Statement of Laura L. Rogers
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Subcommittee on Crime, Terrorism, and Homeland Security
2:00 P.M. in 2141 Rayburn House Office Building
March 10, 2009

Hearing on: Sex Offender Registration and Notification Act (SORNA): Barriers to Timely Compliance by States

Mr. Chairman and members of the sub-Committee, thank you for the opportunity to testify and submit this statement for the record. Until recently, I served as director of the Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office in the Depart of the Justice. Prior to my appointment, I prosecuted child homicide and child sexual abuse cases for over a decade at the San Diego District Attorney's Office. In have tried over 120 jury trials as a prosecutor, and have a 92% success rate. Additionally, I served as a senior attorney for the National District Attorney's Association's National Center for Prosecution of Child Abuse for 5 years where I trained front line child abuse prosecutors, police, doctors, first responders and others on how to investigate and prosecute child homicide (including shaken baby syndrome cases) and child physically and sexual abuse cases. After leaving NDAA, I established a consulting firm, the National Institute for the Training of Child Abuse Professionals (NITCAP), and continued to train frontline child abuse professionals in the United States and around the world.

In short, I have dedicated my entire professional career to protecting children, and holding perpetrators accountable.

Protecting children is not a partisan, or political issue. It is simply the right thing to do. The Adam Walsh Act, which I had the privilege to help implement, is part of a larger framework in our country to protect children. It is not the only law designed to protect children, nor is it the most important law, but it is sound public policy. It should be supported by this body, financially and otherwise. Like many laws, it is not perfect, and there is room for improvement.

The Adam Walsh Act was signed into law on July 26, 2006. Since that day, there has been much progress throughout this nation in the implementation of the Sex Offender Registration and Notification Act (SORNA). However, the momentum with which this progress is being made stands to be undermined if special-interest groups' and individual jurisdiction's myopic criticisms of the law is allowed to change the statutory language of SORNA. Individuals who do not have a national perspective do not understand the significance of the jurisdiction-specific modifications they seek.

Congress intended to give this country and its citizens a comprehensive system for sex offender registration and notification under SORNA. SORNA recognized that every jurisdiction is unique, with distinct systems and issues, and SORNA provides significant flexibility that will allow for the comprehensive nature of the Act to be

achieved, while still requiring jurisdictions to meet or exceed equivalent minimum standards.

Modification to SORNA will not resolve all hurdles to substantial implementation. Modifications to SORNA will create new and different issues. As the SMART Office currently does, each jurisdiction must be worked with individually to achieve success in a unique way.

The facts show that sex offender registration and a public registry are highly valued by the public. In Calendar Year 2008, NSOPW had nearly 5 million users and over 772 million sex offender files were accessed. Currently SORNA provides a comprehensive system that gives our children and families access to the same minimum level of information regardless of where they choose to live, work and go to school. SORNA was created because of the fact that sex offenders do reoffend. It was never intended to reduce recidivism rates—because only sex offenders themselves can change this statistic. SORNA and the public registry are intended to allow families and individuals to inform themselves regarding which sex offenders, both adult and serious juveniles offenders lurks in their communities and, based on this knowledge, to allow for informed decision making to occur. SORNA is about accountability.

This statement will focus on three issues:

(1) the challenge to achieve SORNA compliance

(2) flexability for jurisdictions within SORNA, and

(3) the resources that are needed to fully achieve SORNA's vital purpose.

1. SORNA compliance is challenging but achievable and on-track. Currently, no jurisdiction has met substantial compliance. However, this does not mean that SORNA, as currently constituted, is too burdensome or unachievable. All this indicates is that the deadline for compliance has not yet arrived.

Congress set July 27, 2009, as the initial compliance date. It also built in two one-year extensions, extending the final deadline into July 2011. When I left office in January 2009, several jurisdictions had been working quickly and were extremely close to achieving substantial compliance years in advance of the final deadline. Numerous jurisdictions had already demonstrated enough progress to be granted an extension. Information on the SMART Office website reveals that several more jurisdictions have been granted since my departure.

