



# Sex Offender Registration and Community Notification Law: Recent Legislation and Issues

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## Summary

Congress has enacted laws to imprison sex offenders and, once they are released from prison, to monitor their movement in the community. With passage of the Jacob Wetterling Act in 1994, Congress required states to establish a sex offender registration program. Since 1994, Congress has periodically amended the act, requiring closer scrutiny of released sex offenders, increased penalties for sex crimes, and training for law enforcement personnel. The 109<sup>th</sup> Congress passed the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) (hereafter, the Walsh Act), which consolidates and strengthens existing federal laws on sex offenses.

The Walsh Act repeals and replaces the Jacob Wetterling Act and related legislation with provisions intended to strengthen sex offender registration and notification requirements. Major provisions of the act include registry requirements for sex offenders and jurisdictions with penalties for failure to comply with registry requirements and oversight, periodic in-person verification, a sex offender management assistance program, a national sex offender registry, a national sex offender public website, a community notification program, federal assistance in identifying and locating certain sex offenders, electronic monitoring of sex offenders, civil commitment of certain sexual predators, enhanced federal penalties for sexual crimes against children, increased penalties for using the Internet for the exploitation of children, and grant programs. Also, the 109<sup>th</sup> Congress added provisions to the Violence Against Women Act reauthorization (P.L. 109-162) relating to sex offender management and establishment of a national tribal sex offender registry.

Congress remains interested in the issue of sex offenders. On May 22, 2008, the Senate adopted two amendments to H.R. 2642, one of which would include \$50 million for the U.S. Marshals Service to apprehend unregistered sex offenders, and sent both amendments to the House for their consideration. On May 20, 2008, the Senate passed S. 431, as amended, which would add a registration requirement for sex offenders and address monitoring of sex offenders' use of the Internet. On this same date, it also passed H.R. 2517, which provides for locating sex offenders and on May 23, 2008, sent it to the President for his signature.

Other legislation introduced in the 110<sup>th</sup> Congress include provisions that would establish and maintain a DNA database on sexual predators, establish a National Sex Offender Risk Classification Task Force, require a convicted sex offender who uses the Internet to provide electronic mail and instant message addresses, require a convicted sex offender to alert jurisdictions of plans to travel abroad, prohibit use of the Internet to facilitate access to or possession of child pornography, require electronic communication service providers and remote computer service providers to report violations of child sexual exploitation and pornography laws, reauthorize certain Walsh Act activities, and offer grants.

This report provides details of the Walsh Act; analyzes legislation introduced in the 110<sup>th</sup> Congress; and discusses continuing policy issues related to sex offender registration and community notification. It will be updated as events warrant.

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## Recent Developments

On May 22, 2008, the Senate adopted two amendments to H.R. 2642, the FY2008 war supplemental bill, one of which would provide funding for domestic programs, including \$50 million for the U.S. Marshals Service to track and arrest unregistered sex offenders. The Senate has sent both amendments to the House for their consideration. See the section, later in this report, on “Legislation in the 110<sup>th</sup> Congress”

On May 20, 2008, the Senate amended and passed S. 431, Keeping the Internet Devoid of Sexual Predators Act of 2007. Among other provisions, S. 431, as amended, would add another registration requirement for sex offenders and would address monitoring of sex offenders’ use of the Internet. See the sections, later in this report, on “Provisions Related to Registration Requirements, Apprehension and Penalties for Sex Offenders” and “Monitoring Use of the Internet by Sex Offenders.” On this same date, the Senate also passed H.R. 2517, Protecting Our Children First Act of 2007, which would provide for locating sex offenders who have not registered as required and authorize grants to be used to protect children from sex offenders and sexual abuse. On May 23, 2008, the bill was sent to the President for his signature.

Two bills related to sex offender legislation, H.R. 5722, the International Megan’s Law of 2008 (Christopher H. Smith) and H.R. 5760, the Child Protection Reauthorization Act (Brown-Waite), were introduced on April 8 and 10, 2008, respectively. H.R. 5722, among other provisions, would expand access to information on sex offenders who travel abroad by requiring convicted sex offenders who must register as such to alert appropriate jurisdictions in advance when they intend to travel internationally. H.R. 5722 would provide for the Secretary of Homeland Security to notify appropriate authorities in relevant countries of the travel plans of a sex offender.

H.R. 5760 would amend the Adam Walsh Act by reauthorizing certain of its programs. H.R. 5760 would extend the authorization for some sex offender programs from FY2009 to FY2011. The bill would also amend the Omnibus Crime Control and Safe Streets Act of 1968 by extending the authorization for sex offender apprehension grants and juvenile sex offender treatment grants from FY2009 through FY2011. See the section, later in this report, on “Legislation in the 110<sup>th</sup> Congress” for more discussion of pending proposals.

In its FY2009 budget request, the Bush Administration proposes no funding specifically for programs under the Adam Walsh Act but would instead consolidate funding for programs under DOJ’s State and Local Law Enforcement Assistance, Weed and Seed, and Community Oriented Policing Services (COPS) accounts into three flexible, competitive grant programs (violent crime reduction partnership initiative program, Byrne public safety and protection program, and the COPS program). The Administration also proposes to consolidate existing juvenile justice and exploited children programs into a single, flexible, competitively awarded grant program called the Child Safety Juvenile Justice Program. See section on “FY2009 Budget Request,” later in this report.

## Introduction

According to the Center for Sex Offender Management, most sexual assaults, whether directed at a child or an adult, are committed by someone known to the victim or the victim’s family. Rather than a stranger, often relatives, friends, baby-sitters, or persons in positions of authority over the

child are more likely to commit a sexual assault. Although the vast majority of sex offenders are males, females also commit sexual crimes. In response to community outrage over several particularly heinous sex offense crimes, Congress, since the mid-1990s, has passed a number of laws concerning sex offenders, requiring registration with law enforcement agencies and community notification.

Enacted originally in 1994, these laws were designed to protect the public by both imprisoning sex offenders for longer periods and tracking their movements upon release from prison. While there had been some earlier state action on sex offender registration, with the public's increasing concern Congress passed the Violent Crime Control and Law Enforcement Act of 1994 (Crime Act of 1994), which included Title XVII, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act).<sup>1</sup> Congress further amended the Crime Act of 1994 with passage of Megan's Law in May 1996 and the Pam Lychner Sexual Offender Tracking and Identification Act in October 1996. Collectively, these three laws required states to establish registration programs and to strengthen state procedures for monitoring sex offenders. In addition, Congress passed a number of other amendments to the Wetterling Act that increased the types of crimes for which sex offenders were required to register, increased penalties for sex offenders, and allowed states more flexibility in registering and tracking sex offenders.

The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Act (PROTECT Act, P.L. 108-21) amends the Wetterling Act by requiring maintenance of an Internet site with publicly available information on a sex offender and with instructions on the process for correcting information on the site that is believed to be erroneous. The PROTECT Act also amends the Wetterling Act by (1) renaming it the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program" and (2) adding another offense, "production or distribution of child pornography," to the range of offenses identified under the term "criminal offense against a victim who is a minor" as described in sexual exploitation of children (18 U.S.C. 2251); certain activities relating to material involving the sexual exploitation of a minors (42 U.S.C. 2252); or certain activities relating to material constituting or containing child pornography (42 U.S.C. 2252A).

Because of high-profile crimes committed by sex offenders and complaints from victims' rights groups as well as some lawmakers that dangerous sex offenders were not being monitored, Attorney General Gonzales announced plans in May 2005 for a new national registry of sex offenders to enable the public to view, via the Internet, all existing state databases of sex offenders in a single web search.<sup>2</sup> On July 20, 2005, the National Sex Offender Public Registry website was launched. The site allows the public one-stop access to the latest information on the identity and location of known sex offenders. Registries for the District of Columbia and all states are on the website.

On July 27, 2006, the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) was enacted. The stated purpose of this act is to respond to vicious attacks of sex offenders against certain victims and to protect the public, especially children, from sex offenders by establishing a comprehensive national system for registering offenders. With passage of the Adam Walsh Act, Congress again addressed elements of registration and notification laws; procedures for treating,

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<sup>1</sup> P.L. 103-322 (H.R. 3355); 108 Stat. 2038.

<sup>2</sup> See <http://www.usdoj.gov/ag/speeches/2005/052005agremarksnpr.htm>.

tracking, and apprehending sex offenders; the recidivism rate of sex offenders; child pornography and use of the Internet for sexual purposes; sex crimes, and penalties for sex crimes. In addition, the Walsh Act provides for grants, studies and reports on some of these sex offender/sex crime issues.

This report summarizes major provisions of the Adam Walsh Child Protection and Safety Act. It identifies legislation introduced in the 110<sup>th</sup> Congress to further address sex offender and crime issues, and discusses the various policy issues related to sex offender registration and community notification. Other CRS reports on sex offenders cover legal and constitutional issues, the civil commitment of sex offenders, and residence restrictions for released sex offenders.<sup>3</sup>

## **Overview of the Adam Walsh Child Protection and Safety Act of 2006**

The Adam Walsh Act expands the requirements for state law enforcement and prison officials in registering and tracking released sex offenders. Among other provisions, the act requires a review of sex offenders before they are released from prison to determine whether they are a threat to the public; requires sex offenders to register more frequently; provides for closer supervision of sex offenders, including through electronic monitoring; allows collection of DNA from persons who are charged with or convicted of sex offenses; establishes a national database of sex offenders; allows public access to information on sex offenders released from prisons; provides for a stronger sex offender community notification program; and imposes longer penalties for crimes against children, including mandatory minimum penalties for certain crimes. To apprehend sex offenders, the Adam Walsh Act continues federal financial support for technical assistance, and hiring and training of both law enforcement personnel and support staff, including probation and parole agents.

The act provides a three-tier classification system for sex offenders that affects the duration of registration, how often they must verify their address, and whether they are to be listed on the Internet. Provisions of the Walsh Act require imposition of penalties on a sex offender who fails to comply with registration requirements. The Walsh Act provides for federal assistance in apprehending sex offenders who violate registration requirements. It provides for training of law enforcement personnel who work with sex offenders and increases authorized funding for local law enforcement to track sex offenders. The act requires civil commitment of sexually dangerous persons and provides grants to jurisdictions for that purpose.

### **Registration and Notification and Related Provisions**

The following sections present major provisions of current law, as amended by the Adam Walsh Act, in more detail.<sup>4</sup>

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<sup>3</sup> For an analysis of legal and constitutional issues related to sex offenders, see CRS Report RL33967, *Adam Walsh Child Protection and Safety Act: A Legal Analysis*, by Charles Doyle. For information on the issue of civil commitment of sex offenders, see CRS Report RL34068, *Civil Commitment of Sexually Dangerous Persons*, by Nathan James, Kenneth R. Thomas, and Cassandra L. Foley. For a discussion and analysis of residence restrictions for released sex offenders, see CRS Report RL34353, *Residence Restrictions for Released Sex Offenders*, by Garrine P. Laney.

<sup>4</sup> For more discussion of the criminal justice aspects of this legislation, see CRS Report RL33967, *Adam Walsh Child* (continued...)

## **Registration Requirements**

The Adam Walsh Act changes registration requirements for a convicted sex offender. Formerly, a convicted sex offender had to register an address change with the state law enforcement agencies of both the old state and the new state within 10 days. The Walsh Act continues the requirement that a sex offender register in each jurisdiction where the offender resides, is employed, or attends school. The new law, however, requires initial registration of a convicted sex offender prior to completion of a sentence of imprisonment or not later than three business days after sentencing if no term of imprisonment is imposed. It requires an offender, including a child pornographer, to appear in person in at least one jurisdiction and report a change of name, residence, employment or student status not later than three business days after a change has occurred; and requires that the jurisdiction immediately provide the new information to other jurisdictions where the offender is required to register. Under provisions of the Walsh Act, for the first time a juvenile can be required to register as a sex offender. The act provides that a juvenile who is at least 14 years old must register as a sex offender if the juvenile commits an offense that is comparable to or more severe than the federal offense of aggravated sexual abuse.

## **Tier Classification System**

Prior to passage of the Adam Walsh Act, each state had its own classification system for determining the level of danger a sex offender posed to the public. The Walsh Act, however, establishes a three-tier system for states that classifies sex offenders based on the seriousness of their sex crime. The Tier level determines how long a convicted sex offender must register and how often. A convicted sex offender must register for 15 years if the offender is a Tier I sex offender; 25 years for a Tier II sex offender; and for the life of the offender, if the offender is a Tier III sex offender. A convicted sex offender whose classification is Tier I must appear in person once a year; a Tier II sex offender, every six months; and a Tier III sex offender, every three months.

Following are definitions of Tier I, Tier II, and Tier III convicted sex offenders:

- Tier I offender is a sex offender other than a Tier II or Tier III.
- Tier II sex offender has been convicted of a sex offense that is punishable by imprisonment for more than one year or is comparable to or more severe than sex trafficking; coercion and enticement; transportation with intent to engage in criminal sexual activity; abusive sexual contact, as well as any offense involving a minor in a sexual performance, soliciting a minor for prostitution, or producing or distributing child pornography.
- Tier III sex offender has been convicted of a sex offense that is punishable by imprisonment for more than one year or is comparable to or more severe than the federal offenses of sexual abuse or aggravated sexual abuse, abusive sexual contact against a minor less than 13 years old, kidnapping of a minor, or any offense that occurs after a person has been designated a Tier II sex offender.

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(...continued)

*Protection and Safety Act: A Legal Analysis*, by Charles Doyle.



