

▷ SEX OFFENDER MANAGEMENT POLICY IN THE STATES



STRENGTHENING POLICY & PRACTICE

FINAL REPORT



The Council of State Governments
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STRENGTHENING POLICY & PRACTICE



In 2006, The Council of State Governments, in partnership with the Association of Paroling Authorities International, the American Probation and Parole Association and the Center for Sex Offender Management, was awarded the Policy Training on Sex Offender Initiatives for State Legislators grant through the Bureau of Justice Assistance to provide educational opportunities to

state policymakers on innovative policy options for the management of sexual offenders.

Through support from the Bureau of Justice Assistance, CSG has tracked trends in state sex offender laws; hosted two national forums for state officials; developed and disseminated educational materials; and established a Web site to promote innovative and effective state sex offender policies.

UNDERSTANDING THE ISSUES

Sex offenders pose an exceptional challenge for policymakers. The crimes they commit evoke fear among constituents and are devastating to victims and the victim's family and friends. Victims of child sex offenders such as Megan Kanka, Dylan Groene and Jessica Lunsford become household names. And for policymakers, these children have become the inspiration for dozens of bills in statehouses nationwide, including efforts to mandate longer sentences for sex offenders, to prohibit sex offenders from living near schools and child care centers and to increase penalties against convicted offenders for failing to register with authorities.

Despite numerous efforts at all levels of government, policymakers continue to struggle to identify and implement effective policies and programs that address the myriad issues related to sexual offenders and their crimes. Complex issues around sentencing, community supervision and re-entry of sexual offenders into the community remain critical challenges for state lawmakers. Recent public opinion polls indicate sex offender management should be a high priority for lawmakers, with constituents calling for longer sentences and tighter controls for sex offenders in order to increase safety in their communities.¹

Complicating matters is the fact that lawmakers must act at a time when high-profile cases involving sex offenders continue to dominate the news. The extensive media coverage of these events understandably shapes the public's perception of sex offenders, which further affects the policies legislators introduce. The miraculous recoveries of Shawn Hornbeck, kidnapped at age 11 and held for more than four years, and Jaycee Dugard, kidnapped at age 11 and held for 18 years, both sexually molested, as well as the shocking rape and murder of 8-year-old Sandra Cantu by a female Sunday school teacher, further inflamed the public. Questions of "How could this happen?" quickly lead to "How could this have been prevented?"

Answering that question is not easy and state strategies to deal with sex offenders vary greatly. While few would argue against legislative and programmatic efforts to ensure the safety of the public—especially children—from violent sexual crimes, some state leaders have expressed concern that the urgency of efforts to strengthen sex offender management policy is prohibiting lawmakers from fully considering the range of long-term impacts such policies will have.

In addition, common myths about sex offenders continue to influence the laws policymakers create. For example, many recently enacted state policies presume sex offenders reoffend at a rate much higher than the average criminal offender, that they cannot be rehabilitated and that they generally perpetrate their crimes against strangers. None of these assumptions is grounded in research. It is in this environment that lawmakers must consider and enact legislation related to sex offenders.

SEX OFFENDERS: UNDERSTANDING A DIVERSE POPULATION

The U.S. has approximately 704,000 registered sex offenders, the majority of whom live in the community under probation or parole supervision.² The Center for Sex Offender Management reports that approximately 60 percent of convicted sex offenders are released under supervision in communities across the country—either directly after sentencing or following a period of incarceration. Between 10,000 and 20,000 sex offenders are released back into the community each year.³ Experts estimate that as many as 100,000 convicted sex offenders, however, are lost in the system across the country, meaning law enforcement are unable to find or track their whereabouts.

While often referred to as a single group, the sex offender population comprises a variety of individuals who

And in contrast to popular belief, recidivism rates for sex offenders are lower than for nonsexual offenders.



have committed a wide range of crimes. For instance, in some states the term sex offender may be used to describe both an adult serial rapist and an 18-year-old who had consensual sex with his younger girlfriend.

Yet the differences between groups of sex offenders can be significant. According to the Center for Sex Offender Management, “reoffense rates vary among different types of sex offenders and are related to specific characteristics of the offender and the offense.”⁴

These differences, experts argue, should be reflected in state sex offender management legislation. Carl Wicklund, executive director of the American Probation and Parole Association, encourages state policymakers to consider the distinctions between various groups of sex offenders—and the different risk levels they pose to the public—when developing sex offender policies.

“No two offenders are the same, and no two situations are the same,” he said. “If we legislate to treat different groups of cases the same for purposes of justice and public safety, we may get neither.”