The reality is that jurisdictions **still** have two years and four months to substantially comply with SORNA. The Final National Guidelines on Sex Offender Registration and Notification were only published July 1, 2008. Dozens of jurisdictions have already submitted new or amended legislation, compliance packages, tiering structures, extension requests and other items for review to the SMART Office. Jurisdictions will work within whatever time frame is available. Extending the current time line will assure that many

jurisdictions will delay in the process of substantial implementation. The issue of the necessity for an additional extension in addition to the two already provided for in SORNA is not yet ripe.

The Attorney General is responsible for determining substantial compliance by the jurisdictions with SORNA, and that duty was delegated to the SMART Office. Prior to my departure from SMART, I was working with the Office of General Counsel to put into formation the establishment of a formal appeals process for jurisdictions which disagreed with compliance decisions. During my tenure, we resolved all issues through simple discussion. I expect that this informal and pragmatic process will continue over the next two years until most or all jurisdictions are compliant.

As a practical matter, the term substantial compliance means just that; complying with the minimum standards as required by SORNA. It does not, and has never in practice, meant total compliance. States such as Louisiana, whom I had the privilege of working with, have held an unreasonable and incorrect understanding of "substantial compliance." To "substantially comply" with SORNA, at jurisdictions, at minimum must require persons convicted of offenses included under SORNA to register in accordance with the minimum standards set by SORNA.

Further, Congress included in SORNA a method to resolve any conflicts that might exist between SORNA and a jurisdiction's constitution. Prior to my departure, only two jurisdictions had

submitted potential conflicts to the SMART Office, and upon thorough review, neither met the requirements for relief under SORNA.

2. SORNA offers significant implementation flexibility to jurisdictions. The statutory language of SORNA, with respect to certain sections was initially somewhat inflexible. Through the Final Guidelines, I resolved many problematic issues and built in greater flexibility to the system. The SMART Office received over 650 pages of comments to the Proposed Guidelines. Those comments were quite helpful and instructive. The open comment period, and the feedback we got during that timeframe, guided us in the drafting of the Final Guidelines. As a frontline child abuse prosecutor, I know how important it is for guidelines and regulations to assist practitioners, not hinder them.

Of all of the issues, the most common refrain we heard during the public comment period to the proposed guidelines was the requirement that juvenile sex offenders register. Congress originally wrote the juvenile registration requirement to include registration of adjudicated juveniles 14 years or older who committed acts of rape, sexual acts against unconscious or intoxicated individuals and sexual conduct against children under 12 years old. As written by Congress, this section was highly problematic and did not make sense to many jurisdictions and other stakeholders. I found the provision particularly troubling. The comments provided during the publication of the proposed guidelines echoed the same concerns. Working within the confines of the law, I worked to ensure that the Final Guidelines

allow jurisdictions complete discretion regarding registering juveniles who engage in low end “consensual” sexual conduct against children under age 12. Now, only older juveniles who are forcible rapists and the like are mandatory registrants under SORNA.

Congress wisely provided jurisdictions complete discretion to not register statutory rape type offenders. Cases involving participants are at least 13 years old with a partner not more than 4 years older are **not** required to register under SORNA’s registration scheme. If consensual sexual activity does occur between partners with more than 4 years of separation, then prosecutors have several options: charge the case as a felony qualifying as a tier II offense under SORNA; charge the case as a misdemeanor;, or decide not to file the case. In many cases, the best result from a local prosecutor exercising wise discretion is not to file a case in the first case. SORNA does not require any prosecutor to file any case. In most cases, when charged most severely, the offender would be no more than a tier two- type offender, but often a tier one offender and therefore not necessarily required to be on a public registry.

Another example is the clean-record example. The clean record exception allows tier one and adjudicated juvenile tier three sex offenders to discontinue their registration obligations after successfully completing four criteria as set out in the statutory language of SORNA. As written, SORNA seemed to require mandatory implementation by individual jurisdictions. Because some jurisdictions that have registration systems that far exceed the

minimum requirements of SORNA, mandatorily requiring implementation of this exception would cause some jurisdictions to completely overhaul their already well functioning registration systems. Clearly SORNA's intent was to allow great flexibility to the jurisdictions and not force already well functioning systems to revamp. Through the Final Guidelines, we made sure to give those jurisdictions far greater discretion and flexibility.

