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SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

HEARING ON THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA)

TUESDAY, MARCH 10, 2009

WRITTEN TESTIMONY OF:

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Chairman Scott and Members of the Subcommittee on Crime, thank you for this opportunity to testify about the barriers to states' implementation of the Adam Walsh Act's Sex Offender Registration and Notification Act, the potential legal ramifications of the Act, and Ohio's experience attempting to comply with the Act's requirements.

The Office of the Ohio Public Defender is, of course, concerned about the constitutional rights of our clients who are affected by this Act. But we are also concerned about our clients' futures, and any obstacles that may prevent them from leading crime-free lives. We work with law enforcement, prosecutors, victims groups, treatment providers, and child advocates on this issue because we are all committed to a common goal: reducing the incidence of sexual abuse in our society.

And personally, as someone who has several friends who have been victims of sexual abuse, I am concerned with not just the stated goals of policies aimed at improving public safety, but also with the practical effects those policies have on my safety and the safety of my loved ones. It is for all of these reasons that I am here today.

Ohio's implementation of the Adam Walsh Act

On June 30, 2007, Ohio Senate Bill 10 (SB 10), the state's attempt to implement the requirements of the federal Adam Walsh Act, was signed into law. In late November 2007, the Ohio Attorney General's office mailed letters to thousands of registered sex offenders in the state, informing them that their classification status and registration duties were changing under the new law.

In the 15 months since those reclassification letters were mailed, at least 6,352 petitions challenging the new law's retroactive application have been filed in 78 of Ohio's 88 counties. Ohio courts of appeals have issued decisions in at least 59 cases.[1]

The Buckeye State Sheriffs' Association estimates that the new law has increased sheriffs' workloads by 60 percent.[2]

The Adam Walsh Act, which is intended to create uniformity in sex offender classification and registration requirements across states, has instead resulted in tremendous variation in the application of Ohio's sex offender registration laws across Ohio's counties.

The implementation of SB 10 across the state of Ohio has been uneven, at best. County courts, prosecutors, and sheriffs have interpreted the massive new law differently. Many courts have

[1] See http://www.opd.ohio.gov/AWA_Attorney_Forms/AWA__Attorney_Forms.htm
[2] The Cleveland *Plain Dealer*, "Ohio's tougher sex offender law being met with lawsuits, confusion," Jan. 21, 2008.

issued blanket orders staying enforcement of the new law and allowing persons retroactively affected by the law to continue registering under Ohio's prior sex offender classification and registration scheme until the Supreme Court of Ohio issues a ruling on the constitutionality of SB 10.

The impact of the new law on offenders varies greatly, depending on the county in which they reside. An offender may have to file a challenge to his reclassification as a civil motion or as a motion in his original criminal case. A civil filing fee, ranging from $10–$300, may be assessed. If the offender is indigent, counsel may or may not be appointed at state expense. While the challenge petition is pending, the county sheriff may or may not send out community notification. And, the judge considering the offender's challenge petition may consider constitutional challenges to the offender's reclassification, or may simply view the hearing as an opportunity to correct any errors that may have occurred in the reclassification.

The effect of SB 10 on Ohio was stated succinctly by Franklin County Common Pleas Court Judge David E. Cain: "It's a mess created by politicians, and it's going to be a mess for the courts to sort out."

Changes to Ohio's sex offender registry and classification scheme

The transition from a risk-based classification system to an offense-based system has turned Ohio's sex offender registry upside down.

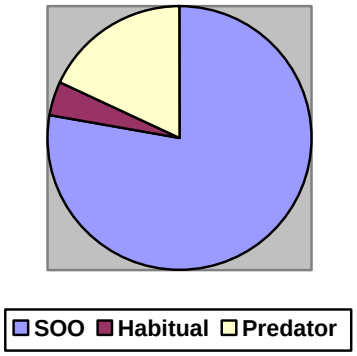
Prior to adopting SB 10, Ohio had a risk-based sex offender classification system. After a conviction of or plea to a sexually oriented offense, a hearing was held to determine whether the offender was likely to commit another sex offense in the future. While these proceedings were deemed to be civil in nature, the Ohio legislature recognized that the offenders needed procedural protections. At the hearing, the offender and the prosecutor could present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses. The offender had the right to be represented by counsel and, if indigent, to be provided counsel at state expense. The state had the burden to prove, by clear and convincing evidence, that the offender was likely to reoffend. And, the offender had the right to appeal an adverse ruling.