## **Information Required from Offenders**

The law requires sex offenders who are required to register to provide the following information:

- sex offender's name (or any alias used);
- social security number;
- address where sex offender resides or will reside;
- address where sex offender is employed or will be employed;
- address where sex offender is a student or will become a student;
- license plate number and a description of any vehicle owned or operated by the sex offender; and
- any other information required by the Attorney General.

## **Information to be Included in Registries**

Jurisdictions must ensure that the following information is included in the sex offender registry:

- a physical description of the sex offender;
- text of the provision of law that defines the criminal offense for which the sex offender is registered;
- criminal history of the sex offender;
- a sex offender's fingerprints, palm prints, and current photograph;
- a DNA sample;
- a copy of a valid driver's license or identification card upon release of a sex offender from prison; and
- any other information the Attorney General requires.

## **Law Enforcement Responsibilities**

The law establishes the following requirements for law enforcement officials:

- requires an appropriate official to inform the sex offender of registration requirements either shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender;
- requires an appropriate official to have the sex offender read and sign a form acknowledging that the duty to register has been explained and is understood;
- requires an appropriate official to ensure that the sex offender is registered; and
- requires the Attorney General to establish and maintain a system for informing relevant jurisdictions of sex offenders entering the United States.

## **Community Notification Program**

The Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program (as created by the Adam Walsh Act) requires an appropriate official in the jurisdiction where the sex offender registers to provide information in the registry to

- the Attorney General, who must include the information in the National Sex Offender Registry or other appropriate databases;
- appropriate law enforcement agencies (including some probation agencies) and each school and public housing agency where the sex offender resides, is employed or attends school;
- each jurisdiction where the sex offender resides, is employed or attends school;
- any agency responsible for conducting employment-related background checks;
- social service entities that are responsible for protecting minors in the welfare system;
- volunteer organizations where contact with minors or other vulnerable individuals is possible; and
- any organization, company, or individual who asked to be notified pursuant to procedures established by the jurisdiction.

## **National Sex Offender Registry**

As amended by the Adam Walsh Act, current law

- requires the Attorney General to maintain a national database, to be known as the National Sex Offender Registry, at the FBI for each sex offender and any other person required to register in a jurisdiction's sex offender registry; and
- requires the Attorney General to ensure that updated information about a sex offender is forwarded electronically to all relevant jurisdictions.

## **Sex Offender Public Website**

The Adam Walsh Act requires the Attorney General to establish and maintain the Dru Sjodin National Sex Offender Public Website, which allows the public to obtain relevant information on a sex offender by a single query for any given zip code or geographical radius that the user indicates.

## **Penalty for Failure to Register**

As newly established by the Adam Walsh Act, the law provides that each jurisdiction, other than a federally recognized Indian tribe, must provide a criminal penalty that includes a maximum term of imprisonment that is more than one year.

## **Federal Penalties, Including Mandatory Minimums, for Selected Crimes**

The Walsh Act increases penalties and establishes new and higher mandatory minimum penalties for persons committing certain sex crimes, particularly those that involve children, pornography and use of the Internet. These crimes include the following:

- sexual abuse;
- child prostitution;
- sexual exploitation;
- sexual abuse of wards;
- abuse and neglect of Indian children;
- sex-trafficking of children;
- production of sexually explicit depictions of children;
- coercion and enticement of children by sex offenders;
- repeated sex offenses against children;
- using misleading domain names to direct children to harmful material on the Internet;
- activities relating to material involving the sexual exploitation of children, or constituting or containing child pornography; and
- Internet sales of date rape drugs (these include gamma hydroxybutyric acid, ketamine or flunitrazepan).

The penalty for sexual abuse is increased from a maximum of 20 years to a sentence of life. New mandatory minimum penalties are imposed, where none existed before passage of the Walsh Act, for crimes such as sex trafficking by using force, fraud or coercion, or by using a minor under 14 years of age; and for aggravated sexual abuse where the victim is under 12 years of age, or where the victim is between 13 and 15 years of age (and is at least four years younger than the defendant) and the crime is accomplished by force, threat or while the victim is unable to appraise conduct because of being unconscious. For coercing or transporting a minor to engage in criminal sexual activity, the mandatory minimum sentence is 10 years and the maximum is 30 years to life; the previous minimum sentence was five years. For producing a sexually explicit depiction of a minor in another country with the intention of importing it into the United States the punishment is a minimum prison term of 15 years and a maximum one of 30 years for a first offense; prior to the Walsh Act, for this offense, there was no mandatory minimum penalty and the maximum term of imprisonment was 10 years. The maximum penalty is 10 years for using a misleading domain name on the Internet with the intent of deceiving a minor into viewing harmful material; the previous maximum sentence was four years.

## **Child Pornography and Use of the Internet**

The Walsh Act creates new federal crimes and requirements concerning child pornography and use of the Internet to exploit or commit a felony sex offense against a child, providing penalties for the offender and additional federal personnel to monitor the Internet. It requires anyone who produces visual depictions of “actual sexually explicit conduct” or “simulated sexual conduct” to

maintain a record of personal information on each performer and to post where the record is located on each page of a website. The act also provides mandatory-minimum penalties for persons convicted of violating these record-keeping requirements.

### **Civil Commitment of Sex Offenders**

The Walsh Act provides for the civil commitment of a sexually dangerous offender any time after commencement of probation or supervised release and prior to the completion of a sentence. The Attorney General is authorized to make grants to jurisdictions for establishing, enhancing, or operating effective civil commitment programs for sexually dangerous persons.

### **Treatment and Management of Adult Sex Offenders in the Bureau of Prisons**

Included in the Adam Walsh Act are provisions for the treatment and management of adult sex offenders in the Bureau of Prisons. The act requires the Bureau of Prisons (BOP) to establish non-residential sex offender management programs for sex offenders and to provide aftercare during pre-release custody. BOP also must establish residential sex offender treatment programs as well as provide treatment to sex offenders who want it and are deemed suitable for it by the BOP. The act authorizes the Attorney General to make grants to eligible entities for a program, project, or other activity to help in treating juvenile sex offenders.

### **Asset Forfeiture**

The Walsh Act authorizes civil and criminal asset forfeiture of property for certain crimes. Offenses for which the property of a person is subject to civil and criminal asset forfeiture include

- offenses involving obscene material;
- child pornography;
- sexual exploitation and abuse of children; and
- using misleading domain names including obscene or pornographic material; or
- any property constituting or traceable to gross profits from these offenses, and any property constituting or traceable to the means for committing or promoting these offenses.

### **Military**

The Walsh Act continues registration requirements for sex offenders convicted in a federal or military court.

### **Public Housing**

Public housing is denied to anyone who is required to register for life as a sex offender.<sup>5</sup>

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<sup>5</sup> Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1999 (P.L. 105-276; 112 Stat. 2641); 42 U.S.C. 13662.

## **Public Access to Information**

The Adam Walsh Act provides a mechanism for the public to obtain information on sex offenders by using the Internet (the Dru Sjodin National Sex Offender Public Website) or by contacting an appropriate law enforcement official in the jurisdiction where the sex offender is registered (Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program).

## **Institutions of Higher Education**

Under provisions of the Campus Sex Crimes Prevention Act, enacted as part of the Victims of Trafficking and Violence Protection Act of 2000,<sup>6</sup> institutions of higher education must inform the campus community of where to obtain information on registered sex offenders, such as a local law enforcement agency with jurisdiction for the campus or a computer network address.

## **Federal Grants and Assistance**

The Walsh Act authorizes both new programs and offices and expands some existing grant programs that are intended to train law enforcement personnel, protect children, provide mentors for youth, improve relations between police and youths, assist in the management of sex offenders, including juveniles, and to combat crime. A description of some of these programs and offices follows. See the section, later in this report, on “Funding of Walsh Act Programs,” for information on the status of appropriations for these activities.

## **Training and Technology Efforts**

To respond effectively to sex offenders who use the Internet and technology for soliciting or exploiting children, the Adam Walsh Act requires the Attorney General to expand training of federal, state and local law enforcement personnel. To identify problems associated with using technology in the exploitation of children, the Attorney General must facilitate meetings that involve corporations who sell computer hardware and software or provide services to the public that are related to using the Internet. Further, the Attorney General must host national conferences to train law enforcement officers, probation and parole officers, and prosecutors on pro-active approaches to monitor sex offender activity on the Internet; and must develop and distribute information to them regarding multidisciplinary approaches to holding sex offenders accountable to the conditions of their probation, parole, and registration. The Attorney General also must partner with other agencies to improve coordination of joint investigations among agencies in combating sex offenders’ online solicitation of children. To carry out this training, the Walsh Act authorized to be appropriated \$1 million for FY2007.

In addition to providing training to law enforcement personnel, the Attorney General must deploy technology, that is modeled after the Canadian Child Exploitation Tracking System, to all Internet Crimes Against Children Task Forces and their partner agencies as well as conduct training in the use of technology. For these technology provisions, the act authorized to be appropriated \$2 million for FY2007.

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<sup>6</sup> Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386; 114 Stat. 1537).

## **Assistance with Violations of Registration Requirements**

The Walsh Act requires the Attorney General to use resources of federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who failed to comply with registration requirements. For fiscal years 2007 through 2009, Congress has authorized to be appropriated such sums as may be necessary for this purpose.

## **Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART Office)**

The Adam Walsh Act establishes a new office in the Justice Department, with the following functions and responsibilities:

- administer standards for the sex offender registration and notification program of this act;
- administer grant programs on sex offender registration and notification and other grant programs under this act;
- cooperate with and provide technical assistance to states, units of local governments, tribal governments, and public and private entities involved in activities related to sex offender registration or notification or to other measures that protect children or others from sexual abuse or exploitation; and
- perform other functions that the Attorney General may delegate.

## **Big Brothers Big Sisters of America Mentoring Program**

Big Brothers Big Sisters of America mentors at-risk youth. The Walsh Act authorizes the administrator of the Office of Juvenile Justice and Delinquency Prevention to make grants to Big Brothers Big Sisters of America to expand its capacity to meet its objective. The organization is required to submit a biannual report in each of fiscal years 2007 through 2013 that (1) details the progress it has made in carrying out its mentoring programs; (2) details how grant funds have been used; (3) assesses the effectiveness of the mentoring programs; and (4) makes recommendations for future grants and the amount of funding that would be needed for those grants. For this program, Congress has authorized \$9 million for FY2007; \$10 million for FY2008; \$11.5 million for FY2009; \$13 million for FY2010; and \$15 million for FY2011.

## **National Police Athletic League (PAL)**

PAL is a youth crime prevention program. Subtitle B—National Police Athletic League Youth Enrichment Act of the Walsh Act reauthorizes PAL through FY2010. The act changes the name of the group to the National Police Athletic/Activities League and adds another goal of the organization, which is to enhance the character and leadership skills of young people. In addition, it increases the number of chapters and youths that can join PAL. Congress has authorized grant funding of \$16 million for each of FY2006 through FY2010.

### **Sex Offender Management Assistance Program (SOMA-Grant)<sup>7</sup>**

The Walsh Act requires the Attorney General to establish and implement a SOMA grant program. Under SOMA-grant, the Attorney General can award a grant to a jurisdiction to offset the costs of the sex offender registration and community notification. A chief executive of a jurisdiction must submit annually an application to the Attorney General. If the Attorney General determines that a jurisdiction has substantially implemented sex offender registration and notification provisions of the Adam Walsh Act, then the jurisdiction is eligible for a bonus payment of 10% of the total funds received under the SOMA grant program for the preceding fiscal year, provided the implementation occurred within one year after enactment of the Walsh Act; and 5% of funds, if implementation occurred within two years of that date. For the SOMA grant, Congress has authorized such sums as may be necessary for FY2007 through FY2009.

### **Jessica Lunsford and Sarah Lunde Grants**

With the objective of better monitoring sex offenders, the Attorney General, for a period of three years, is authorized to award grants to states, local governments, and Indian tribal governments for providing sex offenders with electronic monitoring devices and employing law enforcement officials to operate the program. To allow an assessment of the effectiveness of approaches used to monitor sex offenders, the act requires the Attorney General in making these grants to ensure that a variety of approaches to monitoring offenders are funded. The electronic monitoring units must provide a single-unit tracking device for each offender that contains a central processing unit with global positioning system and cellular technology in a single unit and that provides two- and three-way voice communication. It also must permit active, real-time, and continuous monitoring of offenders 24 hours a day. The Attorney General must submit a report to Congress that addresses the effectiveness and value of this program; compares the cost effectiveness of electronic monitoring to reduce sex offenses with other alternatives; and makes recommendations on whether to continue the grant program and at what funding level. The act has authorized appropriations of \$5 million for each of the fiscal years 2007 through 2009.

### **Sex Offender Apprehension Grants**

The Walsh Act authorizes the Attorney General to make sex offender apprehension grants to states, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia to assist them in enforcing sex offender registration requirements. For fiscal years 2007 through 2009, Congress has authorized to be appropriated such sums as may be necessary.

### **Juvenile Sex Offender Treatment Grants**

The Walsh Act authorizes the Attorney General to make grants to units of local government, Indian tribal governments, correctional facilities, other public and private entities, and multi-jurisdictional or regional consortia to assist in the treatment of juvenile sex offenders. For grant

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<sup>7</sup> Another program, called the Training Program to Assist Probation and Parole Officers, popularly known as the Sex Offender Management Assistance program, was originally established in the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13941) and was recently reauthorized in Section 108 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162).

purposes, a juvenile sex offender is defined as a sex offender who has not attained the age of 18 years at the time a sex offense was committed. The act has authorized to be appropriated \$10 million for each of fiscal years 2007 through 2009 for these treatment grants.

