL) seeks a clarification as to whether the Act applies retroactively to anyone who was ever convicted of a sex offense or only those convicted of a sex offense while there was a state law in effect.

In a recent meeting with the new Director of the SMART Office, NCSL learned that the intent of the retroactivity provision in the interim rule is not to include offenders who were convicted pre-SORNA and who are no longer under state supervision, but that if such a person ever reenters the state criminal justice system, states would be required to enter this person into the sex offender registry at that time. However, for the sake of clarity, NCSL asks that the intent of the retroactivity provision be rewritten to reflect this interpretation. In seeking this clarification, The National Conference of State Legislatures is firm in our belief that the retroactivity provision shall only apply to currently registered sex offenders in the states so as to respect state sovereignty over the treatment of sex offenders as laid out in each state's respective sex offender registry provisions.

Sincerely,

Susan Parnas-Frederick

From: no-reply@erulemaking.net
Sent: Wednesday, March 07, 2007 1:29 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: Fred
Last Name: Lopez
Mailing Address:
City:
Country: United States
State or Province: CA
Postal Code:
Organization Name:

Comment Info: ==========

General Comment:You can not make this new registration requirement retroactive. The State of
California already has very strict registration requirements for sex offenders. California takes a better approach to the registration and notification requirements than what is proposed in this new law. Your method of evaluation for Tier levels is unconstitutional. You have not based it on any evaluation tools that are available. In California many of the offenders that are considered high risk will probably fall into the Tier I category and those that are only considered serious offenders will fall into your Tier III category. You can not be allowed to let this happen. It will be a huge flip flop for this State if the high risk offenders become Tier I and only have to register for 15 years. California Law already requires life time registration for all convicted sex offenders. Apply this new law only to those convicted after the bill was signed into law and I urge you to use an effective evaluation tool like the one used in Canada and many state here for setting a Tier level. You will violate the rights of those that here in California are not considered High Risk by subjecting them to a whole new set of rules after the fact.

Another thing you must look at is all the former offenders that have a spouse and children. We have to take their safety into consideration. They must be protected from vigilante attacks and from being taunted or harassed in school and on the streets. I understand that we have to protect our children but the majority of all child molestations are perpetrated by someone close to the child. This new law is too broad and too far reaching and will do nothing to prevent future attacks. The only thing I see this law doing is endangering the life of the former offender and his or her family.

From: no-reply@erulemaking.net
Sent: Tuesday, March 06, 2007 9:30 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: [redacted]
Last Name: [redacted]
Mailing Address:
City:
Country: United States
State or Province: CA
Postal Code:
Organization Name: United Against Oppression and Neglect

Comment Info: ==========

General Comment:his decision by the Attorney General to make this retroactive is terrible news.
We understand that our children need to be protected against possible sexual assaults. My oldest son was convicted over 10 years ago for having sex with a female party goer. He was not charged as nor is he a child molester. Under California law he is required to register every year and is only listed on the Megan's Law website by zip code. Under this new law he may be required to register every three months and have all of his information available on the internet. My son is married and has two beautiful young children he and his wife are raising. The possibility of his address being listed on the internet will put the safety of children in jeopardy. His wife and children have rights and you are violating them by changing his registration status. If his address was available to the public via the internet he would have never of gotten married, let alone have children. Please consider the safety of his wife and children. He is complying with the registration laws in California and he and his family should not be further scrutinized. He has been a wonderful, loving and caring Dad. He realizes the error in judgment he made 10 years ago and is dealing, or trying to, with all of the new laws that are sweeping our Nation. Posting my son's home address and work address is not in the interest in public safety. No one is looking at the ramifications this will have on, not only my grandchildren and daughter-in-law, the spouses and children of all registered sex offenders that fall under this catagory. We keep coming up with irrational laws without first having proof that any of these steps will help protect our children. Let's help protect my grandchildren and the sanctity of the family by not allowing this law to be applied retroactively.

From: no-reply@erulemaking.net
Sent: Monday, April 30, 2007 12:10 PM
To: OLPREGS
Subject: Public Submission

Follow Up Flag: Follow up
Flag Status: Red

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: Cathy
Last Name: Morton
Mailing Address: [redacted]
City: [redacted]
Country: [redacted]
State or Province: [redacted]
Postal Code: [redacted]
Organization Name: SOHopeful

Comment Info: ==========

General Comment:OAG Docket No. 117
This act does not tier sex offenders, so the young consensual sex, non-violent, age difference, girlfriend/boyfriend teenagers are not destroyed for life. When stated as a sexually violent offense, which our State describes as anyone who is convicted of sexual assault of a child, indecency, etc., this includes the consensual sex teenagers right along with a 50 yrs old who rapes a 5 yr old as a violent offense. Just how the laws are worded destroyes more young lives for a future along with their families and future families.

From: April Myers [redacted]
Sent: Tuesday, May 01, 2007 4:23 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Completed

Attachments: OAG Docket No. 117.doc

This is being entered one day late because of the courts involvement in a capital case. Please accept our comments.

May 1, 2007

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

RE: OAG Docket No. 117

Dear Senior Counsel Karp:

I write to express concern concerning the Part 72 – Sex Offender Registration and Notification Interim Rule promulgated by the Attorney General and published in the Federal Register February 28, 2007, Volume 72, No. 39, page 8894 et sec.

I do not wish to dispute the merits of the law that make the registration requirements of SORNA applicable to certain adjudicated delinquents. I do have concerns, however, about the broad scope of this law as applies to such juveniles and perhaps generally to sex offender registration requirements.

First – registration requirements should not apply to any juvenile, who although adjudicated delinquent of a registration type offense has had his/her adjudication record expunged under applicable law. Further, upon Expungement of the juvenile record registration requirements should cease.

Second – registration requirements should not apply to juveniles adjudicated delinquent prior to the effective date of the Adam Walsh Child Protection and Safety Act who have been released from court supervision and any other applicable registration requirement as of the act's effective date. SORNA registration requirements should not apply to any person who prior to the act's effective date has completed their sentence, supervision and mandatory registration requirements that applied to the individual as of the time of original conviction. It would not appear that inclusion of such individuals is

required in order to compile a "comprehensive" list of sex offenders. Having followed the registration requirements without committing additional offenses and having completed all sentence requirements would be a sufficient basis to remove the individual from being considered a threat to public safety, which is the main purpose of SORNA. Instead, requiring compliance with SORNA by all of those who have completed all of their legal requirements, including satisfactory registration compliance for the required term, prior to the effective date of the Adam Walsh Act becomes a punitive additional sanction.

Please be assured I do not dispute the intent of SORNA nor its usefulness, however, making it apply to the offenders above referenced is going beyond the scope and purpose of the Adam Walsh Child Protection and Safety Act.

Yours Truly,

William S. Kieser

cc: James E. Anderson, Executive Director-Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120-0018
Honorable Arthur G. Grim, Chairman-Juvenile Court Judges Commission, Berks County Courthouse, 633 Court Street, Reading, PA 19601

State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

Department of Human Services

LISA-MICHELE CHURCH
Executive Director

Division of Juvenile Justice Services

DAN MALDONADO
Director

April 4, 2007

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

Dear Mr. Karp,

Thank you for the opportunity to comment on the Retroactive Sex Offender Registration interim rule OAG Docket No. 117. As the Director of the Division of Juvenile Justice Services (Department of Human Services, State of Utah), I would like to add my voice to those expressing concerns regarding retroactivity as applied to juvenile sex offenders.

Adult and juvenile sex offenders differ in a number of ways. Most juvenile sex offenders are not sexual predators. They generally have fewer victims and typically engage in less serious and aggressive sexual behaviors than adult offenders.

Juvenile offenders generally commit a wider range of sexual behaviors than adult offenders. Juvenile offenders do not exhibit the same deviant arousal patterns as adult offenders that increase the likelihood for a positive response to treatment interventions.

Most juvenile offenders do not exhibit the same long-term tendencies to continue sexually re-offending. Juvenile offenders are more responsive to treatment and research indicates the recidivism rates are low when compared to the rates for adult sex offenders.

Most adolescent sex offenders can be safely managed and treated in the community. Placement and living arrangements should be made on an individualized case-by-case basis. Those deemed at high risk to continue sexually re-offending can be identified and placed in custodial placement for treatment. Many of the youth this rule targets are already safely residing within the community and will unnecessarily have their lives disrupted in order to relocate and comply with the requirements specified in the Adam Walsh Act.

The sheer magnitude of this interim rule is enormous. The resources, both technological and personnel, that need to be allocated to this project are substantial. It will take a lot of effort to locate offenders who have been released into the community for several years. Again, as the offense patterns and risk levels are so drastically different between adult and juvenile sex offenders, I do not think that there are any

significant safety benefits to be cost effectively gained by retroactively including these offenders to the requirements of the Adam Walsh Act.

I am concerned about how the requirements of this rule will affect those youth who have had their juvenile offense record legally expunged. Many juvenile offenders have completed treatment and expunged their juvenile records as they age to adulthood and reside in the community.

In sum, I feel that it is not in anyone's best interest to retroactively apply the draconian and socially stigmatizing requirements of this interim rule to juvenile sex offenders who have successfully completed treatment and re-entered their communities. I therefore, respectfully add my voice to those that urge you to exempt juvenile offenders from retroactive applicability.

Thank you for allowing me the opportunity to express my viewpoint regarding this issue.

Sincerely,

Dan Maldonado
Director, Division of Juvenile Justice Services

cc: Lisa-Michele Church

The Registration and Community Notification of Adult Sexual Offenders

Adopted by the ATSA Executive Board of Directors on October 5, 2005

NOTE: THIS PAPER DOES NOT ADDRESS ISSUES OF NOTIFICATION OF YOUTHFUL SEX OFFENDERS DUE TO THE VAST DIFFERENCES BETWEEN ADULTS AND JUVENILES. A SEPARATE INFORMATION STATEMENT ON THIS TOPIC IS UNDER DEVELOPMENT.

History

In 1994, following the 1989 abduction of an 11 year old boy in Minnesota, a federal law was passed mandating sex offenders to register with local law enforcement agencies so that their current whereabouts are known ("Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act," 1994). In 1996, President Clinton signed "Megan's Law," which requires states to disseminate information to the public about sex offenders who live in close proximity. The goal of community notification is to increase the public's ability to protect itself by warning potential victims if a convicted sex offender lives nearby, and to decrease the incidence of recidivistic sexual violence. Currently, about half of the states assign offenders to risk levels and notify the public differentially according to the offender's threat to public safety. The balance of the states employ broad community notification, publicizing the location of all sex offenders without regard for risk assessment.

Community notification statutes have been challenged on issues related to rights to privacy as well as their constitutionality. In the fall of 2002, the U.S. Supreme Court heard two cases challenging Megan's Law. The Court upheld the constitutionality of a Connecticut statute allowing sex offenders to be identified on an Internet registry without first holding a hearing to determine their dangerousness to the community ("Connecticut Dept. of Public Safety v. Doe," 2003). The case was a victory for the 23 states that have broad notification policies. In an Alaska case, the Court ruled that registration and notification of offenders sentenced before the law went into effect did not constitute ex post facto punishment ("Smith v. Doe," 2003). Immediately following the Court's rulings, the Wetterling Act was once again modified under the PROTECT amendment, and now mandates all 50 states to develop and maintain Internet websites containing sex offender registration information ("Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act," 2003).The Association for the Treatment of Sexual Abusers has developed a set of recommendations we believe help assure the original goal of registration and notification - enhanced community safety - are met in an effective manner.

Recommendations

The Association for the Treatment of Sexual Abusers (ATSA) believes that development and implementation of social policies should be based on research whenever possible. It should be noted that to date, few research studies about community notification have been conducted. The research that has been completed has not been able to conclude that community notification reduces recidivism or enhances community safety.

ATSA strongly supports sex offenders being held responsible for their actions. When sex offenders are living in the community, it is imperative they be monitored carefully through effective probationary supervision and treatment. In addition, U.S. federal law requires states to inform the public of the whereabouts of sex offenders. Therefore ATSA offers the following recommendations for implementation of Megan's law based on the research about the assessment and management of sex offenders:

1. Some sex offenders are highly dangerous and require more intensive supervision and treatment interventions.

2. Community notification practices should include an assessment of risk factors that have been associated with increased recidivism. Different notification strategies should be used according to the level of threat that an offender poses to a community. This is imperative so the citizenry can more effectively make informed decisions regarding the large number of identified sexual offenders. Broad notification can dilute the public's ability to identify and protect themselves from truly dangerous offenders.
3. ATSA strongly supports collaborative efforts between citizens, law enforcement, offenders, and treatment providers to render management, supervision, and rehabilitation services that promote community safety.
4. Community notification should always include educational efforts, including factual and research-based information about sexual violence and sexual perpetrators.
5. ATSA supports continued study into the impact of community notification and its effectiveness. Funding for research investigating the impact and effectiveness of sexual violence policies should be a priority.

Discussion

Community notification laws have received widespread support, largely due to the perception that the vast majority of sex offenders will repeat their crimes. Research studies by the US Dept. of Justice and the Canadian Government have found, however, that sexual offense recidivism rates are much lower than commonly believed, averaging in five year follow-up studies between 14 and 20%. Certain sub-groups, such as pedophiles who molest boys, and rapists of adult women, seem to present the greatest risk, with up to half of them reoffending over longer follow up periods. Although extensive media attention is paid to child abductions, such cases occur relatively rarely, and less than 1% of all sex crimes involve murder. Despite myths of "stranger danger," the vast majority (80-90%) of sexually abused children are molested by family members, close friends, or acquaintances. Early studies indicating that treatment was not successful in reducing recidivism have also led to a heightened fear of sex offenders, despite recent data suggesting that contemporary cognitive-behavioral treatments can reduce recidivism by as much as 40%.

Public safety can be enhanced, and limited resources used more efficiently, when, the most aggressive notification practices should be reserved for those offenders who are at highest risk to reoffend sexually and therefore require the most intensive interventions. The ability to predict sexual dangerousness has improved markedly over the past decade as a result of studies identifying risk factors for violent and sexual recidivism. Procedures and instruments for assessing risk have been developed and refined, and risk for sex offense recidivism can be estimated with moderate accuracy. By classifying offenders into risk groups based on the existence of known risk factors, communities may be able to identify more accurately those sex offenders who pose the greatest threat to public safety. At the same time, differential notification strategies can improve cost-effectiveness. Risk level systems might also decrease some of the negative effects of community notification on lower risk offenders. In fact, many states have decided that because the consequences of notification are so severe, they will only notify the public about offenders who pose a high risk to minimize disrupting the stability of low risk offenders in ways that may increase their risk. Given the serious implications of decisions based on risk assessments, these assessment tools should always be administered by skilled, trained, and supervised professionals.

The notification process provides an opportunity to inform and educate the general public and those associated with the offender. It can, when used effectively, allow the community to engage in prevention efforts that simultaneously include offender rehabilitation. But public notification without community involvement and education will not likely be helpful. The level of protection afforded by these laws is somewhat limited and unfortunately community notification does not guarantee protection from harm. After nearly a decade of implementation, there is still no research that suggests community notification decreases recidivistic sexual violence. Furthermore, studies that have investigated community notification's impact on stakeholders indicate that notification often results in increased anxiety for citizens. Law enforcement officers and probation agents report concerns about increased labor and expenditures. These resources can be more effectively utilized if there is a risk-based determination of need regarding the type of notification involved.

Victim advocacy groups have also noted that notification may create a negative impact on offenders' children and family members or lead to the inadvertent identification of victims. These possible consequences may discourage victims

from reporting sexual abuse by family members or acquaintances, ultimately interfering with the child protection system and decreasing the likelihood that victims will receive therapeutic intervention. Families of offenders can be negatively affected when community notification occurs, whether or not the offender returns to the home. Again, these unintended consequences can be mitigated when risk-based notification decisions are made.

Finally, notification can create the potential for vigilantism, despite the fact that all state notification laws warn citizens that such behavior will not be tolerated. Research suggests that about one-third to one-half of sex offenders subjected to community notification experience dire events such as the loss of a job or home threats or harassment, or property damage. Physical assault seems to occur in 5-16% of cases. About 19% of sex offenders report that these negative consequences have affected other members their households. There is also some initial indication that notification may interfere with its stated goal of enhancing public safety by exacerbating the stressors (e.g., isolation, disempowerment, shame, depression, anxiety, lack of social supports) that can trigger some sex offenders to relapse. Such dynamic factors have been associated with increased recidivism risk. Understandably, sex offenders inspire little sympathy from the public, but ostracizing them may inadvertently increase their danger.

In summary, prevention of sexual violence requires a well-planned, comprehensive, inter-disciplinary response. Prevention efforts must begin with developing clear goals and objectives, implementing strategies based on empirical research, and collecting and analyzing data on an ongoing basis. Emotionally charged reactions to sex crimes often lead to legislation that is not driven by data or science but rather by outrage and fear. Lawmakers and citizens should advocate for research-based social policies that both protect women and children and also support the habilitation of perpetrators to effectuate long-term community safety.

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March 14, 2007

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

Re: OAG Docket No. 117

Mr. Karp,

I am writing regarding the Sex Offender Registration and Notification Act and my concerns regarding this new law and the rules pertaining to this law. I am a Licensed Sex Offender Treatment Provider in the state of Texas and have treated sex offenders over the last 20 years.

Please consider the following:

- Eighty five percent of sexual offenses are committed by persons known to the victim. The majority are committed by family members within the home.
  - We need better education and prevention of sexual and physical violence
- There is no evidence that registration of sex offenders a) reduces safety in the community, b) reduces recidivism, or c) reduces sex crimes. It provides a false sense of security for the public and only identifies where sex offenders are residing.
- There is a marked difference between "sex offenders" and "sexual predators". "Sexual predators" are dangerous, high risk offenders that need extreme monitoring or incarceration (civil commitment).
  - Sexual predators should be registered because the public should know where they live and who they are so that they can avoid contact with them.
- "Sexual Offenders" are persons who have serious problems with social skills, relationships, sexual behavior and boundaries. They have a very good rate of rehabilitation, most are good citizens in other parts of their lives, many make significant changes in their lives to never re-offend. Most are not dangerous, and have a very low risk of recidivism (2 – 18 %) when they are involved in treatment.
  - Sexual offenders need treatment and intervention services
- Registration of sex offenders has a very strong impact on their families. Children are ridiculed and ostracized, families (where the offender is allowed to return to the home) have difficulty finding housing, attending religious services, and become very isolated. This creates a higher risk of re-offense for the offender.
  - We need to have better risk assessments to determine which offenders are dangerous and which need social services
- Juveniles with sexual behavior problems have a very low risk of re-offense. They should be allowed to rehabilitate, and given a chance to change their lives to be good productive citizens, not ostracized and labeled as perverted for the rest of their lives.
  - Juveniles should not be required to register unless it is determined they are a sexual predator

Please consider these issues as you develop rules for the Sex Offender Registration and Notification Act. We need laws that protect the public, not cost excessive amounts of money for rules that have no effect on public safety because of media scare tactic.

Respectfully,

Diana Garza Louis, LPC, LMFT, LSOTP, NCC[1]

[1] Council on Sex Offender Treatment, *Treatment of Sex Offenders - Recidivism Rates*
http://www.dshs.state.tx.us/csot/csot_trecidivism.shtm

Association for Treatment of Sex Abusers Managing Sex Offenders in the Community: A National Overview, 2003
http://www.atsa.com

From: [redacted]
Sent: Monday, April 30, 2007 3:18 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
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Attachments: NACDL comments OAG 117.doc

Attn: Mr. David J. Karp, Senior Counsel
Office of Legal Policy

Attached please find the comments of the National Association of Criminal Defense Lawyers regarding the above-referenced regulation. Thank you for your attention to this matter.

Kyle O'Dowd, Legislative Director
National Association of Criminal Defense Lawyers
1150 18th Street, NW -- Suite 950
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National Association of Criminal Defense Lawyers

April 30, 2007

Via email: 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: NACDL Comments on OAG Docket No. 117; the Attorney General's Interim Rule Applying the Provisions of the Adam Walsh Act (Pub. L. 109-248) Retrospectively to Offenders Whose Convictions Pre-Date The Enactment of the Legislation

I. Introduction

The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide, non-profit, voluntary association of criminal defense lawyers founded in 1958 to improve the quality of representation of the accused and to advocate for the preservation of constitutional rights in criminal cases. The NACDL has a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

In these comments NACDL urges the Attorney General to repeal 28 CFR Part 72 because the regulation, as promulgated, violates the ex post facto clause of the Constitution, and will cause widespread confusion and instability in the efforts of many convicted sex offenders to comply with the law and maintain a non-offending lifestyle.

II. The Sex Offender Registration and Notification Act

Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, contains the Sex Offender Registration and Notification Act (SORNA). SORNA imposes direct registration requirements on convicted sex offenders subject to federal jurisdiction. See, SORNA § 111. The act also places certain community notification responsibilities on the states. See, SORNA § 121. SORNA expands the definition of the term "sex offense" to include offenses involving kidnapping and false imprisonment of children and solicitation of children to engage in sexual contact and prostitution. See, SORNA § 111 (7). Section 111 (8) of SORNA expands the definition of sex offender to include certain juveniles.

SORNA generally requires the states to conform their sex offender registration laws to the SORNA requirements at the risk of losing federal funding for certain programs. SORNA requires states to enact laws that make a failure to register an offense punishable by more than one year of incarceration - in other words - a felony in most jurisdictions. See, SORNA § 113 (d). SORNA also requires that all states maintain certain information in their registries to include photographs and DNA samples.

SORNA delegates to the Attorney General the authority to specify the applicability of the act to sex offenders convicted before the enactment and implementation of the act. See, SORNA § 113(d). On February 16, 2007, the Attorney General promulgated 28 CFR Part 72, an interim rule, which extends the provisions of SORNA to sex offenders whose convictions pre-dated the enactment of the act. The regulation was published in the Federal Register on February 28, 2007. 72 Fed. Reg. Vol. 39, 8894.

III. The Interim Rule Violates the Ex Post Facto Clause

28 CFR Part 72, as promulgated, mandates that the provisions of the Sex Offender Registration and Notification Act be applied retroactively to sex offenders whose convictions occurred before the enactment of SORNA and the Adam Walsh Child Protection and Safety Act of 2006. 28 CFR 72.3. The National Association of Criminal Defense Lawyers urges the Attorney General to re-draft the regulation. As written, the regulation violates the ex post facto provisions of Part, I, Article 9 of the Constitution.

The supplementary information provided by the Attorney General broadly states that applying SORNA to sex offenders whose convictions pre-dated the enactment of the Adam Walsh Act does not offend the ex post facto provision of the Constitution because it creates "registration and notification provisions that are intended to be non-punitive, regulatory measures adopted for public safety reasons." 72 Fed. Reg. Vol. 39, 8896. The Attorney General relies on *Smith v. Doe*, 538 U.S. 84 (2003) for this proposition. In *Smith* the Supreme Court upheld the provisions of the Alaska Sex Offender Registration Act (ASORA) against an ex post facto challenge. In fact SORNA is a federal statute that is punitive and therefore the ex post facto provision of Article I Section 9 of the Constitution does apply. SORNA goes well beyond the Alaska Sex Offender Registration Act that was considered by the Court in *Smith*.

a. The Extensive Community Notification Provisions of SORNA Publicly Disgrace and Humiliate the Registered Offender in His or Her Community

One consideration in determining whether a law is punitive is whether it is the type of law that our history and traditions consider to be punishment because it publicly disgraces the offender. Although ASORA and SORNA are similar in some respects, SORNA goes considerably beyond ASORA in its community notification requirements. SORNA requires that

an appropriate state official provide an offender's registration information to the Attorney General (for inclusion in the federal list) and to appropriate law enforcement and probation agencies. However, SORNA also requires the state to notify 1) "each school and public housing authority in the area in which the individual resides, is employed or is a student;" 2) "each jurisdiction where the sex offender resides, is an employee, or is a student and each jurisdiction from or to which a change of residence, employment, or student status occurs;" 3) "any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a);" 4) "social service entities responsible for protecting minors in the child welfare system;" and, 5) "volunteer organizations in which contact with minors or other vulnerable individuals might occur." See, SORNA, § 121. These additional community notification measures render SORNA a punitive statute subject to ex post facto constitutional prohibition. In *Smith* the Court specifically addressed the shaming aspects of publication of registration information on the Internet. The Court described Internet publication as "more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality." *Smith* at p. 99. SORNA provides far more public humiliation and shame than the mere review of criminal records at an archive. It requires the states to take affirmative actions to report the registration information throughout the community, even to those who might otherwise not seek such information. The SORNA requirements are far more akin to a scarlet letter or a wanted poster than they are to a trip to a central registry of government documents. SORNA is far more likely to inflict public disgrace than the provisions of the Alaska law considered by the Court in *Smith*. Our history and traditions consider such public disgrace and humiliation as punishment and thus invoke the requirements of the ex post facto clause. The interim rule violates the ex post facto

clause because it extends these punitive measures to individuals whose offenses pre-dated the enactment of the statute.

b. SORNA Imposes Affirmative Restraints and Disabilities on the Offender

Unlike the Alaska statute considered in Smith, SORNA requires the personal appearance of the sex offender between one and four times per year depending upon his or her tier classification. See, SORNA, § 116. The requirement of periodic in-person appearance and verification imposes significant restraint on individual liberty and is a hallmark of traditional supervisory punishment such as probation and parole. Such a restraint on liberty is one of the primary factors to be considered in determining whether a statute is punitive rather than merely regulatory. *See, Smith* at p. 101; *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168 (1963). The *Smith* court specifically noted that periodic updating of registration information under the Alaska scheme need not occur by personal visit and therefore did not create a restraint or disability. Id. SORNA, on the other hand, does specifically require periodic in-person appearance, verification of information and photographing. See, SORNA, § 116. This requirement imposes a substantial restraint and disability upon the individual subject to the act's requirements rendering the act to be a punitive measure subject to the ex post facto clause.

The extensive community notification provisions discussed above also serve to significantly and affirmatively cause restraint and disability on individual liberty. Such "outreach" efforts on the part of the government are likely to create a modern day equivalent of banishment which will substantially restrict the offender's ability to live and work in the community of his or her choice and to obtain and maintain employment.

SORNA goes well beyond the Alaska scheme that the Court upheld in *Smith*. SORNA imposes significant affirmative restraint and disabilities on the individual liberty of the offender

rendering the statute to be punitive and subject to the prohibitions of the ex post facto clause of the Constitution. The interim rule, in applying SORNA to persons whose offenses pre-dated the enactment of the statute, violates the ex post facto clause.

IV. Application of the Interim Rule Will Cause Widespread Confusion and May Tend to Destabilize Offenders Who Have Paid Their Debt to Society and Are Living Productive, Non-Offending Lifestyles

Sex offenders generally demonstrate lower rates of recidivism than other criminals. See, U.S. Department of Justice, Bureau of Justice Statistics, Recidivism of Sexual Offenders Released from Prison in 1994, November 2003; See also, Hanson R.K. and Morton Bourgon, R.K., Predictors of Sexual Recidivism: An Updated Meta-Analysis, Public Safety and Emergency Preparedness Canada (2004); Harris and Hanson, Sex Offender Recidivism: A Simple Question (2004); Hanson, R.K. and Bussiere, M., "Predicting Relapse: A Meta-Analysis of Sex Offender Recidivism Studies," Journal of Consulting and Clinical Psychology (1998). The interim rule renders SORNA applicable to all persons convicted of a sex offense without consideration of the age of that offense or the individual risk that any particular offender may pose to the community. Given sex offenders' lower rates of recidivism, this is bad policy. It exposes former offenders who have been law-abiding for years to the new requirements and public humiliation, disgrace and embarrassment. Former offenders, through the community notification provisions of SORNA, will be subjected to the likely loss of employment and housing despite their effective rehabilitative efforts and years of positive contributions to society. Secure employment, housing, and a supportive network of family and treatment are important factors in ensuring rehabilitation of an offender. Social science research demonstrates that sex offenders are more likely to re-offend in the absence of such stabilizing influences. See, Kruttschnitt, C., et al., "Predictors of Desistance among Sex Offenders: The Interaction of

Formal and Informal Social Controls," 17 Justice Quarterly 61 (2000). The retrospective application of SORNA to former offenders may disrupt substantial numbers of former offenders who have paid their debt to society and settled into law-abiding lifestyles. Rather than making society safer, retrospective application of SORNA makes society less safe.

It is important to recognize that SORNA does have a clean record reduction provision which permits some Tier I and Tier II offenders to decrease the time period of registration. See, SORNA, §115. However, the clean record provision would still require former offenders to register for a reduced period of time before exemption based upon a clean record. Neither the act nor the interim rule provide a mechanism for a former offender to demonstrate that he has already complied with the clean record requirements and therefore should not now be subject to the registration requirements. In short, former offenders get no credit for their rehabilitative efforts and law-abiding lifestyle, which in many cases has extended over many years. The interim rule is extremely unfair to such individuals. At the very least the interim rule should be amended to permit individuals with convictions that pre-date SORNA to avoid registration upon demonstrating that they have complied with the "clean record" provisions of the statute.

Finally, it is clear that the retroactive application of SORNA will cause significant confusion and enforcement problems in the states. Some states may have difficulty in identifying former offenders with old convictions. Former offenders will likely be confused as to the application of the new law in their individual situations. There will be significant problems with notifying former offenders who are no longer under the supervision of a probationary sentence or parole. If SORNA is to be applied retroactively, at all, it would be wise for the Attorney General to limit the retrospective application of SORNA only to offenders who remain under court, probation or parole supervision.

V. Conclusion

The interim rule 28 CFR 72.3 violates the ex post facto provisions of the Constitution and will tend to make society less safe. Therefore the rule should be repealed and the requirements of SORNA applicable only to those convicted after its enactment.

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April 20, 2007

Dear Mr. Karp:

We are writing to voice our opposition concerning the interim rule, OAG Docket No. 117, which made the Adam Walsh Act retroactive. We oppose the interim rule for the same reasons we are opposed to the Adam Walsh Act. Our primary reason for opposing the interim rule is that there is no research data that supports the claim that it will further protect the public. People who have studied the available research realize the interim rule will add thousands of more names to a system that is already cumbersomely plagued with problems; the Adam Walsh Act is primarily based on a few highly sensationalized tragic cases involving a handful of high-risk men. People who have studied the available research realize that the majority of sex crimes are committed by first time offenders and not by "former" sex offenders who are registered on a public Internet site; the majority of sex crimes are committed by a family member, close relative or a family friend.

A second reason we oppose the interim rule is that it further adds to the mass hysteria, sensationalism, scare mongering, hatred and lack of accurate knowledge that is so prevalent in society with respect to former sex offenders. Former sex offenders have become the modern day lepers, the untouchables, the scarlet-lettered demons. Instead of having in place a system that is aimed at helping people solve and overcome their sexual and mental cognitions the present system imposes a second punishment sentence on former offenders which serves to further isolate, humiliate and dehumanize a segment of society. Many more thousands will be affected in the same way with the implementing of the interim rule.

Thirdly, implementing the interim rule will add many more casualties and traumatizing experiences for the family members of former sex offenders. People give voice to being concerned about children, but they apparently do not hold that same thought about the children of former sex offenders. Some children have cried because their "daddy" cannot live at home. Some children have been beat up at school and ostracized from former friends. Ms. Laura Ahearn, Executive Director of Parents For Megan's Law stated in a February issue of a newspaper, "It's unfortunate that that child is going to have to pay a price for his father's behavior." She made that statement is response to a father who was successfully volunteering at his son's school.

A fourth reason we are opposed to implementation of the interim rule is that it will only add to the already bludgeoning statistics of murders, suicides, harassment incidents, discriminatory statements and actions against former sex offenders. It will also send more former sex offenders underground and living in places where they should not be forced to live. (See Exhibit A)

The fifth reason we are opposed to the interim rule is that it appears the people involved in passing the laws and/or implementing the law have not studied the research or choose to ignore the research. People who have studied the available research realize that the

recidivism rate for sex crimes is extremely low, lower than for every crime except murder. (See Exhibit B)

A sixth reason we oppose the interim rule relates to the fact that most mental health professionals that treat and work with people who have sexual abuse problems "recognize sexual abuse as a public health issue," as does the Center For Disease Control. Their belief is that, "Through treatment, community support, and personal commitment, most persons who have sexually abused can become responsible members of society, and those at risk to sexually act out can successfully learn ways not to abuse."

In closing, we write this opposition letter knowing that nothing will change because it is political suicide for politicians, the media and most others to take a stance against a retributive and dehumanizing part of the justice system. We are reminded of what Thomas Jefferson once said, "The care of human life and happiness, and not their destruction, is the first and only object of good government."

Very sincerely,

Justine Landes

Larry Landes

Exhibit A

- November, 2006. A 40-year-old human being serving time in Washington State Penitentiary as a former sex offender was brutally beaten and killed in his cell at the hands of two other inmates.
- September, 2006. A 72-year-old former sex offender on the state registry was robbed and died from knife wounds and blunt trauma.
- April 16, 2006. Augusta, Maine. Two registered former sex offenders, one aged 57 and one aged 24, were shot to death in their homes. A 19-year-old man had taken their names and addresses off the state registry site. When he was cornered the 19-year-old killed himself with a gun. Sadly, three human beings died because of the (former) sex offender state registry site.
- 2005, Washington state. Two former sex offenders were murdered because a 35-year-old man found their names on a (former) sex offender website.

The above are six out of at least 55 murders, as of January 1, 2007, of former sex offenders during the past several years!

- January 4, 2007. Texas. An English teacher used a gun and committed suicide because of allegations of sexual impropriety with a student.
- January 4, 2007. Vermont. A 53 year-old man committed suicide after admitting to police to fondling two girls at his wife's in-home day care center.
- January 1, 2007. Michigan. An 18-year-old man on the Michigan (former) sex offender registry drove to a vacant lot and committed suicide with an assault rifle.
- November, 2006. A Harvard graduate New York lawyer, married with three children had been charged with rape. The lawyer committed suicide.

The above are examples of at least 160 stories, as of January 4, 2007, of former sex offender suicides that have taken place during the past several years!

- California. A former sex offender bought a plumbing business only to loose the business when people in the community found out he was a former sex offender!
- November, 2006. Washington. A former sex offender's house was broken into and he was beaten with a stick. Signs and posters had been put up pointing out where he lived.
- 2003. Tampa, Florida. A former sex offender was sentenced to 60 years in prison for violating his probation. He had been the subject of vigilantism by the mother of the victim. She essentially stalked him for several years, admitting she used the registry to find him every time he moved.
- New Jersey. The brother of a former sex offender was severely beaten with a baseball bat, almost to the point of death.
- One study, documenting 33 harassment incidents, indicated that about half of the harassment incidents involved family members. Protesters have rallied in front of former sex offenders homes, protesters have followed former sex offenders with posters, threatening phone calls have been made to homes of former sex offenders

and flyers have been posted by unknown individuals showing the former sex offender's picture and detailing the crime.

- Even public officials have been a part of harassment incidents. In 2001, a judge ordered 21 signs to be placed in the yards of former sex offenders stating there was a dangerous sex offender living at the residence. That same judge ordered 21 bumper stickers to be placed on each vehicle stating there was a dangerous sex offender in the vehicle.

The above harassment incidents, from across the country, are just a few of the documented and reported stories, as of January 1, 2007, told by former sex offenders or others!

- January, 2007. Wilmington, Delaware. A 27-year-old man fatally beat a 77-year-old man he believed molested his daughter. The judge sentenced the man to nine months, saying, "The circumstances surrounding this crime were taken into consideration..."
- November, 2006. Georgia. The House of Representatives majority leader stated, "My intent personally is to make it so onerous on those that are convicted of these offenses....they will want to move to another state."
- July, 2006. Nancy Grace Show. Senator Hatch said, "Well, the bill really puts the screws to those who are sexual predators...."
- April, 2006. Washington, D.C. The title of a published news release by the U.S. Marshals Operation Falcon II group states, "More Than 1,100 Sex Offender Arrests By U.S. Marshals' "Operation Falcon II" There were a total of 9,037 persons apprehended, but former sex offenders were singled out; the entire article discriminatorily focused on the 1,102, not on the other 7,935!
- California. Several years ago a state assemblyman, city officials and two mayors picketed outside an apartment where a registered former sex offender had moved to live with his relatives!
- 2002. California. A sheriff faced a lawsuit for having a former sex offender followed, spreading rumors and having his home searched illegally.

The above are biased, discriminatory statements and actions made by elected or appointed government officials!

- December, 2006. Nebraska. Eleven former sex offenders have been evicted from living in a mobile home park.
- December, 2006. New York Times article. "In Iowa, the number of registered (former) sex offenders who went missing soared after the state passed a law forbidding offenders to live within 2000 feet of a school or day care center."
- November, 2006. Iowa. A former sex offender shortly after 8:00 in the evening, "kisses his wife and three kids goodbye and leaves his home.....A half-hour later, he pulls up at an unfurnished rental....one of the few spots in the region where he can legally spend the night."
- Iowa. A former sex offender lives in his van at an Interstate rest stop because he has nowhere else to go after he was forced out of his house because of the 2000-foot law.

- March, 2006. Chicago Tribune article. "……About two years ago, more sex offenders began returning to prison for a parole violation because of the difficulty they face finding housing…."
- Tennessee. A counselor who has a business of counseling sex offenders must move his business out of town because the location of his business is a few feet from an elementary school and that puts him in violation of the law because part of the law says, "Sex offenders can not receive treatment within 1,000 feet of a school playground, daycare center and lots of other places."
- "Under the 7th street bridge," "truck near river," "rest area mile marker 149," "Flying J, in truck," "in tent, S side of I-80," "RV in old K-Mart parking lot," "I-35 rest area."
- Five former sex offenders are living under a bridge in Florida because the state has nowhere else to put them.

The above are just a few stories of the descriptions given as to where former sex offenders live or no longer live!

Exhibit B

There are research studies clearly showing the majority of sex crimes are committed by first-time offenders and the majority of people who commit sex offenses do not re-offend. Recidivism rates for released former sex offenders are between 3% - 13%, depending on the study. Recidivism rates differ, in part, depending on the offense and various characteristics of the offender.

1. One of the most extensive studies, a thirty-page document published in November, 2003, (NCJ 198281) details recidivism of former sex offenders in 1994. In that year a total of 272,111 persons released from prisons were tracked for three years in an effort to document recidivism in all areas of crime. That number represented two-thirds of all persons released from prisons that year. Out of the 272,111 persons released were 9,691 former male sex offenders, two-thirds of all released male former sex offenders. That translates into approximately 3.6% of all released people. During the following three years 3.5%, or 339 of the 9,691, were reconvicted for a sex crime. That compares to 1.3%, or 3328 persons, out of the 262,420 released persons, that recidivated with a sex crime. None of those 3328 persons would have been on an Internet registry. What this clearly indicates is that former non-sex offenders committed more new sex crimes than did former sex offenders, **six** times more sex crimes. One must also realize that most sex offenses are committed by people who do not even have a criminal record!

A Comparison of New Sex Crime Arrests for Sex Offenders and Non-Sex Offenders Within a Three-Year-Period

Released	Former Offenders	Rearrested for a New Sex Offense	New Sex Offenses	% of New Sex Offenses
9,691	Sex Offenders	5.3%	517	13%
262,420	Non-sex Offenders	1.3%	3328	87%
272,211	All released Offenders	1.4%	3845	100%

Source: U.S. Department of Justice, Recidivism of Sex Offenders Released from Prison in 1994, page 24
Published: November, 2003

2. New York - showed a 6% recidivism rate - time period was nine years (Department of Correctional Services (2002)
3. Rockville, Maryland - showed 7.7% - time period was three years (National Criminal Justice Reference Center (1997)
4. CJ - 193427 (2002) - showed 2.5% - time period was three years (Oregon Department of Rehabilitation and Correction report Recidivism of Prisoners Released in 1994)

5. State of Ohio - showed 8% - time period was ten years
(Department of Rehabilitation and Correction (2001)
6. Gibbons, Soothill, and Way [cited in Furby, Weinrott and Blackshaw, 1989]
Showed 4%

Source for the above: Sohopeful International, Inc. Portland, Oregon, page 16. Published: September, 2005

7. Michigan Parole Board recidivism statistics show, in an 11-year study (1990-2000), that former sex offenders average 1.65% recidivism rate for the same crime. This is considered to be an important study because it tracks before and after public registries and shows that the public registry has no effect on recidivism.

8. The Montana Sex Offender Treatment Association was founded in 1987. Its purpose was to develop a "state of the art network of evaluation and treatment of sexual abusers," according to Andy Hudak, a co-founder. In a letter he recently wrote that was published at dailyinterlake.com on January 3, 2007, he maintains that Montana's prison and out-patient programs have consistently demonstrated recidivism of less than one percent per year.

9. Sex Offenders: Flaws in the System and Effective Solutions, a document of approximately 300 pages, published by Sohopeful International, Inc. in Portland, Oregon, on page 16 states the following:

"In United States v. Mound, 157 F.3d 1153, 1154, (8th Cir. 1998((enbanc), four dissenting Judges cite Law Review articles citing statistics finding the **recidivism rate of released sex offenders is the second lowest rate of recidivism of all convicted felons.** In State v. Krueger, Case No. 76624 (December 19, 2000, Eighth Judicial District of Ohio, unreported, two female Judges reversed a Sexual Predator adjudication, finding the statute is based on a false assumption and in essence, an "old wives tale" of popular beliefs contradicted by empirical data." Clearly, **the judges in this case had studied the research about recidivism.**

From: no-reply@erulemaking.net
Sent: Friday, April 27, 2007 10:25 AM
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: Michael
Last Name: Nam-Krane
Mailing Address: [redacted]
City: [redacted]
Country: United States
State or Province: MA
Postal Code: [redacted]
Organization Name: Committee for Publi Counsel Services

Comment Info: ==========

General Comment:There should be a date set for the reachback provision. Otherwise the law is
fundamentally unfair to the individual.

From: Jana Lantor [redacted]
Sent: Monday, April 16, 2007 7:53 AM
To: OLPREGS
Subject: OAG Docket #117

Follow Up Flag: Follow up
Flag Status: Completed
To Whom It My Concern:

NO Ex Post Facto punishment!!!

Sincerely,

Jana Lantor
Albuquerque, NM

From: [redacted]
Sent: Sunday, May 06, 2007 11:57 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Completed
Dear Mr. David J. Karp, Senior counsel
Office of Legal Policy, Room 4509
Main Justice Building
950 Pennsylvania Ave., NW
Washington, D C 20530

Dear Mr. Karp,
I should like to state that I have very serious objections concerning the Interim Rule issued as a result of the Adam Walsh Act, and SORNA, by Attorney General Gonzales. I believe that as a result of mass hysteria following each and every case of horrible sexual attacks on children, the hatred for such criminal acts generates unfounded condemnation upon every other person who has been classified as a sexual offender, whether said offender has been released from prison and gone on to rehabilitate themselves and rejoined society as a productive and reformed individual or else has found to be offensive just by not following every single one of the myriad rules imposed on every sex offender these days. There are so many restrictions being placed on released sexual offenders that it's totally ridiculous to think those "rules" will keep the offender from recidivism, and that they can never be "rehabilitated". That is absurd. There is no such thing as being rehabilitated by the state-run facilities, as such. They are useless in helping anyone except the tax-payer paid state employees working cream puff jobs! If the states' and the federal government want to toss tax-payers money out the window, at least throw some of it at some of the small grass root type groups of which there are legion, and let them "rehabilitate" and oversee the people classified as "sex offenders". There would be such a turn around and success of such magnitude that would astound the world if only our "rules" would be based on fairness and justice for each and every individual case and not on the witch hunts and the "burn-em-at-the-stake" crowd of hypocrites who write those stupid laws.
If there is justice left in America, please, let it shine through now. Sincerely, Mary Kravetz

From: Lynn Hughes [redacted]
Sent: Saturday, April 14, 2007 10:00 PM
To: OLPREGS
Subject: Re: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Completed

Subjec t: OAG Docket No. 117

Att: Mr. David J. Karp, Senior Counsel
Office of Legal Policy.

DEPARTMENT OF JUSTICE
28 CFR Part 72
[Docket No. OAG 117; A.G. Order No. 2868-2007]

RIN 1105-AB22

Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act
Department of Justice.
Interim rule with request for comments.

Dear Mr. Karp,

We respectfully submit our suggestions for rules in the implementation of the Adam Walsh Act. We speak for several convicted of a sex offense who are impacted by public registry. As you are aware last year two offenders in Maine and two in Washington state were murdered by killers who obtained their home addresses from the internet registry. This is not good. The spirit of vigilantism is growing. This is not what America is about.

Although some on the registry are dangerous **pedophiles whose primary sexual attraction is to children**, or **predators or seek to victimize, using weapons, violence, kidnapping**, etc., most are not. Please **reserve internet registry for them**. That is who people are afraid of. The others unfortunately are victimizing their own family members for the most part and no registry will prevent that.

Certainly we would like to see **those under age 21 with no prior felony convictions have their registry kept private.** Give them a second change after prison. Law enforcement knows where to find them, but the whole town doesn't need their home addresses.

Sincerely,

Marsha Hunt
[redacted]

From: Lynn Hughes [redacted]
Sent: Tuesday, April 10, 2007 10:52 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Completed
Att: Mr. David J. Karp, Senior Counsel
Office of Legal Policy.

DEPARTMENT OF JUSTICE
28 CFR Part 72
[Docket No. OAG 117; A.G. Order No. 2868-2007]

RIN 1105-AB22

Office of the Attorney General; Applicability of the Sex Offender Registration and Notification Act
Department of Justice.
Interim rule with request for comments.

Dear Mr. Karp,

We respectfully submit our suggestions for rules in the implementation of the Adam Walsh Act. We represent young **first offenders**, those ages 18-19, still teenagers, yet prosecuted as adults, for experimental sexual experiences.

1. We recommend that there be a tiered system allowing leniency for your first offenders -- those who are lowest risk of re-offending.

2. We recommend that juveniles and **first offenders** under age 20 at the time of offense be on a **private registry**, available only to law enforcement, thus not labeled and have their lives ruined.
Let them have a second chance.

3. Young offenders usually mature out of their unacceptable sexual behaviours. Most of the time their offenses do not involve weapons, true violence, abduction, etc. yet they are classed the same as true violent predators. A registry with several tiers dilutes it's usefulness.

4. Definitions such a predator, violent, etc. need to mean just that, and not casually used for young people who are experimenting with sexuality. Again, it dilutes the usefulness of the registry.

5. Massive education campaign to let kids know what the **legal consequences** of underage sex in their states. This is vital. Most kids haven't any idea what they are facing, legally.

6. There is no evidence registry does anything to prevent future crime. Thus any use, should be for only those who are dangerous, most likely to re-offend: Victims are boys, strangers, weapons are used, abduction involved, multiple offenses, etc.

7. Treatment works. The idea of "no cure' is only true for some mentally disordered folks who suffer from such things as pedophilia. Don't clutter up the registry with others.

8. It's more a function of parents, not government, to protect their children as nearly all sex offenses
against children are in the child's own home, or by someone close to the family. No registry or laws will stop this unfortunately.

Thank you.

Lynn Hughes

Director
Families for Fairness

[redacted]
Knoxville, [redacted]4
e[redacted]
we[redacted]
p[redacted]

From: Tara Andrews [redacted]
Sent: Thursday, April 26, 2007 2:38 PM
To: OLPREGS
Cc: 'Nancy Gannon Hornberger'
Subject: OAG Docket No. 117--Comments in Opposition to Interim Rule RIN 1.105--AB22

Follow Up Flag: Follow up
Flag Status: Completed
April 30, 2007

VIA ELECTRONIC AND FIRST-CLASS MAIL

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 Attorney General Gonzales:

Thank you for the opportunity to comment on the above-referenced rule.

For the reasons that follow, the Coalition for Juvenile Justice recommends that the interim rule be withdrawn. Further, the Coalition 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 craft legislation that protects and defends all of our nation's children and youth, including those who are victims of sexual abuse and assault, as well as children and youth who are adjudicated for sexual offenses.

Introduction

The Coalition for Juvenile Justice (CJJ) is a representative national nonprofit organization based in Washington, D.C. Created in 1984, CJJ comprises Governor-appointed State Advisory Groups (SAGs) charged to fulfill the mandates as well as the spirit of the federal Juvenile Justice and Delinquency Prevention Act. Working together with allied individuals and organizations, SAGs seek to improve the circumstances of vulnerable and troubled children, youth and families involved with the courts, and to build safe communities. Today, more than 1,500 CJJ members span the U.S. states and territories, providing a forum for sharing best practices, innovations, policy recommendations and peer support.

There is not just one but rather fifty-six different juvenile justice systems across the nation and the U.S. territories, each with its own structure, laws, policies and service-delivery models. To varying degrees, each jurisdiction has proactively taken steps to protect its citizens from repeat sexual offenders, and our members are eager to partner with the federal government to better hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. In the spirit of this partnership and per your invitation, we take this opportunity to comment on recent policies that we believe unnecessarily hinder the states, territories and federal government from achieving these goals together.