Simplifying Ohio's risk-based classification system a bit, offenders could be classified into one of three categories. An offender who had been convicted of or pled to a sexually oriented offense, but who had not been found likely to re-offend, was labeled a sexually oriented offender. An offender who had a prior conviction for a sexually oriented offense, but had not been found likely to re-offend, was labeled a habitual sexual offender. And an offender who had been convicted of or pled to a sexually oriented offense, and had been found likely to commit another sex offense in the future, was labeled a sexual predator. These three categories roughly translate, in duration and requirements of registration, to the Adam Walsh Act's Tier I, Tier II, and Tier III, respectively.

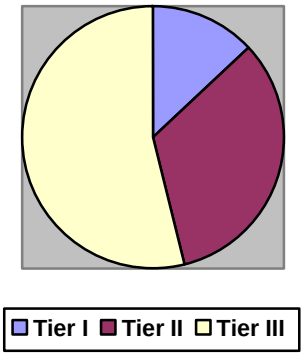
The state's risk-based classification system had resulted in a registry that looked much like what scientific research tells us about the likelihood of sex offender recidivism: 77% of Ohio sex offenders were classified as sexually oriented offenders, 4% were labeled habitual sexual offenders, and 18% were labeled sexual predators. After implementing SB 10, Ohio's registry became top-heavy: only 13% of offenders are classified in Tier I, 33% are in Tier II, and 54% are in Tier III.

Ohio's Sex Offender Registry

Previous, risk-based system



Senate Bill 10/Adam Walsh Act



The number of people in the highest tier of Ohio's registry has tripled. Nearly 8,000 of Ohio's sex offender registrants were moved from one of the two lower classification levels into Tier III—not because they had committed a new crime or because of new evidence of their future dangerousness, but only because of the crime of which they had been previously convicted.

Ohio's old registry was, potentially, a useful public safety tool. It included more than 22,000 offenders; however, only 4,000 of those offenders were labeled sexual predators. Those 4,000 offenders, found by a judge to be likely to reoffend, would rightly garner the most attention from the public and require the closest supervision by law enforcement. Now, however, Ohio's registry includes more than 12,000 people labeled as Tier III offenders. Their propensity to reoffend is not known, but the public will certainly perceive them as dangerous, and law enforcement must expend tremendous resources to supervise them.

Under Ohio's old law, a person convicted of rape for consensual sex with a person four years and one day his junior might have been classified a sexually oriented offender, if that person had not been found likely to commit another sex crime. Also under Ohio's old law, a person convicted of sexual imposition, a misdemeanor, might have been classified a sexual predator, if a judge found him likely to reoffend. Now, however, Ohio courts are mandated to classify the person convicted of rape as a Tier III offender and the person convicted of sexual imposition as a Tier I offender.

The person convicted of rape could lead a law-abiding life and could even, as happened in at least one Ohio case, marry the "victim" of his offense and have a family, but he would forever be labeled a Tier III offender, the supposed worst of the worst. Even though the person convicted of sexual imposition is likely to commit future sex offenses, a judge would not be able to classify that person into a higher tier until that person committed and was convicted of a subsequent sex offense. Instead of being able to properly label a high-risk offender, the court must instead wait until another offense is committed and another victim is created.

Sex offender registration and notification laws are supposed to be forward-looking, aimed at protecting the public from future crimes. Risk-based systems, like Ohio's prior scheme, do a

much better job of addressing the stated aim of sex offender registries: protecting the public from future criminal acts.

In its position paper on the Adam Walsh Act, the National Alliance to End Sexual Violence (NAESV), a victim advocacy organization that conducts the public policy work of state sexual assault coalitions and rape crisis centers, states that, "over-inclusive public notification can actually be harmful to public safety by diluting the ability to identify the most dangerous offenders and by disrupting the stability of low-risk offenders in ways that may increase their risk of re-offense. Therefore, NAESV believes that internet disclosure and community notification should be limited to those offenders who pose the highest risk of re-offense."[3]

The Adam Walsh Act, however, is not concerned with the likelihood of future crimes. It looks only at past offenses and labels offenders based on those past offenses, without considering what those offenders might do in the future.

Retroactivity

One of the primary objections to the Adam Walsh Act concerns the requirement that states apply the law retroactively to persons who offenses predate the enactment of the Act. It is important to remember, however, that the Adam Walsh Act as passed by Congress was not, itself, retroactive. Rather, the Act delegated authority to the Department of Justice to interpret and administer the Act's registration provisions, and to determine the applicability of those provisions to offenders who were convicted prior to the enactment of the Act.[4] The Guidelines for implementation of the Adam Walsh Act, issued by the Department of Justice's SMART Office, require that the Act be applied retroactively to persons with convictions for sex offenses who are incarcerated or under supervision; who are already subject to a pre-existing sex offender registration system; and who re-enter the justice system because of another crime, regardless of whether it is a sex offense.