A final example is SORNA's recordkeeping requirement. SORNA appropriately requires all information be collected in a digital format or be digitally linked. Many jurisdictions balked at the expense of reacquiring all existing finger and palm prints in digital format. After consulting numerous subject matter experts, we afforded jurisdictions the flexibility to simply scan existing ink prints, allowing them to avoid the significant costs of purchasing live scan systems to achieve the same goal. This decision was made for two reasons; first, it was good policy; and two, this decision can significantly reduce the costs jurisdictions, such as Californias' claim they must shoulder in order to be in substantial compliance.

These are just a few of the myriad examples of the flexibility that we built into the Final Guidelines. As these examples demonstrate, SORNA, as it is being implemented, is far from the inflexible system that its critics paint it to be.

However, there is a significant hurdle to substantial implementation that can be solved by Congress: the lack of funding.

Congress should provide resources to support the jurisdictions and the SMART Office in their ongoing efforts.

3. My final point is that although SORNA is affordable, far more resources are needed to achieve its promise. During my tenure, the SMART Office created, paid for, and provided a secure communication portal system to all 253 SORNA registration jurisdictions to allow full compliance with SORNA for immediate communication and sharing of information. On January 20, 2009, we made available to relevant jurisdictions the Tribal and Territory Sex Offender Registry System (TTSORS), which provides each tribe and territory an individual digital sex offender registry fully connected to the NSOPW. In only a couple of months, tribes have embraced this opportunity and approximately 35 tribes are currently testing the software and three tribes have requested to be connected to the system. We created an automated community notification system to allow for proactive notification to the public when sex offenders register in a community, the ability to conduct an email address search, a several mile radius search map where sex offenders live, work and go to school and we renovated the NSOPW. We did this all with a limited amount of staff and money; imagine what we could have been achieved with adequate resources.

Another controversial issue is the retroactivity of SORNA. Congress intended SORNA to provide a national blanket of comprehensive standards. The only way to achieve this goal is to require all sex offenders who are currently active in the legal system to be required

to register. Blindly excluding all sex offenders convicted prior to July 2006 would significantly impact SORNA's effectiveness. The United States Supreme Court has determined that retroactivity is constitutional, as it regulatory and is not a punitive measure.

To clarify how the retroactive component works, SORNA does not require jurisdictions to proactively seek out sex offenders that have completed their registration requirements and that are not currently registering or on some type of criminal supervision (parole/probation). Only sex offenders currently registering, who are currently being supervised or who are convicted of another crime are captured under SORNA requirements. The retroactivity issue, though controversial now, will ultimately fade away as more sex offenders receive convictions post implementation.

SORNA does not control where a sex offender lives, works or goes to school. It has **nothing** to do with residency restrictions which are all the result of state and local legislation.

There is no workable alternative to a system like SORNA. SORNA is an evidence-based system that requires registration based on the fact that the sex offender has ALREADY been convicted of assaulting a real person. There is a movement afoot however, to remove the evidence based component of SORNA and replace it with a soft (and unproven) artifice called "risk assessments." Congress wisely recognized that risk assessment tools should not used to determine if a convicted sex offender should register---by guessing

whether they will re-offend. Rightly so, Congress recognized that risk assessments are not foolproof and are not useful for juveniles. However, “risk assessment” tools remain available for treatment purposes. Currently, only a minority of jurisdictions use them for registration purposes, and it should remain that way for good reason. For one reason, besides the obvious (they are not reliable) there are an insufficient amount of trained professionals available to appropriately administer risk assessment tools to all the sex offenders in the United States.

SORNA is a strong law. It is part of the tool kit that child abuse professionals need to protect children. It provides for a standardized minimum level of sex offender registration and notification throughout the United States. SORNA is not meant to be a panacea for sexual abuse, assault, rape and sexual murders. It is meant to and does provide information that allows parents and others to make informed decisions regarding adult sex offenders and serious juvenile sex offenders who reside, work and go to school in their communities. The amount of use of the NSOPW demonstrates that the public has embraced the type of knowledge and information that SORNA provides.

Thank you for the opportunity to provide my thoughts, and I am eager to work with the Congress on this important issue in the future in any way I can be of assistance.