Our comments primarily address the Attorney General's interim determination that Title I of the Adam Walsh Child Protection and Safety Act of 2006 (the Act), also known as the Sex Offender Registration and Notification Act (SORNA), applies retroactively to all sex offenders as defined by the Act regardless of when they were convicted. We, however, also take this opportunity to express our grave concerns

with and opposition to the overall applicability of Title I to children and youth who have been adjudicated within the juvenile system and not convicted as adults.

SORNA Should Not Be Applied Retroactively to Children and Youth Adjudicated within the Juvenile Court System

In articulating his rationale for retroactivity, the Attorney General acknowledges that he is determining "the applicability of SORNA's requirements to *virtually the entire existing sex offender population . . . regardless of when they were convicted*" (emphasis added). Respectfully, the Attorney General greatly underestimates how difficult it would be for the states to apply the mandates of the Act retroactively. In order to comply, each state would first have to review thousands if not tens of thousands of case files to determine which children and youth fall under the mandates of the Act. Given that many states either still lack the information technology to store these files electronically or only recently obtained this ability, taking this first step towards compliance would mean conducting a paper review of thousands if not tens of thousands of case files.

Next, each state would have to locate and notify each child still living in that state, which presents its own set of difficulties. Poor and low-income children and youth are disproportionately represented in our nation's juvenile justice systems, and a constant challenge for poor and low-income families is frequent relocation of their residence. Case managers have a difficult time monitoring children and youth who are currently juvenile justice-involved, let alone children and youth who have been discharged and no longer required to report to the agency.

Moreover, retroactivity does not take into account those children and youth who have moved out-of-state. Currently, state juvenile databases are not linked to nor do they communicate with juvenile databases in other states. Thus, a likely scenario could include a child who was adjudicated in one state, but has subsequently moved to another. It is unlikely that the first state has a forwarding address for the child, and equally unlikely that the second state is aware that the child is now in its jurisdiction.

Finally, despite the Attorney General's determination that retroactive applicability of the Act does not violate the ex post facto protections of the U.S. Constitution, CJJ asserts the retroactivity runs afoul of fundamental fairness. At the time of disposition, neither the judge nor the juvenile nor the prosecuting or defending attorney were proceeding with the expectation that the child's adjudication would trigger the additional sanction of registering for 25 years to life as a sex offender.

Based on such reasons, CJJ asserts that it is impractical and burdensome for the states to comply with SORNA retroactively. In addition, for states to attempt to manage such a burden, they will be forced to take on additional costs—or to consider use of federal juvenile justice appropriations in a manner would be entirely at odds with the core prevention, early intervention and system improvement goals for federal appropriations to states and localities under current federal juvenile justice laws.

SORNA Should Not Be Applied to Children and Youth Adjudicated Within the Juvenile Court System

Practical considerations and burdens stated, CJJ also asserts that it is bad public policy for SORNA to be applied to children and youth adjudicated within the juvenile system, retroactively, or otherwise.

First, SORNA as applied to children and youth is not in accord with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children," in that it will expose certain children to adult offenders. Just as members of the public will be able to access the registry via the Internet and identify offenders in any and every community, adult offenders who are still inclined to offend will be able to access the registry via the Internet and identify adjudicated children and youth in any and every community. Moreover, the young person's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these children and youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and unlawful actions much easier for those adult offenders who are so inclined to target vulnerable children and youth.

Second, SORNA as applied to children and youth assumes a clear distinction between the children who are abused and children who abuse, which is not always the case. It is common knowledge among juvenile experts and practitioners that children who commit sexual abuse against others are far more

likely than the general population to have been physically, sexually, or otherwise abused themselves. Research cites that between 40% and 80% of sexually abusive youth have themselves been sexually abused, and that 20% to 50% have been physically abused (Center for Sex Offender Management, 1999). These facts are critical to consider when policy decisions are made regarding a national sex offender registry. To be clear, CJJ strongly agrees that children who abuse others sexually must be held accountable for their actions and closely attended to, in order to ensure that they do not re-offend and that they receive the treatment they need to heal and overcome these harmful proclivities. Exposing such children and youth through a public registry, however, is counterproductive.

Third, research does not support the application of SORNA to children. According to the National Center of Sexual Behavior of Youth, a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). The Center also found that juvenile sex offenders are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, children whose conduct involves sexual abuse and acting out—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults. Children and youth, therefore, do not need to be subjected to the same restrictions.

Fourth, the research does not support the application of SORNA to children and youth. According to the National Center of Sexual Behavior of Youth, a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center, the recidivism rate among children and youth who commit sexual abuse is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). The Center also found that children and youth who commit sexual abuse are more responsive to treatment than adults and that they are less likely than adults to re-offend when provided with appropriate treatment. In other words, children and youth do not pose the same threat to public safety as adults and do not need to be subjected to the same restrictions.

Fifth, SORNA as applied to juveniles flies in the face of some of the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders. 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 children and youth implicated by the Act 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.

Sixth, SORNA as applied to children and youth will disrupt families and communities across the nation because SORNA does not just stigmatize the child; it stigmatizes the entire family, including the parents and other children in the home. Similarly, the mandates and restrictions associated with SORNA impact not only the child, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park. In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Seventh, SORNA as applied to children and youth could have a chilling effect on the identification and

proper treatment of children and youth who exhibit inappropriate sexual behavior in that families will be more inclined to hide problems and not seek help for a troubled child or youth if they are aware of the potential long-term consequences of their child being not only labeled but also being required to register for life as a sex offender.

Finally, as a due process matter, the Act does not make clear exactly who should be held accountable and sanctioned if a child under the age of 18 does not comply. Minors, even those adjudicated delinquent, are still dependent upon adults, and children subject to SORNA would be dependent on adults to help them comply with the Act. Neither the interim rule nor the Act speak to how the state is supposed to respond, i.e., who the state is supposed to arrest, prosecute and punish, when a child's parent or guardian fails to or refuses to provide the child with the assistance s/he needs to comply with the Act.

For all of these reasons, CJJ asserts that it is bad public policy for SORNA to be applied to children and youth 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 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 reiterate the eagerness of the states to partner with the federal government to hold offenders accountable, protect vulnerable population and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the interim rule unnecessarily hinder us from achieving these goals together. We therefore 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.

Respectfully,

Nancy Gannon Hornberger
Executive Director
Coalition for Juvenile Justice
1710 Rhode Island Avenue, NW, 10th Floor
Washington, D.C. 20036
[redacted]

Acting for the whole of the organization and its Board.

The Coalition for Juvenile Justice was incorporated in 1985 as a national association of state juvenile advisory groups.

From: [redacted]
Sent: Sunday, April 29, 2007 8:40 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Completed

Attachments: My Response to OAG Docket No 117.doc
April 28, 2007

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

OAG Docket No. 117

As a long time juvenile advocate, I would like to share with you my concerns regarding the interim decision by the U.S. Attorney General on the retroactivity of the Adam Walsh Act (AWA), as well as my concerns about the juvenile component, and the punitive effects of the SORNA.

Should Not Retroactively Include Those Not Previously Required to Register Per the Jacob Wetterling Act

The interim decision states:

> "The current rulemaking serves the narrower, immediately necessary purpose of foreclosing any dispute as to whether SORNA is applicable where the conviction for the predicate offense occurred prior to the enactment of SORNA. This issue is of fundamental importance to the initial operation of SORNA, and to its practical scope for many years, since it determines the applicability of SORNA's requirements to virtually the entire existing sex offender population."

Differentiation needs to be made however between those that previously were required to register per the Jacob Wetterling Act, and those that did not. **The AWA should NOT be retroactively applied to those that were not required to register per the Wetterling Act.** It should only be applied retroactively to those that met the definition in the Wetterling Act, including those currently released into the community, and those incarcerated, at the time the AWA took effect. **The Attorney General's decision is not one that should be "all or none". It requires differentiation.** One cannot assume, nor should that imply that if the AWA is not made retroactive to all past offenders that the entire existing sex offender population would not be subject to the AWA. Instead, the Attorney General needs greater differentiation, so that those that previously were required to per the definition in the Wetterling Act would continue to do so as part of the requirements of the AWA; but those that did not, would not be subject to the AWA. Moving forward, obviously, all new offenders that meet the definition of sex offender as defined in the AWA would be included.

There are many important reasons why this should be the case:

1. Some individuals were determined by a judge to not be deemed a sexual offender, and were not required to register. There are several states that make this a judicious decision. (Which is a much more appropriate method of labeling than a categorical offense based

decision.)
2. Some have already completed their term of registration
3. Some have had their offenses expunged or pardoned.
4. Some were not required to register by law, including the Jacob Wetterling Act. This is especially significant because many states do not place persons < 18 years of age at the time of the offense on the sex offender registry.
5. Some were allowed by law to petition the court for removal from the registry, and that request was successfully granted after judicious review by the court.

The interim decision on retroactivity will pose the following implementation problems within states, and may even jeopardize its implementation:

1. How will states find those persons above that either did not have to register, or no longer have to register?
2. How will these individuals be notified of their new requirements under the AWA?
3. Lengthy and time consuming processes way have to be implemented to review past cases to determine if an individual meets the new definition for a sexual offender per the AWA. This decision could not be done without proper representation of the offender, and the ability to challenge any decision
4. Increased costs to states to determine who retroactively meets the definition in the new law
5. Increased costs to the states to locate and notify those individual who retroactively meet the definition in the law.

AWA Should Not Include Juveniles

The AWA never should have been applied to juveniles. As a long-time advocate for juveniles, and particularly those with learning disabilities, I am disappointed that any juveniles are included in the definition of a sexual offender per the AWA. I am not alone; many professional organizations oppose the inclusion of juveniles on a sexual offender registry (SOR). It is important to consider that the members of these organizations work with both victims and offenders; they understand the developmental differences of juveniles; they know the distinct differences in the nature of sexual contact by a juvenile versus that of an adult; and they know the impact to a victim when juvenile to juvenile contact has taken place is significantly different than when contact is done by an adult. Below are just some of the organizations that wrote letters or positions statements opposing the inclusion of juveniles on a sexual offender registry, when the AWA was still a bill.

1. American Psychological Association
2. Clinical Social Work Federation.
3. National Association of Social Workers
4. National Association of School Psychologists
5. School Social Work Association of America
6. Society for Research in Child Development
7. Association for the Treatment of Sexual Abusers
8. National Mental Health Association
9. American Academy of Child and Adolescent Psychiatry
10. Federation of Families for Children's Mental Health
11. National Juvenile Justice and Delinquency Prevention Coalition
12. National Consortium for Child and Adolescent Mental Health Services

If you would like copies of any of these position statements, please feel free to contact me, and I will

assure that you get it.

Given the rehabilitative nature of our juvenile court system; the fact that these individuals do not have a conviction on their record; the fact that effective intervention and treatment is the basis of our juvenile court system; that fact that state laws and court decisions chose to address an individual's issues as a juvenile; and the fact that confidentiality in juvenile matters should be maintained, **juveniles should not be subjected to the stigma and unintended consequences that accompanying being labeled a sexual offender.**

Punitive Effects of the SORNA

Having worked closely with individuals that have been placed on the SOR, I can tell you this label is definitely punitive. These individuals lose jobs, housing, schooling and scholarship opportunities, and normal socialization opportunities. It fractures the family, and places them at risk for divorce, suicide and depression. Registration requirements are "not just an inconvenience" - they are detrimentally life altering. I know of 2 that have committed suicide because they could not live with a label that inappropriately defined them. Both were 14 – 18 at the time of the offense. Sadly, a few states already place juveniles on their registry. It is heartbreaking to see the negative impact to their life for offenses that sometimes occurred when they were as young as 10 years old. I work with states to change such irrational laws. Regardless, as any juvenile moves into adulthood, their offense is treated in the same manner as an adult offender when it comes to the SOR. The impact on these young offenders is devastating (and I consider young as 21 years old or less because late adolescence isn't complete until approximately 21 or 22). Research shows us this labeling is rarely justified. A juvenile court judge from Kent County Michigan said it best. "It should be reserved for only those juveniles that commit the most heinous of crimes, and show no remorse, and no response to intervention".

It's disheartening to think that 14 – 18 year olds will be subject to the AWA because of the acts of Joshua Wade, the offender in the Amy Zyla case. Joshua Wade stands apart from most juveniles because he refused to participate in his therapy and treatment program. When discharged from the state, it was known that he did not respond to intervention. Something that set him apart from other juvenile offenders. Sadly, so many other juveniles are being wrongly labeled because of him, and will be subjected to the unintended punitive effects of being labeled a "sexual offender". If you think the SORNA is not punitive, I challenge you to live a few days in the life of someone that bears the label of sex offender – even that of a young person. You will be shocked to see the negative impacts of such a label. That's why over-inclusion is a problem. It doesn't make society safer, and at the same time these punitive effects will incur even greater financial burden to society.

Thank you for this opportunity to be heard as the Attorney General considers this important decision. Please feel free to contact me at any time if you would like further information, or have any questions.

Sharon Denniston
Juvenile Advocate
[redacted]

From: no-reply@erulemaking.net
Sent: Wednesday, March 07, 2007 4:27 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: Tim
Last Name: P
Mailing Address: [redacted]
City: [redacted]
Country: United States
State or Province: MI
Postal Code: [redacted]
Organization Name: Self

Comment Info: ==========

General Comment:As a retired Police officer of over 25 years service I am against the Adam Walsh
Act being retro active. The reason is that given that the US Dept. Of Justice Bureau of Justice Statistics on Recidivism puts the recidivism rate at 3.5. Futhermore the US Supereme Court when ruling that Sex Offender Registerys are ok used the Prentky study C. As it turns out that study was used wrong as it was a study of offenders that already had many arrest for sexual assault. Also given that most sexual assault (90%) are commited by a person known and trusted by the victim. Given the above and the effect these SOR laws are having on the public, giving false sence of security. The cost of these laws on Law Enforcement is so high that the return is not worth the investment. I do not want to see one child hurt, but we need to educate the public about who the real danger is. Thank You Tim P.

From: no-reply@erulemaking.net
Sent: Wednesday, March 28, 2007 3:56 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:========

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FR Document Number: E7-03063
Legacy Document ID:
RIN: 1105-AB22
Publish Date: 02/28/2007 00:00:00
Submitter Info:

First Name: Tim
Last Name: P.
Mailing Address: [redacted]
City: [redacted]
Country: United States
State or Province: MI
Postal Code: [redacted]
Organization Name: self

Comment Info: ==========

General Comment:Subject: OAG Docket no 117

As a retired Police officer with over 25 years service I write to you today to ask that you NOT make the Adam Walsh act retro active. My reasoning is that for the most part these sex offender laws are not the answer to the problem. You are in fact giving the public a false sense of security. Over 90% of sexual assualts are commited by a person well known and trusted by the victim. Futher more The U. S. Dept of Justice Bureau of Justice Statistics Recidivism show that sex offenders are one of the lowest group of repeat offenders at 3.5%. The problem is that if we want this type of crime to be lower then we have to do things that will let these criminals work thier way back into the general public and a citizen paying taxes. Under the sex offender laws as they are now we have put all sex offenders on the Sex Offender Registry. I am not saying that all should not be on the SOR. I feel that those that are the biggest danger to the public should be posted. If you make the AWA retro active this will only make the problem larger. Address those who are of the greatest danger and not one sweeping law to fix it all. Thank You Tim P.

From: Tim Poxson [redacted]
Sent: Wednesday, June 20, 2007 1:55 PM
To: OLPREGS
Subject: OAG Docket No 117

I suggesting that Sec III (2) - (4) Classification of Sex Offenders be changed to require each state to set up a tier system to classify sex offenders. This classification shall be a tiered approach to identify HIGH RISK offenders and shall be based on empirically based risk factors.

The reasoning is that if a tiered system is not used the SORNA will be so broad that law enforcement will be hampered in its effort to protect the public from high risk offenders. Law enforcement will be forced to use precious resources to track low risk offender rather than monitoring high risk predators. Further the public will have a hard time picking out the offenders that are the most risk to re-offend and are dangerous to the public. The public will not have confidence in the SNORA if all sex offenders are on it. Also the United States Supreme Court declared that the registry was never intended to be used as a punishment for low - risk offenders. (Smith V. Doe (01-729) 538 US 84 (2003)

[redacted]i.txt

From: no-reply@erulemaking.net
Sent: Wednesday, March 07, 2007 12:21 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: [redacted]
Last Name: [redacted]
Mailing Address:
City:
Country: United States
State or Province: CA
Postal Code:
Organization Name:

Comment Info: ==========

General Comment:The decision by the AG to make this law retroactive is the wrong thing to do. My
nephew under California law is only required to register once a year and can be found in the Megan's Law website by zip code. California law requires this because he is a first time offender and the conviction isn't considered extremely violent. If he has to comply to your new regulations his constitutional rights will be violated. The rights of his wife and children will also be violated. The safety of his wife and children will be jeopardy. You have taken a nonsensical approach to this issue. California was the first state ever, since the 1950's, to require sex offenders to register. My nephew since his release from prison in 1999 has registered every year like he is required to. This whole new set of laws, that does not use a valid tool of evaluation, will put his life and the life of his family at risk. Before you enact any of these new laws you must first look to see how many former offenders are married and have children. No one is thinking about them and the ramifications this new law will have on them personally. In one more year my nephew's oldest child will be attending preschool. What will staff think about him because they received notice that his dad is a registered sex offender. I beg you to please reconsider your decision to make this law retroactive. California already requires him to register for life.

From: no-reply@erulemaking.net
Sent: Wednesday, March 07, 2007 11:35 AM
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: S
Last Name: S
Mailing Address:
City:
Country: United States
State or Province:
Postal Code:
Organization Name: OAG Docket No. 117

Comment Info: ==========

General Comment:OAG Docket No. 117

I decline to give my full name because the former victim lives at the same home addresss and is entitled to privacy. We were reunited by the court after several years of intense individual and family therapy as the unification was desired by the

former victim. Unfortunately, there are no laws on the books addressing cases where the offending parent/stepparent and the victim are "reunited" in the home by the courts, and the continual adverse impact the registration and notification laws have on the victim who is trying to leave the past behind. The victim's home address should not be made available for public access on the World Wide Web, nor should the first-time offending parent/stepparent be posted especially when the offense did NOT involve violence or force. I believe it is unethical to continue to
further punish a former victim by increasing the registration and notification requirements of the individual's parent/stepparent who lives at the same address. Though politicians hide behind the guise of "public safety" to get theirs law passed

and upheld by the courts, it doesn't take a rocket scientist to understand that most of these laws are politically motivated and driven by the threat of loss of funds to the states. How can a law be 'civil' in nature yet provide for increased 'criminal sanctions'? The money the states might lose does not compare to the mental and emotional trauma a former victim suffers as a result of the registration/notification laws the parent/stepparent is subject to. To make the

AWA retroactive is, in my firm opinion, subject to Constitutional challenges regardless of how worthless others think this cherished piece of paper is.

From: no-reply@erulemaking.net
Sent: Sunday, April 29, 2007 8:49 AM
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: Walt
Last Name: Sabol Jr
Mailing Address: [redacted]
City: [redacted]
Country: United States
State or Province: VA
Postal Code: [redacted]
Organization Name: Virginia Cure

Comment Info: ==========

General Comment:The Constitution of the Uniyed States in section nine item three clearly states that
No Bill of Attainer or EX POST FACTO (RETROACTIVE) SHALL BE PASSED.
See Stogner V. California No. 01-1757 Decided June 26 2003.

[redacted].txt

From: no-reply@erulemaking.net
Sent: Sunday, April 29, 2007 9:17 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:========

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FR Document Number: E7-03063
Legacy Document ID:
RIN: 1105-AB22
Publish Date: 02/28/2007 00:00:00
Submitter Info:

First Name: [redacted]
Last Name: [redacted]
Mailing Address:
City:
Country: United States
State or Province: IL
Postal Code: [redacted]
Organization Name:

Comment Info: ==========

General Comment:The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C. 14071) in 1994 grandfathered thousands of people into the Sex Offender Registration system. These people must now suffer at the hands of the political machine, who view them as "animals".

The Act was designed for poor/middle class people, because the rich/senators can cover up their crimes/records by bribing someone (ie., state attorneys, police departments).

There is an issue that has not been addressed regarding the 'Sex Offender'!

I call it the 'She Said, He Said' factor. The factor involves an offender who, for one reason or another, is charged with a crime that he/she didn't do. There is no evidence (DNA, rape kit, etc.) to back up the charges.

The State of Illinois laws say after 10 years of registration that they will remove an individual's name from the website but they don't.

The State of Illinois don't even follow their own rules!!!

When a 18 year old Marine was having sex with a 14 year old girl, guess who got charged: The girl's father because he requested that the Marine (MOS) be moved from one base to another, so the girl retaliated by lying to everyone who would listen.

This information was withheld from the father's trial in 1993, and now we fight!!

Please change the rules, so that the "She said, He said" people can be taken off the lists.

P.S. If you put an offender's email address with their picture, and they receive death threats - the workload of the local police department goes up because every threat has to be investigated!

April 25, 2007

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

Re: OAG Docket No. 117

Dear Senior Counsel Karp:

Please allow me to voice my grave concern and opposition for the Interim Rule issued as a result of the Adam Walsh Act (AWA) and SORNA by Attorney General Gonzales. This law will allow double jeopardy which is legal only because federal jurisdiction and state jurisdiction are separate. A person can now be punished by both the federal; and state government for the same violation of registration. Every state has a registry in place and this is certainly a duplicate effort and an excessively expensive and unnecessary law.

A great many people who have moved on with their lives and living law abiding and productive lives will now be re-exposed with the retroactive clause of SORNA. This is tantamount to the Salem witch hunts only now it is the families of sex offenders who will be brought down with this draconian and vindictive law. This is cruel and unusual punishment, not public safety, as SORNA will show places of employment in the Federal Registry which will be an open invitation to the fear and hate mongers to protest their places of work and/or physically attack them.

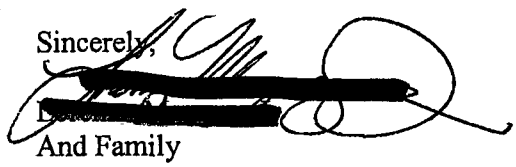
Posting places of employment in a federal database will stand in the way of any sex offender in California (and the nation) from being able to earn a living, no matter how minor their crime. Thousands of hard working individuals could lose their jobs because of this and there is no recourse if this happens. No Federal aid is being offered to the families of those offenders that stand a good chance of losing their jobs. SORNA is completely counterproductive to the goal of reintegrating ex-felons back into society as self supporting, productive citizens. The Attorney General has said that SORNA's applicability will be to "virtually the entire existing sex offender population". Clearly the intent is to cover "virtually" everyone, but there is no mention about whether Congress specifically limits what he can do. Why was this left out?

The Tier system that is planned is, in my opinion, Unconstitutional. It does not allow for due process and lumps the first time offenders with the career criminal. A Risk Assessment Tool should be used on a case by case basis to evaluate each registrant and eliminate the low to moderate low risk from the high risk offenders. All first time offenders in the Tier 3 level, that did not commit a crime against a child, should also be allowed to be removed from the registry after 25 years if they have not committed a new crime.

Please consider the effect this will have on me and my family. As a father I understand the concern most parents have but as a registered sex offender with children I can not comprehend the extent of all the cruel laws being proposed. Our family lives in California. I have an 11 year old conviction. Had I known 5 years ago that our laws would be continually changing I would not have gotten married let alone have children. Under California law I am listed on the Megan's Law website but because I am a first time offender, that did not commit a crime against a child, I am only listed by zip code (which thank God) helps to protect my wife and children. I am also only required to register once a year. SORNA could change that drastically. No one seems to be a bit concerned about the rights and safety of my children from ridicule or vigilante attacks. I know I am not the only one out there with this same situation. There are one million women and children attached to a sex offender in California alone.

Our family implores you to please reconsider making SORNA retroactive as it will have, very, severe consequences on us. I don't want to lose my wife and children over this. I made a mistake 13 years ago and should not be continually punished, ridiculed and humiliated because of my past mistake. Please don't get me wrong, there are very violent offenders and repeat offenders that need to be closely monitored but SORNA is being applied too broadly to too many people. None of what has been proposed in SORNA will protect the public from those that have not been caught. California already requires all sex offenders to register for life so I'm not trying to avoid California's registration requirements by asking you not to make SORNA retroactive

Sincerely,



[redacted]
And Family

From: ray smiyh [redacted]
Sent: Thursday, March 01, 2007 6:28 PM
To: OLPREGS
Subject: Re - Interim Rule Office of the Attorney General; Applicability of the Sex Offender

Follow Up Flag: Follow up
Flag Status: Completed

Registration of Sex Offenders in my state, PA, is currently done with the State Police. The State Police covers registration for all jurisdiction.

"requirements include registration by a sex offender in each jurisdiction in which the sex offender resides, is an employee, or is a student. The Attorney General has the authority to make this specification pursuant to sections 112(b) and 113(d) of the Sex Offender Registration and Notification Act."

How would the above apply in a situation such a s that? Individual counties are currently not set up to perform registration. They do not get funding to perform registration. Nor, do they wish to do registration.

COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

April 26, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Re: The Sex Offender Registration and Notification Act

Dear General Gonzales:

I applaud the federal government for protecting our nation's children through passage of the Sex Offender Registration and Notification Act ("SORNA") contained in the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"). As you may be aware, Virginia has been at the forefront of enacting state legislation designed to protect children from sex offenders. We have registered sex offenders since 1994 and last year Virginia enacted comprehensive legislation to further strengthen our sex offender registry laws.

With such a comprehensive sex offender registry in place, I was initially concerned by several aspects of SORNA. I wish to comment on the proposed regulation (Docket No. OAG 117, A.G. Order No. 2868-2007) and other areas of SORNA. My first concern is the retroactivity requirement. As SORNA applies retroactively, it may have been interpreted to require Virginia to locate and register sex offenders who were required to register under SORNA but were not required to register under current Virginia law. The expense to register those individuals would have been quite significant.

Another issue of concern was Section 121 of the Adam Walsh Act, which provides that state police must notify "volunteer organizations in which contact with minors or other vulnerable individuals might occur" of a sex offender registration. However, a volunteer organization may opt to receive the notification no less frequently than once every five business days. My concern was that states may be required to notify those volunteer organizations that did not opt in to receiving notification.

These concerns, however, were addressed when my staff spoke with Laura L. Rogers, Director of the Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking ("SMART") Office. Ms. Rogers, who was most helpful, informed my staff that guidelines concerning the implementation of SORNA were forthcoming which will address retroactivity and notification provisions.

Under the proposed guidelines, as explained to my staff, Virginia would not be required to search out those individuals who were required to register under SORNA but not required to register under current Virginia law. Rather, only those individuals who were arrested again, for any crime, would be required to register as sex offenders under SORNA. Additionally, it is my understanding that a volunteer organization must opt in to receive notification of a sex offender registration. States would not be required to notify those organizations that have not opted in.

Virginia must "substantially implement" SORNA within three years after federal enactment. Failure to substantially implement SORNA within the applicable period would subject a state to a 10% reduction of federal justice assistance (Byrne Grant) funding. A 10% reduction in Virginia's Byrne Grant monies would total $574,738.[1] Although the total cost of implementing SORNA has not been calculated, without the forthcoming guidelines as Ms. Rogers has described them, the cost of implementing SORNA certainly will exceed the 10% reduction in Byrne Grant monies.

Thank you for your attention to the matters raised in this letter. Please let me know if I may provide additional information.

Sincerely,

Robert F. McDonnell

RFM/caq

cc: Paul J. McNulty
Deputy Attorney General

David J. Karp, Senior Counsel
Office of Legal Policy

Laura L. Rogers, Director
Office of Sex Offender Sentencing,
Monitoring, Apprehending, Registering,
and Tracking

Nicholas Alexander
National Association of Attorneys General

[1] Based on 2006 fiscal year.

July 10, 2007

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

RE: OAG Docket No. 117 Comments on Interim Ruling by the USDOJ for the Adam Walsh Act (SORNA) Comment Period Ending July 31, 2007

Almost by accident, I learned about the guidelines proposed by Attorney General Gonzales for the Adam Walsh (SORNA) Act. Because there has been no news coverage of these important guidelines, it was only because someone commented in a discussion group that I know about them at all. Although I am neither a legislator nor a lawyer, I feel obligated to provide some comments and suggestions that I hope will be made known to the Attorney General, and that he will make substantial changes to the guidelines before their final implementation.

I am moved to comment because I realize that these guidelines will in turn create new legislation in all of the states and probably in a number of local governments as well. I am convinced there will be a flood of unintended consequences. By modifying some parts of the guidelines to make them clearer to the state legislatures, and by removing or tempering some of the conditions proposed, the result will be a more reasonable implementation of the law.

Summary of Suggested Changes to the Guidelines.

1. Make it affirmative that the law does not apply to anyone who, on July 27, 2006:
   - Was not required to register in the state(s) of their residence(s), employment or school enrollment;
   - Has been released from prison prior to July 27, 1981 (25 years);
   - Has not been convicted of another offense;
   - Has completed the sentence and any terms of probation, parole, restitution, etc.

   Or meets one of the following criteria:
   - Has been pardoned by the executive (President or Governor);
   - Has been relieved of the requirement to register because of a court ruling or statutory procedure.

   These exclusions would apply to Tier I, II, and III.

   If a Tier III offender is subsequently convicted or another offense, punishable by a year or more, then that offender would be required to register under the law. If the offender moves to another state and is required to register, then that offender would also be covered retroactively.

2. Make it affirmative that anyone described above is not subject to registration solely because of travel in interstate or international commerce. Such application would be only when the person travels in interstate commerce in such a way that they would be required to register in another jurisdiction. This would permit normal travel, such as family vacations, business trips, and the like, while preserving retroactive application when registration is required.

3. Add to the required information to be disclosed:

- Date convicted;
- Date released from confinement;
- Length of time in the community.

Exclude from disclosure to the public directly or indirectly (such as by submitting a value and getting back a response):

- E-mail addresses;
- Name and address of employer;
- Phone number

4. Recognize pardons, court decisions, statutory relief and other means by which offenders have not been required to register. For pardons, it would apply to past and future pardons.

Retroactive Application of the Law. There is great potential for the rule of unintended consequences to be in full force if the guidelines are implemented as written. There are at least fifty sets of legislation, one for each state, and many conflicting, contradictory and punitive laws enacted at various local levels. I firmly believe that the guidelines must respect the exclusions to registration states already have in place. Those exclusions are part of a framework of the state judicial and legal systems, and the exclusions (by date, court order, or statutory process) have all been taken into account by the states and certainly in the individual cases. To ignore all of the complexities and nuances with a blanket retroactive application of this law is flawed.

That said, it seems obvious from the examples used in the proposed guidelines that a retroactive application of the law to those convicted prior to July 27, 2006 is intended to make it applicable and enforceable to those currently registered or who should be registered. Yet many states have enacted registration requirements that exclude convictions that are much older, and these persons have not been required to register.

A confusing groundwork has been laid out by the proposed guidelines. They propose that states will be in compliance if such persons are required to register only if they enter into the criminal justice system with a subsequent conviction. By changing the interim ruling to affirmatively state that SORNA does NOT apply to such persons, it accomplishes several things. It respects the existing state laws that have recognized that public safety would not be compromised by excluding from registration those whose convictions were sufficiently distant and it does not put a new disability on those who have been free of both subsequent convictions and public risk. While some of these antiquated convictions might benefit from the reductions of Tier I and II, others because of particular circumstances at the time of convictions may not because of a Tier III status.

It is therefore my suggestion that anyone who has been released from custody for 25 years or more as of July 27, 2006, has had no subsequent conviction of any kind, has completed the sentence, and was not currently required to be registered in the state of their residence and employment should be exempt from the law. It would be reasonable to apply it retroactively to these persons based on a subsequent conviction of any kind, provided the conviction is substantive, i.e., a conviction with a penalty of a year or more of jail and not just a traffic or local ordinance fine. Or if they move to a state where they are required to register.

This approach really offers a significant benefit to our communities and the safety of our children. First, it frees up the resources of time, money and manpower to concentrate on sex offenders who are new, or recent, or already registered. It also helps the public by allowing them to concentrate on the registrant and notification information of the greatest threats to public safety. For a limited number of offenders, who by the length of time post confinement and the lack of ANY other offense, it will not undo decades of recovery from their convictions. What will result is the addition of offenders with decades old convictions, indistinguishable

from contemporary offenders. By definition, it will be targeted at an aging group who have proven they are no longer a threat, and coincidentally grow less likely as time passes.

Interstate and International Travel. The interim ruling seems to suggest on the one hand that jurisdictions are in compliance for persons convicted but not required to be registered provided they register for a subsequent conviction, but then states that anyone who travels in interstate or foreign commerce is subject to the law. This means that someone currently not required to register because of the distant conviction could find themselves in travel, perhaps on business or as part of a family vacation, and be arrested and charged with a federal crime, even if they were not aware of the registration requirement. By affirmatively stating that SORNA does not apply to these individuals as suggested in the retroactive changes, this anomaly would not occur.

Required Registration and Disclosed Information. There are several items of personal information in the interim ruling that should not be public. First, the name and/or address of employment. If we reasonably expect that an offender will be released and then become a law-abiding citizen without subsequent convictions of any kind, employment as an element of steadying influences on their post-release life are important. There would be more than ample public safety notification available on the individual without having the employer name AND/OR address be part of public records, leaving that to law enforcement and related parties.

Second, e-mail publication or even query (as proposed) being publicly disclosed is an equally bad idea. E-mail is used for much more than social network registration: internet commerce for banking and commerce often rely on it, so identity theft is an issue. Denial of business services based solely on registration could be the result, so imagine if health coverage or credit were denied someone convicted decades ago (see retroactivity). And has been pointed out, sex offenders might find a way to use this information, say from well meaning citizens who post an e-mail they discover belongs to an offender on a blog or web site, to find and link up with other offenders. Make this do what it is intended to do: require registrants to provide information they use to register into social networks and electronic services that involve peer-to-peer communication with other registrants who are minors. Then allow these services to check their registered users against the sex offender information but not make it public.

What is missing and I believe key to the public in making informed decisions about the public health and welfare is to include the date of conviction and importantly the date of release. If someone were released recently the threat they pose can be more readily determined from someone who was release say ten or fifteen years ago. Coupled with the criminal history, this gives the public more information.

Pardons and Other State Remedies. The interim ruling states that for the purposes of applicability, pardons except for innocence and other court or statute-enabled rulings do not exclude the person from SORNA. For example, some states have allowed individuals to go through a court or other individual review process and be relieved of the registration requirements. SORNA's interim ruling would undo all of that. Certainly anyone who has received a pardon, or will receive, for any and all convictions requiring registration should not be subject to registration. Judicial rulings that may have been issued many years ago could not have contemplated SORNA's impact, and perhaps because of a choice of wording, the court's decision will be bypassed unless the guidelines are changed. No one receiving a pardon for the convictions requiring registration, both before and after the enactment of SORNA, should be covered, and those who have received judicial or other legislatively enable exemption should not be covered, either.

In closing, I want to add that it is apparent much time and effort when into the creation of the guidelines, but there is a very strong emphasis on the people who are currently incarcerated or

registered and very little about the much smaller number, I assume, whose time in the community far overshadows their distant convictions. As an engineer, though, I am all too familiar with the way large, complex structures work. When the real world conditions confront the design assumptions and decisions, things can rapidly go wrong. I equally know that it is far more difficult to get a law changed when things don't work out entirely as planned than it is to get it passed in the first place. And when fifty new sets of laws are going to be passed, from my engineer's perspective, an almost certain chance that things won't happen entirely as planned.

If I may make one more point. Each time I read about some child being abused, injured, or murdered, it makes my blood boil. I have taken care of my sister, raised her daughter, and now am helping raise her two daughters. I cannot possibly imagine the pain and anguish a parent goes through. But because of the wide press coverage these stories receive, I can easily calculate that they represent only a small fraction of the hundreds of thousands of registered offenders. I also know that when these terrible crimes do happen and are committed by a registered offender, the registration requirement did not deter them from the crime. Stricter requirements are unlikely to do that, either. On the other hand, offenders who have been released without offending for extended periods of time are likely to be aware of, and motivated not to offend because of the threat of registration and very long prison sentences. In engineering, we refer to that as an inverse relationship. And it supports my suggestions.

Thank you for your time to review these comments on the guidelines and for making the improvements and changes I hope will benefit the enactment of this law and the public safety without undoing the years of adjustment distant offenders have made.

Sincerely,
Richard Munczenski

From: no-reply@erulemaking.net
Sent: Monday, April 30, 2007 9:28 AM
To: OLPREGS
Subject: Public Submission

Follow Up Flag: Follow up
Flag Status: Completed

Attachments: S__0001_ltr. Karp SORNA 4 30 07.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: Lauren
Last Name: Taylor
Mailing Address: 1101 South Front Street, Suite 5700
City: Harrisburg
Country: United States
State or Province: PA
Postal Code: 17104
Organization Name: Pennsylvania Sexual Offenders Assessment Board

Comment Info: ==========

General Comment:Attached are comments on behalf of the Commonwealth of Pennsylvania.

PENNSYLVANIA BOARD OF PROBATION AND PAROLE
SEXUAL OFFENDERS ASSESSMENT BOARD
1101 SOUTH FRONT STREET, SUITE 5700
HARRISBURG, PA 17104-2533

LAUREN TAYLOR
EXECUTIVE DIRECTOR

TELEPHONE – (717) 787-5430
FAX – (717) 705-2618

April 30, 2007

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

RE: OAK DOCKET NO. 117

Dear Mr. Karp:

Is it the intent of this proposed Interim Rule to require the identification and registration under the requirements of Public Law 109-248 ("SORNA") of those sex offenders who are not currently required to register as sex offenders under current state law but who 1) have a predicate conviction or adjudication under SORNA which predates the Act's effective date; 2) as of the Act's effective date have a nexus with the criminal or juvenile justice system; and 3) at present have no nexus with the criminal or juvenile justice system?

Sincerely,

Lauren Taylor
Executive Director

From: no-reply@erulemaking.net
Sent: Friday, April 27, 2007 2:23 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:========

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FR Document Number: E7-03063
Legacy Document ID:
RIN: 1105-AB22
Publish Date: 02/28/2007 00:00:00
Submitter Info:

First Name: Robert
Last Name: Van Domelen
Mailing Address: [redacted]
City: [redacted]
Country: United States
State or Province: WI
Postal Code: [redacted]
Organization Name: Broken Yoke Ministries

Comment Info: ==========

General Comment:OAG Docket No. 117

The intent of retroactivity for the Adam Walsh Act is understandable but impractical. There is no difference of attitude applied whether the past offender has
been recently released or released 20 or more years ago. The premise is that an offender has the exact same level of age-inappropriate attraction regardless of time or treatment. There simply are no studies that verify such a premise and presuming such to be true without empirical evidence castigates those who have found restoration, who have been offense-free.

[redacted].txt

From: no-reply@erulemaking.net
Sent: Saturday, March 10, 2007 10:26 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:========

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FR Document Number: E7-03063
Legacy Document ID:
RIN: 1105-AB22
Publish Date: 02/28/2007 00:00:00
Submitter Info:

First Name: [redacted]
Last Name: [redacted]
Mailing Address:
City:
Country: United States
State or Province: CO
Postal Code:
Organization Name:

Comment Info: ==========

General Comment:Retroactivity

This regulation would harm many people who have lived decent lives for many years, and who are obeying the laws within the state they reside. By requiring persons who had to register prior to the AWA or this regulation would also have the effect of people possibly loosing their employment by the requirement that ALL sex offenders must be put onto a public registry.

This ACT along with the Adam Walsh Act is inherently unjust to the many people who did not commit a crime against a child. Public registration of ALL sex offenders along with retroactivity will add fuel to the fire and cause many states to
go overboard as they often doing these days.

There are many people on the registries that did not molest a child, nor attempted to do so. My offense was while I was upon my own property and seen by neighbors.

All that many people are asking for is Balanced Justice. Requiring retroactivity is

not Balanced Justice in which people have paid for their crime and are living descent lives. Why does the government through this regulation want to destroy the lives of people who did nothing requiring such continuing harsh treatment?

Retroactivity is unjust. Public registration is unjust. In Colorado, people who are
on public registration are those of medium and high risk. The registries were meant for these people. Molesters, sexual predators, pornographers, and other child abusers are the ones having high risk of reoffending against another person or child.

The umbrella effect has created a growing population of people labeled as sex offender, growing rapidly each day, many of whom should not be on the registries.

The public equates the phrase sex offender with child molestation and sexual predator, neither of which many persons are not.

This regulation need not be retroactive except upon convicted child molesters, convicted pedophiles, sexual predators, and violent sexual predators.

There is absolutely no need for the Federal Government to re-punish people who are obeying all laws and who have turned their lives around, who have homes and jobs, and are productive members of society.

When it is said that this regulation, or any Bill or ACT is for the public safety or

the safety of children, and yet they continue to penalize persons not convicted of any molestation, enticement, luring, grooming, or sexual predator activity, these Act?s, Bills, and regulations serve to do nothing less than re-punish people, and an attempt to raise their level of offense to that of a molester or sexual predator.

Do not require the states to enact retroactivity it is unfair, unjust, and is not balanced.

From: Bennie O Walton [b[redacted]]
Sent: Sunday, March 04, 2007 12:24 PM
To: OLPREGS
Subject: Sex Offender Registration and Notification Act

Follow Up Flag: Follow up
Flag Status: Completed

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.

Example: A person who is/was required to register may be a person who had an offense let's us say thirty-four years ago, an offense that was non-contact, and at the time of that first offense the offense was considered not a crime or offense worthy of having the life of that person destroyed from that point forward. Today's laws have changed where a person is now labeled with a term that has a De Facto meaning to the public and media organizations of child molester or sexual predator, and even that of violent sexual predator. An offense which remains on a person's police record or court record today is now considered a sex offense, and that offense of so long ago is now used to re-punishes that person for that offense because it is wrongfully considered recidivism.

This Act implies and assumes by its very nature of unbalanced Justice that this type person is a danger, although there are no facts to the contrary of that person not being a danger to society. This Act having no justice, assumes that this type person is a recidivist, no matter the length of time between offenses.

It is quite apparent that in today's legal systems, which includes the Department of Justice, or the Department of no justice that a person of such low risk potential continues to be humiliated for the remainder of his or her life, with no intent or legal desire for restorative justice on the part of the states or the federal government.

In the State of Colorado, sex offenders must register if they have more than one sex offense. If that person has a first offense committed many decades ago, with a latest offense, a total of two over a thirty-four year period, that person must register each year his/her residence and place of work, and then be threatened each and every day with lose of residence from residency restrictions overly broad in scope.

This Act threatens a very low risk individual's employment, and sense of being not because it is the right thing to do, for apparently rightness and balanced justice has nothing to do with punitive umbrella laws, only because no legal system, including the Department of Justice does not wish to use good sense. This Act simply on a moral basis can be considered nothing but punitive. Although this punitive Act is legally sanctioned as not punitive under the guise of public safety, it is nothing but a legal shame of the highest order in which the Department of Justice no longer considers Justice as a necessary part of law.

A person who has lived a descent life, and who is, or has been obeying existing laws, and has shown no signs of recidivism of such nature and time duration, one would believe such a person should be considered of such low risk, and of such a low danger to public safety, or child safety that the Act or law would have been crafted so as to consider this ex-offender as being assessed apart from high-risk individuals. This Act nevertheless ensures that people live in fear all over again without any sound foundation. This Act must be amended or changed for consideration of this type ex-offenders lack of dangerousness to the public. We, meaning concerned people continue to fight the states over their overly broad reach to satisfy hysteria and myths, and again along come the Federal Government who sets the example of being overly broad, and overly far-reaching.

The United States Department of Justice along with state and federal legislators are creating events that may in some form or fashion, be regretted. While waiting for that regret to happen, the United States Department of Justice, the Supreme Court, and states legal systems will blindly and willingly continue to create terrorism upon a population of people, most of whom are low risk, loss of life, home, family, livelihoods, and self-worth.

Justice lost in the United States of America using umbrella legislations and laws, enacted only because you who are the legal experts do not want to deal with the individual. It is much easier to umbrella and not care about the effects, and the lives destroyed.

Change this Act. Put justice into this Act. Find the way to make it right.

Bennie O Walton

[redacted]

[redacted]

[redacted]

From: no-reply@erulemaking.net
Sent: Monday, April 30, 2007 8:22 PM
To: OLPREGS
Subject: Public Submission

Follow Up Flag: Follow up
Flag Status: Red

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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: JoEllen
Last Name: Wiggington
Mailing Address:
City:
Country: United States
State or Province:
Postal Code:
Organization Name: Pacific Professional Associates

Comment Info: ==========

General Comment:I would like to add my voice to those objecting to the retroactive application of this law
to those convicted of crimes prior to its enactment. Others have eloquently pointed out
the problems with this ruling, which will likely increase the risk of reoffense. As a
treatment provider for 15 years, I can personally attest to the potential impact this may
also have on the innocent victims and families of offenders. There is no evidence that
the retroactive application of this law is in the public's best interest.

From: ZMan - GA [redacted]
Sent: Friday, March 09, 2007 6:54 PM
To: OLPREGS
Subject: In regards to Adam Walsh Act and Sex Offender Laws

Follow Up Flag: Follow up
Flag Status: Completed
These laws not only punish offenders, but also their families and children. We must stop acting out in fear and anger, and stop lumping all offenders into one group and making them all look like predators who have killed someone like Couey. Not all sex offenders, about 90 - 95% are NOT these people. And making laws due to a few to punish millions is totally wrong. We MUST be fair.

LINKS:
* http://www.nacdl.org/sl_docs.nsf/issues/sexoffender_attachments/$FILE/SexOffenderPolicy.pdf

ISSUES:
* I do not believe in registries period, but if the sex offender laws are kept, why discriminate? If sex offenders must suffer for life and be on GPS, so should ANYONE with a criminal record. If this is not done, then it is discrimination. Anyone with a criminal record should be on a registry on the internet for the whole world to see, and be on GPS for life. DUI offenders should not be able to live XX feet from an alcohol store and should have their license revoked. Drug dealers should not be able to live XX feet from anywhere children congregate, so they cannot sell our kids drugs. Murderers should not be able to life XX feet from ANYONE, since they may kill again. DUI offenders kill more people than any other crime (I believe), and I'm sure the entire public would love to know if a murderer, thief, drug dealer, etc lives in their neighborhood. If all this was on the internet for all to see, I'm sure everyone would NOT leave their house at all. These people are everywhere. Why are sex offenders being "scape goated"? EVERYONE WITH A CRIMINAL RECORD SHOULD OBIDE BY THE SAME LAWS SEX OFFENDERS HAVE TO OR IT'S DISCRIMINATION!!

* When will people ever realize no matter how tough on crime, all the zero tolerance, all the registries in the world will not prevent a murderer from murdering, a thief from stealing, a dealer from dealing, a user from using, a rapist from raping....accusations on any sex crime, child abuse, or domestic violence will literally nail your butt to the wall! No DNA has to be present, No violence has to be present..... HEARSAY ALONE IS LITERALLY NAILING THOUSANDS AND THOUSANDS OF PEOPLE TO THE WALL BECAUSE OF THE BIASNESS IN THE LAWS.

* To live is already almost impossible for "sex offenders", and the more and more laws that are passed daily, eventually they are going to explode, and it won't be a pretty site. You must be realistic when making laws, these draconian laws make it impossible for anyone to live ANY type of life. Everyone is for treatment and punishing those violent predators and pedophiles who are making other sex offenders lives hell, but like I said, we must be realistic.

* For all the people being charged with Child p**nography, is the law checking the computers to make sure they are not infected with a virus? Many people are ignorant when it comes to computers, and if they click on some attachment in an email, their machine can become infected with a virus, trojan, spyware, adaware program which stores child p**n on their machine. Are these so called "experts" checking this? Or ignoring this possibility?

* The issue with sex offenders Internet email addresses, IM names, etc being collected, this is another "feel good" law that will not stop crime. If someone wanted to commit a new crime, they'd create a new email address and commit the crime. This is stupid and won't work.

* Think!! Come up with solutions, not "feel good" laws, which make it harder and harder for sex offenders to get on with their lives.

* "Buffer Zones" are a false sense of security!

* "Buffer Zones" are banishing people from their town, state, and possibly the country!

* "Buffer Zones" create homelessness, which costs society lost productivity, individual dignity, and creates additional problems for enforcing any accurate registry!

* "Buffer Zones" do nothing, except banish! It could be 50 miles and if someone wanted to re-offend, they'd just get in a car and drive!

* It should be MANDATORY that anyone in prison get therapy, and out of prison, if needed. Therapy does work. If you just lock them up, when they get out, they will be worse off. Therapy teaches people how to not act out and help, regardless of what the general public thinks. Just ask a therpist.

* We need to STOP this hysteria and get sex offenders the help they need.

* You can pass all the laws you want but without therapy and this "mob" mentality will not solve anything!

* I am sick of politicians using children to get their laws passed! Who would want to vote against anything that is "for the children"?