Due to widespread underreporting of sexual crimes, sex offender recidivism rates are difficult to calculate. Research related to the recidivism rates of sex offenders is mixed. A 2005 study of persistent sexual of-

fenders found that about 12 to 24 percent of sex offenders will reoffend.⁵ A study in Washington, however, found that when sexual offenders do commit another crime, it is typically not a sexual or violent crime.⁶

Juveniles who commit sexual offenses are different in many ways from adult sex offenders, most specifically in the likelihood that they will reoffend. Several studies found that juvenile sex offenders respond better to treatment and are less likely to reoffend. Because of the important developmental differences between juveniles and adults, juvenile sex offenders do not pose the same public safety threat as adult sex offenders. Because their brains are still developing until their early 20s, juveniles are not fixed in their sexual offending behavior and may respond well to treatment. Juvenile sex offenders have fewer numbers of victims than adult offenders, and on average, engage in less serious and less aggressive behaviors.⁷

A 2005 study estimated the reoffense rate for juvenile sex offenders was approximately 10 percent, and that if they do reoffend, it was likely to be a nonsexual offense.⁸

It is clear that significant differences in recidivism patterns among various categories of sex offenders exist. In a 1995 study on sex offender recidivism, researchers found

that child molesters had a 13 percent reconviction rate for sexual offenses and a 35 percent reconviction rate for nonsexual offenses over a five-year period. Meanwhile, the study found a 19 percent reconviction rate for rapists who had committed a new sexual offense and a 46 percent reconviction rate for nonsexual offenses.⁹

And in contrast to popular belief, recidivism rates for sex offenders are lower than for nonsexual offenders. In a 2003 study of sex offender recidivism rates, the Bureau of Justice Statistics found that 43 percent of sex offenders—versus 68 percent of nonsexual offenders—were rearrested for a new offense within three years of their release from prison in 1994.¹⁰

It is also important to note that in the vast majority of cases, the sex offender is known to the victim. A 2006 report by the U.S. Office of Juvenile Justice and Delinquency Prevention reported that most sexual offenses are committed by someone the victim knows—either a family member, friend, intimate partner or acquaintance. Approximately 27 percent of offenders are strangers to the victim.¹¹

This is especially true of sex offenses against children. According to the Bureau of Justice Statistics, nationally, approximately 93 percent of minor victims of sex crimes know the offender.¹²

Public policy based on the incorrect premise that most sex offenses are perpetrated by strangers can lead to many unintended, and often expensive, consequences.

COMPLYING WITH FEDERAL LEGISLATION

On the 25th anniversary of Adam Walsh’s kidnapping, Congress enacted the *Adam Walsh Child Protection and Safety Act* to protect children and the public from violent sex offenders. Adam was abducted from a Sears department store in Hollywood, Fla., July 27, 1981, and later found murdered. His death drew national publicity, and his father, John Walsh, later became an advocate for victims

of violent crimes and the host of the television program *America's Most Wanted*.

The Adam Walsh Act sets a minimum national standard for state sex offender registries and notification laws and has the potential to overhaul sex offender laws across the nation. The act, which is divided into seven titles, calls for a more detailed, uniform and nationalized system of sex offender registries; addresses issues of child pornography, Internet safety and civil commitment; creates grants for electronic monitoring; and revises the Immigration and Nationality Act to address immigrants who are sex offenders.

The law builds on the Jacob Wetterling Crimes Against Children and Sexually Violent Registration Act, passed by Congress in 1994. It created the first set of standards for sex offender registration and notification, requiring convicted sex offenders to register their addresses with local law enforcement agencies and mandating the creation of state sex offender Web sites. States had a great deal of discretion to decide which offenders should be required to register and what information should be posted about them online. This led to wide discrepancies between states.

To this end, Title I of the Adam Walsh Act, commonly known as the Sex Offender Registration and Notification Act, (SORNA), seeks to standardize registration and notification requirements across the country, while also providing for greater offender accountability and increased sanctions for noncompliance.

States that fail to substantially implement the SORNA guidelines will face a 10 percent reduction in their Byrne Justice Assistance Grant funds, which are used to support multi-jurisdiction drug task forces and to provide other support to local law enforcement agencies.

The law originally gave states three years from July 27, 2006, to comply with the provisions set forth in SORNA, but allowed states to apply for two one-year extensions. On May 26, 2009, however, U.S. Attorney

General Eric Holder issued a one-year blanket extension of the July 27, 2009, deadline in Order No. 3081-2009. Forty-eight states had already applied for an extension.