Congress did not mandate that all sex offenders be reclassified, and certainly did not require that those offenders who have completed their period of registration be re-registered under the new provisions of the Adam Walsh Act. Applying the Adam Walsh Act's classification, registration, and notification requirements retroactively, as required by the Guidelines, unnecessarily subjects states to lengthy and expensive constitutional challenges that could be avoided simply by applying the Act prospectively only.

Retroactive application of the Adam Walsh Act presents separation of powers issues, as state legislatures, acting on a directive handed down by the executive branch of the federal government, will be reversing decisions made by judges. In Ohio, the retroactive application of SB 10 legislatively overturned thousands of legal decisions of trial court judges—to not label offenders as sexual predators—simply because offenses committed many years ago fall into a certain Tier, as defined by the Act.

Plea deals that predate the enactment of the Adam Walsh Act and states' implementation legislation raise additional legal problems. There are thousands of offenders in Ohio who, since the enactment of Ohio's prior sex offender registration system, had pled guilty to sex offenses.

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[3] http://www.naesv.org/Policypapers/Adam_Walsh_SumMarch07.pdf

[4] 42 U.S.C. Sec. 16913(d) provides that "[t]he Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before July 27, 2006…."

Many of them pled guilty to offenses that would, under the Adam Walsh Act, be Tier III offenses. But those offenders were labeled, by a judge, as sexually oriented offenders (similar to Tier I), not as sexual predators (similar to Tier III). In many cases, that label of sexually oriented offender was part of a plea bargain, agreed to by the State of Ohio, through the office of the county prosecutor.

Those plea deals are contracts: the defendant agreed to give up his or her right to trial and agreed to go to prison, and in exchange, the State agreed that the defendant would not be labeled a sexual predator. But now, with SB 10 being applied retroactively, thousands of offenders will be notified that, because of the offense to which they pled guilty, they are being reclassified as Tier III offenders and subjected to lifetime registration and verification duties. The State of Ohio, which years ago entered into these contracts and agreed to less-severe labels, has now unilaterally altered thousands of contracts. And, as a result, has made onerous changes in thousands of people's lives, changes that were neither anticipated nor necessary.

The cost to states and their court systems of the retroactive application of the Adam Walsh Act could take many forms: class action lawsuits; thousands of motions to withdraw pleas; and lawsuits for damages after offenders lose their jobs, are forced to move, or appear on an internet registry after being told they would not. And, perhaps most costly, defendants' unwillingness to enter into future plea agreements, knowing that at any time, any branch of government at any level may choose to breach the State's obligations in that contract.

The retroactive application of the Adam Walsh Act's classification, registration, and notification requirements runs afoul of fundamental fairness. It has, and will continue to, unduly burden court systems and prove costly for the states. Congress, with its one-sentence delegation of authority to the Department of Justice, surely did not intend to levy such a cost on the states and their courts.

The Act's application to juveniles

The juvenile court system is based on the fundamental belief that children can be rehabilitated. Indeed, juveniles' inherent amenability to rehabilitation has been recognized by the United States Supreme Court. In its 2005 opinion in *Roper v. Simmons*, which declared the death penalty for juveniles unconstitutional, the Court stated:

> The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.

The emerging field of neurological science tells us that children's brains are physically different from the brains of fully mature adults, and that as a result, they are not only more likely to engage in risk-taking behavior, but also more amenable to treatment. In children and adolescents, the prefrontal cortex is not yet "hardwired" to the rest of brain. It is this part of the brain that plays a critical role in decision making, problem solving, and being able to anticipate the future consequences of today's actions. Until the prefrontal cortex becomes fully connected, children must rely on another part of the brain for decision making: the amygdala, which processes emotional reactions and is the part of the brain known for the "fight or flight" response.

While this period of brain development can lead to children behaving irrationally, making poor decisions, and overreacting to perceived threats, it is also what makes children especially amenable to treatment. Treatment provided during this critical stage of development to a child who is sexually inappropriate or abusive will impact the way that child's brain continues to develop; as a result, juvenile sex offenders are known to be especially amenable to treatment, and thus significantly less likely to reoffend.

According to the Ohio Association of County Behavioral Health Authorities, research shows that "with treatment, supervision and support, the likelihood of a youth committing subsequent sex offenses is about 4–10 percent."[5] And a compilation of 43 follow-up studies of the re-arrest rates of 7,690 juvenile sex offenders found an average sexual recidivism rate of 7.78 percent.[6]

Additionally, the American Psychological Association has noted that because "adolescent sexual offending is different from adult sexual offending in its motivation, nature, extent, and response to intervention … [r]esearch has consistently shown that the majority of children and teenagers adjudicated for sex crimes do not become adult offenders."[7] The National Center on Sexual Behavior of Youth has conducted an extensive review of the available research on juvenile sex offenders, and has concluded that adolescent sex offenders have fewer numbers of victims than do adult offenders, and engage in less serious and aggressive behavior.[8]

The inclusion on a public registry of all children who are adjudicated delinquent of certain sex offenses is fraught with problems that undermine both the history of the juvenile court system and the purpose of the Adam Walsh Act. It ignores the very foundation of this country's juvenile court system: a belief, confirmed by scientific research, that children can and should be rehabilitated. And it dilutes the effectiveness of the public registry as a public safety tool, by flooding it with thousands of juvenile offenders, 90–96 percent of whom will never commit another sex offense.