* "Stranger Danger" is a smoke screen & hype! Most child sexual offenses occur by someone the child knows, like a family member or close friend!

* These laws are being passed by politicians using sex offenders as scape goats, for votes!

* Registries do NOT protect anyone or prevent crimes!

* Registries are punishing sex offenders as well as their families and children, and opening them up to vigilantism. DON'T THE FAMILIES AND CHILDREN OF SEX OFFENDERS COUNT? They are suppose to be "for the children", right?

* Registries are NOT being updated in a timely fashion, so the public is getting false information! How is this helping the public or protecting them when they cannot rely on them?

* Registries are putting families and children of sex offenders in a public position to be socially outcast and discriminated against with regard to employment, housing, schooling, etc!

* About 90% of the people on the registry are NOT sexual predators or pedophiles that these laws were for in the first place!

* These laws cost millions, if not billions to enforce, and they cause prison over-population, which is already a problem, especially in California! AND TAX PAYERS PAY FOR ALL THIS!

* GPS does not prevent sexual crimes! Another false sense of security which cost tons of money! Plus they are suppose to pay for this, which will eventually go homeless. MAKE THE TAX PAYERS WHO

WANT THESE LAWS TO PAY FOR THEM!

* These laws cause sex offenders to go underground and into hiding, due to the strict nature of the laws! How is this protecting anyone?

* These laws are all abount money for law enforcement and votes for politicians. Prison is a business! Politicians are salaried and want elected/re-elected! Law enforcement get paid for people in jails, prisons or on the registry!

* These laws blatantly disregard the United States constitutional rights of all citizens! (i.e. ex-post facto, due process & others)

* These laws are cruel and unusual punishment! A sex offender cannot go to a fast food restaurant which has a playground! Why? We have just as must of a right as you to get a burger! Plus they cannot go anywhere kids congregate, which is endless (i.e. Amusement parks, Movie theaters, the list is endless)

* Sex offenders can go to church, but must leave immediately afterwards. If a sex offender owns a business and someone decides to put a church or school next door, they have to now sell their business and move. This is not right, move the church or school, the sex offender was there first!

* These laws continue to punish people even after a sentence has been served, and they are trying to get on with their lives! (i.e. ex-post facto)

* These laws are driven by fear-mongering, opportunistic politicians and will do nothing to actually protect children!

* There are over one million women and children whose lives are inter-twined with a sex offender in the United Stated. They should matter too!

* Follow the money trail, these laws are conveyor-belt laws to benefit law enforcement! They get paid for the number of people in jail, prison or on the registry!

* They are currently a one-size-fits all for sex offenders! Not all sex offenders are predators or pedophiles that these laws are suppose to be for anyway!

* They are modern day witch hunts and a scarlett letter!

* If Sex Offenders are re-offending, why does the registries grow each day? Because new people are being added daily for stuff like "public urination", "mooning", "concensual sex", "young children playing 'Doctor'" and various other minor offenses that we need not worry about. We need to worry about predators & pedophiles!

* Now they are trying to make it a law that a sex offender, if they have kids, cannot "take a picture" of anyone under 18. This is totally stupid! Can't even take Christmas pictures, birthday pictures, etc!

* Also, because a sex offender owns a business in town, many people are trying to get the business shut down! The sex offender had the business for awhile. If you don't like it, MOVE!!!!

* The thing about pedophiles not being able to take pictures of kids is stupid. You'd better shred any pictures you have of your kids when they were babies, like diaper changing, baths, etc.

* The Nazi's passed other laws that targeted sex offenders. In 1933, they enacted the Law Against Dangerous Habitual Criminals and Measures for Protection and Recovery. This law gave German judges the power to order compulsory castrations in cases involving rape, defilement, illicit sex acts with children (Paragraph 176), coercion to commit sex offenses (paragraph 177), the committing of indecent acts in public including homosexual acts (paragraph 183), murder or manslaughter of a victim (paragraphs 223-226), if they were committed to arouse or gratify the sex drive, or homosexual acts with boys under 14. The Amendment to the Law for the Prevention of Offspring with Hereditary Diseases dated June 26, 1935 allowed castration indicated by reason of crime for men convicted under paragraph 175 if the men consented. A May 20, 1939 memo from Himmler allows concentration camp prisoners to be blackmailed into castration. -From Scott Safier's Pink Triangle Page.

From: ZMan - GA [redacted]
Sent: Wednesday, March 21, 2007 9:29 PM
To: OLPREGS
Subject: In regards to the sex offender laws

Follow Up Flag: Follow up
Flag Status: Completed
Please see this Blog item first, on my blog, for more comments.

http://sexoffenderissues.blogspot.com/2007/03/yellow-journalism-in-augusta-georgia.html

LINKS:
* http://www.nacdl.org/sl_docs.nsf/issues/sexoffender_attachments/$FILE/sexOffenderPolicy.pdf
* http://sexoffenderinfo.pbwiki.com
* http://sexoffenderissues.blogspot.com/
* http://www.soclear.org <-- Tons of video/media about the facts

ISSUES:
* I do not believe in registries period, but if the sex offender laws are kept, why discriminate? I DEMAND WE HAVE A CRIMINAL HISTORY REGISTRY, SO I KNOW IF YOU ARE A MURDERER, GANG MEMBER, DRUG DEALER/USER, DRUNK, THIEF! IT'S MY RIGHT! Why won't this fly? Because then the senator, mayor, governor, president, celebrities or you may be on a publically accessible registry to face the shame. But why not? Why discriminate? So the rich can implement their "master plan?"

* When will people ever realize no matter how tough on crime, all the zero tolerance, all the registries in the world will not prevent a murderer from murdering, a thief from stealing, a dealer from dealing, a user from using, a rapist from raping....accusations on any sex crime, child abuse, or domestic violence will literally nail your butt to the wall! No DNA has to be present, No violence has to be present..... HEARSAY ALONE IS LITERALLY NAILING THOUSANDS AND THOUSANDS OF PEOPLE TO THE WALL BECAUSE THESE LAWS ARE BIASED.

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* The issue with sex offenders Internet email addresses, IM names, etc being collected, this is another "feel good" law that will not stop crime. If someone wanted to commit a new crime, they'd create a new email address and commit the crime. This is stupid and won't work. It is just another waste of the taxpayers money.

* Think!! Come up with solutions, not "feel good" laws, which make it harder and harder for sex offenders to get on with their lives.

* "Buffer Zones" are a false sense of security!

* "Buffer Zones" are banishing people from their town, state, and possibly the country!

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* These laws blatantly disregard the United States constitutional rights of all citizens! (i.e. ex-post facto, due process & others)

* These laws are cruel and unusual punishment! A sex offender cannot go to a fast food restaurant which has a playground! Why? They have just as much of a right as you to get a burger! Plus they cannot go anywhere kids congregate. (i.e. Amusement parks, Movie theaters, the list is endless)

* Sex offenders can go to church, but must leave immediately afterwards. If a sex offender owns a business and someone decides to put a church or school next door, they have to now sell their business and move. This is not right, move the church or school, the sex offender was there first!

* These laws continue to punish people even after a sentence has been served, and they are trying to get on with their lives! (i.e. ex-post facto)

* These laws are driven by fear-mongering, opportunistic politicians and will do nothing to actually protect children!

* There are over one million women and children whose lives are inter-twined with a sex offender in the United States. They should matter too!

* Follow the money trail, these laws are conveyor-belt laws to benefit law enforcement! They get paid for the number of people in jail, prison or on the registry!

* They are currently a one-size-fits all for sex offenders! Not all sex offenders are violent offenders that these laws are supposed to be for anyway!

* They are modern day witch hunts and a scarlett letter!

* If sex Offenders are re-offending, why do the registries grow each day? Because new people are being added daily for stuff like "public urination", "mooning", "concensual sex", "young children playing 'Doctor'" and various other minor offenses that we need not worry about. We need to worry aboutviolent offenders!

* Now they are trying to make it a law that a sex offender, if they have kids, cannot "take a picture" of anyone under 18. This is totally stupid! Can't even take Christmas pictures, birthday pictures, etc!

* Also, because a sex offender owns a business in town, many people are trying to get the business shut down! The sex offender had the business for awhile. If you don't like it, MOVE!!!!

MY SOLUTION:
To protect children from potential predators, why don't they uses these RFID chips, like the ones from Digital Angel which have GPS? (See links below)

They can embed them (in some random place) into the children to track where they go, and so they can't

easily be removed and the potential predator doesn't know where it is?

Then when the child goes missing, if the software can track them, they would not spend a ton of money hiring a bunch of people to find them, taking days to find them, wasting precious time.

They could know immediately where the kid is at, and if it logs the places the kid has been, they would know exactly who the suspect is, due to where the child has been, and would not possibly convict someone who wasn't the perpetrator?

They could just flip on the software, and up pops the tracking report which shows a log of every place they went and where the child is currently at?

Seems like that would be worth more, cost less, and then these sex offender laws could probably be all but eliminated.

If criminals knew that, I'm sure they would not kidnap another kid, unless they really are brain dead.

I know, many people would say, why make the kids where this? Because putting it on sex offenders is still pointless, you'd have to then look up all the sex offenders in the neighborhood, and check all of them and the tracking logs, which is again wasting time. If the kid had it, they could go directly to the parents, or law enforcement, turn on the software, and find the kid in a couple minutes, give or take.

And when the child is old enough, like 18 or so, then the chip could be removed, so it doesn't violate their privacy.

Just a thought.

From: [redacted]
Sent: Friday, March 30, 2007 9:19 AM
To: OLPREGS
Subject: OAG DOCKET #117

Follow Up Flag: Follow up
Flag Status: Completed
To Whom It May Concern,

I am a Viet Nam era Veteran opposed to retroactive laws. I am sworn to uphold the Constitution of the United States of America, and this is UNCONSTITUTIONAL . Ex Post Facto laws are unconstitutional! Cease and desist!

Alyce Holleman Wenger (USAF 1971-74)
[redacted]

From: Reg Garff [redacted]
Sent: Friday, April 27, 2007 6:45 PM
To: OLPREGS
Subject: OAG Docket No. 117 - Comments in Opposition to Interim RuleRIN 1.105-AB22

Follow Up Flag: Follow up
Flag Status: Completed

Attachments: OAG Docket No 117 - UBJJ Opposition Rule RIN 1 105--AB22.pdf

Please see attached document.

State of Utah
Utah Board of Juvenile Justice

JON M. HUNTSMAN, JR.
Governor
GARY HERBERT
Lieutenant Governor

REG GARFF
Juvenile Justice Specialist

April 25, 2007

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

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

Dear Mr. Karp:

Thank you for the opportunity to comment on behalf of the Utah Board of Juvenile Justice (UBJJ) regarding the interim rule requiring retroactive effect of the Adam Walsh Act on sex offenders. As a Board, we believe making the Act retroactive for juveniles would be detrimental to public safety, the juvenile justice system and the juvenile offenders themselves.

The Act makes very little distinction between juveniles and adults. As such, it is the opinion of the UBJJ that it is poor public policy to impose the requirements of the Act, retroactive or otherwise, on juvenile offenders because of the treatment implications involved.

On a national level, we have historically treated adult and juvenile offenders differently for good reasons. Juvenile offenders generally have diminished culpability relative to adults due to their inherent lack of maturity. They also respond well to treatment. For these reasons, our Nation's juvenile justice system has worked vigorously to protect the confidentiality necessary for effective treatment of youthful offenders.

Utah's juvenile justice system goes to great lengths to rehabilitate juvenile sex offenders. Most juveniles are responsive to treatment and their recidivism rates are low. According to the National Center of Sexual Behavior of Youth, a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14%), and substantially lower than rates for other delinquent behavior (5-14% vs. 5-58%). The Center also found that juvenile sex offenders are more responsive to treatment than adults and less likely than adults to re-offend when provided appropriate treatment. We believe most juveniles can be successfully treated to the extent they no longer pose a risk of harm to others.

It would be highly detrimental to youthful offenders who have successfully completed sex offender treatment to have to comply with the onerous requirements of the Act. Leading life as a productive citizen would be next to impossible while listed on the registry. Education, jobs and housing would become problematic at best for youth listed in the registry. Most youthful

sexual offenders are malleable and responsive to treatment and upon completion of sex specific therapy are ready to move on with their lives without the stigma and perpetual collateral consequences that typically accompany criminal convictions.

Requiring youthful sex offenders to participate in a national registry runs contrary to the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children." Personal information, photos, addresses, schools of youthful sex offenders are required to be posted in a national registry, thus making this information available not only to the public at large, but also those looking to target these young people as victims of further criminal activity.

Finally, it would be extremely difficult for states to apply the mandates of the Act retroactively. Identifying, locating, documenting and requiring in-person updates four times each year would be an enormous administrative burden, not only on the state, but also the families of youthful offenders. These youth frequently move and many have little parental support, thus aggravating an already difficult process.

For the above mentioned reasons and on behalf of the Utah Board of Juvenile Justice, I respectfully ask that juvenile offenders be exempted from retroactive applicability. To do otherwise would constitute a great injustice both to the juvenile offender as well as the juvenile justice system in Utah, which is designed to rehabilitate minors who violate the law.

Thank you for your consideration.

Sincerely,

Holly Martak

Holly Martak
Chair, Utah Board of Juvenile Justice

cc: Robert S. Yeates
Executive Director CCJJ

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]

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

Follow Up Flag: Follow up
Flag Status: Completed

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
ıent ID: DOJ-2007-0032-0001
1105-AB22
al Registration No: E7-03063
'osted: 02/28/07
ıents 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
[redacted]

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 time[ii].

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

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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 protect[iii].

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

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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

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

vi Grotpeter, 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.

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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 a diagnosed as a 'pedophile' if the offender is 16 (or older) at the time of the offense AND the child victim is AT LEAST 5 or more years younger. Furthermore, the DSM-IV states that:
     - If the youthful offender is 15 years of age, he can NOT be diagnosed as a pedophile.
     - If the youthful offender is 16 years of age, the child victim MUST be 11 years old or younger.
     - A late adolescent (age 17 or 18) is not a pedophile, when they are involved in an *ongoing* sexual relationship with a 12 or 13 year old.

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

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

   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

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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,

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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

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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.

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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,

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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
Rassmussen (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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From: David Schwartz [d[redacted]]
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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.

OAG Docket NO 117

against Retro active laws
against Sex Offenders/Predators.

I am absolutely appalled and against any retro-active laws.

You must ask yourself would my grandfather be under this law in any way shape or form, when people married under 18 year of age.

Especially, when Ex Con. Mark Foley is Free, as well as [redacted] in Florida, and urinating in public is now a felony, lewd and lacivious and John Walsh and Reve's early relationship should be examined more fully. It

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FR Document Number: E7-03063
Legacy Document ID:
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Submitter Info:

First Name: Richard
Last Name: Krueger
Mailing Address: [redacted]
City: [redacted]
Country: United States
State or Province: NY
Postal Code: [redacted]
Organization Name: Columbia University

Comment Info: ==========

General Comment:OAG Docket No. 117

Please see appended an op-ed by myself published in the Los Angeles Times, an academic review of non-punative aspects of sex offender sentencing by a Columbia law student and myself, and a piece of Journalism by a Judith Nathan, in which she suggests that the sentencing commission that decidied on sentencing regulations for Internet sex crimes was undely informed and inflamed by testimony from a New York Times reporter and by inaccurate New York Times reporting.

Regarding the retroactive applicability of sex offender notification on the Internet, I undestand that legal precident would allow for this, inasmuch as such notifation is civil, not criminal.

However, I think that that Internet notification of sex offenders, both prospective and retrospective, is problematic, and think that the appended documents and comments below may be of use.

I am in agreement that a sex offender registry is an appropriate measure, which

would allow both tracking and assesment of recidivism risk, and which is a clear improvement over the piecemeal system we have now. It is directly analogous to the national database developed to stop physicians who had commited crimes in one state from moving to another and hanging out a shingle in another.

I am concerned that penalities for child porngraphy sex offenders and for low risk sex offenders are too severe and that they are having an opposite effect, increasing rather than decreasing risk. My professional skills and expertise involve the assessment of risk of sex offenders, and I think that generally speaking, risk assessment is not accurately incorporated into the sentencing and post-sentence management guidelines. Many of the current crimes, for which individuals are receiving long sentences, do not involve the hands on victimization of a child, and this has enormouse implications for risk assessment.

I would be happy to discuss these matters further with anyone.

For your information, I have also included the manual for the best, most validated risk assessment instrument available, developed in Canada, and now used regularly in New York State.

This does not seem to be going through and it may be because of the size of the pdf file. Accordingly, I am duplicating this message and will attempt to send each of these attachments individually.

Thank you for your attention to this.

Dr. Krueger

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CounterPunch

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The New York Times, Kurt Eichenwald and the World of Justin Berry

Hysteria, Exploitation and Witch-Hunting In the Age of Internet Sex

By Debbie Nathan

The latest scandal at the *New York Times* revolves around former business investigative reporter Kurt Eichenwald. He wrote the best-selling book about the Enron scandal, *Conspiracy of Fools*, and late last year quit the *Times* to work at *Portfolio*, a financial magazine soon to be launched by Condé Nast. In early March, a *Times* editor's note revealed that in 2005 Eichenwald sent $2,000 from his personal funds to a teenager named Justin Berry. Justin then became Eichenwald's main source for a sensational story about teens who use webcams to make sexual imagery of themselves, and even live sexual performances, then post the material online, where it's available to adults.

Eichenwald's editors did not know about the $2,000 until a few weeks ago, and after the editor's note came out, Eichenwald told a long, convoluted story about having acted as a "private citizen" when he gave Justin the money. He also said he'd neglected to tell the *Times* about the payment because it simply slipped his mind. That claim, however, was challenged on March 25 by the *New York Times*' public editor Byron Calame. He told readers that weeks after Eichenwald's article came out, the *Times* received a tip that Eichenwald had sent a large amount of money to Justin while reporting the story. Eichenwald was asked about it by his editor, Larry Ingrassia, but acted as though the charge was beneath contempt and still said nothing about the money. In his public editor column, Calame wrote that *Times*' editors were "misled by Mr. Eichenwald on the $2,000 payment". And Calame characterized as "baloney" Eichenwald's claim that he didn't have to disclose the transaction to his editors because he was acting as a private citizen. Still, Calame demurred that while the reporter broke ethics rules while reporting his article, at least "no facts in it have required correction."

But there's plenty that requires correction, according to dozens of documents examined by *CounterPunch*, to interviews conducted recently with Justin Berry's former friends, and to trial testimony in several criminal proceedings. This material suggests that Eichenwald's reporting was shockingly sloppy and that – intentionally or unintentionally – his sloppiness advanced some of the most malign and dangerous politicking currently going on in the country.

Periodically, the United States quakes with child sex abuse panic when society gets especially spooked about shifting ethnic relations, changing gender roles, advancing technology and the meanness of life limned by laissez-faire and consumerism. These days we live in war culture, market culture and the culture of self-possession and fame. Teens are recruited to Iraq via a military which touts itself as "an army of one". Images of their bodies are used in ads to sell things, even as they are denied education about sex. Amid this comes the dazzle and anarchy of the Internet – a medium that parents barely grasp but which youth wear like skin and e-paper with e-portraits – digital images of themselves clothed, partially clothed, and unclothed. They want to be American Idols. Who can blame them? Fifteen-year-olds desire our vote and will post sex pix of themselves to earn it. We stew about this. We panic. We want scapegoats. The *New York Times* is there to help.

Eichenwald's article certainly impacted the prison sentences – incarceration for hundreds of years – of a group of young, mostly gay men. Their sexual involvement with gay and bisexual teenagers probably would not have called out law enforcement if Eichenwald's employers hadn't published his poorly reported, inflammatory work about Justin Berry. That writing led to Con-

gressional hearings where baseless, exaggerated claims were made about the financial might and dangers of child porn. The "war against terror" since the Twin Towers fell has opened up a second front, in the form of draconian, cruel treatment of sex offenders, including children. The *New York Times* added fuel to the furor by publishing the work of Eichenwald. The paper has much to answer for. So does the reporter.

It may be a while, if ever, before he does. Since the $2,000 payment surfaced, Eichenwald has denied engaging in checkbook journalism. He says he ran across a photo of Justin online – with no last name – while researching a story idea about Internet fraud. The image appeared to him to be of someone about 14 years old, and it was on a porn site. Eichenwald says he was very worried that Justin was a child victim of sexual exploitation, and he and his wife vowed to find the boy and rescue him if necessary. Eichenwald now insists he was acting not as a journalist but as a Good Samaritan. He sent the $2,000 check, he has said, because he feared Justin was about to be auctioned off for a night as a child prostitute.

He thought mailing money would cancel the auction and be a chance to get Justin's name and address (which Eichenwald did get, but did not give to the police).

After several weeks of communicating with Justin online and still not knowing how old he was, Eichenwald says, he arranged a meeting on June 30, 2005 in Los Angeles. There, he learned that the picture he had seen was taken years ago, and Justin was now almost 19. He really had been involved in online porn – porn that he'd made of himself. But now he was an adult who was recruiting minors to make masturbation videos. Eichenwald says that five days after this first meeting, Justin gave the impression he was ready, as Eichenwald later put it, to "flip on his own industry". Only then, Eichenwald now says, did he don his reporter's hat, eventually getting access to what he has called "the biggest jackpot: hundreds and hundreds of chat log conversations" and other materials showing the teen had been deeply involved in webcam porn.

Even though this work clearly made Eichenwald a reporter, he continued giving Justin personal help. He found the young man a doctor. And he found a lawyer who helped get Justin immunity from prosecution in exchange for information about his illegal business, his subscribers, and the people who'd helped him create websites and collect money. Eichenwald wrote a reporter's essay describing these unorthodox activities. In it, he never described himself as a private citizen during any time that he was in touch with Justin Berry. And he "forgot" to mention the check.

He had first communicated with Justin in May or June 2005. And by October, Eichenwald has testified, he'd prepared a three-part series for the *New York Times* focusing on web-hosting services and credit-card processors that enabled teens to receive gifts and money for sexual performances. But, he also testified, in several months he'd found only about 90 minors whose webcam images had caught the attention of adults attracted to adolescents. *Times* editors therefore had "some level of discomfort" with the idea of running so many words on the subject. "Someone said, 'This isn't World War II'", Eichenwald recalls one editor saying. "There was a concern" that the *Times* would be making teen sexual webcamming "seem far worse than we knew it to be". Instead of scrapping the story completely, however, the editors sent Eichenwald back to the drawing board to do just one piece, focusing on a single child as "a tour guide" into this world. Eichenwald had only one teen on the record: Justin. He used him as his main source, quickly working to fashion a new piece. When it came out in December, it described how Justin had spent several years using webcams and other Internet technology to make and send porn of himself, starting when he was about thirteen – and how he'd made hundreds of thousands of dollars as – in Justin's words – a "webwhore" or "camwhore".

The article was a blockbuster, and the rest of the media loved it. *Slate*'s Jack Shafer was the only press critic to vigorously question Eichenwald and the *New York Times* for acting more as agents of the government than as the Fourth Estate in their relationship with Justin Berry. That criticism came on the heels of the Judith Miller affair, in which Miller was widely seen as having published disinformation that fueled the U.S. invasion of Iraq.

The government quickly got involved with Eichenwald and Justin. The *New York Times* article spurred congressional hearings by the House Committee on Energy and Commerce, in April 2006, about the danger posed to youth by the Internet.

Eichenwald and Berry testified at one session. Before and just after the hearing, they appeared on major TV talk shows including *The Oprah Winfrey Show* and *Larry King Live*. There, the reporter and his source warned audiences that these days, clever "predators" and "pedophiles" are everywhere in cyberspace and can easily turn teens into sexual performers on the net. "Hundreds and hundreds" of children are being "lost" to the porn industry, Eichenwald said on the shows and at the hearing, because teens are using webcams to send images of themselves into cyberspace – for free or for gifts and money. He warned that even the wildly popular teen and young adult social site MySpace is "the virtual Sears catalogue

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for pedophiles." Justin added that the details of what happened to him were "not the story of a few bad kids whose parents paid no attention". Teens at risk, Eichenwald added, are those who suffer from "loneliness". In fact, Eichenwald said, every single adolescent he found while reporting on the camwhore industry had this problem.

Justin Berry's life was one of loneliness, according to Eichenwald. His *Times* article described Justin as an adolescent with few friends, who got his first webcam hoping to meet girls. Instead, he was quickly contacted by men and seduced into camwhoredom. Except for these men, however, supposedly no one knew that Justin was spending much of his life in the sex trade. His mother has testified and told TV talk-show hosts that she never noticed what Justin was doing and Eichenwald has not questioned her claim. Other family members were purportedly equally unaware. Friends didn't know either, for a long time, according to Eichenwald. Nor did the authorities suspect anything.

Eichenwald's work and media statements imply that the enterprise Justin was involved in such "a vast, criminal conspiracy" – as he said on *Larry King Live* – so far-reaching, insidious and secretive, that teens can be victimized for years without anyone knowing except the "predators". These men, Eichenwald said on *Oprah,* are "the most manipulative people I have ever encountered in my life, working day after day after day on a child, to get that child to do what they want. They are very successful." He warned further that "your kid is going to be lured into this." Later, on *Paula Zahn Now*, he compared webcams to "guns and alcohol". Back on *Oprah* he proclaimed, "Every webcam in every child's room in America should be thrown out today".

"Thank you, Kurt," Oprah said at the end of Eichenwald's appearance. "Bravo. Bravo." With prime-time kudos like this, Eichenwald's work served as the pop-culture battering ram for a government-sponsored war against humane, constructive treatment of sex offenders, not to mention reason, free speech and civil liberties in general.

Less than four months after Eichenwald and Justin Berry gave their congressional testimony, President Bush signed the Adam Walsh Child Protection Act. Under this new law, convicted sex offenders – including some children as young as fourteen at the time of their offense – are listed on a national Internet database for at least 15 years. Adults are listed even if they committed non-violent offenses: public urination is one possible act that can lead to inclusion, for instance, as is mere possession of child porn.

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Meanwhile, Oklahoma, Louisiana and South Carolina now mandate capital punishment for raping a child. The Texas House of Representatives voted last month for the death penalty for repeat sex offenders. (Because most sex crimes against children are committed by family members, many Texas prosecutors worry the law's punitiveness would discourage kin from reporting crimes against children. Several child protection advocates also note that a capital penalty may cause offenders to murder children after committing abuse, since there would be nothing to lose by offing the victim).

The past several months have also seen more states enacting laws to impose "civil commitment" on people who've served their time for sex crimes and lock them up for years in mental hospitals. Nineteen states now have these laws, even though, as even the Justice Department acknowledges, recidivism rates for sex offenders are much lower than for people who commit other crimes. The *Hartford Courant* recently compared current civil commitment policy to "the Bush administration's decision to suspend due process rights and incarcerate suspected terrorists indefinitely without charging them." It's "Guantanamo for Sex Crimes," said the *Courant.*

The terrorism metaphor is actually almost literal. The DOJ has been swinging the Internet-kid-exploitation-fear pendulum in front of Americans since shortly after September 2001. Amid popular worry that the ensuing Patriot Act violates privacy rights, the feds constantly counter that they use its provisions to fight not just terrorism, but also Internet child porn. In politics today, invoking that fight also makes a good personal defense. U.S. Attorney General Alberto Gonzalez has lately been under bipartisan attack for firing several U.S. attorneys and for revelations that the FBI has abused its authority under the Patriot Act to seize the personal records of thousands of citizens and legal residents. The *Washington Post* reported that Gonzalez said he wasn't fazed by the criticism, and that he would continue to focus on "his key initiatives, including programs aimed at prosecuting child pornography".

And the fight is used to justify attacks on adult entertainment. "Child pornography and sexual enticement", Gonzales said weeks after Eichenwald's and Justin's congressional testimony, "are not the only criminal activities that threaten our society. Obscenity debases men and women, fostering a culture in which these heinous crimes against our children become acceptable. That's why I formed the Obscenity Prosecution Task Force in the Criminal Division" – to prosecute people who use grown-up performers to make sex videos for grownups. At the same event, Gonzales proclaimed that "we are in the midst of an epidemic of sexual abuse and exploitation of our children" and that we must do "battle" with the problem.

In fact, studies show that child sex abuse seems to have declined during the past decade, and criminologists note

that most kiddie porn is made by kids' own family members (if not, lately, by the kids themselves).

Columbia University forensic psychiatrist Richard Kreuger who specializes in treating sex offenders wrote in the *Los Angeles Times* recently about the disconnect between reality and rhetoric, and about the policy fostered by such florid talk. "What is happening now with individuals who have committed sex crimes," Kreuger wrote, "is the modern-day equivalent of a witch hunt." By publishing Eichenwald's work (then praising it, as public editor Byron Calame did in January 2006), the *New York Times* threw gasoline on this firestorm of hysteria.

But Eichenwald himself has had a bumpy ride lately. On the heels of the emergence of the $2,000 check last month, *Portfolio* announced it was postponing publication of a flagship article on terrorism that Eichenwald wrote for the first issue of the new magazine. Press critics and bloggers were pursing their lips and snickering. And many had an opinion about why Eichenwald wrote the check to Justin. For most, the scandal was all about the money. But the buck doesn't stop with the buck. The raft of material I have reviewed for *CounterPunch* tells another story – not only of Justin's life, but also of Eichenwald's deficient reporting.

Most of this material has emerged since Eichenwald wrote his December 2005 piece. It has come to light mainly through the work of both defense attorneys and prosecutors. As a result of Eichenwald helping Berry approach the DOJ for immunity and because of the *New York Times*' piece that followed, four men were accused of working with the underage teen to make and distribute child porn. Three of them are gay, and three were in their twenties when they became involved with Justin. One, Greg Mitchel, pleaded guilty of making child porn and helping distribute and collect payment for it. His projected release date from prison, according to the federal government, is the year 2136. Another of the accused, Aaron Brown, awaits trial on similar charges. A third, Timothy Richards, was convicted in federal court in Nashville last August, on various charges including some related to managing one of Justin's websites. He is slated for sentencing in May and could get 220 years. The fourth defendant, Kenneth Gourlay, was convicted in March of multiple criminal counts. He is the only defendant charged with having had physical sexual contact with Justin. He faces up to twenty years and will be sentenced in early May.

The documents generated by these cases include chat logs between Justin and his friends, associates and customers; FBI and other investigative interviews; and trial testimony – including from Justin, his mother, and Kurt Eichenwald. This material suggests that Eichenwald was, to put it at its mildest, careless in portraying Justin as a straight-ahead heterosexual boy alone in the world and helplessly adrift in a swamp of all-powerful pederasts.

That version of the teen's life would work nicely for Hollywood or Lifetime Television. It makes great grist for moral conservatives, technophobes and witch hunters. But it says nothing about Justin's or other teens' actual lives: on the net, amid rampant consumerism, and in a world where the line between gayness and straightness is much fuzzier for young people than for their elders – yet where boys, especially, are still under grinding pressure to insist, while they're testing that line, that they're not really exploring their erotic impulses, they're just doing it for the money. Or worse, because they were duped. Nor does Eichenwald's version suggest anything that adults might think about or do to help adolescents – straight or gay – grow safely and happily into their emerging sexuality. The Justin Berry story that emerges from *CounterPunch*'s investigation, however, does help us move in that direction.

The World of Justin Berry

First of all, he was no loner. On the witness stand at Gourlay's trial in Michigan, Justin's mother, Karen Page, testified that her son had "tons of friends" as a teen and was popular enough to be elected president of his high-school freshman class in Bakersfield, California. Throughout high school, recalls a friend from childhood, Rob Vella, Justin "liked to surround himself with people and be the center of attention". He had several girlfriends, adds Vella. And he was a regular at Bakersfield LAN (local area network) parties. These are events that occur nationwide, where large groups of young, mostly male cyber-enthusiasts gather in, say, a church hall. There they spend all night hooked up to each other's computers, playing online games such as *Battlefield*, *Call of Duty*, and *F.E.A.R. Combat*. Eichenwald mentioned none of this in his article.

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Nor did he discuss a telling piece of information that emerged in an FBI interview of Justin done in July 2005, months before Eichenwald wrote his piece. In that interview, Justin describes how he got a webcam at age 13 – as Eichenwald does say in his *Times* article – and went online with it, only to encounter grown men who flattered him, eventually persuaded him to remove pieces of clothing, and encouraged him to masturbate on camera in exchange for gifts and cash. According to old website archives, by the time Justin was 16, his site was accepting credit card payments; it also asked customers to "vote" for him as their favorite performer.

What Eichenwald does not mention is the segment in the FBI interview where Justin mentions another Bakersfield boy, Vic (whose name has been changed to protect his privacy). According to Rob Vella, Vic and Justin were good friends during adolescence.

"Michelle, I'm whoring to help out some friends. It's the only way I can think of how to get that much money, instantly... it's a job, and I enjoy it... I guess you don't see what I'm trying to accomplish with my cam."

Vic wore "exotic clothes, eyeshadow and fingernail polish" to school, recalls Vella.

Justin told the FBI that Vic was a year older than he. According to Justin's FBI interview, his first sexual experience with a man he met on the net was not just a coupling. It was a threesome, involving Vic. Justin also told the FBI that the grown man involved in this trio was Gilo Anthony Tunno, who was about 25. Tunno traveled to Bakersfield from his home in Oregon, dallied sexually with Justin and Vic in a hotel, and made videos. Justin said he was 13 when this happened. Doing the math with his birth date, his first sexual experience with a man occurred between summer 1999 and summer 2000.

Was Justin traumatized by the incident? It's hard to tell, because just after this period, he claims he was physically assaulted by his father, Knute Berry.

Knute and Karen Page, Justin's mother, were divorced in the late 1990s. One reason they broke up, Page would later testify in court, was because Knute had been verbally and physically abusing Justin ever since he was a young child. By the time of the divorce, Knute's violence had already come to the attention of authorities. In 1994 he was charged with battery on an adult and with disturbing the peace (two charges were later dismissed, and he received probation for a third). Page further testified that during a father-son visit at Justin's grandmother's home after the divorce, Knute rammed Justin's head into a door. Justin went to the hospital, and has since testified that he still has scars from the incident. Page got a restraining order barring Knute from seeing Justin. Knute was also charged with inflicting injury on, and willful cruelty to, a child. The case was filed in November 2000. In court a few months later, Justin testified against his father, but Knute said his son's injuries were accidental, and he was acquitted. Justin has since said he believes the verdict was the product of irregularities such as payoffs.

The acquittal occurred in early 2001, during the second semester of Justin's freshman year of high school. A classmate during this time, Christopher (who does not want his last name published), recalls that up until that time Justin had always been a "cool" person. But one day "his mood kind of snapped. He got wild and vicious. He almost got kicked out of school for hitting a girl with a cell phone. Everyone noticed how he'd changed. It was strange."

Who had turned Justin from being a "happy kid" for whom "life was going well" and "everything was great" – as he would later tell Congress and Oprah Winfrey – into a "pretty messed up kid"? Was the culprit the first grown man he had a sexual encounter with, or his 14-year-old friend Vic, who was involved in that incident? Or was it his dad, Knute Berry, who was accused and perhaps unjustly acquitted of bashing his son's head and leaving permanent injuries? The timing of the teen's symptoms suggests Knute was most to blame. But even if Justin's problems were related to having been touched sexually, one thing seems certain: the person doing the touching was not Ken Gourlay.

Gourlay was about 22 when he first ran across Justin's camwhoring. A University of Michigan student who ran a small web-hosting business in Ann Arbor Gourlay – now 29 – is slender and buff, with prominent cheekbones. On a blog that he maintained a few years ago, he described his opposition to the war in Iraq, urged people to sign a George Bush impeachment petition, and talked about how he enjoyed making pumpkin pies. Gourlay calls himself gay, and according to testimony at his trial, he is sexually attracted to adolescents. Also according to testimony, his twenties were marked by boyfriend relationships and sexual liaisons with 14- and 15-year-olds, also identified as gay.

Gourlay ran into Justin on the Internet when Justin was 13 or 14, according to interviews with law enforcement authorities and court testimony that Justin has given in the past several months. After Gourlay saw Justin camwhoring online, he contacted him, and the two discussed computers because Gourlay had advanced coding skills. He started mentoring Justin in coding. They became fast online friends. Justin would later testify that there was no one he was closer to than Gourlay, that he "wanted to be just like him," and that he "told Gourlay everything", including that he loved him. They did not meet in person until Justin was 15.

But that's not what Eichenwald wrote in his *New York Times* article. There, he claimed that Justin's first face-to-face sexual encounter with an adult occurred when he was only 13, with "a man... from Ann Arbor, Mich." Eichenwald further wrote that the man – who could only have been Gourlay – first met Justin when he "lured" the unsuspecting teen into attending a summer computer camp for kids in Ann Arbor, so he could seduce Justin while he was far from "the relative safety of his home".

In fact, according to court testimony given by Justin after Eichenwald's piece was published, Justin didn't go to summer camp until he was almost 16 and he'd already met Gourlay a few months before that – again, however, when he was 15, not 13. A year before this first meeting at age 15 – also according to later testimony – Gourlay had asked Justin to move to Michigan and live with him to work as Gourlay's "Executive Director of Sales". Justin asked his mother, Karen Page, if he could accept the job. Page would later testify that she found the idea "ridiculous" because Justin was only 14. But she has never

publicly indicated that any red flags went up in her mind about Gourlay's intentions.

Instead, the following year – with no knowledge of who Gourlay was except for information from Justin (he incorrectly told her his friend was a "youth minister" and an "adjunct professor" at the University of Michigan) – Page let her 15-year-old son fly to Michigan alone, to meet Gourlay. Justin had hatched a plan with Gourlay to drive to Virginia so Justin could have sex with a 13-year-old girl he'd met weeks earlier on a family Easter vacation to Florida. Gourlay offered to be the chauffeur. During the road trip, Justin has since testified, Gourlay stuck his hand down the teen's pants and fondled him. (Gourlay has denied that anything physical occurred.)

Two months later, Justin eagerly asked his mother to send him back to Michigan, to the summer camp, which specialized in computers. On the first day, he was threatened with expulsion after being accused of smoking. While the matter was being straightened out, Karen Page gave permission for Justin to leave the camp with Gourlay. Justin would testify later that the two again had sexual contact. (Gourlay has said nothing improper happened this time, either.)

There were more trips with men, which Page allowed. In November 2002, Justin, now 16, said he wanted to attend a computer convention in Las Vegas with Gourlay. Page agreed, not knowing that Justin was lying and that the man he was really going with was Gilo Tunno, the first adult he had done sexual things with in person, when he was about 13. Then, two weeks after returning from Las Vegas, Justin *again* asked to visit Gourlay (this time he really did intend to go to Michigan). Again, Page said yes. Gourlay admitted in instant messages he made sexual overtures to Justin during this visit. But the age of consent in Michigan is 16, so if Justin had accepted the advances the sex would have been legal. He rejected them, however, and angrily caught a plane back to Bakersfield.

Gourlay begged forgiveness via email. On his blog a few days later he posted an allegory titled "Mistakes", about a boy who befriends a rabbit in the woods in the cold of winter and accidentally burns the animal with a match while trying to keep it warm. "The boy loved the rabbit, and vowed never to hurt it again," Gourlay wrote. But one day the rabbit, seeking warmth, hopped into a "cooking fire... left by some hunters". The boy tried to save the rabbit but it had lost half its fur and fled. "Tears were running down the boy's face", Gourlay's post continues. "Then, the rabbit stopped. The boy was puzzled at first, as he slowed down. Then, overjoyed, he ran up to where the rabbit had stopped. Now crying for joy, the boy knelt down and began to apologize for scaring the rabbit. But as quickly as the rabbit had stopped, the boy then stopped and stared. The rabbit was dead."

Meanwhile, what was Karen Page thinking? Or, as Larry King asked Justin later on his show: "Where was your mother?" Page seems to have been utterly oblivious to her son's camwhoring and to the fact that his older male friends were sexually interested in him – though, according to numerous documents and to court testimony, clues were everywhere.

"She's just jealous... It's not like you're doing it for yourself. You're helping friends. It's not like you're having sex with people online."

In a chat log retrieved last year from Justin's computer hard drives, for instance, dated from when Justin had recently turned 15, he tells an online contact that he can't send a picture of himself because "my mom took my camera". "That sux!" answers the contact. "Guess who just talked and convinced his mom to give him the webcam everyday when she gets off work?" Justin emails a while later. "Why did she take it away in the first place?" asks the contact. "Lol [laugh out loud]," replies Justin, "because she found my porn." He sent a similar message to another online correspondent, adding, "Alright! It's showtime!!"

Presumably, he then began masturbating.

In his article, Eichenwald did not mention evidence suggesting that Page found porn associated with Justin's webcam. He did acknowledge that Justin's sexual performances were earning him mountains of perks from his customers – fancy new computer equipment and gobs of cash. Eichenwald has repeated Page's contention that she thought all this capital was profit from a desktop web-design business that Justin started when he was 12 to earn pin money. Old websites from the business advertise services, such as removing "red eye" from family photos, that were priced at $5 or $10. It's a stretch to think a 15- or 16-year-old amateur webpage maker in Bakersfield could earn $250 to $1,000 a day, but that's what Justin testified he pulled in. Christopher, the friend from his freshman year who'd noticed Justin seemed troubled, remembers going to Justin's and noticing that the rest of his house was modestly furnished, but his bedroom was a veritable wonderland of pricey cyber-gadgetry. Christopher was puzzled. More than that, he was jealous. In retrospect, he says, he thinks Justin may not have invited him to camwhore because at the time "I was real overweight."

Justin wasn't acquiring only computers. Sometime after he turned 16 and could obtain a drivers license, he got a 1999 Chevrolet Cavalier. He named it "HackerCar" and spent thousands of dollars outfitting it with add-ons. He proudly listed many of them on a car fixer upper website, including: chrome rims, shaved side markers, back window tinting, a specially painted dash, tweed inner doors, red racing seats, and a personalized license plate (1337 HAX).

Page does not seem to have wondered how he could afford all this. Eich-

enwald did not mention the Chevy.

Chat logs from Justin's hard drives also indicate that by summer 2002, when he was turning 16, he had quit public school and was studying through an online, homeschooling program. They suggest, too, that his mother was coordinating his lessons with the program. Justin's friend Rob Vella also left high school to home school. "It was a joke," he told me. "We did it so we could get out of class." And while out of class, Justin had even more time to camwhore.

He also got his own apartment at age 16, where he could do business for hours in guaranteed privacy. Gilo Tunno – the man who Justin later said had filmed him while they were having sex when he was 13 – signed the lease; Justin was too young to do so. Page has since testified that a few months after he got the apartment, Justin's stepbrother tattled to her about it. But Page has not publicly talked about examining the lease, or investigating why an adult male would want her underage son to have his own place. (It is not known whether Page's husband – Justin's stepfather – asked either his son or stepson about the apartment or if he suspected Justin was camwhoring. He lived in the same home as Justin did in Bakersfield. He has never made any public statements about Justin's case and declined to be interviewed by *CounterPunch*.) Though Eichenwald mentioned the apartment in his article, he did not reveal that Justin's mother knew about it but apparently did nothing.

It may seem strange that Karen Page repeatedly allowed her son to travel unaccompanied to visit men she'd never met and whom she knew nothing about; that she let Justin leave regular school; and that she learned he had his own apartment but never put two and two together. Stranger still is that for years Page has been a licensed marriage and family therapist. On a website (created by Justin) that advertises her services, she notes that having her own children gives her "the practical experience to help you." She has also testified that her specialty is "adolescent issues".

Eichenwald's article did not mention Page's occupation, or her specialty.

Eichenwald did not talk, either, about the fact that for many of Justin's high-school buddies in Bakersfield, Justin's camwhoring hardly seems to have been a secret. Rob Vella recalls discovering porn of Justin when the two were 14 or 15, after he hacked into Justin's computer and found images of him – as Vella put it – "whacking off". According to a chat log that Vella saved and sent to *CounterPunch*, Justin warned Vella that if he didn't send the pictures back, "the FBI will be at your door." Furthermore, according to chat logs obtained by defense lawyers, other friends knew about the apartment and the camwhoring, but didn't care, and they even encouraged Justin.

That's because – again according to chat logs – Justin was not the only one using his apartment. His stepbrother and buddies were hanging out too, partying down with each other and with girls. Also, according to chat logs, Justin was forking over as much as $1,000 apiece to fund LAN parties – those get-togethers where computer geeks rent a hall, buy chips and drinks, put up prizes for winners, then stay up all night and play online games. In addition, Justin was doling out hundreds, even thousands of dollars to his pals.

The one person who seemed distressed by all this was Justin's girlfriend, given the pseudonym Michelle here to protect her privacy. Eichenwald noted that when Michelle told Justin to stop the camwhoring, she was contravened by insidious online predators, who cajoled with treacly blandishments such as, "Just try and remember, Justin, that she may not love you, but most of us in your chat room, your friends, love you very much."

What Eichenwald doesn't reveal is that according to chat logs Justin's actual friends – his age peers in Bakersfield – were pressuring him much more intensely.

In an instant messaging log from December 2002, Justin argues with his girlfriend after she has just implored him to stop giving sex performances on the web:

"Michelle, I'm whoring to help out some friends. It's the only way I can think of how to get that much money, instantly... it's a job, and I enjoy it... I guess you don't see what I'm trying to accomplish with my cam."

The dispute turns into a three-way, as Justin's friend Robby joins in. Michelle has been complaining that Justin is only camwhoring to pay for improvements to his Chevy Cavalier. Robby sends an instant message, directly to Justin, saying that Michelle "said you cared more bout your car than you did her. I was like, 'wtf [what the fuck], he saved all of our asses.'"

Michelle protests. Justin, she tells Robby, has "decided that certain things" are "more important than me."

"Like saving all of our asses?" retorts Robby "And helping everyone out? ... So you think that saving my ass, Ian's ass, Hal's ass, Mark's ass, Peter's ass, Sam's ass ... and everyone else's ass, was less important than you? ... Saving the LAN... Psh, who cares [about camwhoring] if you're helping other people? I don't see a problem." (all friends' names have been changed to protect their privacy.)

Robby instant messages Justin to comment about Michelle that "She's just jealous. Just say that her not letting you do this is her not helping Robby, Hal, Ian, Morgan, Sam, Peter, everyone in [Bakersfield LAN]. It's not like you're doing it for yourself. You're helping friends. It's not like you're having sex with people online. Just tell her that you are helping out friends that need you... All I can say... is bros before hoes."

Then, Robby instant messages Michelle: "You stupid whore."

(And Robby to Justin: "Is she on her period? She seems all mood swingy.")

Plus, there was Vic, the kid who wore nail polish and eye shadow to school. By the time he was 17 and Justin was 16, Vic was also camwhoring and the two were collaborating to make sex videos.

Vic was openly, sexually attracted to Justin.

"You know if I wasn't your friend, I'd be just like those other fucked up pedos," he instant messages Justin in one chat log. "I would be paying 500 bucks for you to take your shirt off."

"Heh bro. I love you," answers

Justin.

" I love you too," writes Vic. " I'm doing this whole whoring thing for you just so you know... I want to make you happy with $$$"

Justin then gaves Vic a freebie by letting him spy on a show he is doing for a client. "Watch the cam," he said while performing for the paying viewer. "$350... I told him $350 to see me cumm."

"Nice :-)... fuck yeah!"

"I'll move the cam back so you can see."

"Hoe!..It' fuckin great... I love you. Seriously."

"I'm such a WHORE. I love it!...I love being a whore... fuck Michelle if she cares, fuck it."

"Dude, if we both get on cam... "

"I got an offer of $750 after Xmas, for two of us. Cool?"

"Sounds great."

Justin was helpful to his customers, too, according to chat logs. And though Eichenwald says nothing about this, Justin seemed unafraid of the police. He was even willing to assist them in catching some of his clients to make life easier for others.

One customer, 27-year-old William Bitzer, had become a friend. According to an FBI interview with Justin, Bitzer gave the teen $2,000 worth of auto parts for his Chevy. One night in late February 2003, Bitzer instant messaged with news that he'd recently been arrested in Anaheim, California, after conversing sexually on the net with a cop posing as a 14-year-old boy.

"I just spent 2 days in jail... for 'talking and stuff' to a 'kid' online," he writes.

"Shit!" replies Justin.

"I need some help, BAD," continues Bitzer.

"How can I help bro?" asks Justin. "U need people? I got people."

"It's a 3 for 1 trade... I help find and convict 3, then it's like a 'wash' for me."

Immediately, Justin sends Bitzer the name and address of a man in Texas – presumably one of Justin's camwhore customers.

"There's one," Justin instant messages. "He has child pornography."

Justin sends similar information regarding a man in Missouri. "There's two," he tells Bitzer.

Then Justin begins stinging people he is conversing with online at the same time he is communicating, separately, with Bitzer.

"Would you touch me in my private places?" Justin asks someone with the screen name Kevkevkev.

"Hehehe of course!" replies Kevkevkev.

"BAM and another one hits the dust," Justin types to Bitzer.

"What would we do in there?" he asks another correspondent.

"I would gently lay you down on my bed, and start to passionately kiss you on your lips."