During the 2007, 2008 and 2009 legislative sessions, many states began revising their laws to meet the requirements laid out in SORNA. On Sept. 23, 2009, Holder announced that Ohio and the Confederated Tribes of the Umatilla Indian Reservation located in Oregon are the first two jurisdictions to substantially implement SORNA. No other jurisdiction has since been deemed in compliance with SORNA.

OVERVIEW OF SORNA PROVISIONS

SORNA sets minimum standards for all 50 states, Washington, D.C., U.S. territories and tribal governments. Most notably, the law expands the definition of sexual offenses as previously used in the Jacob Wetterling Act and increases the number of offenders affected by the registration provisions and its public notification amendment added in 1996. That amendment is commonly known as Megan's Law, named after 7-year-old Megan Kanka, who was kidnapped, sexually assaulted and murdered in 1994 by a man who had two prior convictions for sexual offenses.

CLASSIFYING SEX OFFENDERS

SORNA provides for a nationwide system of sex offender registration that must be publicly available on the Internet. States are required to establish a three-tiered classification system for sex offenders, based on the nature of the crime committed and the offender's criminal history. Though jurisdictions do not have to adopt the tier terminology, they do need to meet or exceed the standards SORNA spells out.

REGISTRATION INFORMATION AND FREQUENCY

SORNA greatly expands the amount of information collected and the frequency this information must be updated, both by the offender and by the agency controlling

▶ SORNA's Three-Tiered Classification System

- ▶ Tier I sex offenders—defined as those other than a Tier II or Tier III offender—must register for 15 years, but can appeal for removal from the registry after 10 years of compliance or a reduction of their registration requirement after five years of compliance. Since federal law prohibits prison terms for greater than one year in tribal court convictions, those cases require a Tier I classification.
- ▶ Tier II offenders are those not classified as a Tier III and who are convicted of a felony or attempt to commit sex trafficking, coercion and enticement, transportation with intent to engage in criminal sexual activity, or abusive sexual contact; use of a minor in a sexual performance, solicitation of a minor to practice prostitution, or production or distribution of child pornography. Tier II is also used for offenders who are already classified as Tier I and who commit any subsequent sex offense. Tier II offenders must register for 25 years.
- ▶ Tier III offenders are felony sex offenders convicted of aggravated sexual abuse, sexual abuse or abusive sexual contact of a minor under age 13, and non-custodial kidnapping. Tier III offenders also include Tier II offenders who commit subsequent sex crimes. Tier III offenders must register for life.

the registry Web site. Registration is required in each jurisdiction in which the offender lives, attends school and is employed.

Offenders must confirm their registration in person and have an updated photograph taken annually if they are in Tier I, every six

months if they are in Tier II, and every three months if in the Tier III category. The offender must report any change in the information required for registration, such as an address, within three days.

At a minimum, each sex offender must provide his/her name, Social Security number, address where he/she habitually lives, employer and address, school (if a student) and address, license plate number and description of any vehicle owned or operated by the offender. The offender will also need to provide any Internet or electronic identifiers, such as e-mail addresses or instant messenger IDs. A criminal history must also be included, with dates of arrests and convictions, as well as the offender's incarceration status. The offender must also provide a DNA sample and finger and palm prints.

SORNA guidelines require state sex offender Web sites to include the sex offenders' names, a physical description, current photograph, addresses or locations, description of their vehicles and license plate numbers, and the sexual offenses for which they were convicted. Web sites must be set up to allow for searches by ZIP code or by a geographical area. Jurisdictions may elect not to publicly post employment or education-related information for Tier I offenders under SORNA.

Some items are exempt from being publicly posted, including the identity of any victim, the offender's Social Security number and arrests that did not result in conviction. Other items are left to the state's discretion, including any information about a Tier I offender convicted of an offense other than a specified offense against a minor, the name of the employer of the sex offender and the name of a school where the sex offender is a student.

Information provided on the state's Web site must be contemporaneously updated and notice should be provided to various individuals and entities, including the U.S. attorney general, law enforcement agencies, schools and

public housing authorities in each area where the individual resides, works or attends school, any volunteer organizations having contact with minors and any organization or individual requesting notification.

HOMELESS OR TRANSIENT SEX OFFENDERS

SORNA's Final Guidelines account for homeless or transient offenders by requiring, under the "habitually lives" definition, any park or street where the sex offender frequents during the day or sleeps at night, shelters where the sex offender circulates, or places in public buildings, restaurants, libraries or other establishments where the offender may loiter. Transient offenders are also required to report the addresses of places they may visit for more than seven days.