Juveniles who are amenable to treatment and who are successfully rehabilitated have no place on a public registry of violent adult sex offenders. Those who interact with each child individually—juvenile court personnel working in conjunction with treatment providers—should continue to be allowed to determine whether a child's offense was a youthful indiscretion, a manifestation of a mental illness or other behavioral health problem, or a sign of a child who is not amenable to treatment and who poses an ongoing threat to public safety.

Including children on an internet-based registry also puts those children at risk of being targeted for harassment and abuse. A pedophile could use the online registry to find victims. The registry will provide him with the names, pictures, and home addresses for children as young as 14, as well as the names of the schools they attend, the cars they drive, their license plate numbers, and other identifying information. Many juvenile sex offenders were themselves victims before they committed their offenses, and are especially vulnerable to further victimization.

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[5] https://secure.digital-community.com/english/oacbha.org/includes/downloads/volume3issue1.pdf
[6] Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Reoffense Risk*. Child Maltreatment, Vol. 7, No. 4, Sage Publication, November 2002 (291-302).
[7] http://www.apa.org/ppo/ppan/sexoffenderaa06.html
[8] http://www.ncsby.org/pages/publications/What%20Research%20Shows%20About%20Adolescent%20Sex%20Offenders%20060404.pdf

Additionally, many juvenile sex offenses are intra-familial. During deliberations in the Ohio General Assembly on SB 10, testimony was heard from several parents with a child who sexually offended on a sibling. Those parents testified about the conflicts they face, as parents of both a juvenile sex offender and a victim of sexual abuse. In these situations, the offender and the victim receive much-needed treatment only if their parents are willing to speak up and seek help. Undoubtedly, many parents will be unwilling to ask for help if doing so resigns one child to a lifetime of inclusion on an internet-based registry, with all the restrictions on schooling, employment, and residency it entails, as well as potential threats to that child's safety. As a result, in many instances, neither offender nor victim will receive the treatment they need.

The risk of mandatory, lifetime inclusion on a public registry will also mean that children facing charges for sex offenses will be less likely to plead guilty and more likely to go to trial, thus exposing the victim and others to the trauma of testifying and to other intrusive aspects of the criminal justice system. And children's defense counsel will certainly work to get sex offense charges reduced to non-sex offense charges, such as assault, in order to avoid the severe consequences of lifetime inclusion on the public registry. But a child adjudicated delinquent for assault is unlikely to receive sex offender treatment, which results in tremendous lost opportunities for treatment and the prevention of further harm.

The list of offenses to be included on the public registry may seem to target only the "worst of the worst" of juvenile sex offenders. But in Ohio, the offenses recognized as equating to the federal definition of "aggravated sexual abuse"—rape, sexual battery, and gross sexual imposition—include a wide range of behaviors.

Several years ago, my office represented "Brian," a 16-year-old boy. On the school bus, Brian sat next to a 15-year-old girl whom he had dated previously. He touched his former girlfriend's breasts through her clothes, and attempted, unsuccessfully, to put his hand down her pants. The girl testified at trial that Brian had put his hand down her pants "[a]bout to the knuckle line." Brian was adjudicated delinquent for attempted rape and gross sexual imposition.

In another example of a client my office represented, "Zach," a 14-year-old boy, and several other children had been at a friend's house without parental supervision. Zach and some of the boys had stolen bottles of alcohol, and the girls had set up a tent in the yard. At some point in the evening, Zach and a 10-year-old girl, who "had become boyfriend and girlfriend earlier that day," were lying on their sides next to each other in the tent. He put his arm over the girl's midsection and touched her "below her beltline" but "did not put his hand in between her legs." Zach was adjudicated delinquent for gross sexual imposition on a victim under the age of 13.

My office also represented "Michael," whose case highlights many of the problems typically found in juvenile courts. Michael was removed from his mother's custody at the age of 11, after being physically abused, and over the next several years was placed in seven different foster homes. He is very low-functioning and has been diagnosed with attention deficit disorder, extreme mood swings, and reactive attachment disorder. Despite this, Michael was adjudicated delinquent for gross sexual imposition without being represented by counsel. Michael certainly should have been evaluated for his competency to face the GSI complaint, but he had no attorney to raise the issue, and Ohio lacks a competency statute for juveniles.