" BAM and another one hits the dust... HAH BAM!!!... watch the HACKA AT WORK... HAHAHA-HAHA I'M so fucking great," Justin brags to Bitzer.

Teenage Bakersfield was roiling with gossip about Justin and his gay porn biz. Justin became the butt of jokes and was beaten up by a boy.

"Fuck," replies Bitzer. "maybe we can SELL these guys to the cops? $$$$$

"Tell them I will sell them for $1K a piece," says Justin.

(It's not clear whether Justin's sting work helped Bitzer. Two months after his arrest, Bitzer pleaded guilty to several counts of child molesting, and of making and possessing child porn. None of the people whose names Justin gave Bitzer are currently listed as federal prisoners or as registered sex offenders in the states encompassing the addresses they gave Justin when they were his customers.)

As his messages to Bitzer make clear, Justin usually seemed cocky about the authorities, even though chat logs (and later trial testimony) indicate that he believed the cops were on to him by the time he was 16, and perhaps before that.

"Hey," someone wrote to him in December 2002, "Just a warning that your new site is being watched by the Feds. Be careful."

"There was a cop in your room last nite," wrote another. "He was asking shit about you... he said some shit that you [private messaged] him and said you would do a private [sex show] for like 250 bux or some shit like that."

"What would they do to an underage webwhore?" asks Justin.

"I don't know if they can throw [you] in jail or not for making underage porn since you are a minor."

"I'm skerd," replied Justin.

But he was less "skerd" than angry in late February 2003, after his old friend Rob Vella again hacked into his computer and found two recently made videos: one of Justin masturbating, and one of Vic doing the same. Vella sent the videos to mutual friends, and soon teenage Bakersfield was roiling with gossip about Justin and his gay porn biz. Justin became the butt of jokes and was beaten up by a boy. He was so infuriated with Vella – according to Vella – that he threatened to report him to the authorities for possessing the child porn videos. Exasperated, Vella called the Bakersfield police and gave them the material, along with Justin's name. "I never heard back from the cops," he told *CounterPunch*. A spokesman for the Bakersfield Police Department confirmed that police did speak with Vella in 2003. But he said that Justin was a juvenile then, so the department cannot comment about anything relating to him that they "did or did not investigate."

Vella said Eichenwald never contacted him.

Also in February 2003, Bitzer, the man just arrested in Anaheim, told Justin there was illegal material related to him on Bitzer's computers seized by the police. Justin responded with bravado, noting that he'd once had the same

problem. "I got my computers taken and shit," he told Bitzer, "when the police came to my house last year for child pornograph[y]." But it didn't matter. "I have a fucking word way with those fuckers bro," Justin reassured Bitzer. "Trust me, I'm safe."

Eichenwald never mentioned that Justin believed the police knew about him. Nor did he note that during the last week of February 2003, Justin thought he was about to be arrested, and fled, almost in the dark of night, to Mexico.

It's not clear which crimes he was worried about. In addition to producing and distributing child porn, he was also involved in credit card theft, sitting in his apartment with at least a dozen numbers he'd purloined from the Internet, using them to order $5,000 worth of merchandise. Eichenwald does not mention this in his article.

For whatever reason, numerous chat logs indicate that Justin was so frightened on February 27 that he scheduled an early morning flight out of Bakersfield to Mazatlan, Mexico. Eichenwald does not talk about this, either.

Justin chose Mexico because his father, Knute Berry, had fled there weeks earlier. Knute had been running a therapeutic massage salon in Bakersfield, and was accused in 2002 of committing insurance billing fraud. Later that year, he was told that if he pleaded guilty he would spend a year behind bars, but if he went to trial and were convicted, he'd pull a seven-year sentence. He turned down the plea and jumped the border.

Now, Justin was preparing to join Knute. According to chat logs, he had his plane ticket, but there was still a problem. He was only 16, and as a minor he could not enter Mexico without his mother's legal permission.

At first she was reluctant to grant it.

"I'm going to Mexico," Justin instant messaged Gilo Tunno, the adult he'd had the sexual encounter with when he was 13 and who had signed his apartment lease. "I gotta get a notarized fucking letter from my mom, fuck... God damnit I need a notarized signed paper by my mom, and fucking she's saying I can't go see my dad... She said, 'I'm not going to waste all the money I spent on lawyers for nothing, I'm not going to break all the restraining orders.'"

"BEG your mom," answered Tunno. "Tell her there will be MORE lawyer fees if she doesn't sign it."

And that, apparently, is what Justin did (though Eichenwald says nothing about Page signing a notarized letter).

"Well I have some awesome news," Justin wrote a few hours later. "I called my mom last night. I'M GOING TO MEXICO TOMORROW MORNING ... I will be safe there. They can't get a warrant for my arrest."

Thus, apparently, did Justin's mother, a therapist specializing in the problems of adolescents, send her adolescent to a foreign country with a foreign language, where he knew no one except for an accused felon and absconder with a long history of charges against him for lawbreaking – and of abuse and violence against this very adolescent.

Knute Berry would then knowingly and enthusiastically help Justin continue his porn-performance business and grow it to unprecedented levels. In Mazatlan, according to Justin, Knute set up a computer and video room, then recruited female prostitutes for Justin to copulate with on webcam. Justin was 16 when he commenced this activity. Not only did Knute approve, but on at least one occasion he operated the camera. Knute used some of the earnings to operate his new spa and to eat in expensive restaurants, Justin has testified and told the media. Justin used the remainder to buy items such as cocaine – apparently in tremendous quantities. He also used an enormous amount of marijuana, drank too much, and was heavily addicted to cigarettes. All this by the time he was only 18. But an 18-year-old is no longer a minor. As a child porn star, Justin was over the hill.

* * *

By the time Eichenwald discovered him, Justin had spent months at loose ends. He'd traveled between Mexico, the U.S.A. and London, sometimes accompanied by a man in his 30s, Greg Mitchel, who Justin later would tell the FBI was his "boyfriend" and who had been convicted several years earlier in Florida of possessing child pornography.

By the end of this period, Justin's online porn sites had gone largely dormant. During the 2004-2005 Christmas and New Year season, he passed through Bakersfield, visiting family and spending a little time with his old high-school friend, Rob Vella. In chat logs that Vella saved from that time, Justin talked about how he was taking college courses, designing websites, and embracing Christianity. He was also apparently having problems with marijuana and cocaine. In a discussion he and Vella had via the Internet about religion and whether he was learning about it, he told Vella, "I'm not interested in studying at the moment because it only confuses me more... I like my drugs but I believe in God. Because if there was no God we'd be fucked."

Vella, who is an atheist, responded, "Am I fucked? No."

"I am," answered Justin.

Not long before he turned 19, Justin joined Greg Mitchel in Virginia, where Mitchel ran a Sonic hamburger franchise. Teens hung around in the summer, and one, whom we will call David, was 14. Sometime in May or June, Mitchel began encouraging David to make videos of himself masturbating, using Mitchel's recording equipment. Eichenwald would later write in the *Times* that during the same period he had just contacted Justin and was communicating with him only online. However, in an audiotaped interview done of David by a private investigator employed by lawyers for one of the defendants charged after Eichenwald's piece was published, David says Eichenwald also was talking to Justin by phone. David describes grabbing the phone at least once, and chatting with Eichenwald. Back then, David, Justin and Greg Mitchel were unaware of Eichenwald's true identity and that he was a *New York Times* reporter. "We all didn't know his real name," David says on the tape. "All of us knew him as... Roy."

Sometime in early June, Eichenwald testified in Michigan recently, he was monitoring Justin's Yahoo fan club and saw a post "offering Justin for sale...

for the night". Eichenwald said he was horrified. But he also deduced that Justin and his friends were broke and that he could stop the sale and make real contact with Justin if he sent a lot of money. Eichenwald said he and his wife decided he would accept a speaking engagement at a local community college, and use most of the fee to "save" Justin. (About men who communicated with him online, Justin later testified that "In order for them to have the ability to keep speaking with me, I asked for money or I wouldn't talk to them.) On June 8, Eichenwald Fed-Exed the $2,000. On June 9, Justin put the check in his bank account. Eichenwald has since said that he learned on the day Justin cashed the check that he spent it on radio-operated toys. But *CounterPunch* obtained a deposit slip filled out by Justin on June 9. It shows that Justin deposited the $2,000 late in the afternoon but withdrew only $300.

Then, sometime within the next ten days, Justin and Mitchel refreshed a long dormant website with new porn, including images of David masturbating with Justin. Justin also posted a "biography" telling viewers that 14-year-old David was 18.

Less than two weeks later, on June 30, Justin met Eichenwald for the first time at the Los Angeles International airport. There the *New York Times* man immediately told the porn star what he really did for a living and that he wasn't gay. He also handed Justin a copy of *Conspiracy of Fools*. On a witness stand in a later criminal trial, Eichenwald would tell about events surrounding this meeting. He'd been so afraid of Berry before coming face to face, he said, that he rented a convertible with the top down, whose interior arrangements precluded Justin placing his luggage anywhere but the trunk (he worried that Justin could have a weapon). With that level of fear, one wonders why Eichenwald didn't confine the rendezvous to the airport and the security of crowds.

Instead, the two went to a hotel, where each got his own room. But, Eichenwald also testified, Justin later went to Eichenwald's room – the room of a "private citizen," not a reporter – and used Eichenwald's computer to demonstrate the business he was involved in. Justin logged on and contacted men, who deluged him with messages that were "unbelievably debasing", according to Eichenwald – such as one person who "asked him the furthest [*sic*] distance he had ever ejaculated". According to Eichenwald's subsequent *Times* piece, "Justin's hands trembled" during these exchanges, and his "pale face dampened with perspiration".

Three months later David, the boy who'd made porn when he was 14 with the adult Justin, was located by the FBI and interviewed. Agents asked him about the man he had earlier known as Roy. By then, David knew who Roy really was. And, he said, Justin had told him something exciting. "Recently," the FBI interview has David saying, "Justin met a famous author, Kurt Ickenwald [*sic*]. Ickenwald was going to do a movie about Justin's life. Justin was to get paid approximately $500,000."

"Recently," the FBI interview has David saying, "Justin met a famous author, Kurt Ickenwald [sic]. Ickenwald was going to do a movie about Justin's life. Justin was to get paid approximately $500,000."

Justin has since said under court oath that he does "not recall" if he told David that Eichenwald talked to him about getting media deals. If Justin did tell David he was going to get rich with Eichenwald's help, it could be because he misunderstood the reporter, he was fantasizing, or he was lying. Rightly or wrongly, though, if Justin thought a Hollywood movie or a book was in the works, he could have felt pressure to tell Eichenwald a story of his life that would sell – and not necessarily a story that was factual. Justin has also testified that in February 2006 he turned down a book offer from ReganBooks – with an advance of $500,000. He said he rejected it because he was told he could not accept it and appear on *Oprah* before a book came out, yet he'd already been asked to be on *Oprah*. He said he believed he could communicate better on television to parents about the dangers of Internet webcamming than he could in a book. Justin testified recently that he has no book or movie deals currently on the table. Eichenwald's entry on his speakers' bureau website currently states that he has two Hollywood deals in progress, one involving Leonardo diCaprio and *Conspiracy of Fools* and the other a project based on his book on Archer Daniels Midland, *The Informant*, to be directed by Steven Soderbergh.

Eichenwald has testified that when he parted from his first, Los Angeles, meeting with Justin on July 1, the teen made a heartfelt vow to stop "debasing" himself with men. But there is evidence that, while working with Eichenwald as a source, Justin was either regaling the reporter with displays of mendacious "to catch a predator" prowess, or was still in the webcam demimonde. By early July 2005, he had moved to the home of cousins living about 30 miles from Eichenwald's home in Dallas. Justin has for years maintained a small website production business called "xpert-creations.com." In chat logs retrieved from his computer and dated July 12, 2005, a person with the moniker "Xp3rt" engages in the following conversation with "MNboi22":

Xp3rt: Hiya

NMboi: How are you

Xp3rt: Good

NMboi: asl [age/sex/location]?

Xp3rt: 16/m/tx... u?

MNboi22: 22 m mn. What you into...

Xp3rt: Money for shows?... I'm into $...

On July 26 – about four weeks after their first meeting – Eichenwald drove Justin to confer with the FBI. There Justin listed all the crimes for which he wanted immunity (child porn making, child porn distribution, recruiting children for porn when he was an adult, income tax evasion, credit card fraud, insurance fraud, and abetting

Once Justin had called Gourlay his best friend and professed love for him. Now he was accusing this same man of violating him and destroying his life.

alien smuggling from Mexico). He also named the men who'd helped him in his porn business, and those who he said touched him sexually.

One of the latter, Gilo Tunno – who Justin told the FBI was the first adult he had a sexual experience with, at age 13 or so – had already been arrested months earlier for traveling from Oregon to Spokane to have sex with an 8-year-old. The charges had no relation to Justin, and by the time Eichenwald found Justin, Tunno was already convicted and in prison. Locked up, he was no longer someone children needed to be saved from.

The only other man on Justin's FBI touching list, his "boyfriend", Greg Mitchel, denied he had sex with Justin until he was 18 and in any event did not seem to have even met Justin until he was 17. The two traveled widely together, and the age of consent in most states is 16 or 17. Mitchel was eventually accused of and pleaded guilty to helping Justin produce and distribute child porn. As for touching, Justin complained that Mitchel "molested" him including when he was 18. It would have been very hard to successfully prosecute Mitchel for child sex abuse.

And that was the end of the FBI list as far as molesters were concerned. Only two men were on it, one already in prison and the other possibly innocent and very difficult to pin a child sex abuse rap on.

But there was another man: Justin's former computer tech mentor, Ken Gourlay.

Recently, Eichenwald testified that the day he drove Justin to his appointment with the FBI, the teen confided that he didn't want to rat on Gourlay because he was such a good friend. He then went through the entire FBI interview without mentioning Gourlay. Regardless, Eichenwald's subsequent article in the *New York Times* talked about the "man... from Ann Arbor" who had introduced Justin to pederasty at age 13. But hard evidence would later emerge that Justin was 15 when he first met Gourlay in person. Eichenwald's sole source for citing a much younger age, apparently, was his conversations with Justin.

The House of Representatives Committee on Energy and Commerce read Eichenwald's page-one *New York Times* article with its accusation against the man from Michigan. Four months later, the committee held a hearing about sexual exploitation of children over the Internet. Justin was subpoenaed to testify and duly sworn. Eichenwald was, too. So was Ken Gourlay. He invoked the Fifth Amendment, and sat stonily behind Eichenwald, listening to Berry cite the same false timetable about tender age and summer camp and molestation that the *Times* had printed months earlier.

Committee members listened to misinformation such as this, and to Eichenwald claim, baselessly, that child porn is a $20 billion-dollar business. They wondered whether the crisis should be answered with laws to restrict freedom of the Internet. There was talk of solving the problem with a new law named for Justin Berry.

As the hearing drew to a close, Rep. Michael Ferguson, R-N.J., had a question for Justin. "What do you think would be a fair sentence for the men that you say molested you?"

"I would hope they would get life", Justin replied.

Mr. Berry," intoned Rep. Greg Walden, R-Oregon, a former radio announcer. "Is there anybody in this room who you believe molested you?"

"Yes, Ken Gourlay," replied Justin, and he pointed his finger. The exchange was captured by C-SPAN. Once Justin had called Gourlay his best friend and professed love for him. Now he was accusing this same man of violating him and destroying his life.

"Thank you," said Walden.

Representatives from the Michigan attorney general's office were at the hearing and witnessed the exchange. Immediately afterward, they interviewed Justin and he made his first claim to law enforcement officials that he'd been molested by Gourlay. Five weeks later Gourlay was arrested. Last month he was tried for producing and distributing child pornography, for "enticing" a child by encouraging Justin to have sex with his girlfriend, and for having oral sex while Justin was at the computer camp, when Gourlay was 24 and Justin was a month shy of his 16th birthday.

At Gourlay's trial, Kurt Eichenwald served as a witness for the prosecution – which is how his $2,000 check came to light. He testified about a porn video he saw of Justin while reporting his *Times*' story. Nobody could find the film anymore; it had disappeared. But Eichenwald recalled seeing it, and said Gourlay was in it. Gourlay was convicted on all ten counts he was accused of, and will be sentenced in a few weeks to as many as twenty years. In addition, the investigation branched beyond Justin's accusations. Gourlay

has also been charged with molesting another underage boy who – unlike Justin – calls himself gay, pursued Gourlay on the Internet, and once wrote him love letters.

Weeks after the Congressional proceeding, Justin Berry was hospitalized for what his mother testified was "a nervous breakdown". She said it followed an episode of "decompensation" that Justin experienced subsequent to seeing Gourlay at the hearing and doing his *J'accuse* on national TV. Eichenwald, too, has had psychological problems. On numerous talk shows, he has mentioned that as a result of working on the Justin Berry story, he developed posttraumatic stress disorder and received therapy paid for by the *New York Times*. Though he testified in Michigan that he saw the beginnings of many sex videos, he said he always turned them off before they advanced to the child porn stage. Even so, Eichenwald told Congress the day Gourlay was put on national show trial, "There were images I couldn't get out of my head when the lights went out."

One image may have been of Justin in a legal pose, first displayed on his website after he turned state's evidence and not removed until about the time he gave his nationally televised congressional testimony. The image – a photo – shows him looking pensive, anxious, in sunglasses and shirtless. Viewers who click under the picture are transferred to MyLiveWebCam.com/Teen-Cams. Justin implores them to enter and register. By so doing, they can "vote" for him. But they must act soon because he is already 19, and soon will be too old for the election.

* * *

On March 8, hours after *CounterPunch* first asked Kurt Eichenwald for an interview, including one by email, he announced that he was suing this writer for $10 million. Days later, *CounterPunch* again requested an interview, but this time a recorded one-on-one, by phone or in person. Eichenwald declined an interview unless it was conducted in Dallas with his lawyer present, or by email with questions and documents sent in advance. *CounterPunch* declined these terms. Justin Berry's attorney, Stephen Ryan, said Justin is "a witness in several upcoming trials" and cannot be "openly questioned by any journalist for many months, at the request of prosecutive authorities". Ryan offered to make his client available for "a handful of questions in writing," whose answers from Justin would be vetted by Ryan. *CounterPunch* also declined these conditions. Justin's mother, Karen Page, did not respond to several requests for an interview. His stepfather declined to be interviewed.

Debbie Nathan is a freelance journalist living in New York. With Michael Snedeker she wrote *Satan's Silence: Ritual Abuse and the Making of a Modern American Witch Hunt*. She can be reached at naess2@gmail.com. CP

STATIC-99 Coding Rules

Revised - 2003

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STATIQUE-99 Règles de codage révisées – 2003

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How To Use This Manual

In most cases, scoring a STATIC-99 is fairly straightforward for an experienced evaluator. If you are unfamiliar with this instrument we suggest that you turn to the back pages of this manual and find the one-page STATIC-99 Coding Form. You may want to keep a copy of this to one side as you review the manual.

We strongly recommend that you read pages 3 to 21 and the section "Scoring the STATIC-99 and Computing the Risk Estimates" before you score the STATIC-99. These pages explain the nature of the STATIC-99 as a risk assessment instrument; to whom this risk assessment instrument may be applied; the role of self-report; exceptions for juvenile, developmentally delayed, and institutionalized offenders; changes from the last version of the STATIC-99 coding rules; the information required to score the STATIC-99; and important definitions such as "Index Offence", Category "A" offences versus Category "B" offences, "Index Cluster", and "Pseudo-recidivism".

Individual item coding instructions begin at the section entitled "Scoring the Ten Items". For each of the ten items, the coding instructions begin with three pieces of information: **The Basic Principle, Information Required to Score this Item,** and **The Basic Rule.** In most cases, just reading these three small sections will allow you to score that item on the STATIC-99. Should you be unsure of how to score the item you may read further and consider whether any of the special circumstances or exclusions apply to your case. This manual contains much information that is related to specific uses of the STATIC-99 in unusual circumstances and many sections of this manual need only be referred to in exceptional circumstances.

We also suggest that you briefly review the ten appendices as they contain valuable information on adjusting STATIC-99 predictions for time free in the community, a self-test of basic concepts, references, surgical castration, a table for converting raw STATIC-99 scores to risk estimates, the coding forms, a suggested report format for communicating STATIC-99-based risk information, a list of replication studies for the STATIC-99, information on inter-rater reliability and, how to interpret Static-99 scores greater than 6.

We appreciate all feedback on the scoring and implementation of the STATIC-99. Please feel free to contact any of the authours. Should you find any errors in this publication or have questions/concerns regarding the application of this risk assessment instrument or the contents of this manual, please address these concerns to:

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Introduction

The Nature of the STATIC-99

The STATIC-99 utilizes only static (unchangeable) factors that have been seen in the literature to correlate with sexual reconviction in adult males. The estimates of sexual and violent recidivism produced by the STATIC-99 can be thought of as a baseline of risk for violent and sexual reconviction. From this baseline of long-term risk assessment, treatment and supervision strategies can be put in place to reduce the risk of sexual recidivism.

The STATIC-99 was developed by R. Karl Hanson, Ph.D. of the Solicitor General Canada and David Thornton, Ph.D., at that time, of Her Majesty's Prison Service, England. The STATIC-99 was created by amalgamating two risk assessment instruments. The RRASOR (Rapid Risk Assessment of Sex Offender Recidivism), developed by Dr. Hanson, consists of four items: 1) having prior sex offences, 2) having a male victim, 3) having an unrelated victim, and 4) being between the ages of 18 and 25 years old. The items of the RRASOR were then combined with the items of the Structured Anchored Clinical Judgement – Minimum (SACJ-Min), an independently created risk assessment instrument written by Dr. Thornton (Grubin, 1998). The SACJ-Min consists of nine items: 1) having a current sex offence, 2) prior sex offences, 3) a current conviction for non-sexual violence, 4) a prior conviction for non-sexual violence, 5) having 4 or more previous sentencing dates on the criminal record, 6) being single, 7) having non-contact sexual offences, 8) having stranger victims, and 9) having male victims. These two instruments were merged to create the STATIC-99, a ten-item prediction scale.

The strengths of the STATIC-99 are that it uses risk factors that have been empirically shown to be associated with sexual recidivism and the STATIC-99 gives explicit rules for combining these factors into a total risk score. This instrument provides explicit probability estimates of sexual reconviction, is easily scored, and has been shown to be robustly predictive across several settings using a variety of samples. The weaknesses of the STATIC-99 are that it demonstrates only moderate predictive accuracy (ROC = .71) and that it does not include all the factors that might be included in a wide-ranging risk assessment (Doren, 2002).

While potentially useful, an interview with the offender is not necessary to score the STATIC-99.

The authors of this manual strongly recommend training in the use of the STATIC-99 before attempting risk assessments that may affect human lives. Researchers, parole and probation officers, psychologists, sex offender treatment providers, and police personnel involved in threat and risk assessment activities typically use this instrument. Researchers are invited to make use of this instrument for research purposes and this manual and the instrument itself may be downloaded from www.sgc.gc.ca.

It is possible to score more than six points on the STATIC-99 yet the top risk score is 6 (High-Risk). In analyzing the original samples it was found that there was no significant increase in recidivism rates for scores between 6 and 12. One of the reasons for this finding may be diminishing sample size. However, in general, the more risk factors, the more risk. There may be some saturation point after which additional factors do not appear to make a difference in risk. It is useful to keep in mind that all measurement activities contain some degree of error. If the offender's score is substantially above 6 (High-Risk), there is greater confidence the offender's "true" score is greater than 6 (High-Risk) than if the offender had only scored a 6.

The STATIC-99 does not address all relevant risk factors for sexual offenders. Consequently a prudent evaluator will always consider other external factors that may influence risk in either direction. An obvious example is where an offender states intentions to further harm or "get" his victims (higher risk).

Or, an offender may be somewhat restricted from further offending either by health concerns or where he has structured his environment such that his victim group is either unavailable or he is always in the company of someone who will support non-offending (lower risk). These additional risk factors should be stated in any report as "additional factors that were taken into consideration" and not "added" to the STATIC-99 Score. Adding additional factors to the STATIC-99, or adding "over-rides" distances STATIC-99 estimates from their empirical base and substantially reduces their predictive accuracy.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is "Ever Lived With ..." (Item #2). If no information is available, this item should be scored as a "0" (zero) – as if the offender **has lived** with an intimate partner for two years.

- **Recidivism Criteria** – In the original STATIC-99 samples the recidivism criteria was a new conviction for a sexual offence.

- **Non-Contact Sexual Offences** – The original STATIC-99 samples included a small number of offenders who had been convicted of non-contact sexual offences. STATIC-99 predictions of risk are relevant for non-contact sexual offenders, such as Break-&-Enter Fetishists who enter a dwelling to steal underwear or similar fetish objects.

- **RRASOR or STATIC-99?** On the whole, if the information is available to score the STATIC-99 it is preferable to use the STATIC-99 over the RRASOR as estimates based on the STATIC-99 utilize more information than those based upon RRASOR scores. The average predictiveness of the STATIC-99 is higher than the average predictiveness of the RRASOR (Hanson, Morton, & Harris, in press).

Recidivism Estimates and Treatment

The original samples and the recidivism estimates should be considered primarily as "untreated". The treatment provided in the Millbrook Recidivism Study and the Oak Ridge Division of the Penetanguishene Mental Health Centre samples were dated and appeared ineffective in the outcome evaluations. Most of the offenders in the Pinel sample did not complete the treatment program. Except for the occasional case, the offenders in the Her Majesty's Prison Service (UK) sample would not have received treatment.

Self-report and the STATIC-99

Ten items comprise the STATIC-99. The amount of self-report that is acceptable in the scoring of these questions differs across questions and across the three basic divisions within the instrument.

Demographic Questions: For Item #1 – Young, while it is always best to consult official written records, self-report of age is generally acceptable for offenders who are obviously older than 25 years of age. For Item #2 – Ever Lived With..., to complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. There may, however, be certain cases (immigrants, refugees from third world countries) where confirmation is not possible. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. For further guidance on the use of self-report and the STATIC-99 please see section "Item #2 – Ever Lived with an Intimate Partner – 2 Years".

Criminal History Questions: For the five (5) items that assess criminal history (Items 3, 4, 5, 6, & 7) an official criminal history is required to score these items and self-report is not acceptable. This being said, there may be certain cases (immigrants, refugees from third world countries) where self-report of crimes may be accepted if it is reasonable to assume that no records exist or that existing records are truly un-retrievable. In addition, to the evaluator, the self-report must seem credible and reasonable.

Victim Questions: For the three (3) victim items self-report is generally acceptable assuming the self-report meets the basic criteria of appearing reasonable and credible. Confirmation from official records or collateral contacts is always preferable.

Who can you use the STATIC-99 on?

The STATIC-99 is an actuarial risk prediction instrument designed to estimate the probability of sexual and violent reconviction for adult males who have already been charged with or convicted of at least one sexual offence against a child or a non-consenting adult. This instrument may be used with first-time sexual offenders.

This instrument is not recommended for females, young offenders (those having an age of less than 18 years at time of release) or for offenders who have only been convicted of prostitution related offences, pimping, public toileting (sex in public locations with consenting adults) or possession of pornography/indecent materials. The STATIC-99 is not recommended for use with those who have never committed a sexual offence, nor is it recommended for making recommendations regarding the determination of guilt or innocence in those accused of a sexual offence. The STATIC-99 is not appropriate for individuals whose only sexual "crime" involves consenting sexual activity with a similar age peer (e.g., Statutory Rape {a U.S. charge} where the ages of the perpetrator and the victim are close and the sexual activity was consensual).

The STATIC-99 applies where there is reason to believe an actual sex offence has occurred with an identifiable victim. The offender need not have been convicted of the offence. The original samples used to create this instrument contained a number of individuals who had been found Not Guilty by Reason of Insanity and others who were convicted of non-sexual crimes, but in all cases these offenders had committed real sex crimes with identifiable victims. The STATIC-99 may be used with offenders who have committed sexual offences against animals.

In some cases, an evaluator may be faced with an offender who has had a substantial period at liberty in the community with opportunity to re-offend, but has not done so. In cases such as these, the risk of sexual re-offence probabilities produced by the STATIC-99 may not be reliable and adjustment should be considered (Please see Appendix #1).

STATIC-99 with Juvenile Offenders

It should be noted that there were people in the original STATIC-99 samples who had committed sexual offences as juveniles (under the age of 18 years) and who were released as adults. In some cases an assessment of STATIC-99 risk potential may be useful on an offender of this nature. If the juvenile offences occurred when the offender was 16 or 17 and the offences appear "adult" in nature (preferential sexual assault of a child, preferential rape type activities) – the STATIC-99 score is most likely of some utility in assessing overall risk.

Evaluations of juveniles based on the STATIC-99 must be interpreted with caution as there is a very real theoretical question about whether juvenile sex offending is the same phenomena as adult sex offending in terms of its underlying dynamics and our ability to affect change in the individual. In addition, the younger the juvenile offender is, the more important these questions become. In general, the research literature leads us to believe that adolescent sexual offenders are not necessarily younger versions of adult sexual offenders. Developmental, family, and social factors would be expected to impact on recidivism potential. We have reason to believe that people who commit sex offences only as children/young people are a different profile than adults who commit sexual offences. In cases such as these, we recommend that STATIC-99 scores be used with caution and only as part of a more wide-ranging assessment of sexual and criminal behaviour. A template for a standard, wide-ranging assessment can be found in the

Solicitor General Canada publication, Harris, A. J. R., (2001), High-Risk Offenders: A Handbook for Criminal Justice Professionals, Appendix "d" (Please see the references section).

At this time we are aware of a small study that looked at the predictiveness of the STATIC-99 with juveniles. This study suggested that the scale worked with juveniles; at least in the sense that there was an overall positive correlation between their score on the STATIC-99 and their recidivism rate. This Texas study (Poole et al., 2000) focused on older juveniles who were 19 when released but younger when they offended.

In certain cases, the STATIC-99 may be useful with juvenile sexual offenders, if used cautiously. There would be reasonable confidence in the instrument where the convictions are related to offenses committed at the age of 17. In general, the younger the child, the more caution should be exercised in basing decisions upon STATIC-99 estimates. For example, if a 17-year-old offender committed a rape, alone, on a stranger female, you would have reasonable confidence in the STATIC-99 estimates. On the other hand, if the offender is now an adult (18+ years old) and the last sexual offence occurred when that individual was 14 or 15, STATIC-99 estimates would not apply. If the sexual offences occurred at a younger age and they look "juvenile" (participant in anti-social behaviour towards peers that had a sexual component) we would recommend that the evaluator revert to risk scales specifically designed for adolescent sexual offenders, such as the ERASOR (Worling, 2001).

The largest category of juvenile sexual offenders is generally antisocial youth who sexually victimize a peer when they are 13 or 14 years of age. These juvenile sexual offenders are most likely sufficiently different from adult sexual offenders that we do not recommend the use of the STATIC-99 nor any other actuarial instruments developed on samples of adult sexual offenders. We would once again refer evaluators to the ERASOR (Worling, 2001).

When scoring the STATIC-99, Juvenile offences when they are known from official sources, count as charges and convictions on "Prior Sexual Offences" regardless of the present age of the offender. Self-reported juvenile offences in the absence of official records do not count.

STATIC-99 with Juvenile Offenders who have been in prison for a long time

In this section we consider juvenile offenders who have been in prison for extended periods (20 years plus) and who are now being considered for release. In one recent case a male juvenile offender had committed all of his offences prior to the age of 15. This individual is now 36 years old and has spent more than 20 years incarcerated for these offences. The original STATIC-99 samples contained some offenders who committed their sexual offences as juveniles and were released as adults. However, most of these offenders were in the 18 – 20 age group upon release. Very few, if any, would have served long sentences for offences committed as juveniles. Although cases such as these do not technically violate the sampling frame of the STATIC-99, such cases would have been sufficiently rare that it is reasonable for evaluators to use more caution than usual in the interpretation of STATIC-99 reconviction probabilities.

STATIC-99 with Offenders who are Developmentally Delayed

The original STATIC-99 samples contained a number of Developmentally Delayed offenders. Presently, research is ongoing to validate the STATIC-99 on samples of Developmentally Delayed offenders. Available evidence to date supports the utility of actuarial approaches with Developmentally Delayed offenders. There is no current basis for rejecting actuarials with this population.

STATIC-99 with Institutionalized Offenders

The STATIC-99 is intended for use with individuals who have been charged with, or convicted of, at least one sexual offence. Occasionally, however, there are cases where an offender is institutionalized for a non-sex offence but, once incarcerated, engages in sexual assault or sexually aggressive behaviour that is sufficiently intrusive to come to official notice. In certain of these cases charges are unlikely, e.g., the offender is a "lifer". If no sanction is applied to the offender, these offences are not counted. If the behaviour is sufficiently intrusive that it would most likely attract a criminal charge had the behaviour occurred in the community and the offender received some form of "in-house" sanction, (administrative segregation, punitive solitary confinement, moved between prisons or units, etc.), these offences would count as offences on the STATIC-99. If that behaviour were a sexual crime, this would create a new Index sexual offence. However, if no sanction is noted for these behaviours they cannot be used in scoring the STATIC-99.

The STATIC-99 may be appropriate for offenders with a history of sexual offences but currently serving a sentence for a non-sexual offence. The STATIC-99 should be scored with the most recent sexual offence as the Index offence. The STATIC-99 is not applicable to offenders who have had more than 10 years at liberty in the community without a sexual offence before they were arrested for their current offence. STATIC-99 risk estimates would generally apply to offenders that had between two (2) and ten (10) years at liberty in the community without a new sexual offence but are currently serving a new sentence for a new technical (fail to comply) or other minor non-violent offence (shoplifting, Break and Enter). Where an offender did have a prolonged (two to ten years) sex-offence-free period in the community prior to their current non-sexual offence, the STATIC-99 estimates would be adjusted for time free using the chart in Appendix One – "Adjustments in risk based on time free".

Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence. Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences.

STATIC-99 with Black, Aboriginal, and members of other Ethnic/Social Groups

Most members of the original samples from which recidivism estimates were obtained were white. However, race has not been found to be a significant predictor of sexual offence recidivism. It is possible that race interacts with STATIC-99 scores, but such interactions between race and actuarial rates are rare. It has been shown that the SIR Scale works as well for Aboriginal offenders as it does for non-aboriginal offenders (Hann et al., 1993). The LSI-R has been shown to work as well for non-white offenders as it does for white offenders (Lowenkamp et al., 2001) and as well for aboriginal offenders as it does for non-aboriginal offenders (Bonta, 1989). In Canada there is some evidence that STATIC-99 works as well for Aboriginal sexual offenders as it does for whites (Nicholaichuk, 2001). At this time, there is no reason to believe that the STATIC-99 is culturally specific.

STATIC-99 and Offenders with Mental Health Issues

The original STATIC-99 samples contained significant numbers of individual offenders with mental health concerns. It is appropriate to use the STATIC-99 to assess individuals with mental health issues such as schizophrenia and mood disorders.

STATIC-99 and Gender Transformation

Use of the STATIC-99 is only recommended, at this time, for use with adult males. In the case of an offender in gender transformation the evaluator would score that person based upon their anatomical sex at the time their first sexual offence was committed.

What's New? What's Changed?

Since the last version of the Coding Rules

The most obvious change in the layout of the STATIC-99 is the slight modification of three of the items to make them more understandable. In addition, the order in which the items appear on the Coding Form has been changed. It is important to remember that no item definitions have been changed and no items have been added or subtracted. Present changes reflect the need for a clearer statement of the intent of the items as the use of the instrument moves primarily from the hands of researchers and academics into the hands of primary service providers such as, parole and probation officers, psychologists, psychometrists and others who use the instrument in applied settings. The revised order of questions more closely resembles the order in which relevant information comes across the desk of these individuals.

The first item name that has been changed is the old item #10, Single. The name of this item has been changed to "Ever lived with an intimate partner – 2 years" and this item becomes item number 2 in the revised scale. The reason for this change is that the new item name more closely reflects the intent of the item, whether the offender has ever been capable of living in an intimate relationship with another adult for two years.

The two Non-sexual violence items, "Index Non-sexual violence" and "Prior non-sexual violence" have been changed slightly to make it easier to remember that a conviction is necessary in order to score these items. These two items become "Index Non-sexual violence – Any convictions?" and "Prior Non-sexual violence – Any convictions?" in the new scheme.

Over time, there have been some changes to the rules from the previous version of the coding rules. Some rules were originally written to apply to a specific jurisdiction. In consultation with other jurisdictions, the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item. These minor changes are most evident in Item #6 – Prior Sentencing Dates.

Over the past two years, a large number of direct service providers have been trained in the administration of the STATIC-99. The training of direct service providers has revealed to us that two related concepts must be clearly defined for the evaluator. These concepts are "Pseudo-recidivism" and "Index cluster". Pseudo-recidivism results when an offender who is currently engaged in the criminal justice process has additional charges laid against them for crimes they committed before they were apprehended for the current offence. Since these earlier crimes have never been detected or dealt with by the justice system they are "brought forward" and grouped with the Index offence. When, for the purposes of scoring the STATIC-99, these offences join the "Index Offence" this means there are crimes from two, or more, distinct time periods included as the "Index". This grouping of offences is known as an "Index Cluster". These offences are not counted as "priors" because, even though the behaviour occurred a long time ago, these offences have never been subject to a legal consequence.

Finally, there is a new section on adjusting the score of the STATIC-99 to account for offenders who have not re-offended for several years. There is reason to downgrade risk status for the offender who has not re-offended in the community over a protracted period (See Appendix One).

Information Required to Score the STATIC-99

Three basic types of information are required to score the STATIC-99, Demographic information, an official Criminal Record, and Victim information.

Demographic Information

Two of the STATIC-99 items require demographic information. The first item is "Young?". The offender's date of birth is required in order to determine whether the offender is between 18 and 25 years of age at the time of release or at time of exposure to risk in the community. The second item that requires knowledge of demographic information is "Ever lived with an intimate partner – 2 years?". To answer this question the evaluator must know if the offender has ever lived in an intimate (sexual) relationship with another adult, continuously, for at least two years.

Official Criminal Record

In order to score the STATIC-99, the evaluator must have access to an official criminal record as recorded by police, court, or correctional officials. From this official criminal record you score five of the STATIC-99's items: "Index non-sexual violence – Any convictions", "Prior non-sexual violence – Any convictions", "Prior sex offences", "Prior sentencing dates", and "Non-contact sex offences – Any convictions". Self-report is generally not acceptable to score these five items – in the Introduction section, see sub-section – "Self-report and the STATIC-99".

Victim Information

The STATIC-99 contains three victim information items" "Any unrelated victims", "Any stranger victims" and, "Any male victims". To score these items the evaluator may use any credible information at their disposal except polygraph examination. For each of the offender's sexual offences the evaluator must know the pre-offence degree of relationship between the victim and the offender.

Definitions

Sexual Offence

For the purposes of a STATIC-99 assessment a sexual offence is an officially recorded sexual misbehaviour or criminal behaviour with sexual intent. To be considered a sexual offence the sexual misbehaviour must result in some form of criminal justice intervention or official sanction. For people already engaged in the criminal justice system the sexual misbehaviour must be serious enough that individuals could be charged with a sexual offence if they were not already under legal sanction. **Do not count offences such as failure to register as a sexual offender or consenting sex in prison.**

Criminal justice interventions may include the following:

- Alternative resolutions agreements (Restorative Justice)
- Arrests
- Charges
- Community-based Justice Committee Agreements
- Criminal convictions
- Institutional rule violations for sexual offences (Do not count consenting sexual activity in prison)
- Parole and probation violations

Sanctions may include the following:

- Alternative resolution agreements
- Community supervision
- Conditional discharges
- Fines
- Imprisonment
- Loss of institutional time credits due to sexual offending ("worktime credits")

Generally, "worktime credit" or "institutional time credits" means credit towards (time off) a prisoner's sentence for satisfactory performance in work, training or education programs. Any prisoner who accumulates "worktime credit" may be denied or may forfeit the credit for failure or refusal to perform assigned, ordered, or directed work or for receiving a serious disciplinary offense.

Sexual offences are scored only from official records and both juvenile and adult offences count. You may not count self-reported offences except under certain limited circumstances, please refer to the Introduction section – sub-section "Self-report and the STATIC-99".

An offence need not be called "sexual" in its legal title or definition for a charge or conviction to be considered a sexual offence. Charges or convictions that are explicitly for sexual assaults, or for the sexual abuse of children, are counted as sexual offenses on the STATIC-99, regardless of the offender's motive. Offenses that directly involve illegal sexual behaviour are counted as sex offenses even when the legal process has led to a "non-sexual" charge or conviction. An example of this would be where an offender is charged with or pleads guilty to a Break and Enter when he was really going in to steal dirty underwear to use for fetishistic purposes.

In addition, offenses that involve non-sexual behavior are counted as sexual offenses if they had a sexual motive. For example, consider the case of a man who strangles a woman to death as part of a sexual act but only gets charged with manslaughter. In this case the manslaughter charge would still be considered a sexual offence. Similarly, a man who strangles a woman to gain sexual compliance but only gets charged

with Assault; this Assault charge would still be considered a sexual offence. Further examples of this kind include convictions for murder where there was a sexual component to the crime (perhaps a rape preceding the killing), kidnapping where the kidnapping took place but the planned sexual assault was interrupted before it could occur, and assaults "pled down" from sexual assaults.

Physical assaults, threats, and stalking motivated by sexual jealousy do not count as sexual offenses when scoring the STATIC-99.

Additional Charges

Offences that may not be specifically sexual in nature, occurring at the same time as the sexual offence, and under certain conditions, may be considered part of the sexual misbehaviour. Examples of this would include an offender being charged with/convicted of:

- Sexual assault (rape) and false imprisonment
- Sexual assault (rape) and kidnapping
- Sexual assault (rape) and battery

In instances such as these, depending upon when in the court process the risk assessment was completed, the offender would be coded as having been convicted of two sexual offences plus scoring in another item (Index or Prior Non-sexual Violence). For example if an offender were convicted of any of the three examples above prior to the current "Index" offence, the offender would score 2 "prior" sex offence charges and 2 "prior" sex offence convictions (On Item #5 – Prior Sexual Offences) and a point for Prior Non-sexual Violence (Please see "Prior Non-sexual Violence" or "Index Non-sexual Violence" for a further explanation).

Category "A" and Category "B" Offences

For the purposes of the STATIC-99, sexual misbehaviours are divided into two categories. Category "A" involves most criminal charges that we generally consider "sexual offences" and that involve an identifiable child or non-consenting adult victim. This category includes all contact offences, exhibitionism, voyeurism, sex with animals and dead bodies.

Category "B" offences include sexual behaviour that is illegal but the parties are consenting or no specific victim is involved. Category "B" offences include prostitution related offences, consenting sex in public places, and possession of pornography. Behaviours such as urinating in public or public nudity associated with mental impairment are also considered Category "B" offences.

Rule: if the offender has **any** category "A" offences on their record - all category "B" offences should be counted as sex offences for the purpose of scoring sexual priors or identifying the Index offense. They do not count for the purpose of scoring victim type items. The STATIC-99 is not recommended for use with offenders who have only category "B" offences.

Offence names and legalities differ from jurisdiction to jurisdiction and a given sexual behaviour may be associated with a different charge in a different jurisdiction. The following is a list of offences that would typically be considered sexual. Other offence names may qualify when they denote sexual intent or sexual misbehaviour.

Category "A" Offences

- Aggravated Sexual Assault
- Attempted sexual offences (Attempted Rape, Attempted Sexual Assault)
- Contributing to the delinquency of a minor (where the offence had a sexual element)
- Exhibitionism

- Incest
- Indecent exposure
- Invitation to sexual touching
- Lewd or lascivious acts with a child under 14
- Manufacturing/Creating child pornography where an identifiable child victim was used in the process (The offender had to be present or participate in the creation of the child pornography with a human child present)
- Molest children
- Oral copulation
- Penetration with a foreign object
- Rape (includes in concert) (Rape in concert is rape with one or more co-offenders. The co-offender can actually perpetrate a sexual crime or be involved to hold the victim down)
- Sexual Assault
- Sexual Assault Causing Bodily Harm
- Sexual battery
- Sexual homicide
- Sexual offences against animals (Bestiality)
- Sexual offences involving dead bodies (Offering an indignity to a dead body)
- Sodomy (includes in concert and with a person under 14 years of age)
- Unlawful sexual intercourse with a minor
- Voyeuristic activity (Trespass by night)

Category "B" Offences

- Consenting sex with other adults in public places
- Crimes relating to child pornography (possession, selling, transporting, creating where only pre-existing images are used, digital creation of)
- Indecent behaviour without a sexual motive (e.g., urinating in public)
- Offering prostitution services
- Pimping/Pandering
- Seeking/hiring prostitutes
- Solicitation of a prostitute

Certain sexual behaviours may be illegal in some jurisdictions and legal in others (e.g., prostitution). Count only those sexual misbehaviours that are illegal in the jurisdiction in which the risk assessment takes place and in the jurisdiction where the acts took place.

Exclusions

The following offences would not normally be considered sexual offences

- Annoying children
- Consensual sexual activity in prison (except if sufficiently indiscreet to meet criteria for gross indecency).
- Failure to register as a sex offender
- Being in the presence of children, loitering at schools
- Possession of children's clothing, pictures, toys
- Stalking (unless sexual offence appears imminent, please see definition of "Truly Imminent" below)
- Reports to child protection services (without charges)

Rule: Simple questioning by police not leading to an arrest or charge is insufficient to count as a sexual offence.

Probation, Parole or Conditional Release Violations as Sexual Offences

Rule: Probation, parole or conditional release violations resulting in arrest or revocation/breach are considered sexual offences when the behaviour could have resulted in a charge/conviction for a sexual offence if the offender were not already under legal sanction.

Sometimes the violations are not clearly defined as a sexual arrest or conviction. The determination of whether to count probation, parole, or conditional release violations as sexual offences is dependent upon the nature of the sexual misbehaviour. Some probation, parole and conditional release violations are clearly of a sexual nature, such as when a rape or a child molestation has taken place or when behaviours such as exhibitionism or possession of child pornography have occurred. These violations would count as the Index offence if they were the offender's most recent criminal justice intervention.

Generally, violations due to "high-risk" behaviour would not be considered sex offences. The most common of these occurs when the offender has a condition not to be in the presence of children but is nevertheless charged with a breach - being in the presence of children. A breach of this nature would not be considered a sexual offence. This is a technical violation. The issue that determines if a violation of conditional release is a new sex offence or not is whether a person who has never been convicted of a sex offence could be charged and convicted of the breach behaviour. A person who has never faced criminal sanction could not be charged with being in the presence of minors; hence, because a non-criminal could not be charged with this offence, it is a technical violation. Non-sexual probation, parole and conditional release violations, and charges and convictions such as property offences or drug offences are not counted as sexual offences, even when they occur at the same time as sexual offences.

Taking the above into consideration, some high-risk behaviour may count as a sexual offence if the risk for sexual offence recidivism was truly imminent and an offence failed to occur only due to chance factors, such as detection by the supervision officer or resistance of the victim.

Definition of "Truly Imminent"

Examples of this nature would include an individual with a history of child molesting being discovered alone with a child and about to engage in a "wrestling game." Another example would be an individual with a long history of abducting teenage girls for sexual assault being apprehended while attempting to lure teenage girls into his car.

Institutional Rule Violations

Institutional rule violations resulting in institutional punishment can be counted as sex offences if certain conditions exist. The first condition is that the sexual behaviour would have to be sufficiently intrusive that a charge for a sexual offence would be possible were the offender not already under legal sanction. In other words, "if he did it on the outside would he get charged for it?" Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. Poorly timed or insensitive homosexual advances would not count even though this type of behaviour might attract institutional sanctions. The second condition is that the evaluator must be sure that the sexual assaults actually occurred and the institutional punishment was for the sexual behaviour.

In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female officer and masturbates in front of her, where she is the obvious and intended target of the act, would count as a

"charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell is discovered by a female officer and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge' and could not stand as an Index offence. If the evaluator has insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and the evaluator would not score these occurrences. A further important distinction is whether the masturbation takes place covered or uncovered. Masturbating under a sheet would not be regarded as an attempt at indecent exposure.

Consider these two examples:

(1) A prisoner is masturbating under a sheet at a time when staff would not normally look in his cell. Unexpectedly a female member of staff opens the observation window, looks through the door, and observes him masturbating. This would not count as a sex offence for the purposes of STATIC-99, even if a disciplinary charge resulted.

(2) In the alternate example, a prisoner masturbates uncovered so that his erect penis is visible to anyone who looks in his cell. Prison staff have reason to believe that he listens for the lighter footsteps of a female guard approaching his cell. He times himself so that he is exposed in this fashion at the point that a female guard is looking into the cell. This would count as a sexual offence for the purposes of scoring STATIC-99 if it resulted in an institutional punishment.