CRIMES EXPANDED

States must also make failure to register a criminal offense with a maximum penalty of greater than one year in prison. Registration for criminal activity against an adult victim is no longer limited to sexual penetration, as crimes involving sexual contact are now also registrable offenses.

NEW RULES FOR JUVENILES

Prior to SORNA, only juveniles prosecuted and convicted as adults were required to register as sex offenders. Under SORNA, juveniles convicted of certain serious sexual offenses are treated in the same manner as adult sex offenders, and must register with local law enforcement. In addition, information about them can be released to the public.

SORNA does not require registration for all juveniles convicted of all sex offenses, but does require registration for juveniles who are at least 14 years old at the time of the offense who are convicted of committing, attempting to commit or conspiring to commit serious sexual assaults. The final guidelines specify that in order for SORNA requirements to apply, the act committed must be one that, if perpetrated by an adult, would

result in a Tier III classification.

SORNA allows states to reduce the registration period for such juveniles if the offender maintains a clean record for 25 years.

RETROACTIVITY

SORNA took effect immediately when the Adam Walsh Act was signed, and applies to all sex offenders in the federal system, regardless of date of conviction. Ostensibly, this is true for jurisdictions that adopt SORNA requirements, which means states will need to reclassify all their current sex offenders and apply new standards to their registration.

SORNA will also require sex offenders who have been out of the system and no longer under registration requirements to re-register should they commit another crime, regardless of whether the new crime is sexual in nature or not.

IMMIGRANT OFFENDERS AND FOREIGN CONVICTIONS

SORNA amended the Immigration and Nationality Act to make failing to register as a sex offender a deportable offense. States may choose to register individuals who have been convicted of sex offenses in other countries or can scrutinize the way the conviction was attained to determine the need to require registration of the offense.

ROMEO AND JULIET LAWS

SORNA does not require registration of people convicted of sex offenses involving consensual sexual conduct between a victim who is least 13 and an offender who is no more than four years older.

ISSUES WITH COMPLIANCE

State policymakers have long struggled to find a balance between a public that wants to feel safe from sex offenders and policy that is effective in managing this class of offenders. Passage of the Adam Walsh Act created additional pressures on states to modify their laws, resulting in heated debates among state policy officials and the sex offender management community. Compliance with the

provisions has proved elusive, as only Ohio has been deemed in compliance.

In early 2009, the 47 states that responded to a survey indicated that they would not meet the July 2009 deadline for compliance, which has since been extended to July 2010. That survey was conducted in February and March at the request of U.S. Sen. Patrick Leahy of Vermont by SEARCH, which is directed by a membership group consisting of a governor-appointed representative from each state.¹³

States that responded to the survey cited several factors impacting their ability to comply with SORNA requirements, including cost, the fact that the provisions are retroactive, and the act's juvenile registration and reporting requirements.

JUVENILE SEX OFFENDERS

The most common barrier to compliance was the act's juvenile registration and reporting requirements, cited as a reason by 23 states.¹⁴

Under SORNA, juveniles as young as 14 could potentially be required to register as a sex offender and be subject to the same public disclosure as their adult counterparts, making public their names, addresses, photographs, and even the name and address of the schools they attend. Most states use their own discretion in making this information available on a Web site.

Advocates for juvenile offenders argue that SORNA ignores significant differences between adult and juvenile sex offenders. Research shows there are important developmental differences between juveniles and adults, and as a result, juvenile sex offenders do not pose the same public safety threat as adult sex offenders. Because their brains are still developing into their early 20s, juveniles are not fixed in their sexual offending behavior and may respond well to treatment, research has found. Juvenile sex offenders have fewer numbers of victims than adult offenders, and on average, engage in less serious and less aggressive behaviors.¹⁵

In addition, critics of the provisions related to juveniles argue that they

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contradict the rehabilitative intent and confidentiality that is inherent in the juvenile justice system. There is also a concern that the harsh new registration laws for juveniles could lead to a decrease in the reporting of juvenile sex crimes.

RETROACTIVE REGISTRATION

The second most common barrier to compliance—cited by 20 states—is retroactive registration. SORNA requires registration to be retroactive for certain offenders whose convictions predate enactment or implementation of the act in a particular jurisdiction. Specifically, the act requires the registration of sex offenders who remain in the system as prisoners, supervisees or registrants, and those who re-enter the system through a subsequent criminal conviction, even if it is not sexual in nature.