### **Grants to Combat Sexual Abuse of Children**

To combat sexual abuse of children, the Bureau of Justice Assistance is authorized to make grants, based on need, to law enforcement agencies to (1) hire additional personnel or train existing staff to combat sexual abuse of children through community education and outreach, investigation of complaints, enforcement of laws on sex offender registries, and management of released sex offenders; (2) investigate use of the Internet to facilitate the sexual abuse of children; and (3) purchase computer hardware and software to investigate sexual abuse of children over the Internet, access local, state, and federal databases for apprehending sex offenders, and facilitate the creation and enforcement of sex offender registries. For these grants, Congress has authorized to be appropriated such sums as may be necessary for fiscal years 2007 through 2009.

### **Crime Prevention Campaign Grant**

The Attorney General is authorized to provide a grant to a national private, nonprofit organization with expertise in promoting crime prevention through public outreach and media campaigns. These campaigns are to be coordinated with law enforcement agencies and other local government officials as well as with representatives of community public interest organizations such as schools and youth-serving organizations, faith based, and victim's organizations and employers. Grantees must use funds to

- create and promote national public communications campaigns;
- develop and distribute publications and other educational materials that promote crime prevention;
- design and maintain websites and related web-based materials and tools;
- design and deliver training for law enforcement personnel, community leaders, and other partners in public safety and hometown security initiatives;
- design and deliver technical assistance to states, local jurisdictions, and crime prevention practitioners and associations;
- coordinate a coalition of federal, national, and state-wide organizations and communities in support of crime prevention;
- design, deliver, and assess demonstration programs;
- operate McGruff-related programs;
- operate the Teens, Crime, and Community Program; and
- evaluate crime prevention programs and trends.

For this grant program, Congress has authorized to be appropriated \$7 million for FY2007; \$8 million for FY2008; \$9 million for FY2009; and \$10 million for FY2010.



## **Grants for Fingerprinting Programs for Children**

The Walsh Act authorizes the Attorney General to establish and implement a program under which grants for fingerprinting children can be made to states, units of local government, and Indian tribal governments. Grant funds are to be used to establish a voluntary fingerprinting program for children, which may include taking palm prints of children; hiring additional law enforcement personnel or training existing law enforcement personnel to fingerprint children; informing the community involved about the fingerprinting program; and providing computer hardware, computer software or other materials to carry out such a fingerprinting program. For a person who uses the fingerprinting program for unauthorized purposes, the Walsh Act provides a criminal penalty of imprisonment of not more than one year, a fine or both. Congress has authorized to be appropriated \$20 million for a five-year period beginning FY2007.

## **Rape, Abuse and Incest National Network (RAINN)**

RAINN is a 501(c)(3) nonprofit corporation that provides help to victims of sexual assault and educates the public about sexual assault prevention, prosecution, and recovery. The Adam Walsh Act authorizes the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to make an annual grant to RAINN; issue regulations to carry out RAINN grants; effectively coordinate all federally funded programs relating to victims of sexual assault; and provide adequate staff and agency resources to properly carry out OJJDP's responsibilities.

RAINN grants may be used to operate the National Sexual Assault Hotline, which is a 24-hour toll-free telephone line that individuals may use to receive help and information from trained volunteers. Other purposes for which grant funds may be used include education of the media, the general public and populations at risk of sexual assault about the incidence of sexual violence and sexual violence prevention, prosecution, and recovery; dissemination nationally of information on innovative and model programs, services, laws, legislation, and policies that benefit victims of sexual assault; and provision of technical assistance to law enforcement agencies, state and local governments, the criminal justice system, public and private nonprofit agencies, and individuals investigating and prosecuting cases of sexual assault. Congress has authorized to be appropriated \$3 million for each of fiscal years 2007 through 2010 for the Administrator of OJJDP to provide grants to RAINN.

## **Fugitive Safe Surrender**

Fugitive Safe Surrender was a pilot program of the United States Marshals Service, in partnership with public, private and faith-based organizations, that allowed fugitives to turn themselves in safely and have nonviolent cases adjudicated immediately at a church that had been temporarily transformed into a courthouse. Because the pilot program in Cleveland, Ohio was successful, Congress expanded the program to other cities. The Walsh Act provides for the U.S. Marshals to establish, direct, and coordinate the Fugitive Safe Surrender Program to safely, securely, and peacefully apprehend federal, state and local fugitives in coordination with law enforcement and community leaders in designated cities throughout the United States. This provision, however, does not limit any existing authority under any other provision of federal or state law for law enforcement agencies to locate or apprehend fugitives through task forces or any other means. Congress has authorized to be appropriated to the U.S. Marshals Service for this program \$3 million for FY2007; \$5 million for FY2008; and \$8 million for FY2008.

## **Selected Studies and Reports**

The Walsh Act also calls for a number of studies and reports that assess the cost and effectiveness of efforts to control, prosecute, manage, treat and monitor sex offenders and requires DOJ to report the findings of these studies to Congress. In addition, the act addresses the performance of federal, state, and local criminal investigators of homicides.

As noted below in the section on “Funding of Walsh Act Programs,” \$1 million was allocated in FY2007 (from the Byrne Discretionary Grant program) for these studies (which are discussed below). According to DOJ, in June 2007, the National Institute of Justice (NIJ) announced the competitive grant solicitation for studies on the effectiveness of monitoring and treating sex offenders, risk-based sex offender classification systems, and the effectiveness of restricting the activities of sex offenders to reduce repeat offenses. Applications are currently under review, and DOJ expects to announce awards for these projects later this spring.

## **Comprehensive Examination of Sex Offender Issues**

The Walsh Act requires NIJ to conduct a comprehensive study of the control, prosecution, treatment, and monitoring of sex offenders. The study is to focus on the effectiveness of (1) the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Act) in improving the compliance of sex offenders with registration and notification requirements; (2) sex offender registration and notification requirements in increasing public safety; (3) public dissemination of sex offender information on the Internet in increasing public safety; and (4) treatment programs in reducing recidivism among sex offenders. In addition to addressing the effectiveness of these four approaches to handling sex offenders and protecting public safety, the study is to consider the costs associated with each approach. The study must also include recommendations on how to reduce the number of sex crimes against children and adults and increase the effectiveness of registration requirements.

NIJ must submit annual interim reports, and not later than five years after enactment of this act, report the results of the study together with findings to Congress, through the Internet to the public, to every state governor, the mayor of the District of Columbia, to heads of territories, and to the heads of Indian tribes. There are authorized to be appropriated \$3 million for this study.

## **Annual Report on Enforcement of Registration Requirements**

By July 1 of each year, the Attorney General is required to submit a report to Congress that describes: how the U.S. Marshals Service has assisted jurisdictions in locating and apprehending sex offenders who have not complied with sex offender registration requirements; the use of national crime information databases to punish offenders for failure to register; a detailed account of each jurisdiction’s compliance with the Sex Offender Registration and Notification Act; DOJ’s efforts to ensure compliance with this act; and any funding reductions because a jurisdiction failed to comply with registration requirements and the basis for deciding whether to reduce funding; and, finally, any denials or granting of extensions to comply with the Sex Offender Registration and Notification Act and the reasons why extensions were denied or granted. According to DOJ, this annual report is currently in review.

## Government Accountability Office (GAO) Studies on Feasibility of Using Drivers License as a Registration Requirement for Sex Offenders

To improve sex offenders' compliance with registration requirements concerning change of address upon relocation and other related updates of personal information, Congress required GAO, not later than 180 days after the date of the enactment of this act, to complete a study on the feasibility of using a driver's license in the sex offender registration process. GAO was to survey a majority of the states to assess the relative systems capabilities to comply with a federal law requiring all state driver's license systems to automatically access state and national databases of registered sex offenders similar to the Nevada law.<sup>8</sup>

In January 2008, GAO published a report, *Convicted Sex Offenders, Factors That Could Affect the Successful Implementation of Driver's License-Related Processes to Encourage Registration and Enhance Monitoring*. The report identified some key factors that would influence implementation of a driver's license screening process: costs, information technology, and design of the screening process. In brief, GAO found that most of the motor vehicle agencies and sex offender registries in 26 states it surveyed reported that their current information technology systems would require moderate to major modifications, with the cost of software modifications a key factor. The states also indicated that operational or functional requirements must be clearly defined before any reliable cost estimates for this kind of screening process can be made. In addition, motor vehicle agency officials reported that because of competing demands for programming resources, it would be several years before they could handle additional projects. How well the driver's license screening program is designed would also determine its success, simply because there are many different processes, procedures, databases, and operational environments among motor vehicle and law enforcement agencies nationally.<sup>9</sup>

## Sex Offender Risk Classification Study

The Attorney General is required to conduct a study of risk-based sex offender classification systems that includes an analysis of various risk-based sex offender classification systems, methods and tools for assessing the risks posed by sex offenders; and a comparison of the efficiency and effectiveness of risk-based sex offender classification to offense-based sex offender classification systems in reducing threats to public safety and assisting law enforcement agencies and the public in identifying the most dangerous sex offenders. The study should include both an analysis of the resources necessary to implement risk-based sex offender classification systems for sex offender registries as well as the legal implications of doing so. Finally, the study must include an analysis of any other information the Attorney General determines should be used to evaluate risk-based sex offender classification systems. Within 18 months after enactment of the Walsh Act, the Attorney General must report the results of the study to Congress. If the Attorney General creates a task force to conduct the study and prepare the report, the Attorney General must appoint persons to the task force who represent national, state, and local interests

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<sup>8</sup> Chapter 507 of Statutes of Nevada 2005. The Nevada law prohibits sex offenders and offenders convicted of a crime against a child from renewing their drivers' licenses, commercial drivers' licenses or identification cards if they have not complied with offender registration requirements.

<sup>9</sup> U.S. Government Accountability Office, Report to Congressional Committees, January 2008, GAO-08-116, *Convicted Sex Offenders, Factors That Could Affect the Successful Implementation of Driver's License-Related Processes to Encourage Registration and Enhance Monitoring*, pp. 4-6.

and who have education, training or experience in sex offender management, community education, risk assessment of sex offenders and sex offender victim issues.

### **Study of the Effectiveness of Restricting the Activities of Sex Offenders to Reduce Recidivism**

The Attorney General is required to conduct a study to evaluate the effectiveness of monitoring and restricting the activities of sex offenders to reduce recidivism through conditions imposed as part of supervised release or probation conditions. The study must evaluate the effectiveness of monitoring and restricting activities of sex offenders, including (1) restrictions on where the sex offender can reside, work, and attend school; (2) limitations on sex offenders' access to Internet or to specific Internet sites; and (3) denying sex offenders access to pornography and other obscene materials. It also must evaluate the ability of law enforcement agencies and courts to enforce these restrictions; and the efficacy of any other restrictions that may reduce recidivism. The Attorney General is required to report the results of this study to the House and Senate Judiciary Committees no later than six months after enactment of the Walsh Act.

### **Justice for Crime Victims Family Act**

Within six months of enactment of the Walsh Act, the Attorney General must submit a report to House and Senate Judiciary Committees that outlines measures needed to improve the performance of federal, state, and local criminal investigators of homicide. The report must include an examination of (1) the benefits for criminal investigators of increasing training and resources such as investigative techniques, best practices, and forensic services; (2) uniformity among state and local jurisdictions in measuring homicide rates and clearance of homicide cases; (3) coordination among federal, state, and local law enforcement, coroners and medical examiners in sharing information; and (4) sources of funding for state and local criminal investigators of homicide that are in existence on the date of enactment of this act.

The Attorney General, within six months of enactment of this act, also must submit a report to the House and Senate Judiciary Committees that examines measures to expand national criminal records databases with accurate information on missing persons and unidentified human remains; improvement of post mortem examinations, autopsies and reporting procedures of unidentified persons or remains; collection of DNA information; and use of the Internet to post information on missing persons and unidentified human remains. DOJ has yet to assign these projects.<sup>10</sup>

## **Additional Provisions Enacted in the 109<sup>th</sup> Congress**

In addition to the Adam Walsh Act, the 109<sup>th</sup> Congress also passed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005; P.L. 109-162).<sup>11</sup> Section 108 of the act amends Section 40152 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13941), which provides training in the areas of case management, supervision, and relapse prevention to assist probation and other personnel who work with released sex

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<sup>10</sup> Based on telephone conversation with DOJ spokesman, May 9, 2008.

<sup>11</sup> For a complete discussion of VAWA 2005, see CRS Report RL30871, *Violence Against Women Act: History and Federal Funding*, by Garrine P. Laney.

offenders. For this section of VAWA 2005, Congress has authorized \$3 million to be appropriated for each of fiscal years 2007 through 2011. VAWA 2005 adds provisions directing the Attorney General to contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain a national tribal sex offender registry and a tribal protection order registry. Congress has authorized \$1 million to be appropriated for each of fiscal years 2007 through 2011 to carry out this section. Funds would remain available until expended.

VAWA 2005 also contains new sex offender provisions that authorize the Attorney General, through the Director of the Office on Violence Against Women, to award grants to encourage cross-training and collaboration among courts, domestic violence and sexual assault service providers, youth organizations and service providers, violence prevention programs and law enforcement agencies. To be eligible for a grant under this section (Section 41202, Access to Justice for Youth), an applicant must establish a collaborative team that includes a victim service provider with experience in working on domestic violence, dating violence, sexual assault, or stalking, and the effect of these types of abuse on young people as well as a court. Among other entities that may be included on the team are batterer intervention programs and sex offender treatment programs staffed by people with specialized knowledge and experience working with youth offenders. Congress has authorized \$5 million to be appropriated in each of fiscal years 2007 through 2011 for this section of VAWA 2005.