The Adam Walsh Act purports to protect society from dangerous sexual predators, like the adult pedophiles, unknown to their victims, who kidnapped, sexually assaulted, and murdered Adam Walsh, Jacob Wetterling, Jessica Lunsford, and the other children for whom the legislation is

named. But, with the overly broad requirements of the Adam Walsh Act and Ohio's SB 10, Ohioans instead find themselves "protected" from children like Brian, Zach, and Michael.

The year that Ohio implemented the Adam Walsh Act also marked the 40th anniversary of *In re Gault*, the landmark U.S. Supreme Court decision that granted many basic due process rights to children in juvenile court, including the right to advance notice of the charges, the right to a fair and impartial hearing, and the right to be represented by counsel. But *Gault* did not grant full due process protections to juveniles facing delinquency complaints. Notably absent are a child's right to a grand jury determination of probable cause and the right to an open and speedy trial by jury. And, at least in Ohio, juveniles have yet to fully realize the promises of *Gault*. A recent study found that two-thirds of children facing unruly or delinquency complaints are not represented by counsel when they appear in Ohio's juvenile courts.[9]

The failure to fully protect juveniles' constitutional rights is certainly not limited to Ohio. Last month, two Luzerne County, Pennsylvania judges pled guilty to receiving $2.6 million in kickbacks to send juveniles to certain juvenile detention facilities. A lawsuit filed by the Juvenile Law Center on behalf of 70 families affected by this scandal alleges that the two judges violated the rights of juveniles in ways that went beyond the kickback scheme.[10] The lawsuit asserts that in "a wave of unprecedented lawlessness," the judges failed to advise youth of their right to counsel, accepted their guilty pleas without explaining the charges against them, and garnished the wages of their parents to pay the costs of detention. If Pennsylvania were to adopt the Adam Walsh Act's overly broad offense-based system, some of these youth, forced to enter admissions to sexual offenses in courts that showed complete disregard for their constitutional rights, would automatically be labeled Tier III and subject to lifetime registration and notification.

The Guidelines for implementation, issued by the SMART Office, instruct that "registration need not be required on the basis of a foreign conviction if the conviction 'was not obtained with sufficient safeguards for fundamental fairness and due process….'" The Guidelines fail to acknowledge, however, that only limited due process protections are offered to children in juvenile court. By placing juvenile sex offenders on a public registry, the Adam Walsh Act imposes adult sanctions on juvenile defendants. It treats a select group of children who appear in juvenile court differently than other children who appear in juvenile court; it treats them more like adult sex offenders than like children. And it does so without regard to the limited due process protections offered to children in juvenile court.

Limited due process protections make the retroactive application of the Adam Walsh Act especially inappropriate for juveniles. Children who have already been through the juvenile court system—without full due process protections and perhaps without even being represented by counsel—could never have anticipated that lifetime inclusion on a public registry would someday be a consequence of their juvenile court proceeding.

Recognizing the unique qualities and needs of children, the juvenile court system was established to focus on treatment, supervision, and control, rather than solely on punishment. Inclusion on a public registry, though, will significantly limit treatment and aftercare options for juvenile sex offenders. Many group homes, foster homes, and community placements will not accept children with sex offenses in their histories. Children on a public registry with community notification requirements will be nearly impossible to place for or after treatment. As a result, many juvenile sex offenders will be kept in juvenile correctional facilities far beyond the time it

[9] http://www.aclu.org/pdfs/ohiowaiverpetition20060309.pdf
[10] http://www.jlc.org/news/25/luzernelawsuit/

takes them to complete treatment. Children will be incarcerated not because they need further treatment or pose a risk to public safety, but only because public policy will prevent them from going anywhere else. This is a dramatic, and ill-advised, shift in the focus of the juvenile court system from treatment to punishment.

Subjecting juvenile sex offenders to the same sanctions as adults raises legal and scientific questions about culpability and punishment, and the registration and notification requirements are inconsistent with the purposes of juvenile court: treatment and rehabilitation. Inclusion on an internet-based public registry will subject juveniles to social ostracism, limit access to educational and work opportunities, make it more difficult for juveniles to be placed with family or friends, and limit residential treatment options. And treating juvenile sex offenders in the same manner as adult sex offenders with respect to reporting, notification, and length of classification, even though juveniles have fewer legal rights and protections than adults, presents legal and Constitutional problems.