States are concerned about applying the provisions retroactively, both in terms of the cost and time involved in re-evaluating all the sex offenders currently on the registries.

In addition, the retroactive provisions violate the constitution of many states, which prohibit ex post facto laws that retroactively change the legal consequences of acts committed prior to the enactment of the law. States, however, are not required to

comply with provisions that would violate their constitutions, as determined by the state's highest court. To reconcile differences between SORNA's requirements and the state's constitution, the state must act in good faith with the U.S. attorney general. The jurisdiction is still required to implement alternative laws that fulfill the intent of SORNA.

A federal appeals court panel ruled Sept. 10, 2009, that juveniles convicted of sex offenses in federal court before SORNA took effect in July 2006 cannot be retroactively required to register under the law. The panel ruled the registration requirement was an unconstitutional additional punishment and would violate the confidentiality rules and the rehabilitative purpose of most juvenile court proceedings. In the ruling, Judge Stephen Reinhardt of the 9th Circuit Court of Appeals wrote that the registration requirement "serves to convert a rehabilitative judicial proceeding, sheltered from the public eye, into a punitive one, exposed for all to see, and with long-lasting substantially adverse and harsh effects."¹⁶

COSTS OF IMPLEMENTATION

Seven states were concerned with the cost of implementing SORNA, as the federal government has yet to provide funds to support its imple-



Despite the high costs of compliance with **SORNA**, little empirical proof exists that sex offender registries and notification make communities safer.



mentation. States that have examined complying with SORNA have, for the most part, found the costs would far outweigh the 10 percent cut in Byrne Justice Assistance Grant funding they face in choosing not to comply. Byrne funding is generally used to enforce drug laws and support law enforcement.

In recent years, Congress has slashed Byrne funding for state and local law enforcement from \$520 million in 2007 to just \$170.4 million in 2008, with upwards of \$2.5 billion cut since 2001, according to the National Criminal Justice Association. The American Recovery and Reinvestment Act of 2009 allocated an additional \$2 billion in the grant funding. While Recovery Act money will boost Byrne grants, the funding increases may only be temporary and still may not be enough to offset the costs of compliance with SORNA.

According to an analysis by the Justice Policy Institute, in all 50 states, the first year costs of implementing SORNA would exceed the cost of losing 10 percent of the Byrne grant funding.¹⁷ States can expect to incur significant costs as they attempt to comply with SORNA, including the costs of new personnel, new software, additional jail and prison space, court and administrative costs, and law enforcement costs.

For example, a comprehensive cost analysis in Virginia found the first year of compliance with the registry requirements alone would cost approximately \$12.5 million.¹⁸ After the first year, Virginia estimates the cost of SORNA compliance at nearly \$8.9 million. The amount of Byrne grant funding Virginia would lose due to noncompliance would be approximately \$600,000.¹⁹

Similarly, Ohio found the cost of implementing new software needed to create the registry would approach \$500,000 in the first year alone. The software would then cost \$85,000 annually thereafter. In addition, Ohio estimates certifying treatment programs based on the new standards and complying with increased notification laws would cost another \$100,000 annually. This is in addition to other estimated increased costs, including salaries and benefits for new personnel, new court and administrative costs, and costs to counties and municipalities. If Ohio were not to comply with SORNA, it would lose approximately \$900,000.²⁰

EFFECTIVENESS OF SEX OFFENDER REGISTRATION LAWS

Despite the high costs of compliance with SORNA, little empirical proof exists that sex offender regis-

tries and notification make communities safer.

In 1999, University of Memphis researchers conducted a survey of psychologists, social workers and counselors who treat sex offenders. The study revealed that nearly 70 percent of those surveyed felt that Internet sex offender registries create a false sense of security. The authors presented possible reasons for this false sense of security, including that not all offenders are included on every site, sex offenders may move often, not all sex offenders comply with their registration requirements, and those who have committed sex crimes against children but were never caught will not be included in the registry. The same group of respondents was even more unconvinced of the effectiveness of registry sites, with more than 80 percent saying they did not think the sites would result in a decrease in the incidences of child sexual abuse.²¹ Little research has been done to examine the effects of online registries on recidivism rates.

At least half the states currently categorize sex offenders using risk-based assessment to evaluate known risk factors and screen offenders into categories based on their likelihood to re-offend. When used correctly, such risk-based assessment tools better predict the likelihood a sex offender will commit another offense, help identify specific risk factors and monitor treatment. Under SORNA, offenders are categorized based on their offense, rather than by their risk to re-offend.