Rule: Prison Misconducts and Institutional Rule Violations for Sexual Misbehaviours count as one charge per sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Mentally Disordered and Developmentally Delayed Offenders

Some offenders suffer from sufficient mental impairment (major mental illness, developmental delays) that criminal justice intervention is unlikely. For these offenders, informal hearings and sanctions such as placement in treatment facilities and residential moves would be counted as both a charge and a conviction for a sexual offence.

Clergy and the Military

For members of the military or religious groups (clergy) (and similar professions) some movements within their own organizations can count as charges and convictions and hence, Index offences. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of this would be the "de-frocking" of a priest or minister or being publicly denounced. Another example would be where an offender is transferred within the organization and the receiving institution knows they are receiving a sex offender. If this institution considers it part of their mandate to address the offender's problem or attempt to help him with his problem then this would function as equivalent to being sent to a correctional institution, and would count as a conviction and could be used as an Index Offence.

For members of the military, a religious group (clergy) or teachers (and similar professions) being transferred to a new parish/school/post or being sent to graduate school for re-training does not count as a conviction and cannot be used as an Index Offence.

Juveniles

Instances in which juveniles (ages 12–15) are placed into residential care for sexual aggression would count as a charge and conviction for a sexual offence. In jurisdictions where 16 and 17 year old sexual offenders remain in a juvenile justice system (not charged, tried, and sent to jail as adults are), where it is possible to be sent to a "home" or "placement", this would count as a charge and a conviction for a sexual offence. In jurisdictions where juveniles aged 16 and 17 are charged, convicted, sentenced, and jailed much like adults, juvenile charges and convictions (between ages 16 & 17) would be counted the same as adult charges and convictions.

Sexual misbehaviour of children 11 or under would not count as a sex offence unless it resulted in official charges.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Similar Fact Crimes

An Offender assaults three different women on three different occasions. On the first two occasions he grabs the woman as she is walking past a wooded area, drags her into the bushes and rapes her. For this he is convicted twice of Sexual Assault (rape). In the third case he grabs the woman, starts to drag her into the bushes but she is so resistant that he beats her severely and leaves her. In this case he is convicted of Aggravated Assault. In order for the conviction to be counted as a sexual offence, it must have a sexual motivation. In a case like this it is reasonable to assume that the Aggravated Assault had a sexual motivation because it resembles the other sexual offences so closely. In the absence of any other indication to the contrary this Aggravated Assault would also be counted as a sexual offence. Note: This crime could also count as Non-sexual Violence.

Please also read subsection "Coding Crime Sprees" in section "Item #5 – Prior Sex Offences".

Index offence

The Index offence is generally the most recent sexual offence. It could be a charge, arrest, conviction, or rule violation (see definition of a sexual offence, earlier in this section). Sometimes Index offences include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. If this results in a single conviction regardless of the number of counts, all counts are considered part of the Index offence. Convictions for sexual offences that are subsequently overturned on appeal can count as the Index offence. Charges for sexual offences can count as the Index Offence, even if the offender is later acquitted.

Most of the STATIC-99 sample (about 70%) had no prior sexual offences on their record; their Index offence was their first recorded sexual misbehaviour. As a result, the STATIC-99 is valid with offenders facing their first sexual charges.

Acquittals

Acquittals count as charges and can be used as the Index Offence.

Convictions Overturned on Appeal

Convictions that are subsequently overturned on appeal can count as an Index Offence.

"Detected" by Child Protection Services

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction. This is insufficient to create a new Index Offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences – As an Index Offence

Occasionally, offenders on conditional release in the community who have a life sentence, who have been designated as Dangerous Offenders (Canada C.C.C. Sec. 753) or other offenders with indeterminate sentences either commit a new offence or breach their release conditions while in the community. Sometimes, when this happens the offenders have their conditional releases revoked and are simply returned to prison rather than being charged with a new offence or violation. Generally, this is done to save time and court resources as these offenders are already under sentence.

> If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour this can serve as the Index Sexual Offence if the behaviour is of such gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence given the same behaviour. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police.

Historical Offences

The evaluator may face a situation where an offender is brought before the court on a series of sexual offences, all of which happened several years in the past. This most often occurs when an offender has offended against children in the past and as these children mature they come forward and charge the perpetrator. After the first charge is laid it is not unusual for other victims to appear and lay subsequent charges. The evaluator may be faced with an offender with multiple charges, multiple court dates, and possibly multiple convictions who has never before been to court – or who has never before been sanctioned for sexual misbehaviour. In a case like this, where the offender is before the court for the first time, all of the charges, court appearances and convictions become what is known as an "Index Cluster" and they are all counted as part of the Index Offence.

Index Cluster

An offender may commit a number of sexual offences in different jurisdictions, over a protracted period, in a spree of offending prior to being detected or arrested. Even though the offender may have a number of sentencing dates in different jurisdictions, the subsequent charges and convictions would constitute an "Index Cluster". These "spree" offences would group together – the early ones would not be considered "priors" and the last, the "Index", they all become the "Index Cluster". This is because the offender has not been "caught" and sanctioned for the earlier offences and then "chosen" to re-offend in spite of the sanction. Furthermore, historical offences that are detected after the offender is convicted of a more recent sexual offence would be considered part of the Index offence (pseudo-recidivism) and become part of the Index Cluster (See subsequent section).

For two offences to be considered separate offences, the second offence must have been committed after the offender was detected and detained and/or sanctioned for the previous offence. For example, an offence committed while an offender was released on bail for a previous sexual offence would supersede

the previous charge and become the Index offence. This is because the offender knew he/she had been detected for their previous crimes but chose to re-offend anyway.

An Index cluster can occur in three ways.

The first occurs when an offender commits multiple offences at the same time and these offences are then subsequently dealt with as a group by the police and the courts.

The second occurs when an Index offence has been identified for an offender and following this the evaluator becomes aware of previous historical offences for which the offender has never previously been charged or convicted. These previous offences come forward and become part of the "Index Cluster". This is also known as "Pseudo-recidivism". It is important to remember, these historical charges do not count as "priors" because the offending behaviour was not consequenced before the offender committed the Index offence. The issue being, the offender has not been previously sanctioned for his behaviour and then made the choice to re-offend.

The third situation arises when an offender is charged with several offences that come to trial within a short period of time (a month or so). When the criminal record is reviewed it appears that a cluster of charges were laid at the end of an investigation and that the court could not attend to all of these charges in one sitting day. When the evaluator sees groups of charges where it appears that a lot of offending has finally "caught up" with an offender – these can be considered a "cluster". If these charges happen to be the last charges they become an Index Cluster. The evaluator would not count the last court day as the "Index" and the earlier ones as "priors". A second example of this occurs when an offender goes on a crime "spree" – the offender repeatedly offends over time, but is not detected or caught. Eventually, after two or more crimes, the offender is detected, charged, and goes to court. But he has not been independently sanctioned between the multiple offences.

> **For Example:** An offender commits a rape, is apprehended, charged, and released on bail. Very shortly after his release, he commits another rape, is apprehended and charged. Because the offender was apprehended and charged between crimes this does not qualify as a crime "spree" – these charges and possible eventual convictions would be considered separate crimes. If these charges were the last sexual offences on the offender's record – the second charge would become the Index and the first charge would become a "Prior".
>
> However, if an offender commits a rape in January, another in March, another in May, and another in July and is finally caught and charged for all four in August this constitutes a crime "spree" because he was not detected or consequenced between these crimes. As such, this spree of sexual offences, were they the most recent sexual offences on the offenders record, would be considered an "Index Cluster" and all four rape offences would count as "Index" not just the last one.

Pseudo-recidivism

Pseudo-recidivism occurs when an offender currently involved in the criminal justice process is charged with old offences for which they have never before been charged. This occurs most commonly with sexual offenders when public notoriety or media publicity surrounding their trial or release leads other victims of past offences to come forward and lay new charges. Because the offender has not been charged or consequenced for these misbehaviours previously, they have not experienced a legal consequence and then chosen to re-offend.

> **For Example:** Mr. Jones was convicted in 1998 of three sexual assaults of children. These sexual assaults took place in the 1970's. As a result of the publicity surrounding Mr. Jones' possible release in 2002, two more victims, now adults, come forward and lay new charges in 2002. These offences also took place in the 1970's but these victims did not come forward until 2002. Because Mr. Jones

had never been sanctioned for these offences they were not on his record when he was convicted in 1998. Offences for which the offender has never been sanctioned that come to light once the offender is in the judicial process are considered "pseudo-recidivism" and are counted as part of the "Index Cluster". Historical charges of this nature are not counted as "priors".

The basic concept is that the offender has to be sanctioned for previous mis-behaviours and then "chose" to ignore that sanction and re-offend anyway. If he chooses to re-offend after a sanction then he creates a new offence and this offence is considered part of the record, usually a new Index offence. If historical offences come to light, for which the offender has never been sanctioned, once the offender is in the system for another sexual offence, these offences "come forward' and join the Index Offence to form an "Index Cluster".

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

For Example, Post-Index Sexual Offences: Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered a separate crime. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

For Example, Post-Index Violent Offences: Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, as an "external risk factor", outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Prior Offence(s)

A prior offence is any sexual or non-sexual crime, institutional rule violation, probation, parole or conditional release violation(s) and/or arrest charge(s) or, conviction(s), that was legally dealt with PRIOR to the Index offence. This includes both juvenile and adult offences. In general, to count as a prior, the sanction imposed for the prior offense must have occurred before the Index offense was committed. However, if the offender was aware that they were under some form of legal restraint and then goes out and re-offends in spite of this restriction, the new offence(s) would create a new Index offence. An example of this could be where an offender is charged with "Sexual Communication with a Person Under the Age of 14 Years" and is then released on his own recognizance with a promise to appear or where they are charged and released on bail. In both of these cases if the offender then committed an "Invitation to Sexual Touching" after being charged and released the "Invitation to Sexual Touching" would become the new Index offence and the "Sexual Communication with a Person Under the Age of 14 Years" would automatically become a "Prior" sexual offence.

In order to count violations of conditional release as "Priors" they must be "real crimes", something that someone not already engaged in the criminal justice system could be charged with. Technical violations such as Being in the Presence of Minors or Drinking Prohibitions do not count.

Scoring the 10 Items

Item # 1 - Young

The Basic Principle: Research (Hanson, 2001) shows that sexual recidivism is more likely in an offender's early adult years than in an offender's later adult years. See Figure 1, next page.

Information Required to Score this Item: To complete this item the evaluator has to confirm the offender's birth date or have other knowledge of the offender's age.

The Basic Rule: If the offender is between his 18th and 25th birthday at exposure to risk you score the offender a "1" on this item. If the offender is past his 25th birthday at exposure to risk you score the offender a "0" on this item.

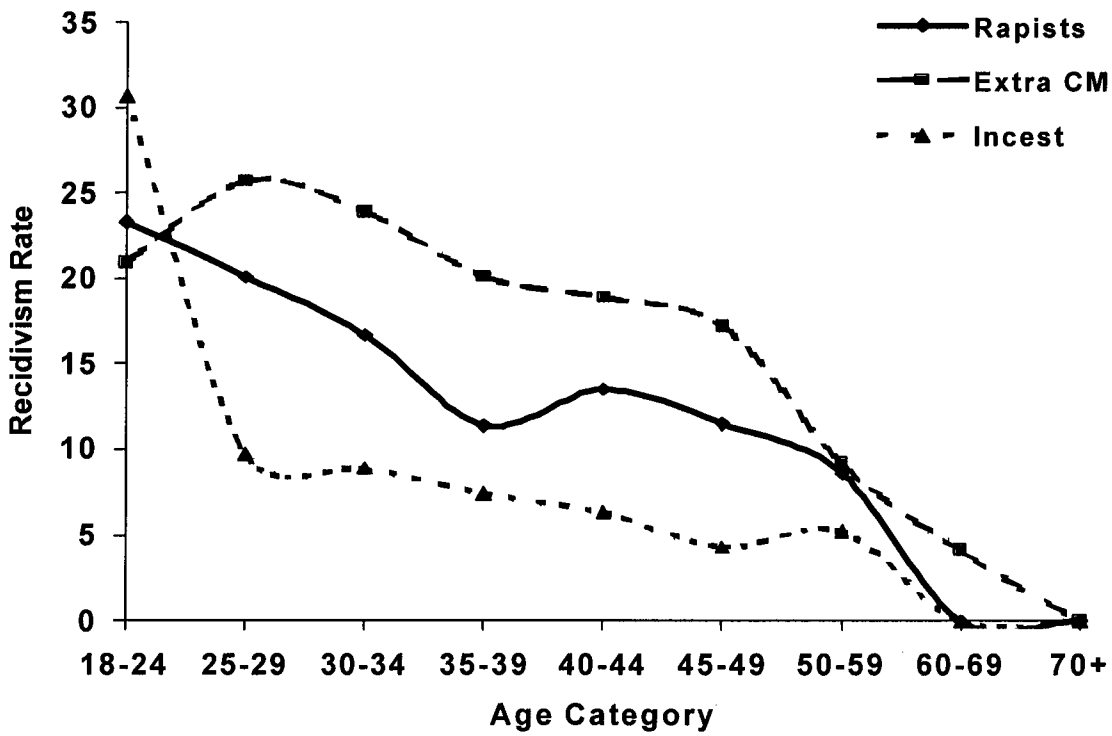
STATIC-99 is not intended for those who are less than 18 years old at the time of exposure to risk.

Under certain conditions, such as anticipated release from custody, the evaluator may be interested in an estimate of the offender's risk at some specific point in the future. This may occur if the offender is presently incarcerated (January) and you are interested in his risk when he is eligible for release in September. However, you know that the offender's 25th birthday will occur in May. If you were assessing the offender's estimated risk of re-offence for his possible release in September – because at time of exposure to risk he is past his 25th birthday - you would not give the risk point for being less-than-25 even though he is only 24 today. You calculate risk based upon age at exposure to risk.

Sometimes the point at which an offender will be exposed to risk may be uncertain, for example, if he is eligible for parole but may not get it. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change according to when he is released.

Figure 1

Age Distribution of Sexual Recidivism in Sexual Offenders



Rapists (n = 1,133)
Extra-familial Child Molesters [Extra CM] (n = 1,411)
Incest Offenders (n = 1,207)

Hanson, R. K. (2002). Recidivism and age: Follow-up data on 4,673 sexual offenders. Journal of Interpersonal Violence, 17, 1046-1062.

Hanson, R. K. (2001). *Age and sexual recidivism: A comparison of rapists and child molesters.* User Report 2001-01. Ottawa: Department of the Solicitor General of Canada. Department of the Solicitor General of Canada website, www.sgc.gc.ca

Item # 2 – Ever Lived with an Intimate Partner – 2 Years

The Basic Principle: Research suggests that having a prolonged intimate connection to someone may be a protective factor against sexual re-offending. See Hanson and Bussière (1998), Table 1 – Items "Single (never married) and Married (currently)". On the whole, we know that the relative risk to sexually re-offend is lower in men who have been able to form intimate partnerships.

Information Required to score this Item: To complete this item it is highly desirable that the evaluator confirm the offender's relationship history through collateral sources or official records.

The Basic Rule: If the offender has never had an intimate adult relationship of two years duration you score the offender a "1" on this item. If the offender has had an intimate adult relationship of two years duration you score the offender a "0" on this item.

The intent of this item is to reflect whether the offender has the personality/psychological resources, as an adult, to establish a relatively stable "marriage-like" relationship with another person. It does not matter whether the intimate relationship was/is homosexual or heterosexual.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is this one (Ever Lived With – Item #2). If no information is available this item should be scored a "0" (zero) – as if the offender has lived with an intimate partner for two years.

- To complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. There may be certain cases (immigrants, refugees from third world countries) where it is not possible to access collaterals or official records. Where the evaluator, based upon the balance of probabilities, is convinced this person has lived with an intimate partner for two years the evaluator may score this item a "0". It is greatly preferred that you confirm the existence of this relationship through collateral contacts or official records. This should certainly be done if the assessment is being carried out in an adversarial context where the offender would have a real motive to pretend to a non-existent relationship.

- In cases where confirmation of relationship history is not possible or feasible the evaluator may chose to score this item both ways and report the difference in risk estimate in their final report.

If a person has been incarcerated most of their life or is still quite young and has not had the opportunity to establish an intimate relationship of two years duration, they are still scored as never having lived with an intimate partner for two years. They score a "1". There are two reasons for this. The first being, this was the way this item was scored in the original samples and to change this definition now would distance the resulting recidivism estimates from those validated on the STATIC-99. Secondly, having been part of, or experienced, a sustained relationship may well be a protective factor for sexual offending. As a result, the reason why this protective factor is absent is immaterial to the issue of risk itself.

The offender is given a point for this item if he has never lived with an adult lover (male or female) for at least two years. An adult is an individual who is over the age of consent to marriage. The period of co-habitation must be continuous with the same person.

Generally, relationships with adult victims do not count. However, if the offender and the victim had two years of intimate relationship before the sexual offences occurred then this relationship would count, and the offender would score a "0" on this item. However, if the sexual abuse started before the offender and the victim had been living together in an intimate relationship for two years then the relationship would not count regardless of it's length.

Cases where the offender has lived over two years with a child victim in a "lover" relationship do not count as living with an intimate partner and the offender would be scored a "1" on this item. Illegal relationships (Incestuous relationship with his Mother) and live-in relationships with "once child" victims do not count as "living together" for the purposes of this item and once again the offender would score a "1" on this item. A "once child" victim is the situation where the offender abused a child but that victim is either still living, as an adult, in an intimate relationship with the offender or who has lived, as an adult, in an intimate relationship with the offender.

Exclusions

- Legal marriages involving less than two years of co-habitation do not count
- Male lovers in prison would not count
- Prison marriages (of any duration) where the offender is incarcerated during the term of the relationship do not count
- Illegal relationships, such as when the offender has had an incestuous relationship with his mother do not count
- Intimate relationships with non-human species do not count
- Relationships with victims do not count (see above for exception)
- Priests and others who for whatever reason have chosen, as a lifestyle, not to marry/co-habitate are still scored as having never lived with an intimate partner

Extended Absences

In some jurisdictions it is common for an offender to be away from the marital/family home for extended periods. The offender is generally working on oilrigs, fishing boats, bush camps, military assignment, or other venues of this nature. While the risk assessment instrument requires the intimate co-habitation to be continuous there is room for discretion. If the offender has an identifiable "home" that he/she shares with a lover and the intimate relationship is longer than two years, the evaluator should look at the nature and consistency of the relationship. The evaluator should attempt to determine, in spite of these prolonged absences, whether this relationship looks like an honest attempt at a long-term committed relationship and not just a relationship of convenience.

If this relationship looks like an honest attempt at a long-term committed relationship then the evaluator would score the offender a "0" on this item as this would be seen as an intimate relationship of greater than two years duration. If the evaluator thinks that the relationship is a relationship of convenience, the offender would score a "1". If the living together relationship is of long duration (three plus years) then the periods of absence can be fairly substantial (four months in a logging camp/oil rig, or six months or more on military assignment).

Item # 3 – Index Non-sexual Violence (NSV) – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item "Prior Violent Offences". The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense.

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record shows a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on the same sentencing occasion as the Index sex offence. A separate Non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim. All non-sexual violence convictions are included, providing they were dealt with on the same sentencing occasion as the Index sex offence(s).

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault causing bodily harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item
- Kidnapping
- Murder

- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

"Resisting Arrest" does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with "Assault a Peace/Police Officer" which would count as non-sexual violence.

Convictions that are coded as only "sexual"

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for "Sexual Battery" (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences

would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" sexual offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that would generally attract a sexual charge if the offender were not already under sanction and at the same time this same offender committed a violent act sufficient that it would generally attract a

separate criminal charge for a violent offence, this offender can be scored for Index Non-sexual Violence when the accompanying sexual behaviour stands as the Index offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that both a sexual offence charge and a violent offence charge would be laid by police.

Item # 4 – Prior Non-sexual Violence – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item "Prior Violent Offences". The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for prior non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense. Sub-analyses of additional data sets confirm the relation of prior non-sexual violence and sexual recidivism (Hanson & Thornton, 2002).

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record shows a separate conviction for a non-sexual violent offence prior to the Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence prior to their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on a sentencing occasion that pre-dates the Index sex offence sentencing occasion. A separate non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim, but the offender must have been convicted for this non-sexual violent offence before the sentencing date for the Index offence. All non-sexual violence convictions are included, providing they were dealt with on a sentencing occasion prior to the Index sex offence.

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault Causing Bodily Harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item

- Kidnapping
- Murder
- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

"Resisting Arrest" does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with "Assault a Peace/Police Officer" which would count as non-sexual violence.

Convictions that are coded as only "sexual"

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for "Sexual Battery" (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence has been revoked (returned to prison from conditional release in the community without trial) for a Non-sexual Violent offence that happened prior to the Index sexual offence (or Index Cluster) this revocation can stand as a conviction for Non-sexual Violence if that non-sexually violent act were sufficient that it would generally attract a separate criminal charge for a violent offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a violent offence charge would be laid by police.

Item # 5 – Prior Sex Offences

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the "the best predictor of future behaviour, is past behaviour". Andrews & Bonta (2003) state that having a criminal history is one of the "Big Four" predictors of future criminal behaviour. More recently, and specific to sexual offenders, a meta-analytic review of the literature indicates that having prior sex offences is a predictive factor for sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item "Prior Sex Offences".

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: This is the only item in the STATIC-99 that is not scored on a simple "0" or "1" dichotomy. From the offender's official criminal record, charges and convictions are summed separately. Charges that are not proceeded with or which do not result in a conviction are counted for this item. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Charges and convictions are summed separately and these totals are then transferred to the chart below.

Note: For this item, arrests for a sexual offence are counted as "charges".

Prior Sexual Offences		
Charges	**Convictions**	**Final Score**
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Whichever column, charges or convictions, gives the offender the "higher" final score is the column that determines the final score. Examples are given later in this section.

This item is based on officially recorded institutional rules violations, probation, parole and conditional release violations, charges, and convictions. Only institutional rules violations, probation, parole, and conditional release violations, charges, and convictions of a sexual nature that occur **PRIOR** to the Index offence are included.

Do not count the Index Sexual Offence

The Index sexual offence charge(s) and conviction(s) are not counted, even when there are multiple offences and/or victims involved, and the offences occurred over a long period of time.

Count all sexual offences prior to the Index Offence

All pre-Index sexual charges and convictions are coded, even when they involve the same victim, or multiple counts of the same offence. For example, three charges for sexual assault involving the same victim would count as three separate charges. Remember, "counts count". If an offender is charged with six counts of Invitation to Sexual Touching and is convicted of two counts you would score a "6" under

charges and a "2" under convictions. Convictions do not take priority over charges. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Generally when an offender is arrested, they are initially charged with one or more criminal charges. However, these charges may change as the offender progresses through the criminal justice system. Occasionally, charges are dropped for a variety of legal reasons, or "pled down" to obtain a final plea bargain. As a basic rule, when calculating charges use the most recent charging document as your source of official charges.

In some cases a number of charges are laid by the police and as the court date approaches these charges are "pled-down" to fewer charges. When calculating charges and convictions you count the number of charges that go to court. In other cases an offender may be charged with a serious sexual offence (Aggravated Sexual Assault) and in the course of plea bargaining agrees to plead to two (or more) lesser charges (Assault). Once again, you count the charges that go to court and in a case like this the offender would score as having more charges than were originally laid by the police.

When scoring this item, counting charges and convictions, it is important to use an official criminal record. One incident can result in several charges or convictions. For example, an offender perpetrates a rape where he penetrates the victim once digitally and once with his penis while holding her in a room against her will. This may result in two convictions for Sexual Battery (Sexual Assault or equivalent) and one conviction of False Imprisonment (Forcible Confinement or equivalent). So long as it is known that the False Imprisonment was part of the sexual offence, the offender would be scored as having three (3) sexual charges, three (3) sexual convictions and an additional risk point for a conviction of Non-sexual Violence [the False Imprisonment] (Either "Index" {Item #3} or "Prior" {Item #4} as appropriate).

Probation, Parole and Conditional Release Violations

If an offender violates probation, parole, or conditional release with a sexual misbehaviour, these violations are counted as one charge.

If the offender violates probation or parole on more than one occasion, within a given probation or parole period, each separate occasion of a sexual misbehaviour violation is counted as one charge. For example, a parole violation for indecent exposure in July would count as one charge. If the offender had another parole violation in November for possession of child pornography, it would be coded as a second charge.

Multiple probation, parole and conditional release violations for sexual misbehaviours laid at the same time are coded as one charge. Even though the offender may have violated several conditions of parole during one parole period, it is only counted as one charge, even if there were multiple sex violations.

The following is an example of counting charges and convictions.

Criminal History for John Jack			
Date	**Charges**	**Convictions**	**Sanction**
July 1996	Lewd and Lascivious with Child (X3) Sodomy Oral Copulation Burglary	Lewd and Lascivious with Child (X3) Sodomy (dismissed) Oral Copulation (dismissed) Burglary (dismissed)	3 Years
May 2001	Sexual Assault on a Child		

To determine the number of Prior Sex Offences you first exclude the Index Offence. In the above case, the May 2001 charge of Sexual Assault on a Child is the Index Offence. After excluding the May 2001

charge, you sum all remaining sexual offence charges. In this case you would sum, {Lewd and Lascivious with Child (X3), Sodomy (X1), and Oral Copulation (X1)} for a total of five (5) previous Sex Offence charges. You then sum the number of Prior Sex Offence convictions. In this case, there are three convictions for Lewd and Lascivious with Child. These two sums are then moved to the scoring chart shown below. The offender has five prior charges and three prior convictions for sexual offences. Looking at the chart below, the evaluator reads across the chart that indicates a final score for this item of two (2).

Prior Sexual Offences		
Charges	**Convictions**	**Final Score**
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Charges and Convictions are counted separately – the column that gives the higher final score is the column that scores the item. It is possible to have six (6+) or more charges for a sexual offence and no convictions. Were this to happen, the offender's final score would be a three (3) for this item.

Acquittals

Acquittals count as charges and can be used as the Index Offence. The reason that acquittals are scored this way is based upon a research study completed in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Note: Acquittals do not count for Item #6 – Prior Sentencing Dates.

Adjudication Withheld

In some jurisdictions it is possible to attract a finding of "Adjudication Withheld", in which case the offender receives a probation-like period of supervision. This is counted as a conviction because a sentence was given.

Appeals

If an offender is convicted and the conviction is later overturned on appeal, code as one charge.

Arrests Count

In some instances, the offender has been arrested for a sexual offence, questioning takes place but no formal charges are filed. If the offender is arrested for a sexual offence and no formal charges are filed, a "1" is coded under charges, and a "0" is coded under convictions. If the offender is arrested and one or more formal charges are filed, the total number of charges is coded, even when no conviction ensues.

Coding "Crime Sprees"

Occasionally, an evaluator may have to score the STATIC-99 on an offender who has been caught at the end of a long line of offences. For example, over a 20-day period an offender breaks into 5 homes, each of which is the home of an elderly female living alone. One he rapes, one he attempts to rape but she gets away, and three more get away, one with a physical struggle (he grabs her wrists, tells her to shut up). The offender is subsequently charged with Sexual Assault, Attempted Sexual Assault, B & E with Intent (X2), and an Assault. The question is, do all the charges count as sexual offences, or just the two charges

that are clearly sexual? Or, does the evaluator score the two sex charges as sex charges and the assault charges as Non-sexual Violence?

In cases such as this, code all 5 offences as sex offences - based upon the following thinking:

1) From the evidence presented this appears to be a "focused" crime spree – We assume the evaluator has little doubt what would have happened had the women not escaped or fought back.
2) Our opinion of "focus" is reinforced by the exclusive nature of the victim group, "elderly females". This offender appears to want something specific, and, the very short time span - 20 days – leads us to believe that the offender was feeling some sexual or psychological pressure to offend.
3) An attempted contact sex offence is scored as a contact sex offence for the purposes of the STATIC-99. Charges such as Attempted Sexual Assault (Rape) and Invitation to Sexual Touching are coded as contact sex offences due to their intention.
4) We recommend that if the evaluator "based on the balance of probabilities" (not "beyond a reasonable doubt") - is convinced that sex offences were about to occur that these actions can be counted as sex offences.
5) Please also read sub-section "Similar Fact Crimes" in the "Definitions" section.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Consent Decree

Where applicable, "Consent Decree" counts as a conviction and a sentencing date.

Court Supervision

In some states it is possible to receive a sentence of Court Supervision, where the court provides some degree of minimal supervision for a period (one year), this is similar to probation and counts as a conviction.

Detection by Child Protection Officials

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction.

Extension of Sentence by a Parole Board (or similar)

In some jurisdictions Parole Boards (or similar) have the power to extend the maximum period of incarceration beyond that determined by the court. If an offender is assigned extra time, added to their sentence, by a parole board for a sexual criminal offence this counts as an additional sexual charge and conviction. The new additional period of incarceration must extend the total sentence and must be for sexual misbehaviour. This would not count as a sexual conviction if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is not presently possible in Canada.

Giving Alcohol to a Minor

The charge of Giving Alcohol to a Minor (or it's equivalent, drugs, alcohol, noxious substance, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit a sexual offence. If there were evidence the alcohol (or substance) was given to the victim just prior to the sexual assault, this would count as a sexual offence. If

there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Institutional Disciplinary Reports

Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female guard and masturbates in front of her, where she is the obvious and intended target of the act would count as a "charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell and is discovered by a female employee and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge' and could not stand as an Index offence. If you have insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and you do not score the occurrence.

> An example of a behaviour that might get an inmate a disciplinary charge, but would not be used as a charge for scoring the STATIC-99, includes the inmate who writes an unwanted love letter to a female staff. The letter does not contain sexual content to the extent that the offender could be charged. Incidents of this nature do not count as a charge.
>
> Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Juvenile Offences

Both adult and juvenile charges and convictions count when scoring this item. In cases where a juvenile was not charged with a sexual offence but was moved to a secure or more secure residential placement as the result of a sexual incident, this counts as a charge and a conviction for the purposes of scoring Prior Sex Offences.

Juvenile Petitions

In some states, it is impossible for a juvenile offender to get a "conviction". Instead, the law uses the wording that a juvenile "petition is sustained" (or any such wording). For the purposes of scoring the STATIC-99 this is equivalent to an adult conviction because there are generally liberty-restricting consequences. Any of these local legal wordings can be construed as convictions if they would be convictions were that term available.

Military

For members of the military, a discharge from service as a result of sexual crimes would count as a charge and a conviction.

If an "undesirable discharge" were given to a member of the military as the direct result of a sexual offence, this would count as a sexual conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have, and the "undesirable discharge" is the equivalent to a bad job reference, the undesirable discharge would not count as a sexual offence or as a Sentencing Date (Item #6).

Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence, rather than a purely military offence {failure of duty}, these offences count, both charges and convictions, when scoring the STATIC-99. If the charges are sexual they count as sexual offences and if violent, they count as violent offences. These offences also count as sentencing dates (Item #6). Pure Military Offences {Conduct Unbecoming, Insubordination, Not following a lawful order, Dereliction of Duty, etc.} do not count when scoring the STATIC-99.

Noxious Substance

The charge of Giving A Noxious Substance (or it's equivalent, drugs, alcohol, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit the sexual offence. If there were evidence the substance was given to the victim just prior to the sexual assault, this would count as a sexual offence. If there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Not Guilty

Being found "Not Guilty" can count as charges and can be used as the Index Offence. Note: This is not the case for Item #6, "Prior Sentencing Dates", where being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Official Diversions

Official diversions are scored as equivalent to a charge and a conviction (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Peace Bonds, Judicial Restraint Orders and "810" Orders

In some instances a Peace Bond/Judicial Restraint Order/810 Orders are placed on an offender when sexual charges are dropped or dismissed or when an offender leaves jail or prison. Orders of this nature, primarily preventative, **are not counted** as charges or convictions for the purposes of scoring the STATIC-99.

"PINS" Petition (Person in need of supervision)

There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to sexual aggression. This would count as a charge and a conviction for a sexual offence.

Priests and Ministers

For members of a religious group (Clergy and similar professions) some disciplinary or administrative actions within their own organization can count as a charge and a conviction. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of an official sanction would be removal from a parish for a priest or minister under the following circumstances.

If the receiving institution knows they are being sent a sex offender and considers it part of their mandate to address the offender's problem or attempt to help, this would function as equivalent to being sent to a

correctional institution and would count as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Allegations that result in a "within-organization" disciplinary move or a move designed to explicitly address the offenders problems would be counted as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Being transferred to a new parish or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a priest/minister is transferred between parishes due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Prison Misconducts for Sexual Misbehaviours Count as One Charge per Sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

> **For Example, Post-Index Sexual Offences:** Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered separate crimes. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.
>
> **For Example, Post-Index Violent Offences:** Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Probation before Judgement

Where applicable, "Probation before judgment" counts as a charge, conviction, and a sentencing date.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence, this revocation of conditional release would

count as both a Prior Sex Offence "charge" and a Prior Sex Offence "conviction". Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police. Revocations for violations of conditional release conditions, so called "technicals" (drinking violations, failure to report, being in the presence of minors, being in the possession of legally obtained pornography) are insufficient to stand as Prior Sentencing Dates.

RRASOR and STATIC-99 – Differences in Scoring

Historical offences are scored differently between the RRASOR and the STATIC-99. On the RRASOR, if the offender is charged or convicted of historical offences committed prior to the Index Offence, these are counted as Prior Sexual Offences (User Report, The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism 1997-04, Pg. 27, end of paragraph titled Prior Sexual Offences). This is not the case for the STATIC-99. For the STATIC-99, if the offender is charged or convicted of historical offences after the offender is charged or convicted of a more recent offence, these offences are to be considered part of the Index Offence (pseudo-recidivism) – forming an "Index Cluster".

Suspended Sentences

Suspended sentences should be treated as equivalent to a charge and a conviction.

Teachers

Being transferred to a new school or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a teacher is transferred between schools due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Item # 6 Prior Sentencing Dates

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the "the best predictor of future behaviour, is past behaviour". Andrews & Bonta (2003) state that having a criminal history is one of the "Big Four" predictors of future criminal behaviour. Prior Sentencing Dates is a convenient method of coding the length of the criminal record.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99 in the Introduction section.

The Basic Rule: If the offender's criminal record indicates four or more separate sentencing dates prior to the Index Offence, the offender is scored a "1" on this item. If the offender's criminal record indicates three or fewer separate sentencing dates prior to the Index Offence, the offender scores a "0" on this item.

Count the number of distinct occasions on which the offender was sentenced for criminal offences. The number of charges/convictions does not matter, only the number of sentencing dates. Court appearances that resulted in complete acquittal are not counted, nor are convictions overturned over on appeal. The Index sentencing date is not included when counting up the sentencing dates.

If the offender is on some form of conditional release (parole/probation/bail etc.) "technical" violations do not count as new sentencing dates. For example, if an offender had a condition prohibiting drinking alcohol, a breach for this would not be counted as a new sentencing date. To be counted as a new sentencing date, the breach of conditions would have to be a new offence for which the offender could be charged if he were not already under criminal justice sanction.

Institutional rule violations do not count, even when the offence was for behaviour that could have resulted in a legal sanction if the offender had not already been incarcerated.

Count:

- Juvenile offences count (if you know about them – please see section on the use of self-report in the Introduction)
- Where applicable "Probation before judgment" counts as a conviction and a sentencing date
- Where applicable "Consent Decree" counts as a conviction and a sentencing date
- Suspended Sentences count as a sentencing date

Do Not Count:

- Stayed offences do not count as sentencing dates
- Institutional Disciplinary Actions/Reports do not count as sentencing dates

The offences must be of a minimum level of seriousness. The offences need not result in a serious sanction (the offender could have been fined), but the offence must be serious enough to permit a sentence of community supervision or custody/incarceration (as a juvenile or adult). Driving offences generally do not count, unless they are associated with serious penalties, such as driving while intoxicated or reckless driving causing death or injury.

Generally, most offences that would be recorded on an official criminal history would count – but the statute, as written in the jurisdiction where the offence took place, must allow for the imposition of a custodial sentence or a period of community supervision (adult or juvenile). Only truly trivial offences

are excluded; those where it is impossible to get a period of incarceration or community supervision. Offences that can **only** result in fines do not count.

Sentences for historical offences received while the offender is incarcerated for a more recent offence (pseudo-recidivism), are not counted. For two offences to be considered separate offences, the second offence must have been committed after the offender was sanctioned for the first offence.

Offence convictions occurring after the Index offence cannot be counted on this item.

Conditional Discharges
Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Diversionary Adjudication
If a person commits a criminal offence as a juvenile or as an adult and receives a diversionary adjudication, this counts as a sentencing date (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Extension of Sentence by a Parole Board (or similar)
If an offender is assigned extra time added to their sentence by a parole board for a criminal offence this counts as an additional sentencing date if the new time extended the total sentence. This would not count as a sentencing date if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is presently not possible in Canada.

Failure to Appear
If an offender fails to appear for sentencing, this is not counted as a sentencing date. Only the final sentencing for the charge for which the offender missed the sentencing date is counted as a sentencing date.

Failure to Register as a Sexual Offender
If an offender receives a formal legal sanction, having been convicted of Failing to Register as a Sexual Offender, this conviction would count as a sentencing date. However, it should be noted that charges and convictions for Failure to Register as a Sexual Offender are not counted as sexual offences.

Juvenile Extension of Detention
In some states it is possible for a juvenile to be sentenced to a Detention/Treatment facility. At the end of that term of incarceration it is possible to extend the period of detention. Even though a Judge and a prosecutor are present at the proceedings, because there has been no new crime or charges/convictions, the extension of the original order is not considered a sentencing date.

Juvenile Offences
Both adult and juvenile convictions count in this item. In the case where a juvenile is not charged with a sexual or violent offence but is moved to a secure or more secure residential placement as the result of a sexual or violent incident, this counts as a sentencing date for the purposes of scoring Prior Sentencing Dates.

Military
If an "undesirable discharge" is given to a member of the military as the direct result of criminal behaviour (something that would have attracted a criminal charge were the offender not in the military),

this would count as a sentencing date. However, if the member left the military when he normally would have and the "undesirable discharge" is the equivalent to a bad job reference then the criminal behaviour would not count as a Sentencing Date.

Military Courts Martial
If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence rather than a purely military offence {failure of duty} this counts as a sentencing date. Pure Military Offences {Insubordination, Not Following a Lawful Order, Dereliction of Duty, Conduct Unbecoming, etc.} do not count as Prior Sentencing Dates.

Not Guilty
Being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom
In the United Kingdom, an official caution should be treated as equivalent to a sentencing date.

Post-Index Offences
Post-Index offences are not counted as sentencing occasions for the STATIC-99.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences
If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for criminal behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a criminal offence, this revocation of conditional release would count as a Prior Sentencing Date. Note: the evaluator should be sure that were this offender not already under sanction that a criminal charge would be laid by police and that a conviction would be highly likely. Revocations for violations of conditional release conditions, so called "technicals", (drinking violations, failure to report, being in the presence of minors) are insufficient to stand as Prior Sentencing Dates.

> Note: for this item there have been some changes to the rules from previous versions. Some rules were originally written to apply to a specific jurisdiction. Over time, and in consultation with other jurisdictions the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item.

Suspended Sentences
Suspended sentences count as a sentencing date.

Item # 7 - Any Convictions for Non-contact Sex Offences

The Basic Principle: Offenders with paraphilic interests are at increased risk for sexual recidivism. For example, most individuals have little interest in exposing their genitals to strangers or stealing underwear. Offenders who engage in these types of behaviours are more likely to have problems conforming their sexual behaviour to conventional standards than offenders who have no interest in paraphilic activities.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record indicates a separate conviction for a non-contact sexual offence, the offender is scored a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-contact sexual offence, the offender is scored a "0" on this item.

This category requires a conviction for a non-contact sexual offence such as:

- Exhibitionism
- Possessing obscene material
- Obscene telephone calls
- Voyeurism
- Exposure
- Elicit sexual use of the Internet
- Sexual Harassment (Unwanted sexual talk)
- In certain jurisdictions "Criminal Trespass" or "Trespass by Night" may be used as a charge for voyeurism – these would also count

The criteria for non-contact sexual offences are strict: the offender must have been convicted, and the offence must indicate non-contact sexual misbehaviour. The "Index" offence(s) may include a conviction for a non-contact sexual offence and this offence can count in this category. The most obvious example of this is where an offender is charged and convicted of Exposure for "mooning" a woman from a car window. This would result in a coding of "1" for this item.

There are some cases, however, where the legal charge does not reflect the sexual nature of the offence. Take, for example, the same situation where an offender is charged with Exposure for "mooning" a woman from a car window, but the case is pled-down to, and the offender is finally convicted of Disorderly Conduct. In cases like this, while this item requires that there be a conviction, the coding of a non-contact sexual offence can be based on the behaviour that occurred in cases where the name of the offence is ambiguous.

Charges and arrests do not count, nor do self-reported offences. Sexual offences in which the offender intended to make contact with the victim (but did not succeed) would be considered attempted contact offences and are coded as contact offences (e.g., invitation to sexual touching, attempted rape). Some offences may include elements of both contact and non-contact offences, for example, sexual talk on Internet - arranging to meet the child victim. In this case, the conviction would count as a non-contact sex offence.

Attempted Contact Offences

Invitation to Sexual Touching, Attempted Rape and other such "attempted" contact offences are counted as "Contact" offences due to their intention.

Internet Crimes

Internet crimes were not recorded in the original samples for the STATIC-99 because the Internet had not advanced to the point where it was commonly available. As a result, determining how to score Internet crimes on the STATIC-99 requires interpretation beyond the available data. Internet crimes could be considered in two different ways. First, they could be considered a form of attempted sexual contact, where the wrongfulness of the behaviour is determined by what is about to happen. Secondly, they could be considered an inappropriate act in themselves, akin to indecent telephone calls (using an older technology). We believe that luring children over the Internet does not represent a fundamentally new type of crime but is best understood as a modern expression of traditional crimes. We consider communicating with children over the Internet for sexual purposes to be an inappropriate and socially harmful act in itself and, therefore, classify these acts with their historical precursors, such as indecent/obscene telephone calls, in the category of non-contact sexual offences.

Pimping and Prostitution Related Offences

Pimping and other prostitution related offences (soliciting a prostitute, promoting prostitution, soliciting for the purposes of prostitution, living off the avails of prostitution) do not count as non-contact sexual offences. (Note: prostitution was not illegal in England during the study period, though soliciting was).

Plea Bargains

Non-contact sexual offence convictions do not count if the non-contact offence charge arose as the result of a plea bargain. Situations such as this may appear in the criminal record where charges for a contact offence are dropped and the non-contact charges appear simultaneously with a guilty plea. An occurrence of this nature would be considered a contact offence and scored as such.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a Non-contact Sexual Offence that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a Non-contact Sexual Offence, this revocation of conditional release would count as a conviction for a Non-contact Sexual Offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a non-contact sexual offence charge would be laid by police.

Items #8, #9, & # 10 – The Three Victim Questions

The following three items concern victim characteristics: Unrelated Victims, Stranger Victims, and Male Victims. For these three items the scoring is based on all available credible information, including self-report, victim accounts, and collateral contacts. The items concerning victim characteristics, however, only apply to sex offences in which the victims were children or non-consenting adults (Category "A" sex offences). Do not score victim information from non-sexual offences or from sex offences related to prostitution/pandering, possession of child pornography, and public sex with consenting adults (Category "B" sex offences). Do not score victim information on sexual offences against animals (Bestiality and similar charges).

In addition to all of the "everyday" sexual offences (Sexual Assault, Rape, Invitation to Sexual Touching, Buggery) you also score victim information on the following charges:

- Illegal use of a Minor in Nudity-oriented Material/Performance
- Importuning (Soliciting for Immoral Purposes)
- Indecent Exposure (When a specific victim has been identified)
- Sexually Harassing Telephone Calls
- Voyeurism (When a specific victim has been identified)

You do not score Victim Information on the following charges:

- Compelling Acceptance of Objectionable Material
- Deception to Obtain Matter Harmful to Juveniles
- Disseminating/Displaying Matter Harmful to Juveniles
- Offences against animals
- Pandering Obscenity
- Pandering Obscenity involving a Minor
- Pandering Sexually-Oriented Material involving a Minor
- Prostitution related offences

"Accidental Victims"

Occasionally there are "Accidental Victims" to a sexual offence. A recent example of this occurred when an offender was raping a woman in her living room. The noise awoke the victim's four-year-old son. The son wandered into the living room and observed the rape in progress. The victim instructed her son to return to his bedroom and he complied at once. The perpetrator was subsequently charged and convicted of "Lewd and Lascivious Act on a Minor" in addition to the rape. In court the offender pleaded to both charges. In this case, the four-year-old boy would not count as a victim as there was no intention to commit a sexual offence against him. He would not count in any of the three victim items regardless of the conviction in court.

A common example of an accidental victim occurs when a person in the course of his/her daily life or profession happens across a sexual offence. Examples include police officers, park wardens, janitors, and floor walkers who observe a sexual offence in the course of their duties. If a male officer were to observe an exhibitionist exposing himself to a female, the offender would not be given the point for "Male Victim" as there was no intention to expose before the male officer. The evaluator would not give the offender a point for "male victim" unless the offender specifically chose a male officer to expose himself to. In the same vein, a floor walker or janitor who observes an offender masturbating while looking at a customer in a store would not be counted as a "stranger victim" or an "unrelated victim". In short there has to be some intention to offend against that person for that person to be a victim. Merely

stumbling upon a crime scene does not make the observer a victim regardless of how repugnant the observer finds the behaviour.

Acquitted or Found Not Guilty

The criteria for coding victim information is "all credible information". In this type of situation it is important to distinguish between the court's stringent standard of determining guilt (Beyond a reasonable doubt) and "What is most likely to be true" – a balance of probabilities. When the court sticks to the "Beyond a reasonable doubt" criteria they are not concluding that someone did not do the crime, just that the evidence was insufficient to be certain that they did it. The risk assessment perspective is guided by: "On the balance of probabilities, what is most likely to be true?" If the assessor, "On the balance of probabilities" feels that the offence more likely than not took place the victims may be counted.

For the assessment, therefore, it may be necessary to review the cases in which the offender was acquitted or found "Not Guilty" and make an independent determination of whether it is more likely than not that there were actual victims. If, in the evaluators opinion, it were more likely that there was no sexual offence the evaluator would not count the victim information. In the resulting report the evaluator would generally include a score with the contentious victim information included and a score without this victim information included, showing how it effects the risk assessment both ways.

This decision to score acquittals and not guilty in this manner is buttressed by a research study in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Child Pornography

Victims portrayed in child pornography are not scored as victims for the purposes of the STATIC-99. They do not count as non-familial, stranger, nor male victims. Only real, live, human victims count. If your offender is a child pornography maker and a real live child was used to create pornography by your offender or your offender was present when pornography was created with a real live child, this child is a victim and should be scored as such on the STATIC-99 victim questions. (Note: manipulating pre-existing images to make child pornography [either digitally of photographically] is not sufficient – a real child must be present) Making child pornography with a real child victim counts as a "Category A" offence and, hence, with even a single charge of this nature, the STATIC-99 is appropriate to use.

The evaluator may, of course, in another section of the report make reference to the apparent preferences demonstrated in the pornography belonging to the offender.

Conviction, But No Victim

For the purposes of the STATIC-99, consensual sexual behaviour that is prohibited by statute does not create victims. This is the thinking behind Category "B" offences. Examples of this are prostitution offences and public toileting (Please see "Category "A" and Category "B" offences" in the Introduction section for a further discussion of this issue). Under some circumstances it is possible that in spite of a conviction for a sexual offence the evaluator may conclude that there are no real victims. An example of this could be where a boy (age 16 years) is convicted of Statutory Rape of his 15-year-old boyfriend (Assume age of consent in this jurisdiction to be 16 years of age). The younger boy tells the police that the sexual contact was consensual and the police report informs the evaluator that outraged parents were the complainants in the case. In a scenario like this, the younger boy would not be scored as a victim, the conviction notwithstanding.

Credible Information

Credible sources of information would include, but are not limited to, police reports, child welfare reports, victim impact statements or discussions with victims, collateral contacts and offender self-report.

If the information is credible (Children's Protective Association, victim impact statements, police reports) you may use this information to code the three victim questions, even if the offender has never been arrested or charged for those offences.

Exhibitionism

In cases of exhibitionism, the three victim items may be scored if there was a targeted victim, and the evaluator is confident that they know before whom the offender was trying to exhibit. If the offender exhibits before a mixed group, males and females, do not score "Male Victim" unless there is reason to believe that the offender was exhibiting specifically for the males in the group. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

> Example: If a man exposed to a school bus of children he had never seen before (both genders), the evaluator would score this offender one risk point for Unrelated Victim, one risk point for Stranger Victim, but would not score a risk point for Male Victim unless there was evidence the offender was specifically targeting the boys on the bus.

In cases where there is no sexual context (i.e., the psychotic street person who takes a shower in the town fountain) there are no victims regardless of how offended they might be or how many people witnessed the event.