The plain language of the Adam Walsh Act requires that all children age 14 and older who are adjudicated delinquent for offenses "comparable to or more severe than aggravated sexual abuse" be included on the public, online registry of sex offenders. But the negative consequences of doing so—fewer intra-familial crimes being reported, fewer offenders and victims receiving treatment, and children on the registry being targeted for abuse and exploitation, to name only a few—would actually put states out of compliance with the stated intent of the Adam Walsh Act: protecting children from violent sex offenders.

Substantial compliance and SORNA as a "floor"

The Adam Walsh Act requires substantial implementation, and the Guidelines issued by the SMART Office purport to require substantial compliance. But the definition of "substantial" is unclear, and leaves states uncertain about their options to tailor the Act to their systems and needs.

The Guidelines offer that the "substantial" compliance standard "contemplate[s] that there is some latitude to approve a jurisdiction's implementation efforts, even if they do not exactly follow in all respects the specifications of SORNA or these Guidelines." However, the Guidelines also say that the Adam Walsh Act presents a set of "*minimum* national standards," and that the Guidelines "set a floor, not a ceiling," for states' registration systems.

These two statements, taken together, imply that a state's implementation efforts do not have to "follow in all respects" the Adam Walsh Act or the Guidelines, but only if the state chooses to exceed the requirements of the Act or the Guidelines. These two statements seem to define "substantial" compliance as something at or above 100 percent compliance. That, of course, is an illogical and unfounded definition of "substantial," and clearly goes beyond what is required by the Adam Walsh Act. The Guidelines instruct that nothing less than strict compliance will be sufficient, while the Act requires only the substantial implementation of the federal law.

Further, the characterization of the Guidelines as a "floor" is disingenuous. It is akin to Congress declaring that a speed limit of 95 miles per hour is now the floor for speed limits across the nation. States could feel free to exceed that requirement and set the speed limit within their jurisdiction at a higher rate, but 95 miles per hour would be the new national minimum. Ohio and other states, with speed limits ranging from 55 to 75 miles per hour, would be left staring upward at the 95-mile-per-hour floor, wondering how to achieve that level,

whether doing so would be worth the effort and cost of implementation, and most importantly, what impact the implementation of this new federal requirement would have on public safety.

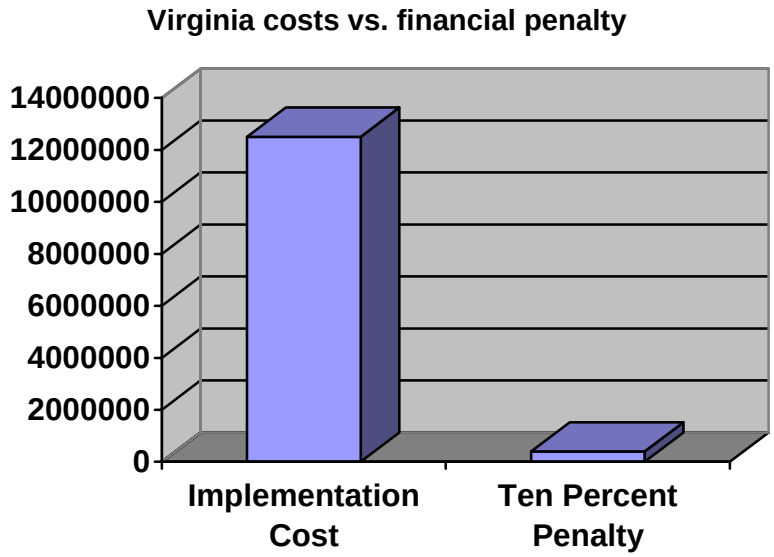
States should be allowed to substantially comply with the Adam Walsh Act not by blindly enacting federal mandates, but by crafting good public policy that both achieves the Act's goals and is tailored to the unique systems and public policy goals of each state.

Cost to implement

Especially now, as the country faces the most serious economic downturn in at least three decades, the cost to implement the Adam Walsh Act must be considered.

Virginia's Department of Planning and Budget, which has developed one of the most detailed fiscal analyses to date, estimated that implementing the Adam Walsh Act would cost the Commonwealth nearly $12.5 million the first year and nearly $9 million every year thereafter, to maintain the system. While the Virginia fiscal analysis included cost estimates for law enforcement and the adult prison system, it did not include estimates for expenditures by the juvenile justice system, courts, prosecutors, or defenders.