Critics contend that offense-based categorization has several inherent problems, most notably that the crime for which an offender is charged may not reflect the seriousness of the underlying offense. This could lead to an underestimation of the risk of offenders who plead to a lesser offense. As a result, many lower risk offenders could potentially be erroneously classified as high risk and publicly identified while dangerous offenders with more favorable court outcomes will have fewer limits placed upon them. There is

no empirical research that indicates the crime of conviction is related to the risk of recidivism, but it will be extremely expensive for states to reassess all their current sex offenders based on their offense.

NOTABLE LEGAL CHALLENGES

SORNA continues to face multiple challenges in both federal and state courts.

For example, Senate Bill 10 passed by the Ohio legislature to comply with SORNA has faced numerous legal challenges since its adoption in 2007. In 2009, the Ohio Appellate Court found in *Spangler v. State* that the compliance legislation to be a violation of both the Ohio and U.S. Constitutions.

In Nevada, U.S. District Judge James Mahan has issued a permanent injunction barring the state from applying two new sex offender laws retroactively. He ruled that the laws, which the legislature passed in 2007 to bring the state into compliance with the Adam Walsh Act, violated the U.S. Constitution under both the Due Process and Ex Post Facto clauses. In his ruling, Mahan found that “the application of these laws retroactively is the equivalent of a new punishment tacked on to the original sentence—sometimes years after the fact—in violation of the Ex Post Facto and Double Jeopardy Clauses of the U.S. Constitution, as well as the Contracts clauses of the U.S. and Nevada Constitutions.”²²

In determining whether to comply with SORNA, states may find that the costs of implementation may outweigh the benefits. If states choose to comply, it is likely that these new laws will face constitutional challenges, in both state and federal courts. Consequently, the national debate over proper management of sex offenders is certain to continue.

ZONED OUT: RESIDENCY RESTRICTIONS FOR SEX OFFENDERS

Among the many trends in state laws to better manage sex offenders are measures restricting where convicted sex offenders are able to live

▶ Timeline of Sex Offender Laws

1900s

1947 California enacts the first sex offender registration law

1990 Washington state enacts the first sex offender public notification law

1990 First civil commitment law for violent sex offenders is passed in Washington State

1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act asks states to pass legislation creating sex offender registries

1994 Texas creates the first sex offender residency restriction and “child safety zone” laws

1994 New Jersey passes Megan’s law, which allows the public to be notified of sex offenders within their communities

1996 President Bill Clinton signs Megan’s Law, allowing states to disclose information about sex offenders to the public

1996 The Pam Lychner Sexual Offender Tracking and Identification Act allows the FBI to compile a national database of the names and addresses of sex offenders released from prison and required lifetime registration for certain offenders

1998 Protection of Children from Sexual Predators Act is signed to help states comply with registration requirements and also prohibits federal prisoners from having unsupervised access to the Internet

2000s

2000 The Campus Sex Crimes Prevention Act requires sex offenders attending college to register in their school’s jurisdiction

2005 Florida passes Jessica’s Law, which provides mandatory minimum sentences for sex crimes and lifetime electronic monitoring for certain offenders

2007 The Adam Walsh Child Protection and Safety Act of 2006 is signed into law

2008 Keeping the Internet Devoid of Predators Act (KIDS Act) amends the Adam Walsh act to include Internet identifiers to sex offender registration requirements

2009 The state of Ohio and the Confederated Tribes of the Umatilla Indian Reservation become the first two jurisdictions certified to have substantially implemented the Sex Offender Registration and Notification Act (SORNA)

and work. State legislatures across the country have passed restriction zones to keep known sex offenders away from places where children congregate. Legislators tout the need for such residency restrictions to reduce child sex offenders’ opportunities for contact with potential victims. As more states enact residency restrictions for sex offenders, experts are learning more about the many impacts of these laws on communi-

ties, offenders and public safety.

In 1995, Florida, Delaware and Michigan became the first states to enact some form of sex offender residency restrictions, and they have since become a widespread approach to managing sex offenders in the community. According to an article on Stateline.org, by 2005 16 states and more than 400 cities nationwide had adopted restriction zones, with some ordinances barring high-risk

▶ Homeless Sex Offenders Find Places to Live

In April 2007, the problem of homeless sex offenders was brought to national attention by the discovery that sex offenders in Miami were living beneath the Julia Tuttle Causeway. According to the Miami Herald, by February 2008, at least 19 offenders were residing under the bridge. Their makeshift home includes a couch, a generator-powered television, an Xbox, a kitchen area and two dogs. The number of residents grew to as many as 140 people by July 2009, since the bridge is one of the few places in Miami-Dade County that does not violate the city's ordinance, passed in 2006, that requires sex offenders to live more than 2,500 feet from schools and day care centers, two and a half times the state-mandated restriction of 1,000 feet. This made it impossible for many sex offenders to go back home since their old residences fell within the restricted area, and all the homeless shelters in the county were off-limits. Corrections officials settled on the state-owned land under the bridge as their only recourse.

