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Statement by

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"The Reauthorization of the Adam Walsh Act"

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Chairman Sensenbrenner, Ranking Member Scott, and Members of the subcommittee, thank you for the invitation to testify today about the Adam Walsh Act and efforts by states to implement the Sex Offender Registration and Notification Act (SORNA).

The most important thing that a public servant can do in service to their state is to promote the health and safety of their citizens. Sexual violence represents a threat to our

communities – in particular the children of our communities – with devastating, and long-lasting consequences. As chair of the Corrections and Juvenile Justice committee in the Kansas House, I have focused my time in the legislature on protecting those who are vulnerable to harm and on holding offenders accountable for their crimes.

As a Republican, I believe in keeping government costs and programs under strict control, but I also believe there is an important role for both the state and federal governments in protecting our children from the threat of sexual offenders. And from my experience as a member of several national public safety working groups and taskforces, I have heard policymakers from both parties and every affiliation agree that our national system of information exchange and community notification related to sex offenders who reside and move between our states can be improved.

Like many policymakers, I was filled with great hope during the passage of the Adam Walsh Act (AWA) that the federal government was finally going to address long-ignored gaps in our national system of coordination and sharing of information regarding sexual offenders.

SORNA passed as part of the Adam Walsh Child Protection and Safety Act of 2006 creates standards for sex offender registration and notification programs in states, tribes, and territories.

SORNA requires sex offenders to register (in some cases regularly and in person) with their local law enforcement agency. Also, they must notify the appropriate law enforcement agency if they travel or change residence, employer or school. States, tribes and territories are required to put juvenile offenders convicted of certain violent sex offenses on their law enforcement registry for life (or 25 years if reduced by a court). A state, territory or tribe may decide to make their juvenile registry accessible to the public or only to law enforcement. Jurisdictions must also examine the past criminal histories of any felon reentering the criminal justice system, as well as all individuals currently incarcerated, on probation or on parole.

States and territories failing to "substantially implement" SORNA by July 27, 2011 will lose 10 percent of their Byrne Justice Assistance Grant program (Byrne JAG) formula grant annually, beginning in FY12. For states and local law enforcement, Byrne

JAG is the cornerstone federal justice assistance program. A tribe that fails to implement must cede operations of its sex offender registry to the state in which the tribe resides, conferring tribal civil and regulatory jurisdiction to the state where it has never before existed.

It is also important to acknowledge that the AWA has a number of elements that can be implemented with relative ease. For example, it is incredibly useful for states to know how their criminal statutes comport with those of other states. This information is used by our own public safety and law enforcement entities that are tasked with negotiating other state policies in interstate compact transfers and jurisdictional crossover, as well as with determining the liability unto the state for purposes of supervision or registration. We believe this type of information sharing along with the joint access to national databases can be invaluable in carrying out our duties.

Today there are seven jurisdictions in compliance with AWA: four states (OH, FL, DE, SD), two tribes (the Confederated Tribes of the Umatilla Indian Reservation and the Yakama Nation), and one territory (Guam).

I believe that Kansas is one state that, like many others, is working diligently to walk the line between implementing policies established by the Adam Walsh Act (AWA) and policies developed within Kansas that address our specific needs. As I address the story of Kansas, I would urge you to consider the ways in which we as states can work alongside the federal government in developing the best public safety policies and enhancing collaboration.

Kansas Initiatives

Kansas has a longstanding commitment to the safety of our citizens, and in particular the safety of our children. A brief history of our approach to sex offender registration and notification will show the steps our state took to deal with this widespread problem and how it fits into our unique legal system.

In 1993, Kansas passed its Sex Offender Registration Act, which created a statewide registry of specified sexual offenders that is available for law enforcement use. A year later, the state legislature expanded this act to give the public access, through the local sheriff's office, to some registrant information. We believed that the public had a

right to know where offenders were living and we wanted them to have access to resources that would help them think about how to use this information in keeping their families safe. Since that time, registration information has been moved online to encourage public access.

In our state, a person is required to register for at least 10 years (and to register for a lifetime for certain crimes) upon their first conviction of specified sex crimes. If convicted again, the individual faces lifetime registration. Those offenders coming from out of state are required to register for the duration of their out of state requirement or the Kansas requirement – whichever is longer.

As of last year, more than 5,000 sex offenders were on the Kansas public registry.