## Legislation in the 110<sup>th</sup> Congress

The House and Senate are resolving their differences on provisions in the FY2008 war supplemental bill (**H.R. 2642**) by exchanging amendments between the two houses. On May 22, 2008, the Senate adopted two amendments, one of which would provide funding for domestic programs, including \$50 million for the U.S. Marshals Service to apprehend sex offenders who had not complied with registration requirements as provided in the Adam Walsh Act. The Senate has sent both amendments to the House for their consideration.

On May 20, 2008, the Senate amended and passed **S. 431**, Keeping the Internet Devoid of Sexual Predators Act of 2007, by adding another registration requirement for sex offenders. S. 431, as amended, would also address changes in technology and respond to rulings in two court cases that affect child pornography. For further details, see sections below on registration requirements and monitoring use of the Internet for sex offenders. On this same date, the Senate also passed **H.R. 2517**, Protecting Our Children First Act of 2007. Among other provisions, H.R. 2517 would provide for locating sex offenders who have not registered as required and would offer grants to be used to protect children from sex offenders and sexual abuse. See section below on “Grants.”

Additional legislation related to sex offenders has been introduced in the 110<sup>th</sup> Congress. Many of the bills contain provisions on multiple aspects of the issues of sex offenders and sexual abuse of children, which in this report are arranged and discussed topically. Generally, the bills include major provisions that would address registration of sex offenders (S.Amdt. 752, H.R. 291, H.R. 3095, S. 1819, H.R. 3144, H.R. 5475, H.R. 5722, S. 431 and S. 2632); place some restrictions on released sex offenders (H.Res. 572, H.R. 2170 and H.R. 3149); monitor use of the Internet for sexual exploitative purposes (S. 431, H.R. 3791, H.R. 876, S. 519 and H.R. 837); concern sex offender DNA issues (H.R. 252 and H.R. 3833); address the locating and monitoring the location of sex offenders (H.R. 719, H.R. 1656, H.R. 1684, H.R. 4094 and H.R. 5722); relate to crimes against the elderly and minors (H.R. 2105 and H.R. 2106); relate to concerns over sexual misconduct in educational institutions (H.R. 1829 and S. 2360); offer grants to eligible entities

(H.R. 3322, H.R. 4147, H.R. 2517, S. 1829, H.R. 291, H.R. 876, S. 519, and H.R. 252); and reauthorize some Walsh Act activities and programs (H.R. 5760 and H.R. 5722).

All of these bills were referred to their respective committees. Only H.R. 719, H.R. 1684, H.R. 2517, H.R. 3095, H.R. 3791, S.Amdt. 752, S. 431, and S. 1829 have received further legislative activity, which is discussed below. Following is an analysis of these measures.

## **Provisions Related to Registration Requirements, Apprehension and Penalties for Sex Offenders**

**S.Amdt. 752** (Ensign) would amend H.R. 1591 (U.S. Troops Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007) to increase funding under the Walsh Act for the U.S. Marshals Service to apprehend a convicted sex offender who failed to register as legally required. The Senate agreed to S.Amdt. 752 on March 29, 2007. Congress passed H.R. 1591 and on May 1, 2007, the President vetoed the measure. On May 2, 2007, efforts to override the President's veto failed; the House then referred the bill and veto message to the Committee on Appropriations.

On May 20, 2008, the Senate passed an amended S. 431, Keeping the Internet Devoid of Sexual Predators Act of 2007, which, among other provisions, would require a convicted sex offender who uses the Internet to provide and keep current an electronic mail address, instant message address, or other designation used for self identification or routing in an Internet communication that is not included in the sex offender's registration information. Penalties, including a fine and/or imprisonment for up to 10 years, would be imposed on a sex offender who knowingly fails to provide this information.

The identical bills **H.R. 3095** (Kildee) and **S. 1819** (Dorgan) would extend by one year (to 2008) the deadline by which an Indian tribe must decide whether to enforce the Sex Offender Registration and Notification (SORNA) provisions of the Adam Walsh Act or to delegate this enforcement authority to another jurisdiction(s). On July 23, 2007, the House passed, by voice vote, H.R. 3095, and on August 3, 2007, the measure was referred to the Senate. S. 1819 was referred to the Senate Judiciary Committee on July 19, 2007.

**H.R. 291**, Safe NOW Act of 2007 (Gillmor) would establish a National Sex Offender Risk Classification Task Force to create guidelines for classifying a sex offender, on the basis of the offender's threat of danger to the public, and would allow law enforcement agencies and the public to use this classification system to identify the most dangerous sex offenders listed in sex offender registries. The task force would consist of 20 members, including the chair, and representatives from a variety of organizations such as advocacy groups, law enforcement, federal agencies, the Washington State Institute for Public Policy, psychologists, and three representatives from academia with specialties in risk assessment of sex offenders.

Duties of the task force would include creation of preliminary guidelines for establishing a risk-based sex offender classification system, administration of a demonstration program, and creation of final guidelines. The task force would submit an initial report to the Attorney General and relevant congressional committees not later than one year after the date of its first meeting. Another final report would be required not later than six months after the demonstration program (described below under the heading, "Grants") expires. The final report would contain guidelines

for establishing a risk-based sex offender classification system and a summary of information gathered through the demonstration program.

**H.R. 3144**, Sex Offender Internet Prohibition Act of 2007 (McMorris Rodgers) would require that a sex offender who must register as such be fined and imprisoned for a minimum of five years and a maximum of 20 years, if the offender knowingly accesses a website on the Internet to communicate with an unsuspecting child.

**H.R. 5475**, Sex Offender Mandatory Registration Act of 2008 (Moore) would amend the sex offender registration provisions of the Walsh Act by adding a requirement for sex offenders who travel between states, regardless of when they travel, to register with the appropriate state and local authorities. It would also make failure to register or update a sex offender registration a continuing offense for as long as such a failure exists.

Among other provisions, **H.R. 5722** (Christopher H. Smith) would expand access to information on convicted sex offenders in the United States who travel internationally. The bill would require sex offenders who must register as such to inform an appropriate jurisdiction(s) 21 days before departing to or arriving from a foreign place. Once notified, the jurisdiction must promptly inform the Secretary of Homeland Security and the Attorney General. At the same time an official notifies an offender that he or she must register under SORNA, the official must also inform the offender of the reporting requirements for travel abroad and require the offender to sign a form stating that the duty to report as well as reporting procedures have been explained and are understood.

H.R. 5722 would require the Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, to notify in a timely manner and provide sufficient information to appropriate authorities in relevant foreign countries or territories concerning the travel plans of a convicted sex offender who is required to register under SORNA. The Secretary of State may provide technical assistance to foreign authorities to enable them to more effectively participate in this sex offender reporting and notification program.

Within one year of enactment of this act and every four years thereafter, H.R. 5722 would require the President to submit a report to congressional committees on the implementation of this act. Included in the report should be information on the number of sex offenders who report travel to or from a foreign place, the number of sex offenders prosecuted and convicted for failure to report such travel, and what actions, if any, foreign countries and territories of destination took after being notified of the travel plans of a sex offender.

The measure would create a new federal offense for a convicted sex offender to knowingly fail to report his or her travel to or from a foreign place, with a penalty of a fine or imprisonment for up to 10 years, or both. For this sex offender travel and notification program, H.R. 5722 would authorize to be appropriated such sums as may be necessary for each of the fiscal years 2009 through 2013.

**S. 2632**, Sex Offender Registration and Notification Retroactivity Correction Act of 2008 (Bond) would amend the Walsh Act to provide a retroactive registration requirement for a sex offender. The bill would require a sex offender to register under provisions of SORNA (Title I of the Adam Walsh Child Protection and Safety Act) whether the sex offender was convicted before, on, or after enactment of the act.

## **Restrictions on Released Sex Offenders**

Several bills would encourage the use of sex offender registries for background checks on offenders and would place restrictions on the pretrial release of a sex offender and on where an offender can work. **H.Res. 572**, Encouraging Employers and Online Dating Sites to Use Sex Offender Registries for Background Checks (King) would encourage employers and online dating sites to use sex offender registries to conduct background checks on potential employees.

**H.R. 2170** (Pearce) would make an individual ineligible to serve in the Department of the Interior or the Department of Agriculture if the person is convicted of a sexual offense involving a minor. Provisions of this act, however, would not apply to an individual whose employment began before enactment of this act.

**H.R. 3149**, Protecting America's Children Act of 2007 (Porter) would require the chief officer of a state or unit of local government to certify annually that state or local laws provide adequate protection against the pre-trial release of individuals (1) who are charged with a state or local crime that would constitute a federal sexual offense, including aggravated sexual abuse, sexual abuse of a minor or ward, and sexual abuse resulting in death; and (2) who would pose a serious risk of fleeing, obstructing or attempting to obstruct justice or threaten, injure, or intimidate a potential witness, judge, magistrate, or juror. Minimally, the pre-trial release measures must include a pre-trial detention hearing for the individual, and the individual must be detained prior to trial for the period beginning at presentment and ending on the last day of the pre-trial detention hearing involved or the last day of any continuance period, whichever is later. If a state or local government fails to meet these requirements, then Byrne grant funds would be denied to that state or unit of local government for any fiscal year in which the pre-trial release requirements are not met.

## **Monitoring Use of the Internet by Sex Offenders**

To protect children from exploitation or abuse by a sex offender, several bills would modernize and expand reporting requirements, encourage cooperation among law enforcement concerning child pornography, and monitor a sex offender's use of the Internet.

Once a convicted sex offender provides an electronic mail address, instant message address, or other designation used for self identification or routing in an Internet communication for inclusion in the NSOR, among other provisions, **S. 431**, as amended, would require the Attorney General to maintain a system that would allow commercial social networking websites to compare users of their databases to the Internet identifiers of persons in the NSOR. To gain access to databases, a commercial social networking website must provide the Attorney General with its name, its specific legal nature and corporate status; contact information for the website; an explanation of why the website seeks to use the system; and any other information required by the Attorney General. After providing this information and paying any fee established by the Attorney General, the commercial social networking website may use the database for identifying a registered user who is a sex offender.

S. 431, as amended, would prohibit both the Attorney General and the social networking website from releasing to the public any list of the e-mail addresses or other designations used for self-identification provided by a sex offender.



The bill would amend 18 U.S.C. 2422 to provide that anyone who knowingly misrepresents his or her age in using the Internet to operate a facility to engage in criminal sexual conduct with a minor would be fined and imprisoned for up to 20 years. This penalty would be in addition to any other imposed by a jurisdiction for such criminal conduct with a minor.

S. 431, as amended, would address changes in technology and rulings in two cases concerning child pornography,<sup>12</sup> by amending 18 U.S.C. 2252(a)(4) and 18 U.S.C. 2252A(a)(5) to include a prohibition on knowingly accessing child pornography images with an intent to view. This provision is intended to reach a person who views child pornography on the Internet, but does not attempt to save the images. The requirements that such accessing of child pornography be knowing and intentional is designed to protect persons from prosecution who might accidentally access child pornography.<sup>13</sup>

Section 7 of S. 431 also would add the words “affecting interstate or foreign commerce” or “using a facility or means of interstate or foreign commerce” in a variety of places in the child pornography statutes. The primary purpose in adding this language is to ensure that the law would encompass activities that occurred over the Internet and telephone lines. This language appears to have been in response to court cases that found that the existing law did not apply to all such activities.<sup>14</sup>

**H.R. 3791**, SAFE Act of 2007 (Lampson) and the identical bills **H.R. 876**, SAFE Act of 2007 (Chabot) and **S. 519**, (McCain) would monitor an offender’s use of the Internet by requiring electronic communication service providers and remote computing service providers to report to the CyberTipline of the National Center for Missing and Exploited Children (NCMEC) facts or circumstances which indicate that federal law relating to child pornography or to obscene visual representations of the sexual abuse of children has been violated, with identifying information on the individual involved. All three measures would require the NCMEC to forward this information to any appropriate state or foreign law enforcement agency that the Attorney General designates.

Of these three bills, only H.R. 3791 would impose a fine of \$150,000 in the first case and \$300,000 for any subsequent failure of an electronic communication service provider or a remote computing service provider that fails to report a violation of federal law relating to child pornography or to obscene visual representations of the sexual abuse of children. H.R. 3791 would not require an electronic communication service provider or a remote computing service provider to monitor any user of that provider or the content of any communication of a person, or affirmatively seek facts regarding violations of federal law on child pornography or obscene visual representations of the sexual abuse of children.

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<sup>12</sup> *Congressional Record*, May 20, 2008, p. 4549. The two cases are *United States v. Teal*, No. 1:04-CR-00042-CCB-1 (D. Md., motion to dismiss granted August 13, 2004) and *United States v. Kuchinski*, 469 F.3d 853 (9<sup>th</sup> Cir. 2006). In *Teal*, Marvin Teal, a former administrative law judge, was prosecuted for viewing child pornography at a public library. Because there was no evidence that the defendant had intentionally saved the images, the District Court dismissed the case. In *Kuchinski*, the Ninth Circuit vacated and remanded the sentence of an offender on the basis that while he may have viewed the images in question, he did not know that those images were in his Internet cache.

<sup>13</sup> *Congressional Record*, May 20, 2008, p. S. 4549.

<sup>14</sup> For instance, in *United States v. Schaefer*, 501 F.3D 1197 (10<sup>TH</sup> Cir. 2007), the court dismissed a conviction for receipt and possession of child pornography in interstate commerce because the court found that proof that an image traveled over the Internet was not sufficient to prove that the image moved between the states.