Internet Victims and Intention

If an offender provides pornographic material over the Internet, the intent of the communication is important. In reality a policeman may be on the other end of the net in a "sting" operation. If the offender thought he was providing pornography to a child, even though he sent it to a police officer, the victim information is counted as if a child received it. In addition, when offenders attempt, over the Internet, to contact face-to-face a "boy or girl" they have contacted over the Internet the victim information counts as the intended victim, even if they only "met" a policeman.

Intention is important. In a case were a child was pretending to be an adult and an adult "shared" pornography with that person in the honest belief that they were (legally) sharing it with another adult there would not be a victim.

Polygraph Information

Victim information derived solely from polygraph examinations is not used to score the STATIC-99 unless it can be corroborated by outside sources or the offender provides sufficient information to support a new criminal investigation.

Prowl by Night - Voyeurism

For these types of offences the evaluator should score specific identifiable victims. However, assume only female victims unless you have evidence to suggest that the offender was targeting males.

Sexual Offences Against Animals

While the sexual assault of animals counts as a sexual offence, animals do not count as victims. This category is restricted to human victims. It makes no difference whether the animal was a member of the family or whether it was a male animal or a stranger animal.

Sex with Dead Bodies

If an offender has sexual contact with dead bodies these people do count as victims. The evaluator should score the three victim questions based upon the degree of pre-death relationship between the perpetrator and the victim.

Stayed Charges

Victim information obtained from stayed charges should be counted.

Victims Not at Home

If an offender breaks into houses, (regardless of whether or not the victims are there to witness the offence) to commit a sexual offence, such as masturbating on or stealing their undergarments or does some other sexual offence – victims of this nature are considered victims for the purposes of the STATIC-99. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

Item # 8 - Any Unrelated Victims?

The Basic Principle: Research indicates that offenders who offend only against family members recidivate at a lower rate compared to those who have victims outside of their immediate family (Harris & Hanson, Unpublished manuscript). Having victims outside the immediate family is empirically related to a corresponding increase in risk.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in the previous section "Items #8, #9, & #10 -The Three Victim Questions".

The Basic Rule: If the offender has victims of sexual offences outside their immediate family, score the offender a "1" on this item. If the offender's victims of sexual offences are all within the immediate family score the offender a "0" on this item.

A related victim is one where the relationship is sufficiently close that marriage would normally be prohibited, such as parent, brother, sister, uncle, grandparent, stepbrother, and stepsister. Spouses (married and common-law) are also considered related. When considering whether step-relations are related or not, consider the nature and the length of the pre-existing relationship between the offender and the victim before the offending started. Step-relationships lasting less than two years would be considered unrelated (e.g., step-cousins, stepchildren). Adult stepchildren would be considered related if they had lived for two years in a child-parent relationship with the offender.

Time and Jurisdiction Concerns

A difficulty in scoring this item is that the law concerning who you can marry is different across jurisdictions and across time periods within jurisdictions. For example, prior to 1998, in Ontario, there were 17 relations a man could not marry, including such oddities as "nephew's wife" and "wife's grandmother". In 1998 the law changed and there are now only 5 categories of people that you cannot marry in Ontario: grandmother, mother, daughter, sister, and granddaughter (full, half, and adopted). Hence, if a man assaulted his niece in 1997 he would not have an unrelated victim but if he committed the same crime in 1998 he would technically be assaulting an unrelated victim. We doubt very much the change in law would affect the man's choice of victim and his resulting risk of re-offence. As a result the following rules have been adopted.

People who are seen as related for the purposes of scoring the STATIC-99

1. Legally married spouses
2. Any live-in lovers of over two years duration. (Girlfriends/Boyfriends become related once they have lived with the offender as a lover for two years)
3. Anyone too closely related to marry (by jurisdiction of residence of the perpetrator)
4. The following relations whether or not marriage is permitted in the jurisdiction of residence of the perpetrator:
    - Aunt
    - Brother's wife
    - Common-law wife/Ex common-law wife (lived together for 2 years)
    - Daughter
    - Father's wife/step-mother
    - First cousins
    - Granddaughter
    - Grandfather
    - Grandfather's wife

- Grandmother
- Grandson's wife
- Mother
- Niece/Nephew
- Sister
- Son's wife
- Stepdaughter/Stepson (Must have more than two years living together before abuse begins)
- Wife and Ex-wife
- Wife's daughter/step-daughter
- Wife's granddaughter
- Wife's grandmother
- Wife's mother

The relationships can be full, half, adopted, or common-law (two years living in these family relationships). The mirror relationships of the opposite gender would also count as related (e.g., brother, sons, nephews, granddaughter's husband).

People who are seen as <u>unrelated</u>for the purposes of scoring the STATIC-99

- Any step-relations where the relationship lasted less than two years
- Daughter of live-in girlfriend/Son of live-in girlfriend
  (less than two years living together before abuse begins)
- Nephew's wife
- Second cousins
- Wife's aunt

Decisions about borderline cases (e.g., brother's wife) should be guided by a consideration of the psychological relationship existing prior to the sexual assault. If an offender has been living with the victim in a family/paternal/fraternal role for two years prior to the onset of abuse, the victim and the offender would be considered related.

Becoming "Unrelated"

If an offender who was given up for adoption (removed etc.) at birth (Mother and child having no contact since birth or shortly after) and the Mother (Sister, Brother etc.) is a complete stranger that the offender would not recognize (facial recognition) as their family, these biological family members could count as Unrelated Victims. This would only happen if the offender did not know they were offending against a family member.

Item # 9 - Any Stranger Victims?

The Basic Principle: Research shows that having a stranger victim is related to sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item "Victim Stranger (versus acquaintance)".

Information Required to Score this Item: Use all credible information to score this item. "Credible Information" is defined in the section "Items #8, #9, & #10 - The Three Victim Questions".

The Basic Rule: If the offender has victims of sexual offences who were strangers at the time of the offence, score the offender a "1" on this item. If the offender's victims of sexual offences were all known to the offender for at least 24 hours prior to the offence, score the offender a "0" on this item. If the offender has a "stranger" victim, Item #8, "Any Unrelated Victims", is generally scored as well.

A victim is considered a stranger if the victim did not know the offender 24 hours before the offence. Victims contacted over the Internet are not normally considered strangers unless a meeting was planned for a time less than 24 hours after initial communication.

For Stranger victims, the offender can either not know the victim or it can be the victim not knowing the offender. In the first case, where the offender does not know the victim, (the most common case), the offender chooses someone who they are relatively sure will not be able to identify them (or they just do not care) and offends against a stranger. However, there have been examples where the offender "should" have known the victim but just did not recognize them. This occurred in one case where the perpetrator and the victim had gone to school together but the perpetrator did not recognize the victim as someone they knew. In cases like this, the victim would still be a stranger victim as the offender's intention was to attack a stranger.

The criteria for being a stranger are very high. Even a slight degree of knowing is enough for a victim not to be a stranger. If the victim knows the offender at all for more than 24 hours, the victim is not a stranger. For example, if the victim was a convenience store clerk and they recognized the perpetrator as someone who had been in on several occasions to buy cigarettes, the victim would no longer be a stranger victim. If a child victim can say they recognize the offender from around the neighborhood and the perpetrator has said "Hi" to them on occasion, the child is no longer a stranger victim. The evaluator must determine whether the victim "knew" the offender twenty-four hours (24) before the assault took place. The criteria for "know/knew" is quite low but does involve some level of interaction. They need not know each other's names or addresses. However, simply knowing of someone but never having interacted with them would not be enough for the victim to count as "known".

The Reverse Case

In cases of "stalking" or stalking-like behaviours the offender may know a great deal about the victim and their habits. However, if the victim does not know the offender when they attack this still qualifies as a stranger victim.

The "24 hour" rule also works in reverse – there have been cases where a performer assaulted a fan the first time they met. In this case, the victim (the fan) had "known of" the performer for years, but the performer (the perpetrator) had not known the fan for 24 hours. Hence, in cases such as this, the victim would count as a stranger because the perpetrator had not known the victim for 24 hours prior to the offence.

Internet, E-mail, and Telephone

Sometimes offenders attempt to access or lure victims over the Internet. This is a special case and the threshold for not being a stranger victim is quite low. If the offender and the victim have communicated over the Internet (e-mail, or telephone) for more than twenty-four hours (24 hours) before the initial face-

to-face meeting, the victim (child or adult) is not a stranger victim. To be clear, this means that if an offender contacts, for the first time, a victim at 8 p.m. on a Wednesday night, their first face-to-face meeting must start before 8 p.m. on Thursday night. If this meeting starts before 8 p.m., and they remain in direct contact, the sexual assault might not start until midnight – as long as the sexual assault is still within the first face-to-face meeting – this midnight sexual assault would still count as a stranger assault. If they chat back and forth for longer than 24 hours, the victim can no longer be considered a stranger victim for the purposes of scoring the STATIC-99.

It is possible in certain jurisdictions to perpetrate a sexual offence over the Internet, by telephone or e-mail and never be in physical proximity to the victim. If the offender transmits sexually explicit/objectionable materials over the Internet within 24 hours of first contact, this can count as a stranger victim; once again the "24 hour rule" applies. However, if the perpetrator and the victim have been in communication for more than 24 hours prior to the sending of the indecent material or the starting of indecent talk on the telephone then the victim can no longer be considered a stranger.

Becoming a "Stranger" Again

It is possible for someone who the offender had met briefly before to become a stranger again. It is possible for the offender to have met a victim but to have forgotten the victim completely (over a period of years). If the offender believed he was assaulting a stranger, the victim can be counted as a stranger victim. This occurred when an offender returned after many years absence to his small hometown and assaulted a female he thought he did not know, not realizing that they had gone to the same school.

Item # 10 - Any Male Victims?

The Basic Principle: Research shows that offenders who have offended against male children or male adults recidivate at a higher rate compared to those who do not have male victims. Having male victims is correlated with measures of sexual deviance and is seen as an indication of increased sexual deviance; see Hanson and Bussière (1998), Table 1.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in section "Items #8, #9, & #10 - The Three Victim Questions".

The Basic Rule: If the offender has male victims of sexual offences, non-consenting adults or child victims, score the offender a "1" on this item. If the offender's victims of sexual offences are all female, score the offender a "0" on this item.

Included in this category are all sexual offences involving male victims. Possession of child pornography involving boys, however, does not count. Exhibitionism to a mixed group of children (girls and boys) would not count unless there was clear evidence the offender was targeting the boys. Contacting male victims over the Internet does count.

If an offender assaults a transvestite in the mistaken belief the victim is a female (may be wearing female clothing) do not score the transvestite as a male victim. If it is certain the offender knew he was assaulting a male before the assault, score a male victim.

In some cases a sexual offender may beat-up or contain (lock in a car trunk) another male in order to sexually assault the male's date (wife, etc.). If the perpetrator simply assaults the male (non-sexual) in order to access the female you do not count him as a male victim on the STATIC-99. However, if the perpetrator involves the male in the sexual offence, such as tying him up and making him watch the rape (forced voyeuristic activity), the assault upon the male victim would count as a sexual offence and the male victim would count on the STATIC-99.

Scoring the STATIC-99 & Computing the Risk Estimates

Using the STATIC-99 Coding Form (Appendix 5) sum all individual item scores for a total risk score based upon the ten items. This total score can range from "0" to "12".

Scores of 6 and greater are all considered high risk and treated alike.

Once you have computed the total raw score refer to the table titled STATIC-99 Recidivism Percentages by Risk Level (Appendix 6).

Here you will find recidivism risk estimates for both sexual and violent recidivism over 5, 10, and 15-year projections. In the left-most column find the offender's raw STATIC-99 risk score. Remember that scores of 6 and above are read off the "6" line, high risk.

For example, if an offender scored a "4" on the STATIC-99 we would read across the table and find that this estimate is based upon a sample size of 190 offenders which comprised 18% of the original sample. Reading further, an offender with a score of "4" on the STATIC-99 is estimated as having a 26% chance of sexual reconviction in the first 5 years of liberty, a 31% chance of sexual reconviction over 10 years of freedom, and a 36% chance of sexual reconviction over 15 years in the community.

For violent recidivism we would estimate that an offender that scores a "4" on the STATIC-99 would have a 36% chance of reconviction for a violent offence over 5 years, a 44% chance of reconviction for a violent offence over 10 years, and a 52% chance of reconviction for a violent offence over a 15 year period. It is important to remember that sexual recidivism is included in the estimates of violent recidivism. You **do not** add these two estimates together to create an estimate of violent and sexual recidivism. The estimates of violent recidivism include incidents of sexual recidivism.

STATIC-99 risk scores may also be communicated as nominal risk categories using the following guidelines. Raw STATIC-99 scores of "0" and "1" should be reported as "Low Risk", scores of "2" and "3" reported as "Moderate-Low" risk, scores of "4" and "5" reported as "Moderate-High" risk, and scores of "6" and above as "High Risk".

Having determined the estimated risk of sexual and violent recidivism we suggest that you review Appendix seven (7) which is a suggested template for communicating STATIC-99 risk information in a report format.

Appendices

Appendix One

Adjustments in Risk Based on Time Free

In general, the expected sexual offence recidivism rate should be reduced by about half if the offender has five to ten years of offence-free behaviour in the community. The longer the offender has been offence-free, post-Index, the lower the expected recidivism rate. It is not known what the expected rates of sexual re-offence should be if the offender has recidivated post-Index with a non-sexual offence. Presently, no research exists shedding light on this issue. Arguments could be made that risk scores should be increased (further criminal activity), decreased (he has still not committed another sexual offence in the community) or remain the same. We suspect that an offender who remains criminally active will maintain the same risk for sexual recidivism.

Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence. Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences. For these purposes, an offender could, theoretically, commit minor property offences and still remain offence-free.

The recidivism rate estimates reported in Hanson & Thornton (2000) are based on the offender's risk for recidivism at the time they were released into the community after serving time for a sexual offence (Index offence). As offenders successfully live in the community without incurring new offences, their recidivism risk declines. The following table provides reconviction rates for new sexual offences for the three STATIC-99 samples where survival data were available (Millbrook, Pinel, HM Prison), based on offence-free time in the community. "Offence-free" means no new sexual or violent convictions, nor a non-violent conviction that would have resulted in more than minimal jail time (1-2 months).

The precise amount of jail time for non-violent recidivism was not recorded in the data sets, but substantial periods of jail time would invalidate the total time at risk. We do not recommend attempting to adjust the survival data given below by subtracting "time in prison for non-violent offences" from the total time elapsed since release from Index sexual offence.

For example, if offender "A" has been out for five years on parole got 60 days in jail for violating a no-drinking condition of parole the adjusted estimates would most likely still apply. However, if offender "B" also out on parole for five years got 18 months for Driving While Under the Influence these adjustments for time at risk would not be valid.

Adjusted risk estimates for time free would apply to offenders that are returned to custody for technical violations such as drinking or failing to register as a sexual offender.

Table for Adjustments in Risk Based on Time Free

STATIC-99 Risk Level at original assessment	Years offence-free in community					
	0	2	4	6	8	10
	Recidivism rates – Sex Offence Convictions %					
0-1 (n = 259)						
5 year	5.7	4.6	4.0	2.0	1.4	1.4
10 year	8.9	6.4	4.6	3.3	3.2	(5.8)
15 year	10.1	8.7	9.5	7.7	(6.5)	
2-3 (n = 412)						
5 year	10.2	6.8	4.4	3.1	5.5	5.3
10 year	13.8	11.1	9.1	8.1	8.2	8.4
15 year	17.7	14.5	13.6	13.9	(18.7)	
4-5 (n = 291)						
5 year	28.9	14.5	8.0	6.9	7.6	6.8
10 year	33.3	21.4	13.7	11.5	(13.1)	(11.5)
15 year	37.6	22.8	(18.7)			
6+ (n = 129)						
5 year	38.8	25.8	13.1	7.0	9.4	13.2
10 year	44.9	30.3	23.7	16.0	(17.8)	(17.8)
15 year	52.1	37.4	(27.5)			

Note: The total sample was 1,091. The number of cases available for each analysis decreases as the follow-up time increases and offenders recidivate. Values in parentheses were based on less than 30 cases and should be interpreted with caution.

Appendix Two

Self-Test

1. **Question:** In 1990, Mr. Smith is convicted of molesting his two stepdaughters. The sexual abuse occurred between 1985 and 1989. While on conditional release in 1995, Mr. Smith is reconvicted for a sexual offence. The offence related to the abuse of a child that occurred in 1980. Which conviction is the Index offence?

   Answer: The 1990 and 1995 convictions would both be considered part of the Index offence. Neither would be counted as a prior sexual offence. The 1995 conviction is pseudo-recidivism because the offender did not re-offend after being charged with the 1990 offence.

2. **Question:** In April 1996, Mr. Jones is charged with sexual assault for an incident that occurred in January 1996. He is released on bail and reoffends in July 1996, but this offence is not detected until October 1996. Meanwhile, he is convicted in September 1996, for the January 1996 incident. The October 1996 charge does not proceed to court because the offender is already serving time for the September 1996 conviction. You are doing the evaluation in November. What is the Index offence?

   Answer: The October 1996 charge is the Index offence because the offence occurred after Mr. Jones was charged for the previous offence. The Index sexual offence need not result in a conviction.

3. **Question:** In January 1997, Mr. Dixon moves in with Ms. Trembley after dating since March 1996. In September 1999, Mr. Dixon is arrested for molesting Ms. Trembley's daughter from a previous relationship. The sexual abuse began in July 1998. Is the victim related?

   Answer: No, the victim would not be considered related because when the abuse began, Mr. Dixon had not lived for two years in a parental role with the victim.

4. **Question:** At age 15, Mr. Miller was sent to a residential treatment centre after it was discovered he had been engaging in sexual intercourse with his 12 year old stepsister. Soon after arriving, Mr. Miller sexually assaulted a fellow resident. He was then sent to a secure facility that specialized in the treatment of sexual offenders. Charges were not laid in either case. At age 24, Mr. Miller sexually assaults a cousin and is convicted shortly thereafter. Mr. Miller has how many prior sexual offences?

   Answer: For Item #5, Prior Sexual Offences, score this as 2 prior charges and 2 prior convictions. Although Mr. Miller has no prior convictions for sexual offences, there are official records indicating he has engaged in sexual offences as an adolescent that resulted in custodial sanctions on two separate occasions. The Index offence at age 24 is not counted as a prior sexual offence.

5. **Question:** Mr. Smith was returned to prison in July 1992 for violating several conditions of parole including child molestation, lewd act with a child and contributing to the delinquency of a minor. Once back in prison he sexually assaulted another prisoner. Mr. Smith has now been found guilty of the sexual assault and the judge has asked you to contribute to a pre-sentence report. How many Prior Sexual Offence (Item #5) points would Mr. Smith receive for his parole violations?

Answer: 1 charge and no convictions. Probation, parole and conditional release violations for sexual misbehaviours are counted as one charge, even when there are violations of multiple conditions of release.

6. **Question:** Mr. Moffit was charged with child molestation in April 1987 and absconded before he was arrested. Mr. Moffit knew the police were coming to get him when he left. He travelled to another jurisdiction where he was arrested and convicted of child molesting in December 1992. He served 2 years in prison and was released in 1994. He was apprehended, arrested and convicted in January of 1996 for the original charges of Child Molestation he received in April 1987. Which offence is the Index offence?

   Answer: The most recent offence date, December 1992 becomes the Index offence. In this case, the offence dates should be put back in chronological order given that he was detected and continued to offend. The April, 1987 charges and subsequent conviction in January of 1996 become a prior sexual offence.

7. **Question:** While on parole, Mr. Jones, who has an extensive history of child molestation, was found at the county fair with an 8 year-old male child. He had met the child's mother the night before and volunteered to take the child to the fair. Mr. Jones was in violation of his parole and he was returned to prison. He subsequently got out of prison and six months later re-offended. You are tasked with the pre-sentence report. Do you count the above parole violation as a prior sex offence charge?

   Answer: No. Being in the presence of children is not counted as a charge for prior sex offences unless an offence is imminent. In this case, Mr. Jones was in a public place with the child among many adults. An incident of this nature exhibits "high-risk" behaviour but is not sufficient for a charge of a sex offence.

Appendix Three

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Appendix Four

Surgical Castration in Relation to Sex Offender Risk Assessment

Surgical castration or orchidectomy is the removal of the testicles. In most cases this is done for medical reasons but in sex offenders may be done for the reduction of sexual drive. Orchidectomy was practiced in Nazi Germany and in post-war Europe in sufficient numbers that several studies have been conducted on the recidivism rates of those who have undergone the operation. In general, the post-operative recidivism rates are low, but not zero (2% - 5%). In addition, the subjects in the European samples tended to be older men and this data may not generalize well to ordinary sex offender samples. The recidivism rates reported, however, are lower than expected base rates. This may suggest that there is some protective effect from castration.

However, this effect can be reversed. There have been a number of case studies where a castrated individual has obtained steroids, reversed the effects of the operation, and gone on to re-offend.

In terms of overall risk assessment, if an individual has undergone surgical castration it is worth consideration but this is not an overriding factor in risk assessment. In particular, an evaluator must consider the extent to which sex drive contributes to the offence pattern and whether the offender has the motivation and intellectual resources to maintain a low androgen lifestyle in the face of potentially serious side effects (e.g., bone loss, weight gain, breast growth).

Appendix Five

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Aged 25 or older Aged 18 – 24.99	0 1
2	Ever Lived With (S9910)	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Prior non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Prior Sex Offences (S9901)	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6+ / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences (S9903)	No Yes	0 1
8	Any Unrelated Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

Score	Label for Risk Category
0,1	Low
2,3	Moderate-Low
4,5	Moderate-High
6 plus	High

Appendix Six

STATIC-99 Recidivism Percentages by Risk Level

Static-99 score	sample size	sexual recidivism			violent recidivism		
		5 years	10 years	15 years	5 years	10 years	15 years
0	107 (10%)	.05	.11	.13	.06	.12	.15
1	150 (14%)	.06	.07	.07	.11	.17	.18
2	204 (19%)	.09	.13	.16	.17	.25	.30
3	206 (19%)	.12	.14	.19	.22	.27	.34
4	190 (18%)	.26	.31	.36	.36	.44	.52
5	100 (9%)	.33	.38	.40	.42	.48	.52
6 +	129 (12%)	.39	.45	.52	.44	.51	.59
Average							
3.2	1086 (100%)	.18	.22	.26	.25	.32	.37

Appendix Seven

Suggested Report Paragraphs for Communicating STATIC-99-based Risk Information

The STATIC-99 is an instrument designed to assist in the prediction of sexual and violent recidivism for sexual offenders. This risk assessment instrument was developed by Hanson and Thornton (1999) based on follow-up studies from Canada and the United Kingdom with a total sample size of 1,301 sexual offenders. The STATIC-99 consists of 10 items and produces estimates of future risk based upon the number of risk factors present in any one individual. The risk factors included in the risk assessment instrument are the presence of prior sexual offences, having committed a current non-sexual violent offence, having a history of non-sexual violence, the number of previous sentencing dates, age less than 25 years old, having male victims, having never lived with a lover for two continuous years, having a history of non-contact sex offences, having unrelated victims, and having stranger victims.

The recidivism estimates provided by the STATIC-99 are group estimates based upon reconvictions and were derived from groups of individuals with these characteristics. As such, these estimates do not directly correspond to the recidivism risk of an individual offender. The offender's risk may be higher or lower than the probabilities estimated in the STATIC-99 depending on other risk factors not measured by this instrument. This instrument should not be used with Young Offenders (those less than 18 years of age) or women.

Mr. X scored a ?? on this risk assessment instrument. Individuals with these characteristics, on average, sexually reoffend at ??% over five years and at ??% over ten years. The rate for any violent recidivism (including sexual) for individuals with these characteristics is, on average, ??% over five years and ??% over ten years. Based upon the STATIC-99 score, this places Mr. X in the Low, [score of 0 or 1](between the 1st and the 23rd percentile); Moderate-Low, [score of 2 or 3] (between the 24th and the 61st percentile); Moderate-High, [score of 4 or 5] (between the 62nd and the 88th percentile); High, [score of 6 plus](in the top 12%) risk category relative to other adult male sex offenders.

Based on a review of other risk factors in this case I believe that this STATIC-99 score (Over/Under/Fairly) represents Mr. X's risk at this time. The other risk factors considered that lead me to this conclusion were the following: {Stable Variables: Intimacy Deficits, Social Influences, Attitudes Supportive of Sexual Assault, Sexual Self-Regulation, and General Self-Regulation; Acute Variables: Substance Abuse, Negative Mood, Anger/Hostility, Opportunities for Victim Access - Taken from the SONAR*}, (Hanson & Harris, 2001). Both the STATIC-99 and the SONAR 2000 are available from the Solicitor General Canada's Website www.sgc.gc.ca.

* Note: This list is not intended to be definitive. Evaluators may want to include other static or dynamic variables in their evaluations.

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[Evaluator – these paragraphs are available electronically by e-mailing Andrew Harris, harrisa@sgc.gc.ca and requesting the electronic file – Standard STATIC-99 Paragraphs]

Appendix Eight

STATIC-99 Inter-rater Reliability

Reliability is the extent to which the same individual receives the same score on different assessments. Inter-rater reliability is the extent to which different raters independently assign the same score to the same individual at a given point in time.

These independent studies utilized different methods of calculating inter-rater reliability. The Kappa statistic provides a correction for the degree of agreement expected by chance. Percent agreement is calculated by dividing the agreements (where both raters score "0" or both raters score "1") by the total number in the item sample. Pearson correlations compare the relative rankings between raters. Intra-class correlations compare absolute values between raters.

The conclusion to be drawn from this data is that raters would rarely disagree by more than one point on a STATIC-99 score.

Summary of Inter-rater Reliability			
Study	**N of cases double coded**	**Method of reliability calculation**	**Reliability**
Barbaree et al.	30	Pearson correlations between total scores	.90
Hanson (2001)	55	Average Item Percent Agreement	.91
	55	Average Item Kappa	.80
	55	Intra-class correlation for total scores	.87
Harris et al.	10	Pearson correlations between total scores	.96

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STATIC-99 Replications

Authors	Country	Sample	n	Reported ROC
Hanson & Thornton (2000)	**Canada & the UK**	**Prison Males**	**1,301**	**.71**
	These are the original samples for the Static-99 Prison Males			
Barbaree et al., (2001)	Canada	Prison Males	215	.70
Beech et al., (2002)	England	Community	53	.73
Hanson (2002) Unpublished	Canada	Community	202	.59
Harris et al., (Submitted)	Canada	Forensic Mental Health Patients	396	.62
Hood et al., (2002)	England	HM Prison Males	162	.77
McGrath et al., (2000)	United States	Prison Males	191	.74
Motiuk (1995)	Canada	Prison Males	229	.77
Nicholaichuk (2001)	Canada	Aboriginal Males	109	.67
Nunes et al., (2002)	Canada	Community Pre-trial	258	.70
Poole et al., (2001)	United States	Juv. sex offenders released after age 18	45	.95
Reddon et al., (1995)	Canada	Prison Males	355	.76
Sjöstedt & Långström (2001)	Sweden	All released male offenders (1993-1997)	1,400	.76
Song & Lieb (1995)	United States	Community	490	.59
Thornton (2000a)	England	Prison Males	193	.89
Thornton (2000b)	England	Prison Males	110	.85
Tough (2001)	Canada	Developmentally Delayed Males	76	.60
Wilson et al., (2001)	Canada	Detained High-Risk Offenders	30	.61
		TOTAL	**4,514**	**MEAN = 72.4**

Appendix Ten

Interpreting STATIC-99 Scores Greater than 6

In the original Hanson and Thornton (1999, 2000) study, all offenders with scores of 6 or more were grouped together as "high risk" because there were insufficient cases to provide reliable estimates for offenders with higher scores. Consequently, some evaluators have wondered how to interpret scores for offenders with scores greater than 6. We believe that there is insufficient evidence to conclude that offenders with scores greater than 6 are higher risk to re-offend than those who have a score of 6. However, as an offender's score increases, there is increased confidence that he is indeed a member of the high-risk group.

Below are the sexual and violent recidivism rates for the offenders with scores of 6 through 9. No offender in these samples had a score of 10 or greater. The rates were based on the same subjects and the same statistics (survival analysis) as those used to generate the estimates reported in Table 5 of Hanson and Thornton (1999, 2000).

Overall, the recidivism rates for the offenders with scores of 6, 7 and 8 were similar to the rates for the high-risk group as a whole. There were only three cases with a Static-99 score of 9, one of which sexually recidivated after 3 years, one re-offended with non-sexual violent offence after 18 years, and one did not recidivate. None of the differences between the groups were statistically significant.

Static-99 score	sample size	Sexual recidivism			Violent recidivism		
		5 years	10 years	15 years	5 years	10 years	15 years
6	72	.36	.44	.51	.46	.53	.60
7	33	.43	.43	.53	.43	.46	.56
8	21	.33	.52	.57	.43	.57	.62
9	3	.33	.33	.33	.33	.33	.33
10, 11, 12	0						
Scores 6 thru 12	129	.39	.45	.52	.44	.51	.59

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Aged 25 or older Aged 18 – 24.99	0 1
2	Ever Lived With (S9910)	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Prior non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Prior Sex Offences (S9901)	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6+ / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences (S9903)	No Yes	0 1
8	Any Unrelated Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

Score	Label for Risk Category
0,1	**Low**
2,3	**Moderate-Low**
4,5	**Moderate-High**
6 plus	**High**

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Aged 25 or older Aged 18 – 24.99	0 1
2	Ever Lived With (S9910)	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Prior non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Prior Sex Offences (S9901)	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6+ / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences (S9903)	No Yes	0 1
8	Any Unrelated Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

Score	Label for Risk Category
0,1	**Low**
2,3	**Moderate-Low**
4,5	**Moderate-High**
6 plus	**High**

Reforming (purportedly) Non-Punitive Responses to Sexual Offending

By Adam Shajnfeld* and Richard B. Krueger**

I. Introduction

Clovis Claxton, who was developmentally disabled and wheelchair-bound after contracting meningitis and encephalitis as a child, was twenty-four years old and living with his family in Washington state in 1991 when he exposed himself to the nine-year-old daughter of a caregiver.[1] Although he had the mental capacity of a ten- to twelve-year-old child, he was charged with first-degree child molestation and served twenty-seven months in prison.[2] When his family moved to Florida in 2000, Claxton was listed as a sexual offender on the Florida Department of Law Enforcement website, but the website inaccurately indicated he had been charged with the rape of a child.[3] Claxton had not been charged with any other offense since his release from prison, but sheriff's deputies in Florida did take him into custody at least five times for threatening suicide.[4]

In 2005, brightly-colored fliers were dropped into mailboxes and pinned to trees around Claxton's neighborhood, where he lived in an apartment adjoining his parents' house.[5] A short time before, a county commissioner had urged that warning signs be posted in neighborhoods where convicted sex offenders live.[6] The fliers displayed Claxton's picture and address, downloaded from the Florida website, and the words "child rapist."

Claxton, distraught and fearing for his life, called the sheriff's office and said he wanted to kill himself.[7] He was taken for an overnight psychiatric assessment, but released the next day.[8] The following morning he was found dead, an apparent suicide, with one of the fliers lying next to him.[9]

Alan Groome was eighteen years old when he was convicted of a sex offense.[10] He was paroled after serving a number of years behind bars in the state of Washington. Upon his release, he moved in with his mother, but they were evicted from their apartment when residents learned of his past. They then moved in with his grandmother, but Groome was forced to leave when police officers knocked on the doors of 700 neighbors, handing out fliers with his address and photo.

Groome became homeless, begging for money. "I got the feeling no one cares about me, so why should I care about myself and what I do?" said Groome. One detective described Groome as "a man without a country." His parole officer loaned him money because he believed Groome had "a lot of potential." A little over two years after being

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[1] Cara Buckley, *Town Torn Over Molester's Suicide*, MIAMI HERALD, Apr. 23, 2005, at 1; Daniel Ruth, *Who Was the Real Threat to the Town?* TAMPA TRIB., Apr. 27, 2005, at 2.

[2] Buckley, *supra* note 1, at 1.

[3] *Id.*

[4] *Id.*; Ruth, *supra* note 1, at 2.

[5] Buckley, *supra* note 1, at 1; Ruth, *supra* note 1, at 2.

[6] Buckley, *supra* note 1, at 1.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] The quotes and facts in this paragraph are taken from Daniel Golden, *Sex-Cons*, BOSTON GLOBE, Apr. 4, 1993, at 12. This article does not address the many issues surrounding juvenile sex offenders. For a treatment of these issues, see Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 CAL. L. REV. 163 (2003).

released from prison, Groome had not been re-arrested but was living in a homeless shelter, looking for employment.[11]

As will be discussed, the United States Supreme Court has distinguished between society's punitive and non-punitive responses to sexual offenders, granting society more discretion and affording sexual offenders few protections in conjunction with non-punitive responses. Although all agree that sexual offenses should generally result in punitive sanctions, including prison sentences, the so-called non-punitive responses to sex offenders currently employed by society are not only very punitive in nature, but they are also largely unhelpful in curbing and may even be increasing sexual offending. Sex offender registration and notification requirements, for example, place offenders in physical danger, force offenders out of their homes and cause them to lose their jobs, and create public hysteria.[12]

These requirements often bear little relation to the risk posed by the offender. The label "sex offender" can refer to anyone from a child rapist to an adult involved in a consensual, albeit incestuous, relationship with another adult. These requirements are typically insensitive to differences in motivation and intent, the nature of the offense and its impact on the victim, and the likelihood of recidivism and risk to society. Further, these regimes rarely allow sex offenders who successfully undergo treatment or who can be demonstrated to be highly unlikely to reoffend to be relieved of these requirements before at least many years have passed, if at all.

Legal and societal responses should take better account of what is currently known about sex offenders and be changed accordingly. This Article describes the characteristics of sex offenders (Part II), discusses various registration and notification requirements (Part III), explores Constitutional challenges to registration and notification laws (Part IV), addresses the civil commitment of sex offenders (Part V), analyzes the various problems with current responses to sex offenders (Part VI), reports current options for treating sex offenders (Part VII), provides various recommendations for implementing a more appropriate societal response to sex offenders (Part VIII), and offers some concluding remarks (Part IX).

II. Characteristics of Sex Offenders

"Sex offender" is a legal, not a psychological term.[13] There is no uniform definition of a sex offender. One who engages or attempts to engage in a sexual act with a minor, or who commits or attempts to commit aggravated sexual battery against a person of any age, is widely considered to be a sex offender.[14] In many states, persons who have been

[11] *Turning Point with Barbara Walters* (ABC News television broadcast Sept. 21, 1994), transcript available on LexisNexis ("Interview with Alan Groome, Transcript #131").

[12] Although this article mainly addresses three particular so-called non-punitive responses: civil commitment, registration, and community notification, there are others, including restrictions on where a sex offender can reside and work. In Virginia, for example, a person convicted of various sex offenses involving children is permanently prohibited from loitering within 100 feet of a primary, secondary, or high school or a child day program (VA. CODE § 18.2-370.2 (2006)), residing within 500 feet of any child day center, or primary, secondary, or high school (VA. CODE § 18.2-370.3 (2006)), or working or engaging in any volunteer activity on property that is part of a public or private elementary or secondary school or child day center (VA. CODE § 18.2-370.4 (2006)).

[13] Richard B. Krueger & Meg S. Kaplan, *The Paraphilic and Hypersexual Disorders: An Overview*, 7 J. PSYCHIATRIC PRAC. 391, 393 (Nov. 2001).

[14] The federal enactment establishing the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program Act defines "sex offender" as "an individual who was convicted of a sex offense" and defines "sex offense" generally as a criminal offense that has an element involving a sexual act or sexual contact with another, various listed criminal offenses against a minor, or an attempt or conspiracy to commit these offenses. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 111 (2006). Many state statutes are more specific. *See, e.g.*, VA. CODE ANN. § 9.1-902 (2006); WASH. REV. CODE § 9A.44.130(9) (2006).

convicted of possessing child pornography are also classified as sex offenders,[15] as are adults engaged in consensual incest,[16] persons who indecently expose themselves,[17] and statutory rapists (for instance, a twenty-two year old who has sex with her sixteen year-old boyfriend).[18] The legal definition of a sex offender includes a very wide range of offenders. From a psychological perspective, though, sex offenders are extremely diverse. The psychological profiles, recidivism rates, and effective treatment modalities of such offenders vary greatly. To appropriately respond to these individuals, a better understanding of these variations is needed.

For example, it is important to distinguish between paraphilic sex offenders and non-paraphilic sex offenders. Paraphilias are psychiatric disorders defined as

> recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving 1) nonhuman objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other nonconsenting persons that occur over a period of at least 6 months.[19]

To be diagnosed as having a paraphilia, depending on the type of paraphilia,[20] the person must also either have acted on the urge or there must be resulting clinically significant distress or impairment in important areas of functioning.[21] Those who develop paraphilias tend to lack social skills and suffer from depression, substance abuse, or other co-occurring psychiatric disorders.[22] Far more men than women develop paraphilias.[23]

Paraphilias need not involve illegal behavior. Transvestic fetishism, where a heterosexual male engages in cross-dressing, is not a crime. Further, not all sex offenders suffer from paraphilias. For example, many rapists commit sex offenses out of anger and desire for domination, not for sexual gratification.[24] In one study involving thirty-six convicted male sex offenders, only 58% could be diagnosed with a paraphilia.[25]

Regardless of these variations, as of 2006, there were roughly 566,700 registered sex offenders in the United States.[26] This figure, however, is not a reliable measure of the actual number of sex offenders, as sex offenses are extremely underreported.[27] At

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[15] FLA. STAT. §§ 775.21(4)(a)1b, 827.071(5) (2006); BURNS IND. CODE ANN. § 35-42-4-4(c) (2006). An Indiana appellate court left open the question of whether that state's statute could be applied to virtual child pornography. Logan v. State, 836 N.E.2d 467, 472 (Ind. Ct. App. 2005). The federal law governing sex offender registration and notification was recently expanded to include possession, production, or distribution of child pornography. Adam Walsh Child Protection and Safety Act of 2006 § 111(7)(G).

[16] LA. REV. STAT. ANN. § 14:78 (2006). The statute includes within the definition of incest an uncle and niece either marrying or having sexual intercourse with one another, regardless of how old they are. *Id.*

[17] TEX. PENAL CODE § 21.08 (2006). Under Texas law, a person can be guilty of indecent exposure even if no one else actually sees the defendant's genitals. Boyles v. State, No. 05-94-01727-CR, 1996 WL 403992, at *8 (Tex. App. July 12, 1996).

[18] N.Y. PENAL LAW § 130.25(2) (Consol. 2006).

[19] AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: FOURTH EDITION, TEXT REVISION 566 (2000) [hereinafter DSM-IV-TR].

[20] The various types of paraphilia include Exhibitionism, Fetishism, Frotteurism, Pedophilia, Sexual Masochism, Sexual Sadism, Transvestic Fetishism, Voyeurism, and Paraphilia Not Otherwise Specified. *See id.* at 569-76.

[21] *Id.* at 566.

[22] SIMON LEVAY & SHARON M. VALENTE, HUMAN SEXUALITY 469 (2002); Krueger & Kaplan, *supra* note 13, at 399-400.

[23] THE MERCK MANUAL OF DIAGNOSIS AND THERAPY, § 15, Ch. 192 (1999-2005), *available at* http://www.merck.com/mrkshared/mmanual/section15/chapter192/192d.jsp.

[24] KAREN J. TERRY, SEXUAL OFFENSES AND OFFENDERS: THEORY, PRACTICE, AND POLICY 92 (2006).

[25] Krueger & Kaplan, *supra* note 13, at 393 (citing Susan L. McElroy et al., *Psychiatric Features of 36 Men Convicted of Sexual Offenses*, 60 J. CLINICAL PSYCHIATRY 414, 416 (1999)).

[26] National Center for Missing and Exploited Children, *Registered Sex Offenders in the United States* (Mar. 6, 2006), *at* http://www.missingkids.com/en_US/documents/sex-offender-map.pdf.

[27] TERRY, *supra* note 24, at 7, 10.

the same time, this number can be mistakenly read to indicate the number of current active sex offenders in this country, a conclusion that fails to take into account the effects of treatment and monitoring, and the fact that many of these offenders are relatively unlikely to reoffend.

One of the most complicated and contested issues regarding sex offenders is that of recidivism.[28] Calculating their rate of recidivism is difficult for a number of reasons. First, as noted, sex offenses are underreported.[29] Second, sex offenders may continue to re-offend for many years, and thus recidivism rates differ depending on the length of time considered.[30] Third, recidivism differs substantially depending on the type of sex offender in question.[31] For instance, sex offenders who molest a family member (i.e., those who commit incest) are less likely to re-offend than those who molest non-family members.[32] Similarly, one study found recidivism rates for rapists and child molesters to be 18.9% and 12.7%, respectively, over an average four to five year follow-up period.[33] Collapsing all sex offenders together into a single category and making generalizations about this diverse range of offenders using this aggregate determination is likely to result in substantial mischaracterizations regarding the risk of re-offending for many of these individuals.

Even though lumping the recidivism rates of all sex offenders together is unhelpful in assessing the risk posed by these offenders, it does shed light on the dubiety of popular claims about sex offender recidivism. One meta-analysis of recidivism studies of over 23,000 sex offenders found the rate of recidivism to be 13.4% on average for a four to five year follow-up period.[34] Another study, from the United States Department of Justice, found recidivism for sex offenders released from prison to be 5.3% for a three-year follow-up period.[35] In contrast, a Department of Justice report of recidivism rates for nearly 300,000 released prisoners found that 13.4% of those imprisoned for robbery were rearrested for robbery after release, and 22% of those imprisoned for assault were rearrested for assault following release, all within a three-year follow-up period.[36] Thus, while recidivism rates are difficult to measure and reported results vary, and there are numerous factors that make recidivism for a particular individual more or less likely,[37] the recidivism of sex offenders is neither inevitable[38] nor nearly as high as popularly believed.[39]

A number of studies have reported higher recidivism rates for sex offenders, most prominently the so-called "Abel study" where 561 non-incarcerated paraphiliacs reported that they had committed a total of 291,737

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[28] For a good review of the recidivism issue, including the results of many studies, see CENTER FOR SEX OFFENDER MANAGEMENT (PRINCIPAL AUTHOR TIM BYNUM), RECIDIVISM OF SEX OFFENDERS (May 2001), http://www.csom.org/pubs/recidsexof.pdf.

[29] TERRY, *supra* note 24, at 7, 10.

[30] Lucy Berliner, *Sex Offenders: Policy and Practice*, 92 Nw. U. L. Rev. 1203, 1209 (1998) (citing R. Karl Hanson et al., *Long Term Recidivism of Child Molesters*, 61 J. CONSULTING & CLINICAL PSYCHOL. 646 (1993)).

[31] *Id.*

[32] Hanson et al., *supra* note 30, at 646.

[33] R. Karl Hanson & Monique T. Bussière, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. CONSULTING & CLINICAL PSYCHOL. 348, 351 (1998).

[34] *Id.* at 357. The meta-analysis included studies that measured recidivism in terms of re-conviction, re-arrest, and offenders' self-reports. *Id.* at 350.

[35] PATRICK A. LANGAN ET AL., RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, 1 (2003), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/rsorp94.pdf.

[36] PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP'T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1994, NCJ 193427, at 9 (2002), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf.

[37] LEVAY & VALENTE, *s upra* note 22, at 467.

[38] Hanson & Bussière, *supra* note 33, at 357.

[39] ROBERT ALAN PRENTKY & ANN WOLBERT BURGESS, FORENSIC MANAGEMENT OF SEXUAL OFFENDERS 237 (2000). *See also* SARAH BROWN, TREATING SEX OFFENDERS: AN INTRODUCTION TO SEX OFFENDER TREATMENT PROGRAMS 8 (2005).

"paraphilic acts" against 195,407 victims.[40] The Abel study suffers from a number of serious problems. First, "paraphilic acts" are defined very broadly, including fetishism, homosexuality, sadism, and masochism.[41] These behaviors, though, are not illegal when they involve a consenting adult, and homosexuality is no longer considered a paraphilia. In fact, the Abel study hints at this confusion, at one point using the term "victim/partner."[42] Thus, it is doubtful that the high rate of recidivism is reflective of what is currently thought to be a sex offense. Second, the median values of the number of victims per paraphiliac are significantly lower than the mean (average) values, which indicate that a small percentage of paraphiliacs are responsible for a disproportionately large amount of the sex offenses.[43] Broad generalizations from a study such as this one fuel panic, but do not accurately reflect the fact that, although there are outliers who are extreme offenders, recidivism rates are low for most sex offenders.

III. Registration and Notification Laws

In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.[44] While not imposing mandatory obligations on the states, the Wetterling Act was a significant milestone because it provided significant financial incentives for the states to adopt various provisions pertaining to sex offenders.[45] For example, it required sex offenders to register for at least ten years with authorities following release from prison or placement on parole, supervised release, or probation.[46] Further, state officials were expected to collect and maintain information about offenders, such as their name, home address, photograph, fingerprints, offense history, and documentation of any treatment received for mental abnormality or personality disorder.[47] In 1996, the Wetterling Act was amended to include a notification provision, known as "Megan's Law," which allows states to disclose information collected through registration for "any purpose permitted under the laws of the State."[48] Megan's Law, like many other broad sex offender laws, was enacted in the politically and emotionally charged aftermath of a brutal act against a child.[49] Currently, all fifty states have enacted some type of Megan's Law.[50]

Recently, Congress passed a new version of the Wetterling Act as part of the Adam Walsh Child Protection and Safety Act of 2006.[51] The bill expands the sex offender registration and notification requirements previously imposed on the states. First, it broadens the definition of sex offender, divides sex offenders into three tiers (tier III being the most serious) based on the severity of the crime for which the offender was convicted, and requires that all sex offender registries include the offender's name (including any alias), physical description, current photograph, Social Security number, residential address, vehicle and license plate number, DNA sample, fingerprints, criminal offense, and criminal history; the name and

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[40] Gene G. Abel et al., *Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs*, 2 J. INTERPERSONAL VIOLENCE 3, 19 (1987).
[41] *Id.* at 18.
[42] *Id.* at 17.
[43] *See id.*
[44] 42 U.S.C. 14071 (2006). As will be discussed, this law was recently amended. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248 (2006).
[45] *Id.* at (g), (i). States that do not comply face a reduction of 10% of funds allocated under § 42 U.S.C. 3751 for criminal justice projects.
[46] *Id.* at (b)(6).
[47] *Id.* at (b)(1)(A)(iv), (b)(1)(B).
[48] Pub. L. No. 104-145 (1996) (codified as 42 U.S.C. § 14071(e) (2006)).
[49] *See* Michele L. Earl-Hubbard, *Comment: The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990s*, 90 NW. U.L. REV. 788, 813 (1996); TERRY, *supra* note 24, at 184.
[50] Doron Teichman, *Sex, Shame, and the Law: An Economic Perspective on Megan's Laws*, 42 HARV. J. LEGIS. 355, 357 (2005).
[51] Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248 (2006).

address of any employer; and the name and address of any school that is being attended.[52]

Second, it requires all jurisdictions to make virtually all sex offender registry information publicly accessible via the Internet and creates a national sex offender website.[53] This generally forces states to broadly disseminate information on every registered sex offender, not just those who pose the greatest risk of re-offending.[54]

A few items cannot be posted, including the identity of any victim, the Social Security number of the sex offender, and any reference to arrests that did not result in conviction, and a few items are left to the discretion of the state, including any information about a tier I sex offender convicted of an offense other than a specified offense against a minor, the name of the employer of the sex offender, and the name of an educational institution where the sex offender is a student.[55]

Third, the bill imposes a registration and Internet notification requirement of fifteen years for a tier I sex offender (with a reduction of five years if a "clean record" is maintained), of twenty-five years for a tier II sex offender, and of life-long duration for a tier III offender.[56] A tier I offender is required to re-register in person at least once a year, a tier II offender every six months, and a tier III offender every three months.[57]

For purposes of comparison, the following are some existing examples of state registration and notification regimes. In Washington, a sex offender can be relieved of the requirement to register ten years after the offender has either been released from confinement, or, if there was no confinement, ten years from entry of judgment and sentence.[58] In Florida, the earliest a sex offender who offended as an adult can be relieved of the requirement to register is twenty years after the offender has been released from sanction, supervision, or confinement, whichever is later.[59] To be relieved of this requirement after twenty years, the offender cannot have been arrested for any felony or misdemeanor (not just a sexual or related offense) since his release,[60] and a court must grant the offender's petition for relief.[61] In Washington and Florida, even if a sex offender no longer poses a risk of re-offending, he must still register as a sex offender until at least either ten or twenty years, respectively, have passed.[62]

Registration, though, did not necessarily mean that the community would be notified about the sex offender. Under the previous Wetterling Act, states were required to notify the community of certain offenders, while notification for others remained optional.[63] State-sponsored Internet sites were routinely used as a means to provide this notification.[64]

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[52] *Id.* at §§ 111, 114.
[53] *Id.* at §§ 118, 120.
[54] Some states had already begun to take this step. In Virginia, for example, the General Assembly in 2006 expanded dissemination via the Internet from individuals "convicted of murder of a minor and violent sex offenders" to individuals "convicted of an offense for which registration is required." *See* VA. CODE § 9.1-913 (2006).
[55] Adam Walsh Child Protection and Safety Act of 2006 § 118.
[56] *Id.* at § 115.
[57] *Id.* at § 116.
[58] WASH. REV. CODE § 9A.44.140(1)(c) (2006).
[59] FLA. STAT. § 943.0435(11)(a) (2006).
[60] *Id.* at 11(a).
[61] *Id.* at 11.
[62] In these states, an offender who was a physically castrated quadriplegic suffering from dementia would still have to register for this entire period of time.
[63] *See* 42 U.S.C. 14071(e)(2) (2006), which requires that states release information to the community when "necessary to protect the public concerning a specific person required to register under this section." The Department of Justice has interpreted this provision to require release of information to the community about the most dangerous offenders, but permits a state to choose not to release information regarding sex offenders it deems are not a threat to public safety. U.S. DEP'T OF JUSTICE, MEGAN'S LAW; FINAL GUIDELINES FOR THE JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION ACT, AS AMENDED, No. RIN 1105-AA56, 582 (1997).
[64] Of the fifty states, only Rhode Island provides no information about sex offenders on an Internet site.