Kansas has demonstrated commitment to the goals of AWA. We include all sexually violent crimes and all crimes involving children under 18 years of age in registration. We have passed Jessica's Law (a mandatory 25 year sentence for sex offenders) and made failure to register for 30 consecutive days a felony at a level in our sentencing grid that presumes imprisonment. Every consecutive 30 days an absconder is hit with a new prison-level felony. As these policies reflect, Kansas is serious about registration compliance.

Keeping Kansas safe from the threat posed by known sexual offenders requires more than a good registry; it requires an entire coordinated system of assessment, management, and supervision that starts from the day an offender enters the courtroom and extends through their ultimate release back to our communities.

Our system has been developed, refined and reworked over the course of more than a decade and a half. Legislative committees like mine have worked exhaustively with researchers, public safety professionals and community members to make our laws respond to the specific and unique needs of Kansas. Even for a relatively small state like ours, it has taken a great deal of time and resources to create a coordinated system of sex offender management that includes a cohesive registration and notification program.

AWA Compliance and Kansas

So, it is with great care and extensive thought and effort that Kansas has worked to comply with AWA. This means diving into statutes and policies that took years to craft, and trying to determine how they comport with Federal standards that are written broadly, and disconnected from the language and crime definitions that we use.

While that poses a challenge, it is certainly not an insurmountable obstacle to implementation. Perhaps the larger questions that arise have first to do with whether Kansas and other states' policies already meet or exceed the threshold set forth by AWA, and second, if those policies that we believe *exceed* the AWA minimum standards, because of their grounding in an evidence- and science-based approach to classifying offenders, are acceptable as substantial compliance.

Even with our sincere commitment to comply and the Herculean efforts currently underway, bringing our state into compliance is a time-consuming and sensitive process. We have set up a state working group to assist us with determining the scope of our implementation package that would include the reclassification of crimes, changes in our notification practice, participation in the national portal and a host of other changes designed to make Kansas comply. What we cannot guarantee is that these changes will be adopted wholesale, or in one complete package – despite the threat of losing vital JAG/Byrne funding.

Nationwide Progress

While only seven jurisdictions have been classified as compliant with AWA, there has been significant work done and progress that should not be overlooked. Over 250 pieces of state legislation have been passed across the country since 2006 that address elements of the AWA.

In at least one important way, AWA has started to deliver on its promise: information-sharing portals like the Sex Offender Registration Tips (SORT) program, are providing new and important ways for states, territories and tribes to communicate and coordinate. In other ways, however, AWA still has a long way to go.

The SMART office and the Department of Justice have been working to address the implementation challenges that have been identified by policymakers and practitioners. Final Supplemental Guidelines released in January of this year have gone a long way to address some of the most challenging elements of SORNA implementation including clarifying juvenile public notification, and how the law can be retroactively applied.

I also need to applaud the SMART office for their courteous and professional interactions they have had with my state – I have found them to be helpful and dedicated to finding solutions to some challenging problems.

I think it is fair to say that progress is being made both by the Federal government in trying to make these policies functional and by state governments in their efforts to try to fit this into their respective systems. Sometimes this has felt like fitting a square peg into a round hole, but it is also an exercise that forces us to go back and confirm that we are doing the best we can to keep our communities safe.

Why the delay?

So, why has this been so difficult for states? Why is there the impression that it is taking states too long to comply? All states, territories and even some tribes have sex offender registries of their own. Synchronizing their laws with the requirements of SORNA requires often complex changes to state and tribal law and, in many cases, changes in key policies regarding sex offender management. All states have passed new sex offender registry laws in recent years; some of these changes were specifically intended to assist with SORNA compliance. Many state legislatures now in session are trying again to pass legislation that can be deemed as having "substantially implemented" SORNA requirements.

There are several requirements have also proven to be stumbling blocks for many states:

Timing

Congress intended to give jurisdictions five years to come into compliance but the implementing guidelines from the Department of Justice were not issued until 2008,

leaving jurisdictions only three years to demonstrate "substantial implementation." Additionally, just this year in 2011, many significant SORNA implementation issues were clarified in the Final Supplemental Guidelines released by the Attorney General related to many elements of implementation, most notably juvenile registration and the retroactive application of the law. Many states have reasonably been waiting for these important and substantial clarifications to the law before embarking on complex statutory changes.

Moreover, those states that maintain government-to-government relationships with tribes who are included in SORNA need to have adequate time to thoroughly and respectfully negotiate what compliance should look like in each jurisdiction.

Like here in Congress, there have been significant changes in state legislatures that might delay the implementation of SORNA. This year, 675 new state legislators and 29 new Governors took office across our country. Also, in 19 states, control of one or both chambers changed parties. These changes alone underscore how difficult it might be to pass complicated and potentially controversial changes to sex offender management laws.