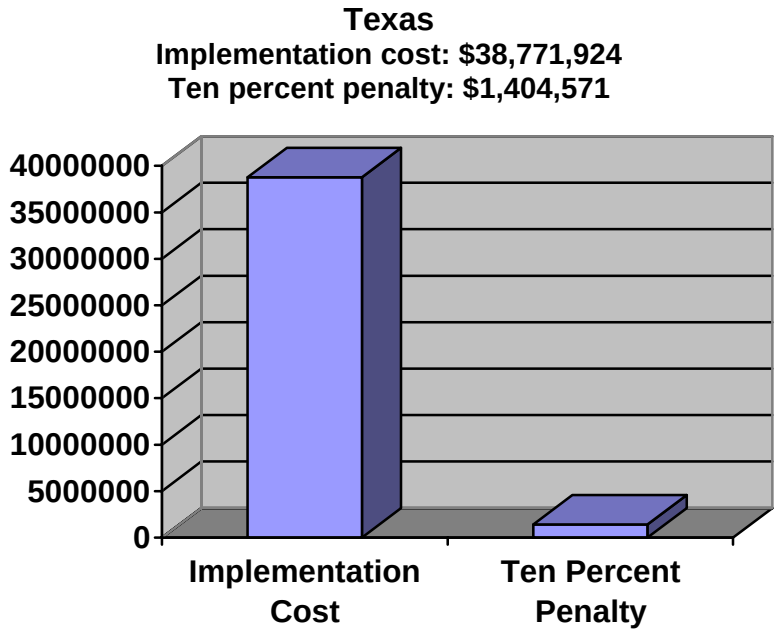
And, compared to the estimated $12.5 million Virginia would have to expend to implement the Adam Walsh Act, it risks losing only $394,304, were it to choose to not comply with the federal Act.

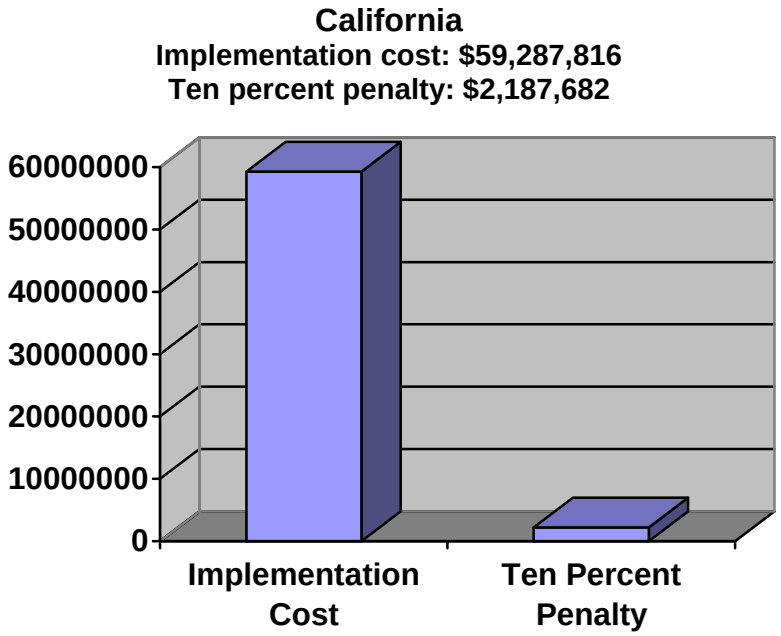


Using the Virginia cost estimates, the Justice Policy Institute estimated the cost of implementation for all 50 states and the District of Columbia, based on population, and

compared those numbers to the amount of money states would lose in Bryne Grant funds[11] if they chose to not comply with the requirements of the federal Adam Walsh Act.[12]

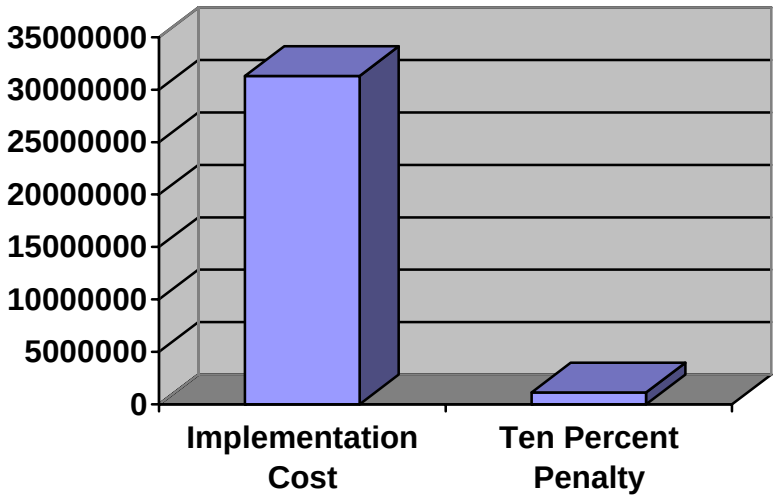
Other states show a similar disparity between costs incurred to implement the Act and the potential financial penalty for non-compliance.