Many states, however, made information regarding *all* sex offenders accessible via the Internet as well.[65] The amount of information available on a particular offender varied from state to state, but all states included the offender's name, offense, physical characteristics, and age.[66] Florida's Internet sex offender database also included the offender's photograph and last known address.[67]

Some states employed risk-tiers, with offenders classified by their risk of re-offending. For example, Rhode Island law provided for three risk-tiers: low risk, moderate risk, and high risk.[68] The level of community notification, if any, depended on the offender's classification.[69] Law enforcement agents were notified of low risk offenders.[70] For moderate and high risk offenders, Internet notification was permitted.[71]

While community notification today is typically provided via the Internet, this need not be the exclusive means. Louisiana, in addition to having a searchable Internet data base of sex offenders,[72] also has perhaps the strictest and most comprehensive notification requirements of any state.[73] Upon release from confinement, a sex offender must supply his name, address, crime information, and photograph to all residences and businesses within a one-mile radius in a rural area, or 3/10 mile radius in an urban area, of the offender's residence. The offender must also notify all adults also residing in his place of residence and the superintendent of the school district in which he resides of his status.[74] A court may even require the offender to wear special clothing indicating that he is a sex offender.[75]

IV. Constitutionality of Registration and Notification Laws

The Supreme Court has issued two major rulings on the constitutionality of sex offender registration and notification laws, both in 2003.

A. Procedural Due Process: *Connecticut Department of Public Safety v. Doe*[76]

In 1999, a person (referred to as John Doe) required to register as a sex offender under Connecticut law,[77] filed a federal lawsuit under 42 U.S.C. § 1983[78] against the Connecticut agencies responsible for administering the State's sex offender registry. Connecticut's law required certain classes of sex offenders to register, and provided for community notification of the presence of these offenders without regard to the registrant's degree of dangerousness to the community.[79] Instead, the registration requirement was linked to whether they had been convicted of certain specified sex offenses.[80]

Doe asserted that this registration requirement harmed his reputation and altered his status under state law. Doe alleged, *inter alia*, that the failure to provide him with a pre-registration hearing to determine if he was

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See http://www.klaaskids.org/pg-legmeg.htm (last visited July 17, 2006).

[65] For example, Florida provides a searchable Internet database generally listing all convicted sex offenders available at http://www3.fdle.state.fl.us/sexual_predators/ (last visited July 17, 2006).

[66] Teichman, *supra* 50, at 381.

[67] *See* http://www3.fdle.state.fl.us/sexual_predators/search.asp?sopu=true&PSessionId=819208581& (last visited July 18, 2006).

[68] R.I. GEN. LAWS § 11-37.1-12 (2006).

[69] *Id.*

[70] *Id.* at (b).

[71] *Id.*

[72] *See* http://lasocpr1.lsp.org/ (last visited July 18, 2006).

[73] *See* LA. REV. STAT. ANN. § 15:542 (2006).

[74] *Id.* at § 15:542(B)(1)(a)-(c).

[75] *Id.* at § 15:542(B)(3) ("Give any other notice deemed appropriate by the court in which the defendant was convicted of the offense . . . including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.").

[76] 538 U.S. 1 (2003).

[77] CONN. GEN. STAT. § 54-250-261 (2001).

[78] This section allows a person to sue, in federal court, for a state's violation of his or her civil rights.

[79] *Connecticut Department of Public Safety v. Doe*, 538 U.S. at 4-5, 7.

[80] CONN. GEN. STAT. § 54-258a (2001).

dangerous violated his procedural due process rights under the Fourteenth Amendment because he was deprived of his liberty interests without a hearing.

The Supreme Court found no violation of procedural due process.[81] The Court reasoned that procedural due process only requires a hearing on the existence of a particular fact (or facts) when such fact is relevant under a state statute.[82] Here, as the statute did not claim that the list was comprised of dangerous sex offenders, but instead merely claimed to be a list of sex offenders regardless of level of danger, Doe was not entitled to a hearing to determine his dangerousness.

In *dicta*, the Court noted that one could still challenge the State's law on substantive due process grounds, an issue not brought up nor addressed in the case.[83]

B. Ex Post Facto: *Smith v. Doe*[84]

The Ex Post Facto Clause of the Constitution[85] prohibits the government from imposing punishment for an act that was not a crime at the time it was committed, and from imposing more punishment for an offense than was prescribed by law at the time the crime was committed.[86]

In 1994, Alaska passed its Sex Offender Registration Act (SORA).[87] SORA contains a registration requirement and provides for community notification.[88] Alaska makes much of the information it gathers available on the Internet.[89] Of primary relevance to this lawsuit, however, was that SORA was made retroactive, thereby encompassing sex offenders who committed their crimes before SORA was enacted.[90] Respondents John Doe I and John Doe II, both convicted of sex offenses before passage of SORA and then, after the passage of SORA, required to register under it, brought an action under 42 U.S.C. § 1983 challenging SORA as it applied to them as a violation of the Ex Post Facto Clause. The Supreme Court found no violation of the Ex Post Facto Clause.[91]

The primary question as far as the Court was concerned was whether SORA imposed additional punishment after the fact (i.e., after the crime was committed). The Court determined that if the legislature intended to impose punishment through its legislation, then its retroactive application was indeed a violation of the Ex Post Facto Clause.[92] If the legislature intended to enact a civil (non-punitive) regulatory scheme through its legislation, however, there was an Ex Post Facto violation only if the statutory scheme was so punitive in its effect as to negate the legislature's stated intent.[93] The Court stated that it was required to be deferential to the legislature's stated intent,[94] requiring the "clearest proof" of punitiveness to overcome a presumption that the legislature had

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[81] *Connecticut Department of Public Safety v. Doe*, 538 U.S. at 1.
[82] *Id.* at 7.
[83] *Id.* at 8. A substantive due process claim asserts that the claimant has a fundamental right to some constitutionally-protected interest that is being infringed by the law/action in question, and that the government has to justify abridging that fundamental right. If a fundamental right is implicated, a court strictly scrutinizes the law/action, and a very strong justification is required to overcome a presumption of unconstitutionality. Less strict standards of review are applicable to abridgments of quasi- or non-fundamental rights. *See* Gunderson v. Hvass, 339 F.3d 639, 643-44 (8th Cir. 2003).
[84] 538 U.S. 84 (2003).
[85] U.S. CONST. art. I, § 9, cl 3.
[86] Cummings v. Missouri, 71 U.S. 277, 325-26 (1867).
[87] *See* 1994 Alaska Sess. Laws page no. 41 (codified at ALASKA STAT. §§ 12.63, 18.65.087 (1994)).
[88] *See id.*
[89] *Smith v. Doe*, 538 U.S. at 91.
[90] 1994 Alaska Sess. Laws page no. 41, § 12.
[91] *Smith v. Doe*, 538 U.S. at 84.
[92] *Id.* at 92.
[93] *Id.* at 92 (citing United States v. Ward, 448 U.S. 242, 248-49 (1980)).
[94] *Id.* at 92 (citing Kansas v. Hendricks, 521 U.S. 346, 361 (1997)).

accurately depicted the nature of its legislation.[95]

In the case before it, the Court noted that the Alaska legislature had stated that its intent in enacting SORA was to protect public safety.[96] As a result, the Court found that the stated intent of the legislature was not to impose punishment on sex offenders with the registration requirement.[97] The Court then proceeded to determine whether the legislation had sufficient punitive effect to undercut this characterization.

The Court discussed five of seven factors previously established,[98] which, while not "exhaustive or dispositive,"[99] provided "useful guideposts" in determining if a law is sufficiently punitive in effect to overcome the stated intent of the legislation.[100] The factors were whether the regulatory scheme: (1) has been historically/traditionally regarded as punishment, (2) serves the traditional aims of punishment, (3) imposes an affirmative restraint or disability on the offender, (4) has an alternative (non-punitive) purpose to which it may be rationally connected, and (5) is excessive in relation to the alternative purpose.[101]

Under this analysis, the Court found no punitive effect sufficient to overcome the legislature's stated intent.[102] First, while SORA might resemble colonial shaming punishments—in which the offender was held up before others, forced to confront them face-to-face, and sometimes expelled from the community—SORA was substantively different, as public shaming often involved corporal punishment and, even when it did not, involved more than mere dissemination of information.[103] Second, the Court found that SORA imposed no physical restraint on the offender, nor did it restrain the activities sex offenders may pursue, such as employment.[104] Third, while the statute might deter crimes, the mere presence of a deterrent effect did not render legislation criminal.[105] Fourth, SORA was determined to have a legitimate, non-punitive purpose, namely, that of promoting and ensuring public safety, and its execution was rationally connected to this purpose.[106] Fifth, SORA was not considered to exceed its non-punitive purpose, even though it was potentially over-inclusive by failing to mandate individual determinations of dangerousness, because Alaska could rationally conclude that a conviction for a sex offense provided evidence of a substantial risk of recidivism.[107]

C. Other Potential Constitutional Challenges

By casting Megan's Law statutes as non-punitive (i.e., they do not impose punishment on sex offenders), the Court has also precluded a constitutional challenge based on an Eighth Amendment "cruel and unusual punishment" theory.[108] In addition, although the Supreme Court has yet to address these issues, federal courts of appeals have generally rejected attacks against registration and notification statutes based on purported violations of substantive due process,[109] privacy,[110] and equal protection.[111] In light of

[95] *Id.* at 92 (quoting Hudson v. United States, 522 U.S. 93, 100, 139 (1997) (quoting Ward, 448 U.S. at 249)).
[96] *Id.* at 93.
[97] *Id.* at 96.
[98] Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69 (1963).
[99] *Smith v. Doe*, 538 U.S. at 96 (quoting Ward, 448 U.S. at 249).
[100] *Id.* at 96 (quoting Hudson, 522 U.S. at 99).
[101] *Mendoza-Martinez*, 372 U.S. at 168-69.
[102] *Doe*, 538 U.S. at 105.
[103] *Id.* at 98.
[104] *Id.* at 100.
[105] *Id.* at 102 (citing Hudson, 522 U.S. at 105).
[106] *Id.* at 102-03.
[107] *Id.* at 104.
[108] *See id.* at 102-03.
[109] Gunderson v. Hvass, 339 F.3d 639, 643-44 (8th Cir. 2003), *cert. denied* 540 U.S. 1124 (2003) (holding that no fundamental right is implicated by such a statute, and that the statute is rationally related to a legitimate government purpose). *See also In re* W.M., 851 A.2d 431, 450 (D.C. Cir. 2004), *cert. denied* 125 S. Ct. 885 (2005) (holding that Alaska's SORA statute does not implicate a fundamental right).
[110] A.A. v. New Jersey, 341 F.3d 206 (3d Cir. 2003) (stating that any privacy right of a sex offender is

the Court's unwillingness to strike down sex offender registration and notification laws in the two cases it considered, sex offenders would likely face an uphill battle pursuing these other challenges before the Supreme Court.

V. Civil Commitment

Another means widely thought to limit the danger posed by sex offenders is to impose on them civil commitment through "sexually violent predator" (SVP) laws.[112] Under this approach, sex offenders are confined to a treatment facility, typically following the completion of their prison term, based on a finding that "because of a mental abnormality or personality disorder, [the person] finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts."[113] "Mental abnormality" or "personality disorder" is frequently defined to mean "a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others."[114] This approach employs the civil, rather than the criminal, process and allows a person to be involuntarily hospitalized if, following a hearing, that person is found to pose a risk of self-harm or harm to others.[115] This approach permits the state to confine the person until he or she no longer poses a danger to society.[116]

In *Kansas v. Hendricks*, the United States Supreme Court upheld a Kansas statute that allowed the involuntary civil commitment of a sex offender who, due to a "mental abnormality or personality disorder," is likely to engage in "predatory acts of sexual violence."[117] In *Hendricks*, the respondent was a convicted sex offender whose pedophilia was considered to constitute the requisite "mental abnormality."[118]

Five years later, the Court issued a second ruling that clarified that *Hendricks* does not require that the state prove that sex offenders are completely incapable of controlling themselves before the state may commit them.[119] In *Kansas v. Crane*, the Court established that the state is only required to prove that it would be "difficult" for the person to control his or her dangerous behavior as a predicate to civil commitment.[120]

As of 2006, nineteen states had civil commitment statutes for certain sex offenders.[121] After an initial rapid proliferation of such laws, enthusiasm for additional enactments has waned. In the decade of the 1990s, fifteen state programs were passed; since 2000, only four states have enacted such programs. Reasons for this vary, but prohibitive cost, lack of ability to control costs, better alternative uses of funds and resources, lack of release back into the community resulting in an ever increasing number of

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outweighed by the state's compelling interest in protecting public safety (citing Paul P. v. Farmer, 227 F.3d 98, 107 (3d Cir. 2000))).

[111] Doe v. Moore, 410 F.3d 1337, 1346-49 (11th Cir. 2005), *cert. denied*, 126 S. Ct. 624 (2005) (finding no equal protection violation).

[112] *See* JOHN Q. LA FOND, PREVENTING SEXUAL VIOLENCE: HOW SOCIETY SHOULD COPE WITH SEX OFFENDERS 128 (2005).

[113] VA. CODE ANN. § 37.2-900 (2006).

[114] *Id.*

[115] ANDREW J. HARRIS, CIVIL COMMITMENT OF SEXUAL PREDATORS: A STUDY IN POLICY IMPLEMENTATION xiii (2005); John Kirwin, *One Arrow in the Quiver--Using Civil Commitment as One Component of a State's Response to Sexual Violence*, 29 WM. MITCHELL L. REV. 1135, 1137 (2003).

[116] *See, e.g.*, FLA. STAT. § 394.917(2) (2005).

[117] Kansas v. Hendricks, 521 U.S. 346, 350 (1997) (quoting KAN. STAT. ANN. § 59-29a01 (1994)). The phrase "predatory acts of sexual violence" has since been replaced with "repeat acts of sexual violence." KAN. STAT. ANN. § 59-29a01 (2005).

[118] *Kansas v. Hendricks*, 521 U.S. at 360.

[119] Kansas v. Crane, 534 U.S. 407, 411 (2002).

[120] *Id.* at 411.

[121] Susan Broderick, *Innovative Legislative Strategies for Dealing with Sexual Offenders*, 18(10) AMERICAN PROSECUTORS RESEARCH INSTITUTE UPDATE 1 (2006), http://www.ndaa-apri.org/publications/newsletters/update_vol_18_number_10_2006.pdf.

individuals committed, and lack of demonstrated efficacy are all cited.[122] As of December 2004, 3,943 people had been confined under these laws, with only 427 of them having been conditionally released (most of them) or discharged.[123]

Civil commitment is arguably the most draconian of the so-called non-punitive sex offender legislation in that it confines, for an indeterminate and potentially life-long period of time, offenders who have already served their criminal sentences. It confines these offenders essentially because of crimes they might commit in the future. Civil commitment should be used as a last resort and only for offenders whose dangerousness has been established on a case-by-case basis.

VI. Problems with the Current Responses to Sexual Offending

Current sex offender legislation regarding community notification in particular needs to be more focused. The broad range of offenders encompassed by these laws detracts attention and resources away from those offenders that need the greatest attention, monitoring, and supervision, namely, offenders who pose the highest risk of recidivism. As discussed, individuals who commit incest or statutory rape, or who possess child pornography, are often considered to be sex offenders for purposes of community notification. While the putative reason for sex offender legislation is a regulatory one–protecting citizens[124]–notification regimes are not risk-discriminating. For instance, adult relatives who engage in consensual sexual intercourse with one another pose little, if any, risk to the community, yet they can be subject to registration and notification requirements. This broad scope needlessly scares community members by overstating the presence of what are perceived to be dangerous offenders, places burdens on offenders who pose little or no risk of harming anyone, and drains financial, law enforcement, and administrative resources.

Notification also makes it difficult for offenders to obtain housing and employment. In a study involving thirty convicted sex offenders subjected to community notification, 83% reported that they had been excluded from a residence and 57% reported that they had lost employment as a result of their status as sex offenders.[125] In another study, 300 employers were surveyed as to whether they would hire ex-convicts, including offenders who had committed sexual crimes against children or sexual assault against adults.[126] The overwhelming majority of employers surveyed stated that they would not hire the sex offenders.[127] Job stability, however, significantly reduces the likelihood that a sex offender will re-offend,[128] making notification counterproductive in this respect.

Given that landlords are reluctant to house sex offenders, not surprisingly many are homeless.[129] Ironically, this makes monitoring them more difficult. In addition, with sex offenders forced to move from place to place, even state to state, it becomes harder for offenders to maintain needed ongoing relationships with mental health professionals and family members, friends, or community members and organizations that can provide

[122] John Q. La Fond & Bruce J. Winick, *Doing More Than Their Time* (op-ed), N.Y. TIMES, May 21, 2006, at sec. 14, p. 13.
[123] *Id.*
[124] *See, e.g.*, N.Y. CORRECT. LAW Art. 6-C Note (2005).
[125] Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Managing High Risk Criminals or Exacting Further Vengeance?* 18 BEHAV. SCI. & L. 375, 383 (2000).
[126] Shelley Albright & Furjen Denq, *Employer Attitudes Toward Hiring Ex-Offenders*, 76(2) PRISON J. 118, 124-25 (1996).
[127] *Id.* at 129-31.
[128] Candace Kruttschnitt et al., *Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls*, 17 JUST. Q. 61, 80 (2000).
[129] *See, e.g.*, Monica Davey, *Iowa's Residency Rules Drives Sex Offenders Underground*, N.Y. TIMES, Mar. 15, 2006, at A1.

support services, which in turn may enhance the likelihood of recidivism.[130]

Vigilantism has also been associated with community notification laws. When communities are notified about the presence of a sex offender, some community members may harass, intimidate, or even violently attack the offenders. In one instance, a teenage offender received death threats and found his dog decapitated on his step.[131] In another instance, arsonists burned down the home where a released sex offender was supposed to live.[132] One study found that amongst 942 sex offenders in Washington state subject to community notification, there were thirty-three reported incidents of harassment of some form against the offender or his family.[133] While this number may seem low, one must keep in mind that such incidents may be underreported, as offenders may not want to call further attention to themselves or their families, and that even the possibility of such vigilantism can cause significant worry amongst offenders and their families and hamper treatment efforts.

Another common result of notification is isolation. Social ostracism that the sex offender experiences may push him farther from integrating with society, decrease social skills, and make re-offense more likely.[134]

While community notification increases public anxiety,[135] an article published in October 2005 noted that in the ten years that such laws have been in place, there has not been a single study that has shown reduced recidivism of sexual violence attributable to notification.[136] In December of that same year, a report from the Washington Institute of Public Policy did find that sex offenses had decreased in the years since Washington's passage of sex offender legislation that contained registration and notification provisions.[137]

There are a number of problems with drawing conclusions from this decrease, however. First, as the report acknowledges, Washington has increased the length of incarceration for sex offenders during this period.[138] If offenders are incarcerated for longer periods of time, they have less opportunity to offend. Thus, the decrease in recidivism could be attributable to increased length of incarceration. Second, even if one ignores the incarceration issue, the notification regime in Washington is risk-discriminating in that it provides for community notification only for

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[130] Further exacerbating this dislocation, a number of communities and states prohibit convicted sex offenders from living within a certain distance of designated locations such as schools or child-care centers. *See, e.g.*, IOWA CODE § 692A.2A (2005). These restrictions have had the effect of virtually excluding convicted sex offenders from urban areas, as well as preventing them from living with family members. Davey, *supra* note 129. Interestingly, the Iowa County Attorney's Association, an organization of Iowa prosecutors, has criticized such legislation as being counterproductive, asserting that it causes homelessness and is too broad, and that no research shows that such a restriction reduces sex offenses. IOWA COUNTY ATTORNEYS ASSOCIATION, STATEMENT ON SEX OFFENDER RESIDENCY RESTRICTIONS IN IOWA (Jan. 2006), http://spd.iowa.gov/filemgmt_data/files/SexOffender.pdf.

[131] Jan Hoffman, *New Law Is Urged on Freed Sex Offenders*, N.Y. TIMES, Aug. 4, 1994, at B1.

[132] Joshua Wolf Shenk, *Do 'Megan's Laws' Make a Difference?* U.S. NEWS & WORLD REP., Mar. 9, 1998, at 27.

[133] SCOTT MATSON & ROXANNE LIEB, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, COMMUNITY NOTIFICATION IN WASHINGTON STATE: 1996 SURVEY OF LAW ENFORCEMENT, Executive Summary, Doc. No. 96-11-1101 (Nov. 1996), *available at* http://www.wsipp.wa.gov/rptfiles/sle.pdf.

[134] TERRY, *supra* note 24, at 196.

[135] Mary Bolding, *California's Registration and Community Notification Statute: Does It Protect the Public from Convicted Sex Offenders?*, 25 W. ST. U.L. REV. 81, 81 (1997).

[136] EXECUTIVE BOARD OF DIRECTORS, ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, THE REGISTRATION AND COMMUNITY NOTIFICATION OF ADULT SEXUAL OFFENDERS (Oct. 5, 2005), http://www.atsa.com/ppnotify.html.

[137] ROBERT BARNOSKI, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, SEX OFFENDER SENTENCING IN WASHINGTON STATE: HAS COMMUNITY NOTIFICATION REDUCED RECIDIVISM? Doc. No. 05-12-1202 (Dec. 2005), http://www.wsipp.wa.gov/rptfiles/05-12-1202.pdf.

[138] *Id.*

moderate and high risk offenders,[139] thus obviating some, but not all, of the inefficiencies and counterproductive components of notification regimes. Those notification regimes that are not risk-discriminating and that are not accompanied by treatment, employment, and housing for offenders are unjust and inefficient. Third, it is notable that with fifty states having enacted community notification laws, this is the only study that we have located that suggests some effect in terms of reducing recidivism. Clearly, more research on the impact of these laws is needed.

Civil commitment as a mechanism for responding to sexual offenders also carries a heavy price. First, a general right to be free from physical restraint and various liberty interests are afforded by the Constitution.[140] There are of course situations where these important guarantees can be tempered, but such restrictions should be limited.[141] Second, civil commitment is very expensive. The cost of housing and treating a civilly committed person for one year in Washington is $138,000.[142] Overall, the cost of operating special facilities for the commitment of sex offenders at the national level is estimated to be $224 million per year.[143] Thus, if there are cheaper or less restrictive ways to achieve the goals of civil commitment, namely, protect public safety and promote rehabilitation, they should be pursued.

VII. Treatment Options

While there is no known cure for inappropriate sexual thoughts and behavior,[144] there are treatments that can significantly reduce their strength and occurrence. Treatments include non-biological therapies such as cognitive behavioral therapy, and biological therapies such as surgical castration and pharmacological (drug) therapy.

Among the non-biological treatments for sex offenders, cognitive-behavioral therapy is the most common.[145] During cognitive-behavioral therapy, offenders may obtain social skills training, sex education, cognitive restructuring, aversive conditioning, and victim empathy therapy.[146]

Social skills training attempts to provide the offender with social competency, so that the individual may pursue appropriate social interactions; sex education informs the offender of the risks and practice of sexual behavior; cognitive restructuring helps the offender avoid cognitive distortions that may have provided the offender with a justification for his behavior; aversive conditioning pairs painful, annoying, or unpleasant experiences, such as a bad smell, with an offender's inappropriate sexual fantasy; and victim empathy therapy helps offenders understand the harm they have caused to the victim and that the victim is also a person with feelings.[147] Offenders may also undergo relapse prevention therapy, a type of cognitive-behavioral therapy, where they learn how to identify problematic thoughts and behaviors and stop their progression.[148]

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[139] WASH. REV. CODE § 4.24.550 (2006).
[140] *See Kansas v. Hendricks*, 521 U.S. at 356.
[141] *Id.*
[142] TERRY, *supra* note 24, at 211.
[143] ROXANNE LIEB & KATHY GOOKIN, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT PREDATORS: COMPARING STATE LAWS, Doc. No. 05-03-1101 (2005), *available at* http://www.wsipp.wa.gov/rptfiles/05-03-1101.pdf. On the other hand, the average cost per year of housing an inmate in state prison is $22,650. JAMES STEPHAN, U.S. DEP'T OF JUSTICE, STATE PRISON EXPENDITURES, 2001, SPECIAL REPORT, NCJ 202949 (June 2004), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/spe01.pdf.
[144] TERRY, *supra* note 24, at 139.
[145] *Id.* at 154.
[146] Richard B. Krueger & Meg S. Kaplan, *Behavioral and Psychological Treatment of the Paraphilic and Hypersexual Disorders*, 8 J. PSYCHIATRIC PRAC. 24-25 (2002).
[147] *Id.*
[148] THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, REDUCING SEXUAL ABUSE THROUGH REATMENT AND INTERVENTION WITH ABUSERS (1996), http://www.atsa.com/pptreatment.html [hereinafter ATSA].

Cognitive behavioral therapy, while often successful in reducing recidivism amongst sex offenders,[149] does not always work, either completely or at all.[150] Thus, it is very important for a mental health professional to determine when cognitive-behavioral therapy is appropriate, and to monitor its effectiveness.

Surgical castration[151] involves removal of the testes, which has the effect of significantly reducing circulating testosterone.[152] While surgical castration does decrease sex drive, [153] it does not always do so completely.[154] Further, many view surgical castration, which they associate with the eugenics movement that sought to sterilize those with undesirable traits thought to be hereditary,[155] with fear and skepticism. Additionally, the reduction of sex drive achieved through surgical castration can be overcome with the use of exogenous androgens, such as testosterone,[156] which may be obtained surreptitiously. Nevertheless, some authorities believe that surgical castration may become more common, as it has achieved the lowest recidivism rate of any treatment.[157]

Pharmacological therapy,[158] however, is a viable option for many, particularly those with paraphilias. One of the most noteworthy studies on pharmacological therapy for sex offenders tested the efficacy of triptorelin, a drug that reduces male testosterone levels, in decreasing the deviant sexual desire and behavior of thirty men.[159] All of the men suffered from paraphilias, with twenty-five of them suffering specifically from pedophilia.[160] Before triptorelin use, the men reported an average of forty-eight deviant sexual fantasies per week (with a standard deviation of ten) and five incidents of abnormal sexual behavior per month (with a standard deviation of two).[161]

During treatment, which involved monthly intramuscular injections of triptorelin, supplemented with regular supportive psychotherapy (one to four sessions a month), all of the men had a prompt reduction in paraphilic activities, with the maximal reduction in the intensity of their sexual desire and symptoms occurring after three to ten months with the exception of one man in whom it was achieved after two years.[162] All of the men reported that their sexual desire decreased considerably, that their sexual behavior became easily controllable, that their deviant sexual fantasies and urges disappeared completely, and that there were no incidents of abnormal sexual behavior during therapy.[163] Once the maximal effects of treatment were achieved, there were no sexual offenses reported by the men, by their relatives, or by a probation officer.[164] Symptoms returned among those men who stopped treatment, including three who

[149] Polizzi et al., *What Works in Adult Sex-Offender Treatment? A Review of Prison- and Non-Prison Based Treatment Programs*, 43 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 357, 371 (1999).
[150] See ATSA, *supra* note 148.
[151] Surgical castration is also referred to as physical castration or orcheictomy.
[152] Kurt Freund, *Therapeutic Sex Drive Reduction*, 62 (Supp. 287) ACTA PSYCHIATRICA SCANDINAVICA 5, 15 (1980). For an updated review of surgical castration, see Richard B. Krueger et al., Orchiectomy (in preparation).
[153] Richard Wille & Klaus M. Beier, *Castration in Germany*, 2 ANNALS SEX RESEARCH 103, 129 (1989).
[154] TERRY, *supra* note 24, at 154.
[155] *See* Charles Scott & Trent Holmberg, *Castration of Sex Offenders: Prisoners' Rights Versus Public Safety*, 31 J. AM. ACAD. PSYCHIATRY L. 502, 502 (2003).
[156] J. Michael Bailey & Aaron S. Greenberg, *The Science and Ethics of Castration: Lessons from the Morse Case*, 92 NW. U.L. REV. 1225, 1235 (1998).
[157] Ariel Rosler & Eliezer Witztum, *Pharmacotherapy of Paraphilias in the Next Millennium*, 18 BEHAV. SCI. & L. 43, 44 (2000).
[158] Pharmacological therapy is also referred to as drug therapy or chemical castration.
[159] Ariel Rosler & Eliezer Witztum, *Treatment of Men with Paraphilia with a Long-Acting Analogue of Gonadotropin-Releasing Hormone*, 338 NEW ENG. J. MED. 416 (1998).
[160] *Id.* at 417.
[161] *Id.* The study did not include a control group "because the men might have continued to offend while receiving a placebo." *Id.*
[162] *Id.* at 418.
[163] *Id.*
[164] *Id.* at 418-19.

reported intolerable side effects. Further, for three of these men who were subsequently given an alternative medication (cyproterone acetate), two were subsequently prosecuted and received prison sentences for sex crimes.[165] Case studies of another testosterone-reducing drug, leuprolide acetate (brand name Lupron), reported successful results similar to those of triptorelin.[166]

Currently, medroxyprogesterone acetate (MPA)[167] is the drug most commonly used to reduce serum testosterone levels.[168] MPA is given by injection and need only be administered once every three months.[169] Each injection costs about $30 to $75.[170] Gonadotropin releasing hormone agonists, such as depot-leuprolide acetate, though, are gaining a foothold[171] because they have fewer adverse side-effects[172] and are considered more effective[173] than MPA. Although leuprolide acetate is significantly more expensive than MPA,[174] considering its treatment potential, it may well be worth the cost.

Pharmacological therapies are generally given to those with paraphilias, as they have stronger and more intense deviant sexual desires than other sex offenders.[175] As noted, however, pharmacological therapies may induce unpleasant or harmful side effects or for other reasons may be resisted by sex offenders. While the testosterone-reducing effects of drugs like MPA and leuprolide acetate may be overcome by taking exogenous androgens, standard laboratory analyses of blood and urine can be used to test for the presence of such androgens.[176] It is also important to note that pharmacological therapies need not be life-long; these therapies may be employed for short-term treatment that allows offenders to obtain some measure of control over their sexual impulses and enables other forms of treatment, such as behavioral therapy, to become effective.[177]

However, pharmacological therapies have their limits. For instance, drugs that reduce

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[165] *Id.* 419.

[166] Richard B. Krueger & Meg S. Kaplan, *Depot-Leuprolide Acetate for Treatment of Paraphilias: A Report of Twelve Cases*, 30(4) ARCHIVES SEXUAL BEHAV. 409 (2001). *See also* Peer Briken et al., *Treatment of Paraphilia with Luteinizing Hormone-Releasing Hormone Agonists*, 27 J. SEX & MARITAL THERAPY 45, 52 (2001); Richard B. Krueger & Meg S. Kaplan, *Chemical Castration: Treatment for Pedophilia,i n* 2 DSM-IV-TR CASEBOOK 309, 309 (Michael B. First et al. eds., 2006).

[167] Available under the brand name Depo-Provera.

[168] TERRY, *supra* note 24, at 153.

[169] MPA can also be given orally. Luk Gijs & Louis Gooren, *Hormonal and Psychopharmalogical Interventions in the Treatment of Paraphilias: An Update*, 33(4) J. SEX RESEARCH 273, 275 (1996).

[170] JENNIFER JOHNSEN, PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., IS THE SHOT RIGHT FOR YOU? (2006), http://www.plannedparenthood.org/pp2/portal/files/portal/medicalinfo/birthcontrol/pub-depo-provera.xml.

[171] Fabian M. Saleh & Laurie L. Guidry, *Psychosocial and Biological Treatment Considerations for the Paraphilic and Nonparaphilic Sex Offender*, 31 J. AM. ACAD. PSYCHIATRY & L. 486, 490 (2003).

[172] Krueger & Kaplan, *supra* note 166, at 418 (citing Smith et al., *Clinical Effects of Gonadotrophin-releasing Hormone Analogue in Metastatic Carcinoma of Prostate*, 25 UROLOGY 106 (1985)). Side effects of MPA include hyperglycemia, nightmares, weight gain, and lethargy. Rosler & Witztum, *supra* note 159, at 420. Side effects of leuprolide acetate include hot flashes and decreases in bone density, which can be countered by administering, among other things, alendronate, vitamin D, and calcium. *Id.* at 419-20; Richard B. Krueger et al., *Prescription of Medroxyprogesterone Acetate to a Patient with Pedophilia, Resulting in Cushing's Syndrome and Adrenal Insufficiency*, SEXUAL ABUSE: J. RES. & TREATMENT (forthcoming 2006).

[173] *Id.* at 420-21.

[174] Although costs vary, the cost of one four-month dose has been set at $2,660. WALGREENS, LUPRON DEPOT 30MG INJ, http://www.walgreens.com/library/finddrug/druginfo1.jsp?particularDrug=Lupron&id=15887) (last visited July 19, 2006).

[175] TERRY, *supra* note 24, at 153.

[176] *See* Bailey & Greenberg, *supra* note 156, at 1236. For instance, anabolic steroids such as testosterone cypionate, which may help increase sex-drive, are easily detectible, even months after use. Lorenz C. Hofbauer & Armin E. Heufelder, *Endocrine Implications of Human Immunodeficiency Virus Infection*, 75 MED. 262, 271 (1996); Morris B. Mellion, *Anabolic Steroids in Athletics*, 30 AM. FAM. PHYSICIAN 113, 118 (1984).

[177] Krueger & Kaplan, *supra* note 166, at 419.

testosterone levels, like leuprolide acetate and MPA, may not have any effect on nonsexual violence.[178] Thus, for offenders without paraphilias or whose primary problems are non-sexual, or for offenders with paraphilias and nonsexual violence problems, behavioral therapies, either alone or in conjunction with pharmacological therapies, are necessary.

VIII. Recommendations

Before better means to reduce the occurrence of sexual offenses can be established, the potent obstacle of the political process must be recognized. In a representative democracy, elected legislators are responsible to and dependent upon the support of their constituents. Considering the significant inaccuracies in, and overall frenetic nature of, popularly held beliefs and attitudes regarding sex offenders, it is not surprising that legislators often feel they must adopt measures driven by fear rather than sound science or public policy.

In this vein, a Police Chief in Des Moines, Iowa, arguing for the repeal of an Iowa law placing residency restrictions on certain sex offenders that increased their homelessness and subsequently decreased the ability to monitor their whereabouts, worried that state legislators would not re-work the counterproductive statute out of political cowardice.[179] This fear needs to be overcome and the following recommendations implemented.

(1) Current medical practice has embraced "evidence-based medicine," which is "the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients."[180] This approach integrates "individual clinical expertise with the best available external clinical evidence [drawn] from systematic research."[181] There is a similar need for "evidence-based legislation." Although recidivism rates are frequently bandied about in the course of legislative debates over proposed sex offender legislation, there is a need for more accurate and precise information on risk and treatment that will enable more appropriate decisions to be made. In general, educational and training programs regarding sex offenders should be made available to legislators and their staff to inform their decision-making.

(2) Sex offender legislation should be preceded by careful study and a projected cost-benefit analysis, rather than rely on speculation and public fears. In addition, any legislation that is enacted should always include a provision mandating and funding a cost-benefit analysis of the legislation and its effects. Building "sunset" provisions into this legislation can provide an opportunity for a systematic review of the cost-benefit analysis and the impact of the legislation, and can be considered in determining whether to modify the legislation.[182]

(3) Sexual offending is a complex behavior and understanding and redressing it is a difficult challenge. Accordingly, proposals to reduce this criminal behavior should be carefully considered and studied. To promote this effort, multidisciplinary commissions should be formed with governmental support and charged to fully evaluate the effects and integration of sex offender-related legislation. These commissions should include mental health professionals, lawyers, criminologists, judges, and legislators. Such commissions should address sex abuse as both a criminal justice and a public health problem. The Centers for Disease Control and Prevention and the World Health Assembly (the decision-making body for the World Health Organization) have declared violence to be a

[178] *Id.*
[179] Lee Rood, *New Data Shows Twice as Many Sex Offenders Missing*, DES MOINES REG. & TRIB., Jan. 23, 2006, at 1A.
[180] David L. Sackett et al., *Evidence Based Medicine: What It Is and What It Isn't*, 312 BRITISH MED. J. 71, 71 (1996).
[181] *Id.*
[182] A "sunset" provision provides that the legislation, unless renewed, will expire after a specified period of time or upon a given date.

public health priority, and The Association for the Treatment of Sexual Abusers has suggested that this framework be extended to sexual violence.[183] The public health model is used to complement the criminal justice approach and strives to prevent the occurrence of crimes through the identification of risk factors and the development of interventions to address these factors.[184] A public health approach can develop not only appropriate post-offense responses, but also generate broader, more systematic, long-term changes that can help prevent the occurrence of sexual abuse and the development of sex offenders.

(4) Risk level classifications should be incorporated into society's responses to sex offenders, particularly with regard to their community notification systems, and a graduated response employed that limits the use of the most "punitive" mechanisms to those offenders that have been shown to pose the greatest risk. This would enable offenders who pose minimal risk and are unlikely to re-offend to reintegrate into society, as well as motivate all offenders to seek and comply with needed treatment programs to obtain this level of classification. Mental health professionals can now identify factors that are related to recidivism and, using sophisticated, empirically-validated instruments, accurately assess the likelihood of future risk.[185] These instruments should be used, for example, to determine what level of community notification is employed for various categories of sex offenders. Community notification should be tailored to the risk these offenders present.

(5) Legislative responses to sex offending should incorporate incentives that reward offenders who undergo, comply with, and maintain treatment, such as relieving these offenders of some of the obligations and hardships they would otherwise face. As noted, the strictest measures should be reserved for those offenders who pose the greatest, most difficult-to-reduce risk of re-offending, thereby targeting scarce resources and focusing attention in a more efficient and productive manner. Such incentives will further motivate offenders to seek and comply with needed treatment programs.

(6) Less restrictive alternatives (including both behavioral and pharmacological treatment) should be considered before civilly committing a sex offender and, where appropriate, be offered to the offender.[186] Such treatment should be provided free of charge or at least at an affordable rate. The successful employment of these alternatives can avoid the huge costs associated with civil commitment, while enhancing the likelihood that an offender becomes a productive member of society. At the same time, the availability of civil commitment or other mechanisms can help ensure treatment compliance.

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[183] *See, e.g.,* THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, SEXUAL ABUSE AS A PUBLIC HEALTH PROBLEM (2001), http://www.atsa.com/pppublichealth.html.

[184] *Id.*

[185] While there are a number of instruments used to predict the likelihood of recidivism, the Static-99 is the most common and most validated. R. KARL HANSON, PUBLIC SAFETY AND EMERGENCY PREPAREDNESS CANADA, THE VALIDITY OF STATIC-99 WITH OLDER SEXUAL OFFENDERS (2005), http://ww2.psepc-sppcc.gc.ca/publications/Corrections/20050630_e.asp. The Static-99 considers ten static factors about an offender, such as the offender's gender and prior sexual offenses, and assigns a score to an offender based on the answers to questions related to these factors. *See* TERRENCE W. CAMPBELL, ASSESSING SEX OFFENDERS 83-84 (2004). Static-99 shows "moderate predictive accuracy." R. Karl Hanson & David Thornton, *Improving Risk Assessments for Sex Offenders: A Comparison of Three Actuarial Scales*, 24 L. & HUM. BEHAV. 119, 129 (2000). Static-99 has its critics. *See, e.g.,* CAMPBELL, *supra*, at 83-97. It is properly used as a starting point, both in practice and as a springboard for further research. A more comprehensive view of risk would involve considering both static and dynamic (such as current employment stability) factors. Further research is necessary, but risk assessment instruments have experienced steady improvement, improvement that will continue with new research and testing.

[186] Involuntary pharmacological therapy is not addressed here, as it raises numerous constitutional and ethical concerns that merit a separate, thorough analysis.

(7) Government supported opportunities for offenders to obtain employment, housing, treatment, and support services should be enhanced. Offenders cannot reintegrate into society and develop healthy living habits if they have no income, shelter, treatment, or support. Enhancing the likelihood that offenders must or will continually relocate because they lack these opportunities not only virtually ensures that offenders will not improve and exhibit appropriate behavior, but also makes it more difficult to monitor the offender to enhance public safety.

(8) Resources available to treat potential offenders should receive more publicity. Existing state-sponsored websites, publications, and education programs appropriately highlight the resources available to victims, as well as how people can identify and locate sex offenders. There is little or no attention given to advertising how and where a person with a sexual disorder can obtain competent and confidential treatment that will prevent inappropriate behavior from occurring. Governmental funding should be provided to enhance awareness of these services.[187] Additionally, governmental support should be supplied to ensure that people can obtain these resources even when they lack the ability to pay for these services.

(9) Drug and mental health courts have been successfully implemented in some locations.[188] These courts hear mostly or exclusively drug cases or relatively minor criminal cases involving defendants with a mental disorder, respectively, and have thus developed significant experience and expertise in such matters. Sex offense courts may be a viable mechanism in which judges and parole or probation officers are knowledgeable about sex offenders, the treatment modalities specifically designed for sex offenders, the appropriate mechanisms to prevent recidivism, and how best to monitor and supervise offenders to ensure public safety.

However, there is much debate regarding specialized courts in the literature, and thus the matter needs further study.[189] Regardless of whether such specialized courts are implemented, educational and training programs regarding sex offenders should be made available to judges, as well as probation and parole officers, to inform their decision-making.

(10) Because of the limited knowledge and understanding of sex offending, funding and support for research to enhance this understanding is essential. Further research should focus on improving the collection and analysis of recidivism data; studying the effects on recidivism of existing non-punitive responses to sex offenders and possible alternatives; and examining, evaluating, and improving the efficacy of non-biological and biological treatment.

IX. Conclusion

[187] Examples of organizations that provide referrals to mental health professionals and programs that treat sex offenders include: The Safer Society Foundation, P.O. Box 340, Brandon, VT, 05733-0340, (802) 247-5141, www.safersociety.org; The Association for the Treatment of Sexual Abusers (ATSA), 4900 S.W. Griffith Dr., Suite 274, Beaverton, OR, 97005, (503) 643-1023, www.atsa.com, atsa@atsa.com.

[188] *See, e.g.*, Jonathan E. Fielding et al., *Los Angeles County Drug Court Programs: Initial Results*, 23 J. SUBSTANCE ABUSE TREATMENT 217, 223 (2002).

[189] The issue of specialized sex courts is not a simple one. Scholars have long debated the merits and drawbacks of specialized courts as compared to courts of general jurisdiction. Proponents see specialization as beneficial insofar as the courts can develop significant expertise in the area of specialization and produce efficiencies such as those that economists have noted flow from specialization in the production of goods and services. Opponents worry that specialization can render these courts more susceptible to special interests and bias, and that the monotony (hearing the same cases over and over) and lack of prestige of a specialized judgeship might attract a lower-quality judiciary than a generalized judgeship would. For an excellent review of these issues, consult Jeffrey Stempel, *Two Cheers for Specialization*, 61 BROOK. L. REV. 67 (1995).

Crafting appropriate responses for sex offenders is no easy task. As they are some of the most hated and reviled members of society, legislators (even those who are well-intentioned) fear opposing legislation targeting these offenders, regardless of how misguided the legislation may be. In the long run, however, well-informed and carefully crafted measures will prove more effective than impulsive, ill-conceived responses in reducing sex offenses.

Four principles should guide the development of these responses. First, sex offenders should be recognized to be a heterogeneous group, distinguishable by offense type and risk of re-offense. Second, the law should take into account new pharmacological therapies, such as testosterone-suppressing drugs, as well as other innovations and therapeutic approaches as a means of reducing the likelihood of future offenses.[190] Third, greater efforts should be made to promote offender reintegration into society, thereby improving their chances for successful treatment and diminishing the likelihood that they will reoffend. Fourth, it is critical to assess the effects of such legislation and to invest in research into the causes, treatment, and prevention of sexual violence.

By integrating law and therapeutic efforts, responses can be formulated that prevent future offenses and victimization, offer offenders and potential offenders the optimal opportunity to lead healthy, productive lives, and decrease the cost of sexual offending to society. By implementing the recommendations described above, society can move one step closer to these goals.

[190] These therapies are not cure-alls. They must be used appropriately, as discussed in this article and in the medical literature.

From: Leah Simon [redacted]
Sent: Sunday, April 22, 2007 7:33 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

Attachments: 251424419-SORNA.doc
Please see attached file
Thank You

Leah Simon
[redacted]

Re: OAG Docket No. 117

Please allow me to voice my grave concern and opposition for the Interim Rule issued as a result of the Adam Walsh Act (AWA) and SORNA. This law will allow double jeopardy which is legal because federal jurisdiction and state jurisdiction are separate. A person can now be punished by both the federal; and state government for the same violation of registration. Every state has a registry in place and this is certainly a duplicate effort and an excessively expensive and unnecessary law. A great many people who have moved on with their lives and living law abiding and productive lives will now be re-exposed with the retroactive clause of SORNA. This is tantamount to the Salem witch hunts only now it is the families of sex offenders who will brought down with this draconian and vindictive law. This is punishment, not public safety as SORNA will show places of employment in the Federal Registry which will be an open invitation to the fear mongers and hatemongers to protest their places of work or physically attack them. Posting places of employment in a federal database will stand in the way of any sex offender in California (and the nation) from being able to earn a living, no matter how minor their crime. This is completely counterproductive to the goal of reintegrating ex-felons back into society as self supporting, productive citizens. The Attorney General has said that SORNA's applicability will be to "virtually the entire existing sex offender population". Clearly the intent is cover "virtually" everyone, but there is no mention about whether Congress specifically limits what he can do. Why was this left out?

Please consider the effect this will have on the one million women and children attached to a sex offender when they cannot earn a living. Current laws have forced a group of people to live under a bridge in Florida. This is an excellent example of how this law will further affect the offenders and their families. They are unable to work and support their families or themselves The one time sex offender is lumped together with the violent sexual predator. In California, there are already laws in effect to handle the truly high risk offender and considering all sex offenders one and the same is simply not right or just. The tiny fraction of a percentage of sex offenders who are guilty of raping and/or murdering a child are mentally ill and they belong in places of healing. They are the people who need to be removed from society for the purpose of safety.

More than 90% of sex crimes involving a child occur within families. No registration, residency restriction or monitoring system will stop these crimes. This law is targeting an entire group of people and only a fraction of the group would possibly be stopped from a crime. We are so scared that those people who have been convicted of sex offense will reoffend, but look at the statistics. The Department of Justice states that the average rate of recidivism is 5%, one the lowest rates among all felonies. It is an invented lie that has been perpetrated to the public that sex offenders cannot be rehabilitated and that they have a high rate of recidivism. This is simply not true. Our conservative leaders are constantly preaching about building the family and knocking the liberals for not having stricter morals, but laws such as this are destroying families over mental illness. It's barbaric, opportunistic and political grandstanding at its worst.

SORNA can be passed as Federal Interim Rule because Congress empowered Attorney General Gonzales, whose character is now being assassinated to do so. All of his initiatives should simply be cancelled. He has proven not to be trustworthy and

everything he has touched is now tainted, including SORNA. In addition, the Attorney General fails to point out anything relative to Sec. 117 (Duty to Notify Sex Offenders of Registration Requirements and to Register) which places a requirement on him (and his office). Notification is a basic tenet of due process, is it not? Why was this left out of the Interim Rule? This is an ill conceived, poorly thought out Rule and I ask that it be struck down before we allow the invented hysteria that has pervaded our country continue to destroy families. A child is 40 times more likely to be killed by a drunk driver than a sex offender. Why are these people being ostracized, forced to live in exile and banishment, on the streets of our FREE country? This is all too reminiscent of the nightmare of Nazi Germany. That is a frightening state of affairs for our country.