H.R. 876 and S. 519 would authorize the courts to impose explicit conditions of supervised release for convicted sex offenders to monitor their use of the Internet. These bills would require the sex offender to pay a fee, not to exceed \$50 per month, for such monitoring. They would increase penalties for using the Internet to violate child pornography or sexual exploitation laws, providing an additional term of imprisonment of 10 years. The measures also would require the Attorney General to make reports on investigations, prosecutions and convictions concerning crimes of sexual exploitation against children publicly available on the DOJ website.

H.R. 3791, H.R. 876, and S. 519 would grant an electronic communication service provider, a remote computing service provider, and NCMEC immunity from civil and criminal liability for reporting violations of child pornography and sexual abuse of children, except in cases of intentional misconduct or malicious failure to act in accordance with law. H.R. 3791 would authorize NCMEC to provide elements relating to any image of child pornography reported to its CyberTipline to an electronic communication service provider or remote computing service provider to enable them to stop further transmission of these images.

Of these bills, only H.R. 3791 has seen House floor action. On December 5, 2007, the House passed H.R. 3791 by a vote of 409-2; on December 6, 2007, the measure was referred to the Senate Judiciary Committee.

For the Department of Justice to supervise convicted sex offenders' access to the Internet, **H.R. 719**, Keeping the Internet Devoid of Predators Act of 2007 (Pomeroy), would authorize to be appropriated \$5 million for each of fiscal years 2008 through 2013. Funding to monitor the Internet would be used to evaluate and purchase computer internet filtering, monitoring, and other programs and devices that are designed to filter access to certain websites; train probation officers to use these devices to supervise sex offenders; and hire additional probation officers and other personnel to supervise sex offenders effectively.

H.R. 719 would include as a discretionary condition of probation and supervised release that a sex offender who is required to register obtain access to the Internet only from computers approved by the probation officer. The sex offender would have to consent to fully cooperate with: periodic examinations of the computers by the probation officer; installation on the computer of any hardware or software filtering systems designated by the probation officer, as well as installation of monitoring systems or hardware that permit the probation officer to monitor the defendant's computer. Finally, the defendant would have to agree not to disable or evade filtering or monitoring programs or devices.

H.R. 719 would fine or imprison for a maximum of 20 years, or both, a person who conducts or attempts or conspires to conduct a financial transaction in or affecting interstate or foreign commerce knowing that the transaction will facilitate access to or possession of child pornography. H.R. 719 would require the U.S. Sentencing Commission to review and amend, if appropriate, the federal sentencing guidelines that apply to persons convicted of sex offenses involving children and use of the Internet when the offender's age is misrepresented or status as a sex offender is not revealed.

**H.R. 837**, Internet Stopping Adults Facilitating the Exploitation of Today's Youth Act (SAFETY) of 2007 (Lamar Smith) would prohibit and impose penalties on an Internet content hosting provider or e-mail service provider who knowingly fails to report several activities on the Internet that sexually exploit children. The bill would prohibit any financial transactions in interstate or foreign commerce that facilitate access to or possession of child pornography. Whoever is

convicted of these activities would be subject to a fine or 20 years imprisonment or both. H.R. 837 would provide for a fine or imprisonment of not more than 10 years or both for any Internet content hosting provider or e-mail service provider who knowingly engages in activities that would facilitate access to or possession of child pornography.

H.R. 837 would amend the Victims of Child Abuse Act of 1990 by imposing the same penalty as provided in H.R. 3791 of a \$150,000 fine for the first offense and up to \$300,000 for a subsequent failure for a provider of electronic communication services or remote computing services who *knowingly* fails to report child pornography. H.R. 837 would authorize the Federal Communication Commission to impose a civil penalty of \$50,000 for the first failure of a provider of electronic communication services or remote computing services who *negligently* fails to report child pornography and up to \$100,000 for any subsequent failure.

H.R. 837 would authorize the Attorney General, within 90 days of enactment of this act, to issue regulations governing the retention of records by Internet Service Providers. To comply with court orders that may require information regarding these records, these regulations, minimally, would require retention of records, such as the name and address of the subscriber or registered user to whom an Internet Protocol address, user identification or telephone number was assigned. For anyone who knowingly fails to keep these records, a fine and imprisonment for not more than one year, or both could be imposed.

H.R. 837 would increase penalties for activities relating to sexual exploitation of children, material involving the sexual exploitation of children, and child pornography. The measure would require commercial website operators to place warning marks on web pages indicating that they contain sexually explicit materials and would impose a fine, a penalty, or both for failure to do so.

H.R. 837 would authorize to be appropriated \$30 million for each of the fiscal years 2008 through 2012 for the Innocent Images National Initiative (IINI). IINI's mission is to reduce the use of computers in sexually exploiting and abusing children; identify and rescue victims of this exploitation and abuse; investigate sexual predators who use the Internet for such purposes; and strengthen, through training and investigative assistance, the capabilities of law enforcement at the federal, state, local and international levels.

H.R. 719 was referred to the House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security on March 1, 2007. On November 14, 2007, the House passed H.R. 719, and on November 15, 2007, referred the measure to the Senate Judiciary Committee.

## **DNA Database**

Two bills with provisions regarding DNA are **H.R. 252** (Jackson-Lee) and **H.R. 3833** (King). H.R. 252 would require the Attorney General to establish and maintain a DNA database solely to collect information on violent predators who commit crimes against children. The Attorney General would be authorized to issue regulations whereby federal, state, and local agencies and other entities would submit DNA information for inclusion in the database for comparison with other information in it. To establish the DNA database, the bill would authorize to be appropriated \$500,000.

Whereas provisions of H.R. 252 would focus on collecting DNA information for a database on violent predators who commit crimes against children, H.R. 3833 would address eliminating the backlog of convicted child sex offender DNA samples awaiting analysis.<sup>15</sup> H.R. 3833 would require the Director of the FBI, in consultation with representatives of states and appropriate federal agencies, to develop a plan to assist states in performing analyses of DNA samples collected from convicted child sex offenders. In providing this assistance, the Director must give preference to states with a developed comprehensive program for DNA analysis of crime scene evidence in casework for which there are no suspects; establish requirements for performing DNA analyses by private forensic laboratories; determine which of these laboratories satisfy the established requirements as well as the quantity of convicted child sex offender DNA samples in a state that the laboratory would analyze; and provide funding to the laboratory to cover the cost of performing the analyses. Access to DNA samples would be limited to criminal justice agencies, judicial proceedings, criminal defense purposes, and validation studies and protocol development.

## **Locating and Monitoring Sex Offenders**

**H.R. 719** and **H.R. 4094** (Forbes) would amend provisions of the Walsh Act that relate to the monitoring of sex offenders. To electronically monitor sex offenders, both H.R. 719 and H.R. 4094 (Forbes) would modify the current minimum standards established by the Walsh Act that provide for a single-unit tracking device for each offender that contains a central processing unit with global positioning system and cellular technology in a single unit, and provides two- and three-way voice communication; and permit active, real-time, and continuous monitoring of offenders 24 hours a day. H.R. 719 and H.R. 4094 would delete the provision for two- and three-way voice communication and would require that, in the pilot program to monitor sex offenders, a tracking device for each offender contain a central program unit with a global positioning system and allow an offender to be monitored 24 hours a day.

**H.R. 1656** (Poe), and **H.R. 1684**, (Bennie Thompson), among other provisions, would provide for access to information on sex offenders during emergencies. H.R. 1656 would amend the Privacy Act of 1974 to allow a governmental agency, during a major disaster or emergency, access to databases maintained by the Federal Emergency Management Agency (FEMA) to comply with sex offender registry and notification laws. The bill would award federal funds to a nongovernmental organization to evacuate persons from an area during a disaster or emergency, provided the organization agreed to disclose records it maintained in connection with such services to a jurisdiction if the information is needed to comply with federal or state sex offender registry or notification law.

H.R. 1684, another measure to locate missing children or registered sex offenders during emergencies, would require the Department of Homeland Security to share information with federal, state, and local law enforcement agencies. H. R 1684 was adopted by the House Committee on Homeland Security by voice vote; the bill was reported (H.Rept. 110-122) on March 28, 2007. On May 9, 2007, the House passed H.R. 1684 by a vote of 296 to 126. On May 11, 2007, the bill was received in the Senate and referred to the Committee on Homeland Security and Governmental Affairs.

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<sup>15</sup> For a fuller discussion of the issue of DNA backlog, see CRS Report RL33489, *An Overview and Funding History of Select Department of Justice (DOJ) Grant Programs*, by Nathan James, Analyst in Crime Policy.

As stated earlier, H.R. 5722 would require a convicted sex offender in the U.S. to meet registration requirements by informing a jurisdiction in advance of any plans to depart to or arrive from a foreign place. The bill also would require both the Secretary of Homeland Security and the Attorney General to establish reporting procedures, determine what information is to be reported, and provide appropriate alternative reporting requirements in emergencies when the reporting requirement may be impracticable or inappropriate.

## **Sexual and Other Crimes Against the Elderly and Minors**

Two bills, **H.R. 2105**, Elder Abuse Prevention Act (Chandler) and **H.R. 2106**, No Parole for Sex Offenders Act (Chandler), would address penalties for any sexually violent predator or individual who commits a crime against the elderly or a minor. H.R. 2105 would require states to enact laws to prohibit parole for a sexual predator or any individual convicted of a sexual offense against an elderly person; H.R. 2106 would prohibit parole for any individual or sexually violent predator convicted of a criminal offense against a minor. Each bill would require that states comply with its provision within three years of enactment of this act, with a possible extension of an additional two years, or lose 10% of funds that would otherwise be allocated for that fiscal year to a state for certain Bureau of Justice Assistance Grant programs under provisions of the Omnibus Crime Control and Safe Streets Act of 1968.

Each bill would provide for the U.S. Sentencing Commission to promptly review sentencing guidelines applicable to sexual offenses committed against either the elderly or a minor and consider promulgating new ones. The Sentencing Commission would also have to explain to Congress its actions on amending sentencing guidelines, and any additional policy recommendations it may have for combating crimes against the elderly or a minor. Under provisions of both bills, the U.S. Sentencing Commission must promulgate these guidelines or amendments as soon as practicable but no later than 180 days after enactment of this act.

## **Sexual Misconduct in Educational Institutions**

**H.R. 1829**, Student Protection Act (Putnam), and a similar bill, **S. 2360**, Student Protection Act (Martinez), would address sexual misconduct against a student by an individual in an elementary and secondary school system. H.R. 1829 would require each state to have in effect for FY2010 and thereafter laws and policies which ensure that if an educator believes another educator has been involved in an act of sexual misconduct with a student, then the individual must report the incident to the state as quickly as practicable and within 48 hours whenever possible. S. 2360 would provide these same reporting requirements of an eligible employee or volunteer in a school system but would require the individual to report the incident within the same time frame that is stipulated for reporting child abuse and neglect. Both bills would require that the individual be disciplined who fails to report an incident of sexual misconduct against a student.

H.R. 1829 and S. 2360 would require the state to have a single, statewide commission for receiving reports of sexual misconduct against a student. In addition, the commission would be required to have policies for investigating and reporting such incidents and also have established a toll-free number that can be used anonymously to make reports. H.R. 1829 would provide that if an educator is punished for sexual misconduct against a student, then the details of the educator, the punishment, and the incident must be reported to the Secretary of Education; S. 2360 alone would require inclusion of the last known address of the perpetrator of the misconduct. In addition to providing similar documentation on an employee or volunteer in a

school system as H.R. 1829 requires, S. 2360 would provide for the Secretary of Education to be informed whenever an employee or volunteer who is guilty of sexual misconduct with a student is terminated from association with the state or local educational agency or public or private school.

If a state does not comply with these provisions for a fiscal year, both measures would authorize the Secretary of Education to reduce by up to 5% the amounts for which a state would have been eligible under the Elementary and Secondary Education Act of 1965. Funding not allocated or awarded to a state for noncompliance with these provisions would be available for states that do comply. Both bills would require the Secretary to report to Congress annually on the activities carried out under this act, identifying both states that are in compliance and those that are not.

H.R. 1829 and S. 2360 would require the Secretary of Education to maintain a national database of incidents of sexual misconduct against a student. S. 2360 would include in the national database incidents of sexual misconduct with a student that have resulted in an eligible employee or volunteer being terminated from association with the state or local educational agency, public or private school, or punished, fined, or sanctioned by any level of state government. S. 2360 would provide that the database include, at a minimum, the required reporting information, and also that the database be available to state educational agencies, local educational agencies, and private schools. H.R. 1829 would make the database available to the public.

## **Grants**

A number of bills would provide grants for eligible entities to address the issues of sex offenders and sexual abuse of children. **H.R. 3322**, Cops for Kids Act (Boswell) would authorize the Attorney General to make grants to states and units of local government to develop programs for hiring personnel to monitor the activities of sex offenders in the community. To be eligible for grant funding under provisions of H.R. 3322, a state or unit of local government must contribute at least 50% of the costs of developing a sex offender monitoring program that includes hiring personnel and providing training. The bill would authorize to be appropriated \$50 million for each of fiscal years 2008 through 2013 to carry out this act.