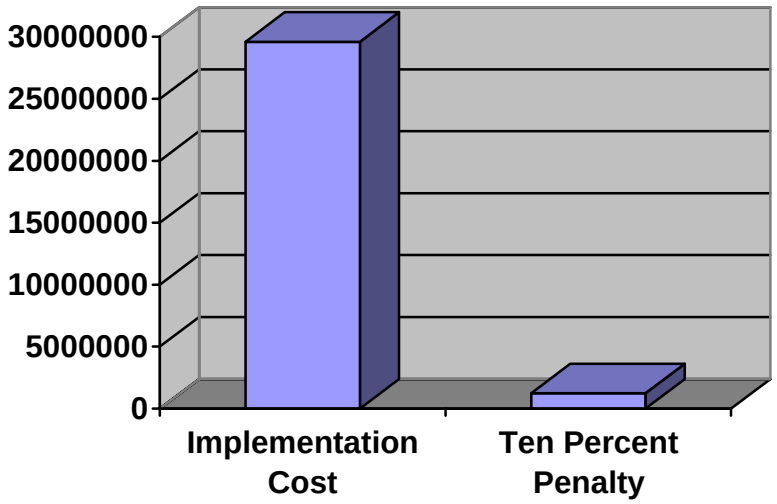


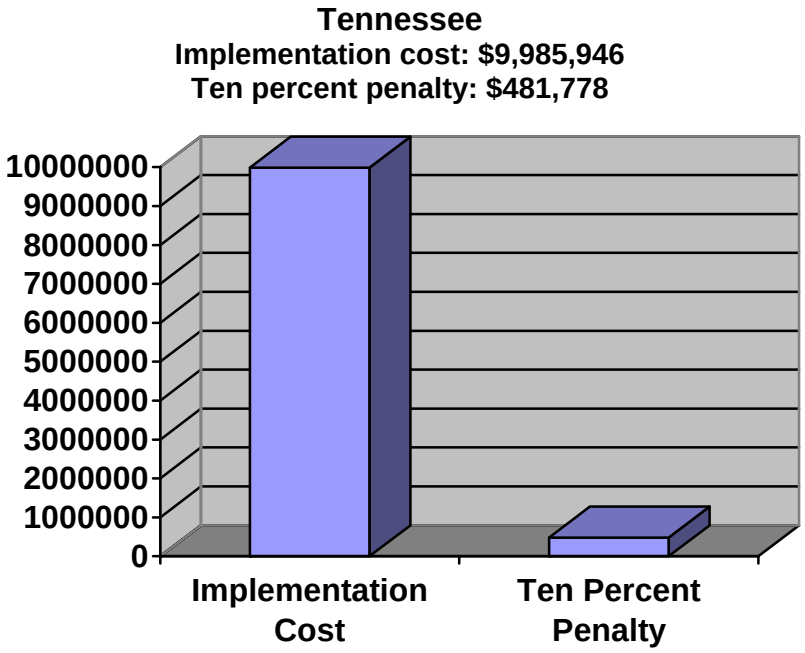
[11] Based upon 2006 allocations for Byrne grants.
[12] http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JJ.pdf

New York
Implementation cost: $31,300,125
Ten percent penalty: $1,127,984



Florida
Implementation cost: $29,602,768
Ten percent penalty: $1,204,269





While not an exact measurement of the necessary state expenditures, the Justice Policy Institute's calculations provide a picture of the serious fiscal impact on states that choose to implement the Adam Walsh Act. For states to just break even between expenditures and the potential loss of Byrne grants, Virginia's cost estimates must have been overestimated, or allocations to the Byrne grant funds must increase from their 2006 levels, by a factor of 31.

These are significant costs to implement an act, the efficacy of which is being questioned not only by defense attorneys, civil libertarians, child advocates, and treatment providers, but also by social science researchers and a growing number of concerned state attorneys general, prosecutors, law enforcement officers, and victims groups.

Conclusion

The effects of the Adam Walsh Act, once implemented, contravene the Act's well-intentioned goals. An act intended to unify registries across the country has instead placed an incredible burden on courts and law enforcement and created confusion from one jurisdiction to another. A law aimed at protecting children from sexual predators instead places thousands of juveniles, many of whom have been sexually abused, on an online registry and into harm's way. A system meant to simplify sex offender classification has instead muddled the meaning of offenders' designations, and left the public to only speculate about which prior offenders might pose a future risk.

Respectfully, I urge the Members of this Subcommittee to consider an extension of the deadline for states to comply with the Act; the establishment of task forces, comprised of experts in the field of sex offender management and representatives of all stakeholders in this complex issue, to examine the practical effects of the Act on public safety; and possible statutory reform.

Chairman Scott, Members of the Subcommittee, thank you for the opportunity to testify today.