From: Blair, Jeff[redacted]
Sent: Monday, April 02, 2007 1:41 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Completed
Good afternoon,
I have several questions regarding OAG Docket No. 117

1. Is the state or the Attorney Generals office going to provide the counties with a list of certified programs?
2. Will the counties be notified as to which juveniles will be required to register or must we submit some type of a report and if so, who will develop the report?
3. Will each county be given a contact person for support help?
4. Once the data base is developed who will have access to the information?

Thank you for your anticipated response.

From: Tamler, Cary [redacted]
Sent: Monday, March 05, 2007 4:04 PM
To: OLPREGS
Subject: Interim Rule 28 CFR Part 72

Follow Up Flag: Follow up
Flag Status: Completed

This is a request for clarification on the above. We take this interim rule to mean that SORNA applies retroactively. If we are correct in that understanding, does this then mean that state and local jurisdictions must "reset" the risk level for offenders previously convicted of registerable sex offense to comply with the classification of sex offenders ("tiers") as set forth in the Sex Offender Registration and Notification Act (SORNA)? The tier system of classification affects verification and registration requirements. Must offenders convicted of a registerable sex offense prior to enactment of SORNA also comply with the SORNA verification and registration requirements?

How if at all does the interim rule impact the statutory time for implementation given to jurisdictions of three years to implement the new sex offender registration and notification requirements. As of the date of the interim rule must state and local jurisdictions adhere to the SORNA classification of sex offenders with all current and new sex crime convictions, including verification/show-up requirements, duration of registration and consequences of registration violations?

Thank you for your assistance in addressing these inquiries.

Cary Steven Tamler
Associate Commissioner
NYC Department of Probation
[redacted]
([redacted]

From: Ryan, Gail [redacted]
Sent: Wednesday, March 14, 2007 5:28 PM
To: OLPREGS
Subject: OAG Docket No. 117

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed
To US Attorney General, federal legislators and policy makers:

Re Federal Law and Policy re Sex Offender Registration (SORNA)

I am very concerned about laws which do not reflect science, research, and common sense.

I have worked for more than 30 years to prevent and treat the initiation and continued perpetration of sexual abuse.
I am sure you are aware of the many competing agendas and the concerns raised by other professionals and organizations re the broad application of sex offender registration, especially the inclusion of juveniles, even prior to the passing of this legislation. I will not repeat them here but do wish to go on record during this period of public comment:

I oppose the unammended implementation of the law, especially the inclusion of juveniles being subject to such registration, and the retroactive requirement for registration of those who offended prior to the law being passed.

Many of the youth I treated in the past 25 years were adjudicated for a sexual offense, and might now be subjected
to retroactive registration, even with no further charges ever being filed. Many of those youth are now pushing 40, many now parents of teens, and some becoming grandparents! Having been successfully dissuaded from continuing to sexually offend, such retroactive action cannot be considered just.

Please note my adamant opposition to retroactive inclusion under SORNA!
Based on my professional expertise, this is my personal conviction and not represented as the opinion of any of the organizations I work with or for.

Respectfully,

Gail Ryan MA
Facilitator, National Adolescent Perpetration Network
Director, Kempe Perpetration Prevention Program
Assistant Clinical Professor, Dept. of Pediatrics
University of Colorado School of Medicine
[redacted]

From: Ryan, Gail [redacted]
Sent: Monday, March 12, 2007 6:47 PM
To: OLPREGS
Subject: re federal registry of those who have sexually offended

Follow Up Flag: Follow up
Flag Status: Completed
Re Federal Law and Policy re Sex Offender Registration (SORNA)

I am very concerned about laws which do not reflect science, research, and common sense.

Working for more than 30 years to prevent and treat the initiation and continued perpetration of sexual abuse,
I am sure you are aware of the many competing agendas and the concerns raised by other professionals and organizations re the broad application of sex offender registration, especially the inclusion of juveniles.
I will not repeat them here but do wish to go on record during this period of public comment:

I oppose the implementation of the law, especially the inclusion of juveniles being subject to such registration,
and the retroactive requirement for registration of those who offended prior to the law being passed.

Based on my professional expertise, this is my personal conviction and not represented as the opinion of any of the organizations I work with or for.

Respectfully,

Gail Ryan MA
Director, Kempe Perpetration Prevention Program
Assistant Clinical Professor, Dept. of Pediatrics
Univ Colorado School of Medicine
[redacted]

From: Tamler, Cary [redacted]
Sent: Monday, March 05, 2007 4:04 PM
To: OLPREGS
Subject: Interim Rule 28 CFR Part 72

Follow Up Flag: Follow up
Flag Status: Completed

This is a request for clarification on the above. We take this interim rule to mean that SORNA applies retroactively. If we are correct in that understanding, does this then mean that state and local jurisdictions must "reset" the risk level for offenders previously convicted of registerable sex offense to comply with the classification of sex offenders ("tiers") as set forth in the Sex Offender Registration and Notification Act (SORNA)? The tier system of classification affects verification and registration requirements. Must offenders convicted of a registerable sex offense prior to enactment of SORNA also comply with the SORNA verification and registration requirements?

How if at all does the interim rule impact the statutory time for implementation given to jurisdictions of three years to implement the new sex offender registration and notification requirements. As of the date of the interim rule must state and local jurisdictions adhere to the SORNA classification of sex offenders with all current and new sex crime convictions, including verification/show-up requirements, duration of registration and consequences of registration violations?

Thank you for your assistance in addressing these inquiries.

Cary Steven Tamler
Associate Commissioner
NYC Department of Probation
([redacted]
([redacted]

From: [redacted]
Sent: Thursday, April 05, 2007 12:07 PM
To: OLPREGS
Subject: A washingtonpost.com article from: [redacted]

Follow Up Flag: Follow up
Flag Status: Completed
washingtonpost.com e-mail

This page was sent to you by: [redacted]

Message from sender: How can this man be riding around in his home town this week on his bike? Why since 2003, 2005 has Florida done nothing, If rehab is ok for a congressman then it should be good enough for others dating back to 2003 and 2005.

FBI to Examine Foley's E-Mails

By Charles Babington and Jonathan Weisman

The FBI announced last night that it is looking into whether former representative Mark Foley (R-Fla.) broke federal law by sending inappropriate e-mails and instant messages to teenage House pages.

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

Re: OAG Docket No. 117

Dear Senior Counsel Karp:

Please allow me to voice my grave concern and opposition for the Interim Rule issued as a result of the Adam Walsh Act (AWA) and SORNA by Attorney General Gonzales. This law will allow double jeopardy which is legal only because federal jurisdiction and state jurisdiction are separate. A person can now be punished by both the federal; and state government for the same violation of registration. Every state has a registry in place and this is certainly a duplicate effort and an excessively expensive and unnecessary law.

A great many people who have moved on with their lives and living law abiding and productive lives will now be re-exposed with the retroactive clause of SORNA. This is tantamount to the Salem witch hunts only now it is the families of sex offenders who will be brought down with this draconian and vindictive law. This is cruel and unusual punishment, not public safety as SORNA will show places of employment in the Federal Registry which will be an open invitation to the fear and hate mongers to protest their places of work and/or physically attack them.

Posting places of employment in a federal database will stand in the way of any sex offender in California (and the nation) from being able to earn a living, no matter how minor their crime. This is completely counterproductive to the goal of reintegrating ex-felons back into society as self supporting, productive citizens. The Attorney General has said that SORNA's applicability will be to "virtually the entire existing sex offender population". Clearly the intent is cover "virtually" everyone, but there is no mention about whether Congress specifically limits what he can do. Why was this left out?

Please consider the effect this will have on the one million women and children attached to a sex offender when they cannot earn a living. Current laws have forced a group of people to live under a bridge in Florida. In Iowa they are living in their cars at rest stops. This is an excellent example of how this law will further affect the offenders and their families. They are unable to work and support their families or themselves The one time sex offender is lumped together with the violent sexual predator. In California, there are already laws in effect to handle the truly high risk offender and considering all sex offenders one and the same is simply not right or just.

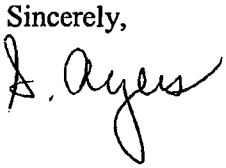
The tiny fraction of a percentage of sex offenders who are guilty of raping and/or murdering a child are mentally ill and they belong in places of healing. They are the people who need to be removed from society for the purpose of public safety, but even this should be done in a much more healing manner, as they are most often severely mentally ill.

The Department of Justice states that the average rate of recidivism is 5%, one the lowest rates among all felonies. It is an invented lie that has been perpetrated to the public that sex offenders cannot be rehabilitated and that they have a high rate of recidivism. This is simply not true. Our conservative leaders are constantly preaching about building the family and knocking the liberals for not having stricter morals, but laws such as this are destroying families over mental illness. It's barbaric, opportunistic and political grandstanding at its worst.

SORNA can be passed as Federal Interim Rule because Congress empowered Attorney General Gonzales, whose character is now being assassinated to do so. All of his initiatives should simply be cancelled. He has proven not to be trustworthy and everything he has touched is now tainted, including SORNA. He most likely wrote this rule anticipating he would need the support of fellow Republicans over the firings of the Attorneys. How can it be a good rule when Conservatives are so hell bent to over punish the severely mentally ill in order to build political careers and Gonzales so desperately needs their support. The fact that SORNA touches so many millions of lives in a destructive manner makes it as much, if not more important than the other probes.

In addition, the Attorney General fails to point out anything relative to Sec. 117 (Duty to Notify Sex Offenders of Registration Requirements and to Register) which places a requirement on him (and his office). Notification is a basic tenet of due process, is it not? Why was this left out of the Interim Rule? This is an ill conceived, poorly thought out Rule and I ask that it be struck down before we allow the invented hysteria that has pervaded our country continue to destroy families. A child is 40 times more likely to be killed by a drunk driver than a sex offender. Why are these people being ostracized, forced to live in exile and banishment, on the streets of our FREE country? This is all too reminiscent of the nightmare of Nazi Germany. That is a frightening state of affairs for our country. SORNA should be discarded immediately

Sincerely,



From: mary doogan [redacted]
Sent: Monday, April 30, 2007 3:25 PM
To: OLPREGS
Subject: OAG Docket No. 117

Follow Up Flag: Follow up
Flag Status: Red

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

Re: OAG Docket No. 117

Dear Senior Counsel Karp:

What do you think of when you hear the words Se Offender or Predator?

Does MONSTER come to mind?

Study history or you are doomed to repeat it.

As Hitler put it, "Society will tolerate almost any injustice so long as you tell them it is for the children."

The Adam Walsh Act (AWA) and SORNA by Attorney General Gonzales will undermine the justice system and allow double jeopardy which is legal only because federal jurisdiction and state jurisdiction are separate. A person can now be punished by both the federal; and state government for the same violation of registration. Every state has a registry in place and this is certainly a duplicate effort and an excessively expensive and unnecessary law.

Many falsely accused, YET convicted with zero evidence is indistinguishable to the Salem witch hunts only now it is the families of sex offenders who will brought down with this draconian and vindictive law. This is cruel and unusual punishment, not public safety as SORNA will show places of employment in the Federal Registry which will be an open invitation to the fear and hate mongers to protest their places of work and/or physically attack them. Many people who have moved on with their lives and living law abiding and productive lives will now be re-exposed with the retroactive clause of SORNA.

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From: Alexis Endurance [redacted]
Sent: Tuesday, April 24, 2007 8:03 AM
To: OLPREGS
Subject: SORNA/Re; OAG Docket No. 117
David J. Karp,Senior Counsel
Office of Legal Policy, Room 4509
Main Justice Building
950 Pennsylvania Avenue, NW., Washington, DC 20530

Re; OAG Docket No. 117

Dear Mr. Karp,Senior Counsel,

The Attorney General has said the "SORNA" applicability will be to "virtually affect the entire existing sex offender population".

My concern,and strong opposition for this Interim Rule, issued as a result of the Adam Walsh Act (AWA) and SORNA by Attorney General Gonzales.

I see a host of further setback problems for all sex offenders,there are state laws already in place,that still need to be challenged intelligently,such as residency restrictions, retroactive punishment,GPS monitoring for life,Megan's database information,and especially Jessica's law.

There are many problems,associated with "Jessica's Law",that where not carefully or intelligently thought out,that,need remedy,to make it fair and just.Other states have their versions of "Jessica's Law",and realize it is not working,prosecutors are trying to appeal,this law,because of the problems,sex offenders and their families are experiencing.

It is a total chaos!! The people who voted for these laws,thought it was,to be for the worst of the worst,not knowing,it included,much lesser offenses,to be severely punished,amongst the small percentage of violent sex offenders.

The lesser levels of sex offenders,including youngsters,are caught between,this witch hunt,which should have stipulated and categorized,the many lessor degrees,of potential sex offenses,different solutions and options,should have been thought out,not the one size fits all label.

Now, by adding the Federal Interim Rule,to the already unfair State sex laws,it cruelly and most unusually,punishes,all sex offenders,twice, and has the potential to be retroactive,this is not constitutional.

The Federal Government should not get involved,until, each state figures out,how to correct,revise and fairly implements,these new laws.

These new laws, are destroying families,they are becoming homeless,for their is no place for a sex offender to live,with his family, they are being hunted by vigilantes,hurt and some have been killed.

These laws have uprooted,sex offenders,who have became,good functioning citizens,who have businesses,and now are also being targeted,even though their crime,happened 15,20,30 years ago.

Megan's Data base,does not show,they are no longer a threat,or how long ago,their crime was committed.They served their time,and moved on.

Why should a human being be targeted again? There are many serious complications, associated with these "tough on crime laws",created for the sake of winning favor,by ego headed politicians,who want to be the "so-called,vote getting, public safety savior's".

We are in an over-crowded prison crisis mess,in California, because of over-zealous,oath breaking politicians,who obviously have discarded,and disrespected our Sacred Constitution.

The war on sex offenders is, popular and profitable, for law enforcement,prison builders,state prison gang union employees,GPS device manufacturer's,all prison vender's,victims of crime group haters,fear mongering politicians,and already government angry,citizens,who clearly are waiting,for an excuse, to act out !!

The Attorney General has his own agenda,that needs healing,and quite honestly,is not capable of getting involved in an area,that he knows little about,the repercussions,involved,that will further destroy sex offenders and their families.

Mr. Gonzales should just say "he does not recall,his position regarding "SORNA" and forget about that !!

The Federal Government should not get involved,because this is counter productive,with what Federal Judge Thelton Henderson is trying to accomplish for California.

Judge Henderson has taken over,the horrific medical care of prisons,trying to bring it,to a constitutional level,and making matters worst,he has to also deal with,such an over abundance of inmates,who are incarcerated passed 200% capacity !!

Mr. Gonzales "SORNA" is a slap in the face to Judge Henderson,and other Judges, whom are conscientious patriots,who honor their Constitutional Oath of Office,to enforce, Our Constitution, of Our United States of America !!

The focus should be on prevention,understanding mental illness and healing,not more punishment

There are many who have been falsely accused,by a disgruntled partner,incompetent lawers,false witnesses,set in place by over-zealous prosecutors, in collusion with law enforcement.

With Respect,Peace be With You, and Thank You !!!!!

Mr. & Mrs. Joseph Stanley Duran and Family

Love & Blessing's, Alexis

Barbara Christie
[redacted]

April 24, 2007

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

Reference: OAG Docket No. 117

Dear Senior Counsel Karp:

I am writing to ask you to investigate the actions of U.S. Attorney General Alberto R. Gonzales relative to the SORNA (Sex Offender Registration and Notification Act) Interim Rule that he recently wrote. The American people deserve to know why the U.S. Attorney General took this action at this time. Whose interest was he serving? Was he building Republican support for himself in anticipation of the current scandal surrounding his part in the alleged political firings of eight U.S. attorneys? Could the Interim Rule perhaps have been written to help the conservatives counter the many objections and court challenges facing states that are attempting to implement their version of Jessica's Law *retroactively*? If SORNA allows retroactive application of its registration and notification requirements, would state Jessica's Laws then become exempt from ex post facto challenges by the courts? These questions need answers.

Furthermore, SORNA itself brings up serious issues that warrant review: the *legal* double jeopardy to which it subjects registrants under both state and Federal jurisdictions, the *overextension* of its application to even minor sex offenders whose crimes did not involve children, and its tendency to empower vigilante-minded people to banish and persecute a broad range of minor sex offenders, many of whom have long since become law-abiding and productive citizens with no subsequent offenses. Requiring registrants to post their work and school addresses on the national sex offender database goes beyond reasonable precaution.

Please do not misunderstand my intent here; I am *for* keeping predatory child molesters and violent sex offenders off the streets. But we must remember that these predators comprise a small minority of sex offender cases. I am strongly *against* broad-brushstroke attempts targeting virtually all sex offenders because such attempts needlessly and seriously affect entire families -- including their innocent children. Thousands of families suffer the far-reaching devastation of banishment and persecution reminiscent of the Salem witch hunts. What a pitiful waste of effort and resources that could go toward mental health education and treatment! Please help right these wrongs.

Sincerely,

Barbara Christie

Barbara Christie

From: [redacted]
Sent: Tuesday, April 24, 2007 5:49 PM
To: OLPREGS
Subject: anti SORNA !!!

Follow Up Flag: Follow up
Flag Status: Completed
Dear Senior Counsel Karp:

Please allow me to voice my grave concern and opposition for the Interim Rule issued as a result of the Adam Walsh Act (AWA) and SORNA by Attorney General Gonzales. This law will allow double jeopardy which is legal only because federal jurisdiction and state jurisdiction are separate. A person can now be punished by both the federal; and state government for the same violation of registration. Every state has a registry in place and this is certainly a duplicate effort and an excessively expensive and unnecessary law.

A great many people who have moved on with their lives and living law abiding and productive lives will now be re-exposed with the retroactive clause of SORNA. This is tantamount to the Salem witch hunts only now it is the families of sex offenders who will brought down with this draconian and vindictive law. This is cruel and unusual punishment, not public safety as SORNA will show places of employment in the Federal Registry which will be an open invitation to the fear and hate mongers to protest their places of work and/or physically attack them.

Posting places of employment in a federal database will stand in the way of any sex offender in California (and the nation) from being able to earn a living, no matter how minor their crime. This is completely counterproductive to the goal of reintegrating ex-felons back into society as self supporting, productive citizens. The Attorney General has said that SORNA's applicability will be to "virtually the entire existing sex offender population". Clearly the intent is cover "virtually" everyone, but there is no mention about whether Congress specifically limits what he can do. Why was this left out?

Please consider the effect this will have on the one million women and children attached to a sex offender when they cannot earn a living. Current laws have forced a group of people to live under a bridge in Florida. This is an excellent example of how this law will further affect the offenders and their families. They are unable to work and support their families or themselves The one time sex offender is lumped together with the violent sexual predator. In California, there are already laws in effect to handle the truly high risk offender and considering all sex offenders one and the same is simply not right or just.

The tiny fraction of a percentage of sex offenders who are guilty of raping and/or murdering a child are mentally ill and they belong in places of healing. They are the people who need to be removed from society for the purpose of public safety, but even this should be done in a much more healing manner, as they are most often severely mentally ill.

More than 90% of sex crimes involving a child occur within families. No registration, residency restriction or monitoring system will stop these crimes. This law is targeting an entire group of people and only a fraction of the group would possibly be stopped from a crime. We are so scared that those people who have been convicted of sex offense will re-offend, but look at the statistics.

The Department of Justice states that the average rate of recidivism is 5%, one the lowest rates among all felonies. It is an invented lie that has been perpetrated to the public that sex offenders cannot be rehabilitated and that they have a high rate of recidivism. This is simply not true. Our conservative leaders are constantly preaching about building the family and knocking the liberals for not having stricter morals, but laws such as this are destroying families over mental illness. It's barbaric, opportunistic and political grandstanding at its worst.

SORNA can be passed as Federal Interim Rule because Congress empowered Attorney General Gonzales, whose character is now being assassinated to do so. All of his initiatives should simply be cancelled. He has proven not to be trustworthy and everything he has touched is now tainted, including SORNA. He most likely wrote this rule anticipating he would need the support of fellow Republicans over the firings of the Attorneys. How can it be a good rule when Conservatives are so hell bent to over punish the severely mentally ill in order to build political careers and Gonzales so desperately needs their support. The fact that SORNA touches so many millions of lives in a destructive manner makes it as much, if not more important than the other probes.

In addition, the Attorney General fails to point out anything relative to Sec. 117 (Duty to Notify Sex Offenders of Registration Requirements and to Register) which places a requirement on him (and his office). Notification is a basic tenet of due process, is it not? Why was this left out of the Interim Rule? This is an ill conceived, poorly thought out Rule and I ask that it be struck down before we allow the invented hysteria that has pervaded our country continue to destroy families. A child is 40 times more likely to be killed by a drunk driver than a sex offender. Why are these people being ostracized, forced to live in exile and banishment, on the streets of our FREE country? This is all too reminiscent of the nightmare of Nazi Germany. That is a frightening state of affairs for our country. SORNA should be discarded immediately

IT IS RIDICULOUS THAT SOMEONE THAT URINATES IN PUBLIC FACES THE SAME PENALTIES AS A RAPIST !!!! IT IS LUDICRIOUS THAT A MENTALLY ILL PERSON THAT MASTURBATES IN HIS CELL RECEIVES ADDITIONAL TIME !!!

WHY DON'T YOU DO SOMETHING TO LESSEN THE PRISON POPULATION, NOT INCREASE IT?

Karen Patton
[redacted]

Breed specific legislation is racial profiling-
ban the deed, not the breed

From: John [redacted]
Sent: Sunday, August 12, 2007 10:53 PM
To: consumer@ag.state.ia.us
Cc: attorney.general@ag.ky.gov; PublicProtectionInfo@ag.state.la.us; oag@oag.state.md.us; msag05@ago.state.ms.us; aginfo@ag.state.nv.us; webmaster@nh.gov; askconsumeraffairs@lps.state.nj.us; atghelp@state.sd.us; agwebmaster@state.wy.us; 2020@abcnews.go.com; aclufl@aclufl.org; assist@nacdl.org; Charlie.Crist@myflorida.com; [redacted] info@ap.org; info@familywatchdog.com; info@jwf.org; Hattendorf, Jim; letters@csicop.org; letters@nypost.com; letters@csicop.org; news@firstcoastnews.com; Spangler, Nicholas - Miami; OLPREGS; pressrelease@rutlandherald.com; ReverendJesseJackson@keephopealiveradio.com; Sally.Zarnowiec@mail.house.gov; senator@schumer.senate.gov; senator_leahy@leahy.senate.gov
Subject: FW: An Email from Connecticut AG We as Children Advocates can tell you have the only Attorney General Richard Blumenthal 8-11-07 attacks my space about Mark Lunsford my space page

Importance: High

While it's very difficult to find the emails addresses for so many Attorney Generals we have found a few. We would like to have you see the email below from Attorney General Richard Blumenthal of Connecticut regarding My Space and social networking of our children.

First we've notice on just about every one of the AG's websites it talks about "CHILD INTERNET PROTECTION" and safety of our children. It seems that this is not being done at all by the local and or federal governments. Not to the fault of any of you it's just that you're so busy that some times we miss some very important issues.

We would like to bring to your attention the website of Mark Lunsford the father of poor Jessica god may God watch over her. Mark Lunsford most of you know as he has traveled around the country advocating tougher laws and protection of our children on the Internet as well as from Sex Offenders. It should be Sex Predators as there is a difference as we have research.

Let us say that as child advocates that are really out to protect our children we would "NEVER ALLOW" our children to go on his my space site. This is a man that is supposed to be protecting children? Instead of exposing those to such "HORRIBLE STUFF ON HIS MY SPACE PAGE" We you go to his page you will see his friend list some of which are linked below that Connecticut AG Richard Blumenthal contacted my space about.

We wonder why a man like this meaning Mark Lunsford allows people to be added to his my space page with such "RAUNCHY" pictures of SEX, DRUGS, WEAPONS, and ALCOHOL for so many children to see. Most of you know that the my space is a snowball effect when one see's a friend on his site, they then can ask permission to get on another person site. This is something that the person can delete, deny, and or block if they don't want them in their friend list.

Mark Lunsford is exposing millions of children from all ages to see all of the above things mention. We would ask that you truly like CT. AG did and stop this from happing. However Mr. Lunsford did take down his Gun in hand picture below on his welcome page after my space contacted him. However he has added so many more friends that if any parent see's this they would be "SHOCK" coming from a man like this. One has to think is it all about money and donations? Or just talk as he himself lurks behind the scenes while not on camera doing these awful things and allowing our children to see this stuff.

We trust that you will lobby to have the age change from 14 to 21 before anyone can join my space, that you will contact all other AG's that we could not and forward this email to them.

"REMEMBER MOST ALL OF YOU HAVE SAID "CHILD AND OR CHILDREN INTERNET SAFETY" So lets make it happen and stop Mr. Lunsford from exposing and exploiting our children on My Space which is a part of the parent company that also owns Fox News.

Christ and Children First (and not "VOTES, MONEY OR TV RATINGS!!!)

See email and links below from CT. AG

From: John [mailto[redacted]
Sent: Monday, August 13, 2007 8:02 AM
To: [redacted]
Cc: 'office@marthacoakley.com'
Subject: FW: To the people of Connecticut We as Children Advocates can tell you have the only Attorney General Richard Blumenthal 8-11-07 attacks my space about Mark Lunsford my space page
Importance: High

We as children advocates find that our public has gone in a wrong direction with regard to sex offenders. We have found on the USAG website that most of the crimes that are committed are within the home and or by someone the child knows. These are proven facts in accordance with USDOJ, CDC, CAPTA, and CHILD WELFARE as well as many doctors and physiologists. While the public is running scared only because of the media and politicians wanting votes. There have been very few cases of a child murdered as a result of a sex offender living near by. John Walsh with his 26 year outrage is causing so many families to lose their live and families, not to mention the suffering of children of a long ago sex offender. The news has been all about sex offenders when in fact it should be about sex predators. They are the ones that we have to worry about. A sex offender as we know can be a 12 year old child, a person that was caught urinating on the street in a drunken stupor. Or something as little as a situation last week in Florida a teen mooning someone. Maybe you could pass this along to **Attorney General Martha Coakley.**

What the public is not aware about is all of the stuff that has gone on behind the scenes like with Mark Lunsford the father of poor Jessica. And Jessica's Law while he travels around asking for tougher laws his own son was charged in Ohio 18 years old and putting his hands down the pants of a 14 year old girl. What did he get 10 days and this is a man meaning Joshua Lunsford old enough to fight for our country. Then we look at all the corrupt and bad cops out there that are molesting children and Florida leads the pack. Juts like Bob Allen a lawmaker that wanted tougher laws on sex crimes was arrested in a men's room offering a cop $20.00 to have sex with him.

Now we turn to one of the most despicable things in this country. As we indicated that Marl Lunsford is traveling around the country asking for tough laws on sex offenders. While he is subjecting our children on his my space page to **BOOZE, SEX, DRUGS, and WEAPONS.**

We have contacted the AG in CT. and he contacted my space as you will see below in his reply to us about Mark Lunsford my space page and friend list. We will paste below some of what our children see on his page this should make any parent wonder about this man and what he is really doing?

Christ and Children First

From: John [mailto:[redacted]
Sent: Saturday, August 11, 2007 7:49 PM
To: 'christine_leonard@judiciary-dem.senate.gov'
Cc: senator_leahy@leahy.senate.gov; senator@schumer.senate.gov
Subject: FW: To the people of Connecticut We as Children Advocates can tell you have the only Attorney General Richard Blumenthal 8-11-07
Importance: High

We feel that Mr. Kennedy should read this please.

From: John [mailto[redacted]
Sent: Saturday, August 11, 2007 7:39 PM
To: 'Attorney General'
Subject: RE: To the people of Connecticut We as Children Advocates can tell you have the only Attorney General Richard Blumenthal 8-11-07
Importance: High

A True Attorney General

We would like to address the people of Connecticut with regard to your Attorney General Richard Blumenthal. While us as child advocates have worked so hard to address the social networking scenes, as it relates to the horrible things that your children could be exposed to. We have contacted at the Federal and local level over 350 State Repersentives, 276 newspapers, 452 Television News reporters, and countless numbers of Congressman, Senators in Washington and yes even those that are running for Presidential in 2008 as well as the Southern Baptist Convention and The Arch Dioceses to name a few. "YES WE HAVE EVEN SENT UNITED STATES ATTORNEY GENERAL ALBERTO GONZALES AS WELL." (NO REPLY) after 10 emails sent to his office.

We can only say that your Attorney General Richard Blumenthal is the only one that returned replied to the Mark Lunsford My Space page exposing our children to SEX, GUN'S, BOOZE and DRUGS. The honorable Richard Blumenthal should be commended for not only replying to us, but took it all the way out.

As a result of his contacting My Space, Mark Lunsford has taken down his Gun picture as you will see below as of 8-10-07, this we believe was a direct result of the Attorney General contacting My Space about such horrible things that Mark Lunsford was exposing our children to.

Mark Lunsford, is the father of Jessica Lunsford god rest her soul, her father has travel around the country advocating tougher laws for crimes. While behind the scenes his my space page and friend list "by which he chooses to have them as friends adding them to his page. We uncovered some of the most "DESPICABLE" images and language not to mention the alcohol, drugs, sex scenes and weapons that become a snowball effect for your children to view as well as requesting these people to be added to their my space page.

While we know that Fox News and My Space are owned by the same parent company we have sent 34 emails to Fox News most of which went to Bill O'Riely. (THEY NEVER REPLIED AT ALL). Having said that why would they being owned by the same parent company. "IS IT ABOUT MONEY AND RATINGS?" Well your Attorney General has it right it should be about "Protecting our children."

We feel that the people of Connecticut are "VERY FORTUNATE" to have an Attorney General that takes action and not "INTERESTED IN VOTES" but truly interested in protecting our children.

We even contacted NCMEC which is a John Walsh area and he is the co founder again they did nothing.

It shows that when a politician tells you what they think you want to hear listen very closely. It's better to elect one that will give you action and not words. That is what the State Of Connecticut has "a true man of action that's not afraid to take on the large lobbyist and contributors."

We would like to say thank you Honorable Attorney General Richard Blumenthal for doing what you say and believe in. That is to protect the children, and not get votes, news ratings, and or funds to support a foundation or election.

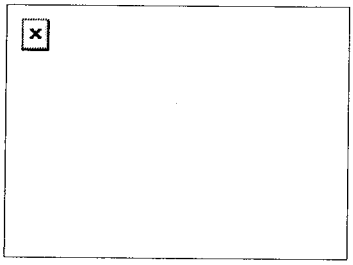
While Mark Lunsford has not remove as of 8-10-07 the sex, drugs, alcohol, and weapons he has been made to take the below picture down.

If the Attorney General chooses to forward the pictures that were sent to him that will be of his choosing to forward them or email them to whomever his wishes.

My Space TOA is very clear and should be held to a higher accountability for allowing such on their website.

It is with our great respect and honor to have been a part in your actions sir.

Christ and Children First,



PICTURE AS OF 8-9-07 before he was made to take it down 8-10-07 however his friend list still contains some of the "RAUNCHY" pictures that we would not want any kid to see. By the way a person on my space has the right to accept, delete, block anyone that they want however Lunsford continues to expose our children to such filth, that he goes around talking against. SEE AG FROM CT. EMAIL BELOW AND links of Mark Lunsford's friend list.

From: Attorney General [mailto:Attorney.General@po.state.ct.us]
Sent: Friday, August 10, 2007 8:57 PM
To: J[redacted]
Subject:

Dear Mr. Nicholas:

Thank you for your August 5, 2007 e-mail regarding the MySpace profile page of Mark Lunsford. My office remains committed to protecting children from the dangers to which they are exposed through social networking websites. I appreciate and share in your concerns, and have brought them to the attention of MySpace.

Sincerely,
Richard Blumenthal
ATTORNEY GENERAL

PEOPLE ON MARK LUNSFORD MY SPACE PAGE AS OF 8-10-07

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=146492099 Right Click and open link

Mark Lunsford added her on 8-10-07 as she also added him on the same date. You can see this person on his friend list by the name of MICKI in his friend list. As we all know these sites become a snowball effect for our children to look at. **THIS IS BY FAR THE WORST ONE THAT WE HAVE SEEN HIM ADD IN THE PAST 2 MONTHS ^^^^^^**

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=84790373 Mark Lunsford last log in 8-10-07 his my space page screen name no1cannow

Right click on this link and open link it is her site sorry the one that I put here was her friend list showing him on here her list.

This by far is the worst that we have seen for children to look at. Lunsford just added the above 8-10-07 to his friend list.

These are what we sent the AG Richard Blumenthal the people that Mark Lunsford has added to his friend list.

We would ask the people of Maine if they would want their child to visit Mark Lunsford's MY SPACE WEB PAGE??????

http://www.americanchronicle.com/articles/viewArticle.asp?articleID=34355 Latest breaking news story 8-7-07

Christ and Children First

http://friends.myspace.com/index.cfm?fuseaction=user.viewfriends&friendID=84790373 15 years old

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=59452987 Gabbing butt against police car

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=64236135 14 years old 8-8-07 name profile

http://friends.myspace.com/index.cfm?fuseaction=user.viewfriends&friendID=84790373 I'm Michaels bitch

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=45742550 This one of Mark Lunsford friend touching the "BREAST" so all the young children on there can see this.

http://friends.myspace.com/index.cfm?fuseaction=user.viewfriends&friendID=51856182 Mark Lunsford on her friend list and she on his.

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=51856182 Hope Page of a very suggestive site of his friend.

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=54983354 Flipping the bird on his friend list.

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=79737449 This is absolutely sick as you scroll down her page and see some of the most disgusting things and Mark chooses to have these people on his friend list.

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=148678058 Scroll over to the right and see what all these young kids are being exposed to. Marks friend list My space last log in for him 7-29-07

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=3787849 Just look at some of the language that Marks friends use and we ask kids to go to this site.

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=5649157 When we see all of these teens and young people drinking and doing pot and drugs on his friend list, we can only say is this truly what we want our children to be exposed to.

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=6319390 17 years old being exposed to Lunsford's My Space site on friend list.

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=6860587 Young girl posing almost nude on Lunsford's my space page friend list.

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=67419139 This girl is 14 years old on his friend list as are so many others. Then we let them see all of this bad stuff on his site.

http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendID=84790373 Mark Lunsford home page and then he say's "PREDATORS BE FOREWARNED" when he is exposing all of this bad stuff to so many children around the USA not to mention the world.

Re: OAG Docket No. 117

Please allow me to voice my grave concern and opposition for the Interim Rule issued as a result of the Adam Walsh Act (AWA) and SORNA. This law will allow double jeopardy which is legal because federal jurisdiction and state jurisdiction are separate. A person can now be punished by both the federal; and state government for the same violation of registration. Every state has a registry in place and this is certainly a duplicate effort and an excessively expensive and unnecessary law. A great many people who have moved on with their lives and living law abiding and productive lives will now be re-exposed with the retroactive clause of SORNA. This is tantamount to the Salem witch hunts only now it is the families of sex offenders who will brought down with this draconian and vindictive law. This is punishment, not public safety as SORNA will show places of employment in the Federal Registry which will be an open invitation to the fear mongers and hatemongers to protest their places of work or physically attack them. Posting places of employment in a federal database will stand in the way of any sex offender in California (and the nation) from being able to earn a living, no matter how minor their crime. This is completely counterproductive to the goal of reintegrating ex-felons back into society as self supporting, productive citizens. The Attorney General has said that SORNA's applicability will be to "virtually the entire existing sex offender population". Clearly the intent is cover "virtually" everyone, but there is no mention about whether Congress specifically limits what he can do. Why was this left out?

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everything he has touched is now tainted, including SORNA. In addition, the Attorney General fails to point out anything relative to Sec. 117 (Duty to Notify Sex Offenders of Registration Requirements and to Register) which places a requirement on him (and his office). Notification is a basic tenet of due process, is it not? Why was this left out of the Interim Rule? This is an ill conceived, poorly thought out Rule and I ask that it be struck down before we allow the invented hysteria that has pervaded our country continue to destroy families. A child is 40 times more likely to be killed by a drunk driver than a sex offender. Why are these people being ostracized, forced to live in exile and banishment, on the streets of our FREE country? This is all too reminiscent of the nightmare of Nazi Germany. That is a frightening state of affairs for our country.

From: no-reply@erulemaking.net
Sent: Sunday, April 22, 2007 7:28 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:========

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General Comment:Re: OAG Docket No. 117

Please allow me to voice my grave concern and opposition for the Interim Rule issued as a result of the Adam Walsh Act (AWA) and SORNA. This law will allow double jeopardy which is legal because federal jurisdiction and state jurisdiction are separate. A person can now be punished by both the federal; and state government for the same violation of registration. Every state has a registry in place and this is certainly a duplicate effort and an excessively expensive and unnecessary law. A great many people who have moved on with their lives and living law abiding and productive lives will now be re-exposed with the retroactive clause of SORNA. This is tantamount to the Salem witch hunts only now it is the families of sex offenders who will brought down with this draconian and vindictive law. This is punishment, not public safety as SORNA will show places of employment in the Federal Registry which will be an open invitation to the fear mongers and hatemongers to protest their places of work or physically attack them. Posting places of employment in a federal database will stand in the way of any sex offender in California (and the nation) from being able to earn a living,
no matter how minor their crime. This is completely counterproductive to the goal of reintegrating ex-felons back into society as self supporting, productive citizens.
The Attorney General has said that SORNA's applicability will be to "virtually the entire existing sex offender population". Clearly the intent is cover "virtually" everyone, but there is no mention about whether Congress specifically limits what he can do. Why was this left out?
Please consider the effect this will have on the one million women and children attached to a sex offender when they cannot earn a living. Current laws have forced a group of people to live under a bridge in Florida. This is an excellent example of how this law will further affect the offenders and their families. They are unable to work and support their families or themselves The one time sex

offender is lumped together with the violent sexual predator. In California, there are already laws in effect to handle the truly high risk offender and considering all
sex offenders one and the same is simply not right or just. The tiny fraction of a percentage of sex offenders who are guilty of raping and/or murdering a child are mentally ill and they belong in places of healing. They are the people who need to be removed from society for the purpose of safety.
More than 90% of sex crimes involving a child occur within families. No registration, residency restriction or monitoring system will stop these crimes. This law is targeting an entire group of people and only a fraction of the group would possibly be stopped from a crime. We are so scared that those people who have been convicted of sex offense will reoffend, but look at the statistics. The Department of Justice states that the average rate of recidivism is 5%, one the lowest rates among all felonies. It is an invented lie that has been perpetrated
to the public that sex offenders cannot be rehabilitated and that they have a high rate of recidivism. This is simply not true. Our conservative leaders are constantly
preaching about building the family and knocking the liberals for not having stricter
morals, but laws such as this are destroying families over mental illness. It's barbaric, opportunistic and political grandstanding at its worst.
SORNA can be passed as Federal Interim Rule because Congress empowered Attorney General Gonzales, whose character is now being assassinated to do so. All of his initiatives should simply be cancelled. He has proven not to be trustworthy and everything he has touched is now tainted, including SORNA. In addition, the Attorney General fails to point out anything relative to Sec. 117 (Duty
to Notify Sex Offenders of Registration Requirements and to Register) which places a requirement on him (and his office). Notification is a basic tenet of due process, is it not? Why was this left out of the Interim Rule? This is an ill conceived, poorly thought out Rule and I ask that it be struck down before we allow the invented hysteria that has pervaded our country continue to destroy families. A child is 40 times more likely to be killed by a drunk driver than a sex

offender. Why are these people being ostracized, forced to live in exile and banishment, on the streets of our FREE country? This is all too reminiscent of the nightmare of Nazi Germany. That is a frightening state of affairs for our country.

From: [redacted]
Sent: Wednesday, March 07, 2007 4:54 PM
To: OLPREGS
Subject: OAG Docket No. 117

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

I would like to say I'm surprised that the government is still trying to go further to make laws that do nothing but cause more heartache for people, but really I'm not. This certainly is one of those laws. If the government would stop using such a broad brush on former offenders and use common sense the laws could be more effective. Why do you insist on punishing and re-punishing people for a crime when they have already paid their debt? You certainly don't do that with murders, the very rich or the rich celebrities (and as of today we can add our current Vice President).

I ask you, if someone was starving and stole an apple to put food in his stomach, is that person the same as a bank robber? Hopefully the government doesn't see it that way, and that these people are sentenced according to their crime. Both are thief's, but of course they are not the same. This applies of sex-offenders, some are he said/she said, some because both people are involved in drugs and nuts at the time, some are not 18 years old but their partner is, sometimes an ex wants to get nasty, and sometimes it's because someone urinated on someone's lawn. All of this should be considered, and hopefully it is when they are sentenced. But now, with the witch hunt of the 21st century, they all have to register as a sex offender. So now with the original offense committed, their time spent in prison is completed and their parole period is finished, these people find themselves back to square one, but even worse. No other crime, murder included, has to endure the new hysteria wave which is fueled daily to the American people. We are being fed through the media of the bogie man, when in fact this creature is rare, it's usually family or family friends. No other crime has had more political backing on these extreme laws. It's all about votes - scare the people enough, then pass horrible laws and they will vote for you because your law makes them feel safe. Lets' judge each crime on a one on one basis - throw that broad brush out the window. Be fair. The Megan's Law, Jessica's Law, etc., passed because most people thought these laws applied to child molesters, not the guy who got drunk and urinated on his neighbors lawn. Again, I beg you to use common sense - for everyone thinks these things happen to other people, but with what it takes nowadays to become an "offender" it could happen to your family. How would you feel someday if a loved one got this same treatment ?

April 27, 2007

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

Dear Mr. Karp;

Re: OAG Docket No. 117

Mr. Karp, the Interim Rule issued as a result of the Adam Walsh Act (AWA) and SORNA by Attorney General Gonzales, raises many serious questions and concerns. As an individual who committed a sexual offense against my grandson, my family and I are directly affected by each new law and rule passed such as this.

It is especially onerous when such rules are applied retroactively. My family and I carefully considered the plea agreement and conditions that I signed in 1996. However, since that time, many rules and laws have been put into place that have greatly changed the conditions in effect in 1996. We never anticipated that new conditions, described as "information" would so greatly change our lives. Yet, almost every day, we become more and more discouraged as legislators and single individuals, like Mr. Gonzales, come up with new "ways to protect the public."

I have been through extensive counseling, including sessions with my grandson, and I have changed. I realize the serious of my offense and the impact it has had on so many. I am unusually fortunate in that my friends, family, colleagues, employers, and church stood by me throughout the last 11 years and I have even been reunited my grandson and his family to the extent that we now have a healthy relationship. In fact, he and his wife frequently join us for dinner and other events.

But as these new rules come into effect, they play havoc with our lives. If I were younger, I don't know how my family would deal with the late night "sweeps" by police and DOC Officers barging into the house and ransacking it searching for contraband – or the monthly patrol cars stopping at the door as neighbors watch and they check that I still live there-even though my PO visits monthly as well. But these are to be expected.

What wasn't expected is the sex offender registration that went into effect retroactively and now requires constant re-registration, picture on the Internet, registration every time I go out of town to a professional conference or on a trip, etc. As a university professor and administrator, I am active in helping others – from online classes to running a project to help low income senior citizens obtain computers and technology training through grants that I help obtain. I teach adult Sunday school classes, chair our church scholarship committee, my wife and I serve as lay reps to the Florida Methodist Annual

Conference each year, co-author a college textbook, etc. Since I maintained my civil rights, I have been able to vote in all elections and serve on juries. In other words, I have been able to be a productive, contributing citizen who has had no violations since the original offense. But it is becoming harder and harder. I feel for other offenders who are made homeless (as we live in fear if our neighbors should ever turn—and we have had a nasty note) and live under a bridge, can't find employment—all because of new laws applied retroactively that are like brands on the forehead – warning everyone to stay away from them and keep them out of sight.

The biggest issue for me is the retroactive nature of such new laws and rules, Once again, we are now faced with another rule resulting from the fear of the public that are being used by politicians, such as Mr. Gonzales, to appear to be "doing something." That something is destined to bring hurt and harm but not protection. Statistics are deliberately falsified and publicized to make a case for such rules. We have seen that most of these new rules and laws are useless efforts to prevent additional sexual offenses. Most of the offenses are committed by new offenders. The recidivism rate is not high as commonly stated. The Department of Justice states that the average rate of recidivism is about 5%, one of the lowest rates among all felonies. More than 90% of sex crimes involving a child occur within families, as did mine. Reprehensible –yes but not one that is hardly ever repeated. And none of these laws or rules have any effect on familial crimes-they are designed to keep the "stranger" away.

This law is targeting an entire group of people yet it would impact only a tiny fraction of people in preventing a potential crime. We are so scared that those who have been convicted of a sex offense (and those who are non-adjudicated) will reoffend—but look at the actual statistics.

SORNA can be passed as Federal Interim Rule because Congress empowered a single individual, Attorney General Gonzales, whose character is now being seriously questioned, to do so. His initiatives should be cancelled. It might even be that he wrote this rule as a political tool to gain support from Republicans over his firing of the Attorneys. This ill conceived, poorly thought out Rule does not even contain provisions for notification. This one group of people, all treated the same, are being ostracized, forced to live in exile and banishment in many areas, and constantly forced to face and follow new rules and laws. Serving your time, being rehabilitated, becoming a contributing, productive citizen seems to no longer be our goal. Rather, setting up a group for the hate mongers and fear mongers to attack seems to be a more popular goal.

Posting places of employment will result in the loss of employment for many people. I am fortunate in that I can now retire if that should happen. However, this is not true for many offenders. Also, if I should, it means a loss for others in the community that I can no longer serve.

This is part of the emerging shape of our country – one that is becoming too similar to others of history that identified segments of the population and systematically decimated them. This is a frightening state of affairs for our country and it is frightening for me and

my family and many others like me. We want to do what's right and proper – SORNA is not the way for this to happen. It should be discarded immediately.

Sincerely,

[redacted]

[redacted]D.

[redacted]

W[redacted]

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

Re: OAG Docket No. 117

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A great many people who have moved on with their lives and living law abiding and productive lives will now be re-exposed with the retroactive clause of SORNA. This is tantamount to the Salem witch hunts only now it is the families of sex offenders who will be brought down with this draconian and vindictive law. This is cruel and unusual punishment, not public safety as SORNA will show places of employment in the Federal Registry which will be an open invitation to the fear and hate mongers to protest their places of work and/or physically attack them.

Posting places of employment in a federal database will stand in the way of any sex offender in California (and the nation) from being able to earn a living, no matter how minor their crime. This is completely counterproductive to the goal of reintegrating ex-felons back into society as self supporting, productive citizens. The Attorney General has said that SORNA's applicability will be to "virtually the entire existing sex offender population". Clearly the intent is cover "virtually" everyone, but there is no mention about whether Congress specifically limits what he can do. Why was this left out?

Please consider the effect this will have on the one million women and children attached to a sex offender when they cannot earn a living. Current laws have forced a group of people to live under a bridge in Florida. In Iowa they are living in their cars at rest stops. This is an excellent example of how this law will further affect the offenders and their families. They are unable to work and support their families or themselves The one time sex offender is lumped together with the violent sexual predator. In California, there are already laws in effect to handle the truly high risk offender and considering all sex offenders one and the same is simply not right or just.

The tiny fraction of a percentage of sex offenders who are guilty of raping and/or murdering a child are mentally ill and they belong in places of healing. They are the people who need to be removed from society for the purpose of public safety, but even this should be done in a much more healing manner, as they are most often severely mentally ill.

The Department of Justice states that the average rate of recidivism is 5%, one the lowest rates among all felonies. It is an invented lie that has been perpetrated to the public that sex offenders cannot be rehabilitated and that they have a high rate of recidivism. This is simply not true. Our conservative leaders are constantly preaching about building the family and knocking the liberals for not having stricter morals, but laws such as this are destroying families over mental illness. It's barbaric, opportunistic and political grandstanding at its worst.

SORNA can be passed as Federal Interim Rule because Congress empowered Attorney General Gonzales, whose character is now being assassinated to do so. All of his initiatives should simply be cancelled. He has proven not to be trustworthy and everything he has touched is now tainted, including SORNA. He most likely wrote this rule anticipating he would need the support of fellow Republicans over the firings of the Attorneys. How can it be a good rule when Conservatives are so hell bent to over punish the severely mentally ill in order to build political careers and Gonzales so desperately needs their support. The fact that SORNA touches so many millions of lives in a destructive manner makes it as much, if not more important than the other probes.

In addition, the Attorney General fails to point out anything relative to Sec. 117 (Duty to Notify Sex Offenders of Registration Requirements and to Register) which places a requirement on him (and his office). Notification is a basic tenet of due process, is it not? Why was this left out of the Interim Rule? This is an ill conceived, poorly thought out Rule and I ask that it be struck down before we allow the invented hysteria that has pervaded our country continue to destroy families. A child is 40 times more likely to be killed by a drunk driver than a sex offender. Why are these people being ostracized, forced to live in exile and banishment, on the streets of our FREE country? This is all too reminiscent of the nightmare of Nazi Germany. That is a frightening state of affairs for our country. SORNA should be discarded immediately

Sincerely,

Rose Lang