Whereas H.R. 3322 would provide grants to state and local governments, **H.R. 4147**, Grants for the Implementation of the Sex Offender Registration Tips Program (King) would require the Attorney General to provide grants to the not-for-profit community and victim's rights organization, Parents for Megan's Law to implement the Sex Offender Registration Tips Program. This is a program to reduce sexual victimization by (1) providing up-to-date and accurate sex offender registry information to federal, state, and local law enforcement entities through the National Megan's Law Helpline staffed by Parents for Megan's Law, and the Internet website of the organization; (2) enabling the analysis and coordination of community tips on sex offenders who fail to comply with registration requirements or who violate conditions of their probation or parole; and (3) identifying geographic locations where sex offenders are identified as in violation of registry requirements of the jurisdiction involved or of the conditions of their probation or parole. For grants for this purpose, H.R. 4147 would authorize to be appropriated \$500 thousand for each of FY2009 through FY2013.

**H.R. 2517**, Protecting Our Children First Act of 2007 (Lampson) and **S. 1829**, Protect Our Children First Act of 2007( Leahy) are similar bills that would amend the Missing Children's

Assistance Act by adding purposes for which the annual grant to the National Center for Missing and Exploited Children (NCMEC) can be used. As it relates to the sex offender issue,<sup>16</sup> these bills would amend the duties and functions of the Administrator of NCMEC to require that grants be used to identify and locate sex offenders who have not complied with the registration requirements of the Walsh Act. H.R. 2517 alone would require NCMEC to provide to the DOJ's Office of Juvenile Justice and Delinquency Prevention annual reports on the numbers of children identified as missing nationwide, victims of non-family abductions, victims of parental kidnappings, as well as the number of children who were reported to NCMEC as recovered.

H.R. 2517 would provide grants for a number of purposes, including to protect children from sex offenders and sexual abuse. Current law provides for grants to be used to operate a cyber tipline to provide an effective means of reporting Internet-related child sexual exploitation for online users and electronic service providers in the areas of distribution of child pornography, online enticement of children for sexual acts, and child prostitution. Under provisions of H.R. 2517, grants would be used for this purpose in the following additional areas: (1) possession and manufacture of child pornography, (2) sex tourism involving children, (3) extrafamilial child sexual molestation, (4) unsolicited obscene material sent to a child, (5) misleading domain names, and (6) misleading words or digital images on the Internet. S. 1829 would provide grants for the cyber tipline for these same areas with the exception of "misleading domain names" and "misleading words or digital images." Both bills would require the NCMEC to transmit reports with information on Internet-related child sexual exploitation, including relevant images and information, to the appropriate international, federal, state or local law enforcement agency for investigation.

Grants also would be used to collaborate with law enforcement, Internet service providers, electronic payment service providers and others on methods to reduce the distribution of images and videos of sexually exploited children on the Internet. Grant funds would be used to operate a child victim identification program in order to assist law enforcement agencies in identifying victims of child pornography and other sexual crimes. Finally, grants would be used to develop and disseminate programs and information to the general public, schools, public officials, and youth-serving and nonprofit organizations on the prevention of child abduction and sexual exploitation and Internet safety.

For these purposes, both H.R. 2517 and S. 1829 would reauthorize funds to be appropriated in FY2008 by increasing the level from \$20 million to \$40 million and would provide such sums as may be necessary for of each of FY2009 through FY2013.

On December 5, 2007, the House passed H.R. 2517, as amended and referred the measure to the Senate on January 22, 2008. On May 20, 2008, the Senate passed the bill without amendment. It was presented to the President for signature on May 23, 2008.

On December 13, 2007, the Senate Judiciary Committee approved by voice vote S. 1829, as amended.

**H.R. 291** would provide for the National Sex Offender Risk Classification Task Force (discussed above under the heading, "Provisions Related to Registration Requirements, Apprehension and

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<sup>16</sup> For a fuller discussion of provisions of H.R. 2517 and S. 1289, see CRS Report RL34050, *Missing and Exploited Children: Background, Policies, and Issues*, by Adrienne L. Fernandes, Analyst in Social Legislation.

Penalties for Sex Offenders”) to carry out a demonstration program under which it would select and award a one-year grant to each of five jurisdictions. The selected jurisdiction would use grant funds to (1) implement a risk-based sex offender classification system using sex offenders registered in the jurisdiction’s sex offender registry, (2) demonstrate the extent to which the preliminary guidelines contributed to successful implementation of an effective risk-based sex offender classification system, and (3) identify ways to improve the preliminary guidelines to better guide jurisdictions in implementing an effective risk-based sex offender classification system. The bill would authorize to be appropriated \$1 million for each of fiscal years 2008, 2009, and 2010.

**H.R. 876 and S. 519** would require the U.S. Trade Representative, the U.S. Attorney General, and the head of any other relevant federal agency to encourage foreign governments to stop the production and transmission of child pornography and cooperate with U.S. law enforcement agencies and the Internet Crimes Against Children Task Force to combat the creation and transmission of child pornography. The bills would also authorize to be appropriated to the Attorney General \$25 million for grants to the Internet Crimes Against Children Task Force.

In addition to other provisions that are discussed earlier in this report (see above section, “DNA Database”), **H.R. 252** would authorize to be appropriated such sums as necessary for incentive grants to each state that has in effect at least one program that decreases the rate of recidivism among violent predators who commit crimes against children.

## **Reauthorization of Certain Walsh Act Activities and Programs**

**H.R. 5760**, the Child Protection Reauthorization Act (Brown-Waite), would reauthorize certain Walsh Act programs and activities. The bill would extend the authorization through 2011 for the Sex Offender Management Assistance (SOMA), Federal Assistance with Respect to Violations of Registration Requirements, and Grants to Combat Sexual Abuse of Children programs. The authorization also would be extended through 2011 for the Pilot Program for Monitoring Sexual Offenders. For the report to Congress that the Attorney General is required to make concerning this pilot program, the bill would change the due date from not later than September 1, 2010, to “after September 1, 2011, but not later than September 1, 2012.”

For the Jessica Lunsford Address Verification Grant Program, **H.R. 5760** would also extend the authorization through 2011. In addition, the bill would change the due date of a report the Attorney General is required to make to Congress that assesses this program to “after April 1, 2010, but not later than April 1, 2011.”

For the Fugitive Safe Surrender Program, **H.R. 5722** would reauthorize the program at \$8 million for each of the fiscal years 2009 through 2011.

In addition, the bill would reauthorize two other grant programs, the Sex Offender Apprehension and the Juvenile Sex Offender Treatment Grants, through 2011.



## **Funding of Walsh Act Programs**

### **FY2009 Request**

For FY2009, the Bush Administration proposes to consolidate funding for programs under DOJ's State and Local Law Enforcement Assistance, Weed and Seed, and Community Oriented Policing Services (COPS) accounts into three flexible, competitive grant programs (violent crime reduction partnership initiative program, Byrne public safety and protection program, and the COPS program). The Administration also proposes to consolidate existing juvenile justice and exploited children programs into a single, flexible, competitively awarded grant program called the Child Safety Juvenile Justice Program. According to the Administration, these consolidations would ensure better coordination of comprehensive training and technical assistance initiatives for state and local law enforcement on violent crime control, community policing, and juvenile justice issues. With funding from the Child Safety Juvenile Justice Program and the Byrne Public Safety and Protection Program, state and local governments could support activities authorized in the Walsh Act that combat child sexual exploitation and target sex offenders.

### **FY2007 and FY2008**

The first full year for which activities under the Walsh Act could have received funding was FY2007. For that fiscal year, most federal departments and agencies received funding under a long-term (i.e., balance of the fiscal year) continuing resolution, (Revised Continuing Appropriations Resolution, 2007; P.L. 110-5), which was enacted on February 15, 2007. Funding was provided for most programs at their FY2006 funding levels, and P.L. 110-5 did not provide funding for newly established programs. Except as described below, Congress did not appropriate funding directly for programs under the Adam Walsh Act prior to FY2008.<sup>17</sup>

For FY2007, the Attorney General announced \$25 million in funding (from the Byrne Discretionary Grant Program),<sup>18</sup> which was allocated for implementing certain provisions of the Adam Walsh Act as follows:

- \$4 million to create software to assist jurisdictions in complying with SORNA requirements,
- \$12.8 million to support jurisdictions in implementing SORNA,
- \$600,000 to Indian Country SORNA Implementation Conferences,
- \$1.4 million for sex offender management and accountability training,
- \$5 million to create or enhance residential juvenile sex offender treatment programs,
- \$1 million for the National Institute of Justice for research on sex offender issues (the effectiveness of monitoring and treating sex offenders, restricting the

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<sup>17</sup> Information obtained from DOJ in April 2008.

<sup>18</sup> Ibid.

activities of sex offenders, and risk-based sex offender classification systems), and

- \$200,000 for peer review of grants.

For FY2008, the Consolidated Appropriations Act of FY2008 (P.L. 110-161) provided funding for a small number of programs authorized under the Walsh Act:

- National Sex Offender Public Registry. Although the Walsh Act does not specifically provide an authorization level for the National Sex Offender Public Registry (Sec. 119), P.L. 110-161 provides \$850,000.
- Sex Offender Management Assistance Program. The Walsh Act authorized to be appropriated such sums as may be necessary for the Attorney General to establish and implement the Sex Offender Management Assistance Program (Sec. 126) for FY2007 through FY2009. P.L. 110-161 provides \$4.16 million for SOMA.
- Additional Prosecutors for Offenses Relating to the Sexual Exploitation of Children. The Walsh Act authorizes to be appropriated such sums as may be necessary for FY2007, for hiring additional U.S. Attorneys to prosecute offenses relating to the sexual exploitation of children (Sec. 704). P.L. 110-161 provides \$5 million for the U.S. Attorneys Office to prosecute offenses relating to the sexual exploitation of children.

## **Continuing Policy Issues**

As discussed in this report, Congress has passed laws with provisions to protect the public from sex offenders by confining them and, once they are released, monitoring their movements. The debate, however, on sex offenders, their punishment and management continues and, as discussed in the previous section, additional legislation has been introduced in the 110<sup>th</sup> Congress.

Issues related to sex offender laws have included the extent to which they are enforced, their effectiveness, the adequacy or targeting of federal funding to support registration and notification, and the extent to which they reflect available research on sex offender recidivism. These issues are discussed below.

## **Enforcement of Registration Requirements**

A major concern of supporters of sex offender registration is whether sex offenders are actually registering in states. An investigation in 2003 by the Associated Press suggested that California could not account for 33,000 sex offenders. A subsequent survey, conducted by Parents for Megan's Law in 2003, which has not been published but has been reported in the press, also suggested that thousands of convicted offenders had failed to register with states as legally required. Others, while registering, had provided false addresses or changed addresses without updating registration information. According to the Parents for Megan's Law survey, on average, states could not account for 24% of sex offenders who were supposed to be in their sex offender

registries. In addition, 23 states missed between 10% and 50% of their sex offenders, while 17 states could not determine how many offenders were unregistered.<sup>19</sup>

Effectiveness of state sex offender registration programs do not appear to vary with the size of the sex offender population. Florida, a populous state, identified two reasons for its relatively low rate of noncompliance, 4.7% of 27,689 offenders. One is that each year the state's Department of Law Enforcement mails letters to sex offenders and closely monitors letters that are returned. Certain state agencies have entire units whose purpose is to follow-up on offenders who fail to respond. The state employs 11 full-time staff to track offenders who do not register. Another reason for Florida's low rate of noncompliance is the state's use of technology, which helps keep track of unregistered offenders. For example, Florida requires a sex offender to carry a state identification card. Several Florida agencies, including those that issue drivers' licenses and state identification cards, have direct electronic access to the sex offender database, and by cross-checking can monitor offenders.<sup>20</sup> According to the Attorney General of North Dakota, a state with a smaller population of sex offenders required to register, 32 of 1,006 convicted offenders had failed to register. North Dakota's compliance rate was 97%. The North Dakota Attorney General attributed the state's high compliance rate to law enforcement's placing a high priority on enforcing the sex offender registration laws.<sup>21</sup> Following is a sampling of noncompliance rates of selected states as reported by the Parents for Megan's Law survey: New York, 10% of 18,000 sex offenders were reportedly unregistered; California, 44% of 76,350 offenders; Ohio, 3.3% of 9,086 offenders; Oklahoma, 50% of 4,711;<sup>22</sup> Tennessee, 50% of 6,300 offenders;<sup>23</sup> Florida, 4.7% of 27,689 offenders; Massachusetts, 44% of 18,000 offenders; and Illinois, 14% of 17,087 offenders.

Both the survey by Parents for Megan's Law and state audits of sex offender registries revealed that serious and high-risk sex offenders often failed to register and that state databases contained errors, inconsistencies, and outdated information. In California, address information had not been updated for at least a year and, in some cases, updates had not occurred for at least five years.<sup>24</sup> Explanations given for the poor enforcement of sex offender registration by law enforcement agencies vary. Other than monitoring sex offenders, state and local law enforcement agencies may also be responsible for tracking domestic violence orders, missing persons, outstanding arrest warrants, DNA information, and more. Spokesmen for many state and local law enforcement agencies argue that they lack the manpower and resources to adequately monitor sex offenders because of budgetary crises. Some at the state level attribute much of the inaccurate data in the registry to their reliance on local law enforcement personnel/agencies that provide the information.<sup>25</sup>

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<sup>19</sup> Jennifer Coleman, "Lawmakers Review Audit of Megan's Law Registry," *Associated Press State and Local Wire*, September 23, 2003; Kim Curtis, "Survey: States Have Lost Track of Thousands of Sex Offenders," *Associated Press State and Local Wire*, February 6, 2003; see <http://www.parentsformeganslaw.com>.

<sup>20</sup> *Ibid.*

<sup>21</sup> "Sex Offender Registry Failure Cited in State," *Daily Oklahoman*, February 7, 2003.