Juvenile Registration

A number of states in compliance with the other requirements of SORNA have been hesitant to adopt the juvenile offender notification requirements. Many lawmakers from across the country and both sides of the aisle are opposed to lifetime registration and public notification for juveniles, even for Tier III (the most violent) offenses. Research indicates that juvenile offenders tend to engage in less serious and less aggressive behaviors and may be more responsive to treatment than their adult counterparts due to their emerging development. While the Final Implementation Guidelines issued by the Attorney General in January of this year went a long way to address these challenges, some states may still reject attempts to put juveniles on public sex offender registries.

Two years ago, the Council of State Governments passed a resolution expressing concern about the juvenile provisions in AWA. Many of the other associations representing state governments, as well as groups dedicated to preventing juvenile delinquency, have done the same. While CSG supports holding a juvenile offender responsible for his or her actions, it does not agree with SORNA's treatment of juveniles

in the same manner as adult offenders. There is significant research that shows success in treatment of juveniles who exhibit problem sexual behavior, they are less likely to reoffend and more likely to have been victims of sexual abuse or assault themselves.

Tiering and Risk Assessment

SORNA requires states, territories and tribes to harmonize categories of offenses so offenders who commit similar crimes will be treated similarly across jurisdictions. This "tiering" of offenses is based on the adjudicated sentence. Many states use a risk assessment tool to determine priority and eligibility for post-conviction services, but a few states use risk assessment to determine whether and for how long an offender should be placed on its registry in an attempt to make notification laws conform with supervision practices. Those states that have adopted this approach—and many others that are considering adopting similar practices—believe this approach works best in their state and represents a better approach to protecting public safety.

Our state, like many others, has had to change our approach to community notification as a result of AWA. We believe that the best information available from experts around the country suggests that supervision and management of offenders should be based upon the risk that is posed, as indicated by scientifically validated risk assessments. If we, as policymakers and public safety officials, are making decisions to supervise offenders based on these tools, it would only make sense that communities are notified about the potential risk an offender poses based on this information. But this flies in the face of the AWA approach, which does not require that community notification of offenders conform to risk–based assessment. In essence, because AWA classifies community notification tiers solely upon the crime of conviction, we lose the ability to notify the community about an offender's risk to the community using the most accurate tools currently available.

At first blush, it makes sense that those convicted of the most wicked crimes should be under the highest scrutiny. Of course, as prosecutors and law enforcement are often quick to point out, many people are convicted of much lesser crimes than they actually committed. Accordingly, using the crime of conviction to trigger classification can undermine public safety by under-classifying individuals.

Classification based upon risk, on the other hand, ensures much better information is provided to the public because those offenders who show that they pose higher, more long-term risk—despite what crime they plead down to—are going to be on the registry much longer. Risk-based classification also allows the public to differentiate between those offenders who pose the highest risk and those who may represent a lesser – but still real – threat.

So our state, and others, must wrestle with the requirements under AWA that steer us away from what national experts and people on the front lines of the criminal justice system tell us are the best practices in this area.

We also have to contend with the influx of prisoners into our system whose offense is failure to register. While we work tirelessly to hold offenders accountable and maintain their registration status, we also know based upon the available research that failure to register is NOT linked to an increased risk of offending. As such, a state like mine pays twice for offenders' failure to register: we spend tremendous resources tracking them down and then spend a great deal more putting them back in prison despite the fact that their risk to the public likely did not change in that period.

Reporting and Notification

In our state we believe that our current registration and reporting requirements strike the right balance between vigilantly tracking the location of registrants and use of public funds to manage that process. We feel that the dramatic increase in reporting requirements outlined in SORNA increases the potential for non-reporting through administrative snafu's like simple scheduling challenges without any adding real public safety benefit (and it's the safety of the public which should be our most important measurement), particularly because changes must be reported in three days and in person.

Kansas currently gives 14 days for offenders to report changes in their status. The Committee may want to consider a combination of types of notification and allow states the flexibility to amend the notification requirements so they are appropriate for that jurisdiction.

Cost

Many states grappling with record budget deficits simply cannot consider any legislation that carry costs beyond what the state is already spending, which is precisely what passage of SORNA statutes in most jurisdictions will require—without a clear public safety benefit.