CNN reported that state probation officers direct convicted sex offenders upon their release to the bridge location, and they are required to be in the camp from 6 p.m. to 7 a.m., when a representative from the Department of Corrections visits to check that they are there. Prisoners being released are issued driver's licenses by the State of Florida listing their addresses as the Julia Tuttle Causeway.

In January 2010, the situation repeated itself, as nine convicted sex offenders in Georgia, which has some of the toughest residency restriction in the country, were told by their pro-

bation officers to camp in a woods behind a suburban Atlanta office park because all but one of the state's homeless shelters were ineligible due to the residency restrictions. Georgia law prohibits the state's 16,000 sex offenders from living, working or loitering within 1,000 feet of schools, churches, parks and other spots where children gather.

Ahmed Holt, manager of the state's sex offender administration unit, described the camp to reporters as a "last resort" for homeless offenders who cannot find another place to live that complies with the law. He explained that probation officers direct them to the woods if other options fail, such as transferring to another county or state or living with a relative if the residence meets the requirements. In addition, Holt told the Associated Press that while "having an offender located in a camp area is not ideal, the greater threat lies in homeless offenders that are not a specified location and eventually absconding

supervision with their whereabouts unknown," he said.

After an Associated Press report about the camp, state officials told the sex offenders they had 24 hours to leave the property, which is owned by the Georgia Department of Transportation.

Probation officers across the country are reporting difficulties in locating housing for sex offenders re-entering a community. Gretl Plessinger, public information officer for the Florida Department of Corrections, said, "We are finding it increasingly difficult to find housing for sex offenders because of the restriction zones. The zones were created to protect the public, but have had unintended consequences in making the offenders homeless. This is the only place they can live, but at least we know where they are. If we don't know where they are and they go underground, we can't supervise them, which does not increase the public's safety."



sex offenders from living within their city limits. By 2008, at least 29 states had implemented some form of residency restriction zones, according to analysis by The Council of State Governments.

The severity of the restriction zones varies from state to state. For instance, sex offenders in Illinois are prohibited from living within 500 feet of a school. Meanwhile, provisions in such states as California and Oklahoma require sex offenders to live as far as 2,000 feet from schools and parks. Moreover, the prohibitions placed on where sex offenders can live vary significantly across the country. While states like Mississippi and Ohio create prohibited zones around schools and day care facilities, other states include parks, youth program centers and other places “where children congregate.”

Georgia lawmakers created one of the strictest policies in the nation, including bus stops, skating rinks, churches and swimming pools in their sex offender residency restrictions. A registered sex offender found to be living, employed or loitering within 100 feet of the restricted areas faces 10 to 30 years in prison.

Some policymakers worry that inconsistencies among the various state statutes could lead sex offenders to move from state to state in search of more lenient laws. As a result, some states have enacted legislation to protect their communities in reaction to laws passed in neighboring jurisdiction, leading to a domino effect in the passage of sex offender residency restrictions across the country.

South Carolina Rep. Joan Brady introduced a 1,000-foot residency restriction during the 2007-2008 legislative session after reading a newspaper article about a sex offender who claimed he moved to South Carolina because its laws were less stringent.

“We don’t want South Carolina to be a welcome center for sex offenders,” said Brady. “I proposed a restriction zone for sex offenders living within 1,000 feet from our schools, playgrounds, and places where children gather. The zones will

not only protect our children, but put less stress on sex offenders if they know where they can and cannot be. We have a responsibility to prevent offenders from preying on innocent children.”

The bill, House Bill 3094, which was enacted in 2008, prohibits sex offenders convicted of an offense against a minor from residing within 1,000 feet of a school, day care center, children’s recreational facility, park or playground.

In addition to state laws prohibiting sex offenders from living in close proximity to schools and other child-focused facilities, many residency restrictions have been enacted across the country at the municipal level. For example, more than 100 local jurisdictions in Florida established additional restriction zones by local ordinance, ranging from 1,500 feet in Hypolux and Lake Worth to a more common distance of 2,500 feet. Many of the zones limit sex offenders from living near child-oriented facilities such as schools, parks, churches, playgrounds, bus stops, museums, day care centers and libraries. In some cases, these restrictions essentially ban sex offenders from living within the city limits.