<sup>22</sup> Reportedly, this percentage is disputed, but an Oklahoman spokesman could not cite a number for the state because no study of the compliance rate had been done.

<sup>23</sup> This percentage is disputed; the Tennessee Bureau of Investigation reports a noncompliance figure of 37% of 5,812 offenders.

<sup>24</sup> California State Auditor, Bureau of State Audits, *Summary of Report 2003-105*, August 2003, p. 2, at <http://www.bsa.ca.gov/reports/summary.php?id=407>.

<sup>25</sup> *Ibid.*, p. 2. Chad Kinsella, "Court OKs Sex Offender Registries: Recent U.S. Supreme Court Rulings Find State Sex Offender Registries Constitutional, but Implementation Poses Problems," *State Government News*, vol. 46, no. 5 (May 1, 2003), p. 7; "Police Can't Find 1,313 Michigan Sex Offenders," *Associated Press State and Local Wire*, (continued...)

There are several explanations given for the failure of sex offenders to register. One view is that requirements to register every three months, which apply to certain sex offenders, place a large burden on individuals who may have difficulty organizing their lives. Another view is that some sex offenders are ignorant of the registration requirement and believe that they have to register only once. Some state that offenders are simply irresponsible and do not take the need to register seriously. Finally, it is argued that sex offenders fail to register because they just don't want to be tracked.<sup>26</sup>

## **Effectiveness of Community Notification Programs**

Although sex offender registration and community notification programs were created primarily to protect the public, some question whether they are effective. They challenge the assumptions underlying these programs that communities would be safe with sex offender laws with harsh penalties; that the recidivism rate of sex offenders is inordinately high; and that once a sex offender, always an offender. They suggest that a legislative approach would be more effective that recognizes pedophilia and some other sexual disorders as both a criminal justice matter and a public health problem.<sup>27</sup>

Few studies have been conducted to evaluate the effectiveness of sex offender registration and community notification programs. Only two states, Washington and Wisconsin, have conducted evaluations of their community notification programs, and neither study is particularly recent.

### **Washington**

In 1998, the Washington State Institute for Public Policy released its findings of a telephone survey conducted in the state over a four-week period in 1997.<sup>28</sup> Results of the survey revealed that

- 80% of respondents were aware of the state's community notification law prior to the telephone interview;
- About a one-third of the residents knew that released sex offenders were residing in their communities;
- About three-fourths of respondents attributed their increased knowledge about sex offenses and how sex offenders operate to community notification;
- Over 60% of residents believed that the behavior of sex offenders improved more with community notification than without it;
- Three-fourths of respondents thought that as a result of community notification, convicted sex offenders would have difficulty establishing new lives in terms of

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(...continued)

January 13, 2004, p. 2.

<sup>26</sup> Anna Uhls, "Some Sex Offenders Off the Grid," *Colorado Daily via U-Wire*, University Wire, June 29, 2004.

<sup>27</sup> Testimony of Fred Berlin, Johns Hopkins University, U.S. House Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security, June 9, 2005.

<sup>28</sup> Dretha M. Phillips, *Community Notification as Viewed by Washington's Citizens* (Olympia: Washington State Institute for Public Policy, 1998), pp. 2-4 <http://www.wsipp.wa.gov/rptfiles/CnSurvey.pdf>.

finding a job, obtaining housing, making friends, etc., but less than half of the respondents believed that offenders “should be given every opportunity for a new start as law-abiding citizens”; and

- Eight out of 10 respondents felt the community notification law was very important.

In another paper, published in 1995 by the Washington State Institute for Public Policy, the costs of implementing the state’s community notification law were addressed.<sup>29</sup> Researchers found that the size of a community’s population (urban or rural), and policy decisions at the local level influenced the cost of implementing community notification. If a community had a small population and few sex offenders who were required to register, notification was handled informally, usually through the county sheriff, resulting in lower costs. Further, in an area with a large population and many registered sex offenders, the costs would increase because of the time and manpower required to track offenders after notification and to investigate an offender’s conduct and charges of harassment of an offender by some community members.

In addition, policy decisions influence costs associated with community notification. If a law enforcement agency, as an information repository, relies on sex offender information supplied by state agencies (such as the state patrol, department of corrections, etc.) and reviews only those offenders who have been drawn to the agency’s attention, such as through a special bulletin, costs can be modest. By using the standard manner of issuing releases, for example, through schools or press releases, it saves postage costs and officers’ time. The study found that where public officials make community notification a high priority and officers are assigned responsibility for monitoring convicted sex offenders, costs are higher. To take these steps may require an increase in payroll expenses and an investment in equipment and/or software.<sup>30</sup>

## **Wisconsin**

Generally, there are three types of notification laws. They require law enforcement agencies to inform residents of sex offenders moving into neighborhoods; enable the public to gain access to relevant data on sex offenders; and require convicted child molesters to identify themselves as sex offenders. Wisconsin’s community notification statute, however, requires officials only to inform residents about the release and reintegration of sex offenders in their communities.

In 2000, a study assessing the impact of the sex offender community notification law in Wisconsin was published, which examined the effect of this law on residents, law enforcement resources, parole and probation officer resources, and offenders. In 1998, 704 persons attending 22 community notification meetings (held from January 1998 through mid-September 1998) throughout Wisconsin were surveyed to determine the impact of community notification on residents. Although results of the study revealed that, generally, community notification was used to improve community protection, 18% of the residents attending notification meetings thought the purpose was to discuss removing or preventing an offender from residing in the neighborhood. While 71% of respondents felt they were better informed, 35% left the meetings

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<sup>29</sup> Carol Poole and Roxanne Lieb, *Community Notification in Washington State: Decision Making and Costs* (Olympia: Washington State Institute for Public Policy, 1995), pp. 13-14, <http://www.wsipp.wa.gov/rptfiles/cprtcost.pdf>.

<sup>30</sup> Ibid.

with less anxiety about sex offenders in their communities than before; 38% were more concerned; and 27% left the meeting with the same level of concern.<sup>31</sup>

Local and county law enforcement agencies were surveyed to identify agencies' policies and practices in implementing community notification law. Of 312 questionnaires sent to local and county law enforcement agencies, 188 were returned. Wisconsin's law enforcement guidelines for sex offender registration and notification recommend a collaborative approach among law enforcement, corrections, and other agencies in executing the notification process. Survey data revealed that 86% of law enforcement agencies were familiar with the state's guidelines and 66% reported that their policies and procedures reflected those guidelines.

Many law enforcement agencies considered community notification to be an unfunded mandate because of the additional work and costs associated with implementing it. More than 66% of law enforcement agencies responding to the survey were concerned about the increase in labor expenditures resulting from implementing community notification. Agencies found the law's registration requirements beneficial because of an increase in information-sharing, but reported that community notification was less beneficial, with less than 41% believing that it improved the management and containment of sex offender behavior due to greater visibility. Based on responses to the survey, the following recommendations were made. Local and county law enforcement agencies were to consider: continuing the collaborative information-sharing and problem-solving approach; developing written policies and training protocols that address the announcement of meetings, distributing pertinent information about sex offenders such as their release locations, answering questions, and handling negative or hostile reactions to the release of a specific offender; and seeking federal or state funding for training and overtime expenses associated with sex offender registration and community notification.<sup>32</sup>

Probation and parole agents of sex offenders throughout Wisconsin were also surveyed for their assessment of the impact of community notification. Survey findings showed that agents and supervisors who were responsible for implementing community notification were knowledgeable and trained on policies. The survey revealed that the caseload for agents in urban areas was much greater than in rural ones. The average caseload for agents surveyed was 25 active cases, but nine agents had 40 or more sex offenders to supervise, and six of the nine had 50 or more. Twenty-nine percent of agents had 30 offenders to supervise and 37% had an average of 21 to 30 offenders; 12% supervised 11-20 offenders, and 22% had 10 or fewer offenders. Some of the heavier caseloads involved low-risk sex offender cases (nonviolent offense, no prior felony, etc.) that did not require the same intensive supervision that high-risk offenders did; nevertheless, community notification had considerably increased the workloads of probation and parole units in the state.<sup>33</sup>

Problems identified by agents and unit supervisors that are associated with handling sex offender cases, include finding housing for offenders and increased paperwork associated with supervising high risk sex offenders. An example of these increased time demands is agents' participation in community notification meetings. Forty-six percent of respondents reported that as part of their job they attended at least one and in some cases more than six such meetings, served as presenters at the meetings, and assisted local and county law enforcement in planning and organizing a

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<sup>31</sup> Richard G. Zevitz and Mary Ann Farkas, *Sex Offender Community Notification: Assessing the Impact in Wisconsin*, National Institute of Justice, U.S. Department of Justice, Office of Justice Programs, December 2000, pp. 1-4.

<sup>32</sup> *Ibid.*, pp. 5-6.

<sup>33</sup> *Ibid.*, p. 7.

notification meeting. It was estimated that this involvement with community notification required about 40 hours of agent time per meeting.<sup>34</sup>

Finally, high-risk sex offenders were surveyed to determine how the community notification process affected them. Of the 30 sex offenders interviewed, all but one stated that the process adversely affected them. Seventy-seven percent told of being humiliated daily, ostracized by neighbors and lifetime friends, and harassed or threatened by neighbors or strangers. Although only one was the victim of vigilante action, all were concerned for their own safety. Two-thirds of survey participants mentioned the negative impact of the notification process on their family members, including parents, siblings, and children. Five of the respondents who lived in the same communities as their victims expressed concern for how notification and renewed public attention might affect their victims. While only a few of the interviewed sex offenders thought the notification would prevent reoffending by making their actions more visible to the public, a majority suggested that the pressure they felt from the public and the media would “drive many sex offenders back to prison.”<sup>35</sup>

## **Federal Funding in Support of Registration and Notification Requirements**

Federal laws directly or indirectly relating to sex offender registration have provided substantial funding over time to support a collaborative effort of federal, state, and local law enforcement both in combating crime and in sharing information across jurisdictional and state lines. The following review of the purposes and funding of a few selected programs provides a glimpse of federal assistance to state and local governments in battling crime, in general, and in supporting sex offender registration and community notification, in particular. To assist in this law enforcement effort, the Adam Walsh Act established some new grant programs, described in more detail earlier in this report.

Some other direct sources of grants to assist law enforcement in addressing sex offender issues include the Training Program to Assist Probation and Parole Officers (Sex Offender Management Assistance Program), the Crime Identification Technology Act (CITA), and the National Criminal History Improvement Program (NCHIP). CITA, administered by DOJ’s Office of Justice Programs, is the umbrella for criminal justice technological and communications needs. On the other hand, NCHIP, administered by DOJ’s Bureau of Justice Statistics, provides funding primarily for records.

Two general sources of grants to assist law enforcement in reducing crime and improving public safety have been the Local Law Enforcement Block Grant program and the Byrne formula grants, which were consolidated in FY2005 into the Edward Byrne Memorial Justice Assistance Grant program. Purpose areas under these two grant programs for which funds can be used include sex offender registration; overtime pay to law enforcement personnel and support personnel; obtaining equipment, technology and other material related to basic law enforcement functions; technology improvement programs; and corrections and treatment programs. These programs are discussed below. (For further discussion of federal crime-prevention funding, see CRS Report

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<sup>34</sup> *Ibid.*, p. 8.

<sup>35</sup> *Ibid.*, pp. 9-10.

RL32824, *Federal Crime Control: Background, Legislation, and Issues*, by Kristin M. Finklea and Lisa M. Seghetti.)

### **Training Program to Assist Probation and Parole Officers or Sex Offender Management Assistance Program<sup>36</sup>**

The Sex Offender Management Assistance (SOMA) training program provides assistance to states and local jurisdictions in managing sex offenders under community supervision. (There is also a provision in the Adam Walsh Act for a SOMA *grant* program, which is discussed earlier in this report.) SOMA also addresses problems that parole and probation officers face in supervising the transition of sex offenders back into the community. SOMA goals include encouraging jurisdictions to focus on juvenile and adult sex offenders under community supervision and ensuring that new initiatives of communities result in a locally tailored collaborative and comprehensive approach to managing sex offenders; helping jurisdictions to expand their existing sex offender management strategies; documenting community practices, challenges, and successes in planning approaches to sex offender management; and collecting and evaluating information on existing practices and their outcomes. Enacted funding, after rescissions, for this program for FY2000 through FY2007 was \$33.90 million. In FY2007 alone, \$4.90 million, after rescissions, was provided.<sup>37</sup> FY2008 enacted funding for SOMA was \$3.29 million.

### **Crime Identification Technology Act of 1998**

As described earlier, the Crime Identification Technology Act (CITA) of 1998 (P.L. 105-251) was enacted to assist states in establishing or upgrading criminal history record systems and to improve the ability of law enforcement agencies to share information across local jurisdictions and state lines. One of the 17 specific areas for which grant funds can be used is enhancing sex offender identification, tracking, and registration systems. Another area is improving the capability of the criminal justice system to provide, in a timely manner, accurate and complete criminal record information to state agencies, organizations, and programs that assess risk and other activities related to protecting children, including protecting them from sexual abuse and placing them in foster care. Also, grant funds can be used for improving criminal justice information systems to allow state and local participation in the FBI's National Instant Check System and establishing an integrated criminal justice system that allows law enforcement agencies, courts, prosecutors, and corrections agencies access to the same information. For FY2000 through FY2006, total funding appropriated for CITA was \$526.20 million. In FY2006 alone, \$28.78 million was appropriated. Appropriations for CITA in FY2007 was \$28.4 million. No funding was provided for this program for FY2008.