In the last 15 years almost every state, territory and tribe in the United States have made significant and sweeping investments in protecting the public from sexual offenders through statutory reform, sentencing changes, new offender management approaches and building capacity through staff training and coordination. We made these investments because we take the safety of our communities seriously and continue to seek guidance from researchers and public safety practitioners to improve our approach. Despite these commitments, all states, territories and tribes are concerned about the sweeping costs of SORNA compliance. Particularly in this economy, no state can afford a significant new regulatory unfunded mandate that will change the public-safety approaches that states have already undertaken. Also, as most tribes will be starting from scratch, it will be very costly for them to build the infrastructure necessary to comply with the Act. SORNA requires new information technology systems and, in some cases, overhauling existing registration systems containing large numbers of registered offenders. It will also require states to reclassify tens of thousands of offenders to conform with new notification requirements. SORNA also places considerable and in some cases insurmountable new burdens of tracking and reporting on local and tribal law enforcement agencies – burdens that, as I mentioned above, might not pay off in an increase in public safety when compared with existing practices.

When considering the cost of implementation, the threat of losing funds if AWA is not implemented is certainly something that compels states to continue to move forward despite the obstacles that may exist. It should be noted, however, that the funds in jeopardy would, in many cases, punish those who have no control whatsoever on the implementation of such policy.

In Kansas for example, the Department of Corrections uses Byrne JAG funds to provide victims of crime with resource referrals and assess victim safety needs. The funds also help establish a collaboration manual for community corrections agencies,

victim/witness coordinators and direct victim service providers, and educate stakeholders about ways to enhance victim safety while the offender is under community corrections probation supervision. In other states, the funds are used to promote drug enforcement, sexual assault and domestic violence victim services and specialized investigation teams—services that would be damaging to public safety if lost.

With that in mind, it is troubling that states that don't have the resources to accommodate what is a tremendously costly unfunded mandate will have to watch as the very services that our criminal justice systems rely upon are cut even further in a punitive measure for not having enough money to enact new policies. In some states, the money that they risk losing from the Byrne JAG penalty is actually used directly for victims of sexual and domestic violence. States do not want to penalize public safety and victim service dollars because of the complex and unfunded changes that SORNA contemplates.

In some ways, states are facing an impossible choice: abandon evidence-based approaches to public safety and appease the Federal government, or continue to implement the most innovative approaches to sex offender management and notification and suffer the painful loss of funding that helps victims rebuild their lives, helps catch criminals who prey upon our most vulnerable citizens, and helps to successfully prosecute some of the most complicated and painful crimes.

Despite our differences, I am proud of my own state and my colleagues as we do our due diligence in finding a common ground that we can stand on. I believe that we ALL have the best interest of our communities in mind, we simply have different philosophical approaches to what that means. I remind myself often that when the AWA was developed, it was meant to be a starting point, a bare minimum. It was the floor upon which states should build. That helps me in understanding why the DOJ and SMART offices are working so hard to promote these policies. Please don't confuse our caution in overturning our approach to public safety as a lack of seriousness on our part. There is nothing more serious to us as policymakers than the safety of our children.

Recommendations

As the Committee considers reauthorization of the Adam Walsh Act, please consider the following changes and improvements to the statute:

- **Deadline Extension** - Up to two more years for states and five more years for tribes to allow legislatures more time to assess and address complex policy issues.
- **Penalty** - Allow the Attorney General to apply a penalty that reflects a jurisdiction's level of effort and compliance, so as to encourage partial compliance rather than forcing states to opt entirely out of SORNA. Rather than weakening SORNA, it would strengthen it, as states that are tempted to walk away from SORNA entirely – if they know they cannot comply with every requirement – will have an incentive to come as far into compliance as possible. Consider mitigating the penalty for states that attempt to participate in the SORT information-sharing portal, even if they are not found to be in overall compliance.
- **Tribal Sovereignty** – Congress should consider delinking state and tribal compliance with SORNA in a way that respects tribal sovereignty, while protecting public safety on tribal lands.
- **Tiering** – Allow states that use risk-based tiering to be found compliant with SORNA.
- **Notification Requirements** – Allow flexibility for states in determining the notification requirements for offenders.

Conclusion

I think it's critical that we recognize we are all on the same side. Congress and state governments want to protect children, prevent sexual assault and abuse, and hold offenders accountable.

We are working in good faith with the Federal government to comply with the requirements of the AWA. And despite the lack of adequate federal dollars to assist us, 49 states are attempting compliance. As you move forward, please help us in bridging the gap between where we believe the cutting edge of criminology is leading us and where you want to ensure continuity amongst states.

We all want to do what is right to protect our children from the threat of known sexual offenders. It is my hope that states and tribes, together with the federal

government, can find a way to build on what we've been able to accomplish thus far and plot a path forward to safer communities.