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<sup>36</sup> This program was originally established in the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13941) and most recently reauthorized in the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162).

<sup>37</sup> These figures were taken from the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Committee Conference Reports for each fiscal year and the Department of Justice Budget Justifications, Office of Justice Programs, FY2006 and P.L. 110-05, Revised Continuing Appropriations Resolution, February 20, 2007, 120 Stat. 42.



## **National Criminal History Improvement Program**

The National Criminal History Improvement Program<sup>38</sup> is a discretionary grant program that was initiated in 1995 as part of a federal effort to ensure that law enforcement has access to accurate records and to protect public safety and national security. NCHIP provides direct funding to states for improving the quality, timeliness and accessibility of criminal history records including records of protective orders involving domestic violence and stalking, and development and enhancement of state sex offender registries. Funding allows acquisition of advanced equipment, conversion of manual records to an electronic/automated format, and development of software. For compatibility, NCHIP requires all record enhancements resulting from program funds to conform to FBI standards for Interstate Identification Index participation. NCHIP also provides technical assistance directly to states to help them upgrade criminal records and improve interface with the FBI's national systems, including the National Sex Offender Registry (NSOR). Beginning with FY2000, NCHIP has been funded under the Crime Identification Technology Act of 1998 (P.L. 105-251). For FY2000-FY2006, NCHIP appropriations were \$236.9 million. In FY2006 alone, NCHIP received \$10 million.<sup>39</sup> Appropriations for NCHIP in FY2007 and FY2008 were \$9.87 million and \$9.4 million, respectively. According to the Bureau of Justice Statistics, funding for NCHIP has enabled all of the states, the District of Columbia, and the territories of Guam, Puerto Rico, and the Virgin Islands to provide almost 330,000 records to the FBI's National Sex Offender Registry.<sup>40</sup>

## **Recidivism Rates**

Recidivism is broadly defined as the commission of a subsequent offense. A major factor that influenced passage of sex offender registration and community notification laws is the perception that the recidivism rate for sex offenders is extremely high. Results of studies of sex offender recidivism vary greatly and actually contribute to the confusion surrounding the actual rate of sex offender recidivism. In a 2001 report that examined available research, the Center for Sex Offender Management (CSOM) identified several reasons for the contradictory findings of studies of sex offender recidivism, such as how recidivism is defined, the sample of sex offenders and behaviors included in each study, and the length of the time period studied.<sup>41</sup>

According to CSOM, the definition of recidivism can be measured by determining whether there is a new arrest, a new conviction, or a new commitment to a correctional institution. While each of these criteria is a valid measure of recidivism, each measures something different, leading to varied outcomes. For instance, when recidivism is measured using new arrests or charges as the criteria, the recidivism rate will be higher because more individuals are arrested than are convicted. When a subsequent conviction is the criterion for measuring recidivism, the rate of

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<sup>38</sup> This grant program implements provisions of the Brady Handgun Violence Prevention Act (P.L. 103-159), the National Child Protection Act of 1993 (P.L. 103-209), and the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 104-145), as amended, that relate to establishing, maintaining, or using criminal history records and criminal record systems.

<sup>39</sup> FY2007 funding is not available at this time.

<sup>40</sup> Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *National Criminal History Improvement Program FY2004 Program Announcement*, and the Department of Justice Justifications, Office of Justice Programs, FY2005, March 2004, p. 3.

<sup>41</sup> Department of Justice, Office of Justice Programs, *Recidivism of Sex Offenders*, Center for Sex Offender Management, May, 2001, pp. 2-3. (Hereafter cited as CSOM, *Recidivism of Sex Offenders*.)

recidivism is lower. When the criterion for determining recidivism is a return to prison, it must be determined whether the return to prison was because of the commission of a new offense or a technical violation of parole (such as consuming liquor or being alone with a minor child). Otherwise, a technical violation could alter the recidivism rate because it could include as recidivists individuals who may not have committed a subsequent criminal offense.<sup>42</sup>

Many studies rely on official criminal justice system data to measure recidivism, which presents problems because crimes of sexual assault are greatly underreported. Also, researchers must determine the specific behaviors that qualify sex offenders as recidivists. For example, will the commission of any crime be sufficient to qualify as a recidivating offense or will only sex offenses be considered? If a sex offense qualifies as a recidivating offense, then researchers must decide whether to include felonies and misdemeanors. Answers to these kinds of questions affect the level of recidivism reported in each study.<sup>43</sup>

## **CSOM Studies**

CSOM reports that while the vast majority of sex offenders are males, they are a heterogeneous group. They include persons who have engaged in sex with children and family members, as well as those who have sexually assaulted strangers and have committed a wide range of inappropriate and criminal sexual behaviors. To reduce confusing results of sex offender recidivism, CSOM states that studies should recognize this heterogeneity and examine specific types of sex offenders.<sup>44</sup>

The period in which a study monitors a group of sex offenders can also affect the reported recidivism rate. Although, to ensure statistical integrity, all individuals in a study should have the same length of time in a community and, consequently, the same opportunity to commit subsequent offenses, often that is not the case. In actuality, some individuals in a 10-year follow-up study may have been in the community for eight or nine years, while others were out of prison for only two years. To correct this problem, CSOM suggests that survival analysis should be used, which is a methodology that considers the amount of time each subject has been in the community, rather than a simple percentage. Many researchers believe that an ideal follow-up period for recidivism studies is five years or more.<sup>45</sup>

From a public policy perspective, recidivism remains a valuable measure of how various interventions with criminal offenders are performing.<sup>46</sup> The noted caveats regarding studies of sex offender recidivism notwithstanding, several notable efforts have been made to provide a synthesis of studies of sex offender recidivism. One of the techniques used to summarize the findings of multiple studies is meta-analysis.<sup>47</sup> Using a meta-analysis approach has some advantages, in that it can reveal the relative importance of a number of factors affecting

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid., pp. 3-4.

<sup>44</sup> Ibid., p. 8.

<sup>45</sup> Ibid., p. 4.

<sup>46</sup> Ibid., p. 11.

<sup>47</sup> Meta-analysis relies upon a quantitative approach to synthesizing research results from similar studies. This technique involves more than just a simple grouping together of disparate studies to obtain average effects. Rather, it entails a statistically sophisticated approach to estimating the combined effects of various studies that meet certain methodological criteria; CSOM, *Recidivism of Sex Offenders*, p. 11.

recidivism across studies. Also, the consistent appearance of certain offender and offense characteristics across different studies allows an estimate of how strongly they relate to recidivism.

In a 1998 study (Hanson and Bussiere) that used the meta-analysis technique, offender and offense characteristics were grouped by demographics, criminal lifestyle, sexual criminal history, sexual deviancy, and some clinical characteristics.<sup>48</sup> The study found a consistent relationship between sexual offending and being young and single. Sex offenders were likely to recidivate if they had a prior sex offense, had male victims, victimized strangers (rather than family members), started sex offending as juveniles and/or had engaged in diverse sex crimes.

A meta-analysis of 61 research studies found specific patterns of reoffending across victim types and offender characteristics. The average sex offense recidivism rate (based on rearrest or reconviction criteria) was 18.9% for rapists and 12.7% for child molesters over a four- to five-year period. For the same period, the recidivism rate for nonsexual violent offenses was 22.1% for rapists and 9.9% for child molesters, while the recidivism rate for any reoffense for rapists was 46.2% and 36.9% for child molesters. Overall, this analysis revealed that the factors with the strongest relationship to sexual offense recidivism were sexual interest in children, deviant sexual preferences, and sexual interest in boys. The study found that having general psychological problems was unrelated to sexual offense recidivism, but that having a personality disorder was related. Another finding was that failure to complete treatment was a moderate predictor of sexual offense recidivism. The study also found that being sexually abused as a child was unrelated to sexual offense recidivism. Knowledge of these historical or static factors helps to predict the relative likelihood of reoffending.<sup>49</sup>

Studies that take into account changes over time (dynamic factors) can inform about the most useful types of interventions in lowering the risk of recidivism. Another five-year study conducted in 1998 (Hanson and Harris) focused on dynamic factors.<sup>50</sup> This study collected data on over 400 sex offenders under community supervision, of whom about half were recidivists who had committed a new sexual offense during the five-year follow-up period. The study revealed a number of significant differences in dynamic factors between recidivists and non-recidivists. For instance, employment status and drug habit of a sex offender were found to play a role in recidivism. Recidivists were more likely to be unemployed (especially rapists) and to have substance abuse problems. Non-recidivists were likely to have positive social influences but tended to have intimacy problems. Attitudinal differences between recidivists and non-recidivists also were identified. The recidivists in the study who had committed subsequent sex offenses tended to be less remorseful or concerned about the victim. They were less likely to acknowledge that they were likely to reoffend and were less likely to avoid high-risk situations. In this study, recidivists were more likely to report engaging in deviant sexual activities. Compared to non-recidivists, the lifestyle of recidivists tended to be more chaotic and antisocial.<sup>51</sup>

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<sup>48</sup> R. Hanson and M. Bussiere, "Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies," *Journal of Consulting and Clinical Psychology* 66 (1998), pp. 348-364.

<sup>49</sup> CSOM, *Recidivism of Sex Offenders*, pp. 11-12.

<sup>50</sup> R. Hanson and A. Harris, *Dynamic Predictors of Sexual Recidivism* (Ottawa: Solicitor General of Canada, 1998).

<sup>51</sup> CSOM, *Recidivism of Sex Offenders*, pp. 12-13.

## **Bureau of Justice Statistics Study**

The Bureau of Justice Statistics (BJS) conducted a study involving 9,691 male sex offenders among 272,111 prisoners released from prisons in 15 states in 1994. For three years after their release, the sex offenders were tracked. BJS published a report documenting the recidivism rate of these sex offenders as determined by rates of rearrest, reconviction, and reimprisonment during the three-year follow-up period (see **Table 1**). The report provides recidivism rates for four overlapping categories: 3,115 released rapists; 6,576 released sexual assaulters; 4,295 released child molesters;<sup>52</sup> and 443 released statutory rapists. Following are the highlights of the survey findings by category.<sup>53</sup>

### ***Rearrest for a New Sex Crime***

- Within three years of release from prison in 1994, 5.3% of the sex offenders were rearrested for a sex crime compared to 1.3% of non-sex offenders.
- Of sex crimes committed by sex offenders within three years of release from prison, 40% of the sex crimes were allegedly committed within the first 12 months.
- The oldest sex offenders (age 45 or older) had the lowest rate of rearrest for a sex crime (3.3%).
- The more prior arrests sex offenders had for different crimes, the greater likelihood of their being rearrested for another sex crime after release from prison. Released sex offenders who had only been arrested once (for the sex crime for which they were imprisoned) had the lowest rearrest rate for a sex crime, about 3%; those with two or three prior arrests, 6%; seven to 10 prior arrests, 7%; and 11 to 15 prior arrests, 8%.
- No clear association was shown between the lengths of prison terms served by sex offenders and their recidivism rate.

### ***Rearrest for a Sex Crime Against a Child***

- The released child molesters were more likely to be rearrested for child molestation compared to the entire group of sex offenders and to the non-sex offenders released from prison. Within the first three years of release from prison in 1994, 3.3% of released child molesters were rearrested for child molestation. The rate of rearrest for a sex crime against a child for all sex offenders (a category that also includes child molesters) was 2.2%, while the rate for all non-sex offenders was less than half of 1%.
- Released child molesters with more than one prior arrest for child molestation were more likely to be rearrested for the same crime (7.3%) than those with only one such prior arrest (2.4%).

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<sup>52</sup> Sixty percent of the children molested by these individuals were age 13 or younger.

<sup>53</sup> Patrick A. Langan et al., U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, 2003), pp. 1-2.

***Rearrest for Any Type of Crime***

- Compared to non-sex offenders who were released from prison, the overall rearrest rate for sex offenders was lower. When rearrests for *all types of crimes* were counted, 43% of the sex offenders who were released were rearrested, while the rearrest rate of the non-sex offenders who were released was higher at 68%.

***Reconviction for a New Sex Crime***

- Of released sex offenders, 3.5% were reconvicted for a sex crime within the three-year follow-up period of the study.

***Reconviction for Any Type of Crime***

- Of released sex offenders, 24% were reconvicted for a new offense; the new offense included all types of crimes.

***Returned to Prison for Any Reason***

- Within the three-year follow-up period of the study, 38.6% of the released sex offenders returned to prison either because they were sentenced again for a new crime or because of a technical violation of their parole (failing a drug test or missing an appointment with their parole officer).

**Table 1. Recidivism Rate of Sex Offenders Released from Prison in 1994, by Recidivism Measure and Type of Sex Offender**  
(percentages)

Recidivism Measure	All Sex Offenders	Rapists	Sexual Assaulters
<b>Within three years following release:</b>			
Rearrested for any type of crime	43.0	46.0	41.5
Reconvicted for any type of crime <sup>a</sup>	24.0	27.3	22.4
Returned to prison with a new sentence for any type of crime <sup>b</sup>	11.2	12.6	10.5
Returned to prison with or without a new sentence <sup>c</sup>	38.6	43.6	36.1
Total released	9,691	3,115	6,576

**Source:** Patrick A. Langan et al., U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, November 2003), table 7, p. 13.

**Note:** The 9,691 sex offenders were released in 15 states.

- Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.
- “New prison sentence” includes new sentences to state or federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percent returned to prison with a new sentence.
- “With or without a new sentence” includes prisoners with new sentences to state or federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released in six states (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of

percent returned to prison with or without a new sentence. New York state custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 38.6%. When California is excluded, the return-to-prison rate falls to 27.9%.

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