ONE STATE’S EXPERIENCE

In 2002, Iowa became one of the first states to enact sex offender residency restrictions requiring sex offenders who had victimized children to “not reside within 2,000 feet of the real property comprising a public or nonpublic elementary school or secondary school or a child care facility.” The bill was introduced after a constituent contacted his state legislator to express concern about a sex offender living in his neighborhood.

Shortly after the bill was enacted, three sex offenders challenged the law, arguing that the restriction zones encompassed a majority of available housing. In *Doe v. Miller*, the 8th Circuit Court of Appeal upheld the law, stating it was constitutional and that the state had a right to protect its residents. In addition, the court found that the U.S. Constitution does not include a “right to live where you choose.” Following the 2005 ruling, Iowa officials began enforcing the law.

After a year of experience with the law, however, policymakers began to identify problems in the language of the statute and questions surrounding the law’s implementation. The statute included every sex offender, not just those who had committed crimes against children. In addition, questions surfaced about how to apply the law to juvenile offenders once they reach adulthood and how to address day care facilities that opened after the law was passed.

In addition, policymakers found these laws resulted in a serious unintended consequence: They drove registered sex offenders underground. Blackhawk County Attorney Tom Ferguson explained that when the law was first enacted, “we couldn’t find 80 to 90 people. Now it’s more like 300 to 400 offenders we cannot locate.”

Enforcing residency restrictions also requires significant resources from criminal justice agencies. “Law enforcement and probation officers do not have the time or resources to track them down, given all of their other responsibilities. Instead, because of the restriction zones, they have become landlords trying to find housing for offenders,” said Ferguson.

In response, in 2006 the Iowa County Attorneys Association issued a “Statement on Sex Offender Residency Restrictions in Iowa,” which declared the restrictions “do not provide the protection that was originally intended and the cost of enforcing the requirements and the unintended effects on families of offenders warrant replacing the restrictions with more effective protective measures.” The statement further argued that the residency restrictions have led to fewer confessions and plea agreements, which place added burdens on the criminal justice system and decreased the likelihood of adjudications and ultimately of convictions.

In a 2007 report in the Criminal Justice Policy Review, Jill Levenson of Lynn University in Boca Raton, Fla., and David D’Amora of the Center for the Treatment of Problem Sexual Behavior, a Connecticut-based facility that seeks to prevent future sexual abuse through state-

Enforcing residency restrictions also requires significant resources from criminal justice agencies.



of-the-art assessment, treatment and training, estimated that the Iowa law displaced approximately 6,000 offenders and their families and resulted in the homelessness of many offenders.²³

A December 2008 report from the state legislature’s Fiscal Services Division came to similar conclusions about the state’s sex offenders following passage of the residency restrictions. It found:

- ▶ More sex offenders were living in rural or unknown locations. Rural locations were less likely to offer treatment options, and having offenders in unknown locations defeated the purpose of the law.
- ▶ State and local law enforcement agencies were using a significant amount of resources enforcing the residency restrictions by verifying addresses and searching for offenders as a result of more offenders living in unknown locations.
- ▶ State Department of Corrections and Community Based Correction staff were spending an increasing amount of time assisting offenders in finding housing that was in compliance with the 2,000 feet rule, leaving less time for interventions designed to reduce recidivism.
- ▶ Restricted housing options

for sex offenders may increase stress levels and isolation of offenders, which could lead to recidivism.²⁴

During the 2009 legislative session, Iowa lawmakers responded by making sweeping changes to the state’s residency restriction laws. Senate File 340 narrowed the list of offenders who are forbidden from living within 2,000 feet of a school or day care to those who commit Class C felony sexual abuse. All other offenders on the sex offender registry whose victim was a minor will now be subject to exclusionary zones where they would be prohibited from working or visiting without permission. Instead of limiting where sex offenders can live, the law now prohibits them from loitering within 300 feet of an elementary or secondary school; being at an elementary school or day care without permission; working at a school or child care facility; or loitering within 300 feet of anyplace intended primarily for use by children, such as a playground or sports field when it is in use by a minor. The bill also allows ankle bracelets to be used to track certain convicted sex offenders.

The bill was overwhelmingly supported by law enforcement officials, who called the previous law unworkable, pointing out that previously, a

sex offender could loiter near schools but simply could not live in that location. They said the new law would give law enforcement more authority to remove sex offenders from such areas.

One of the sponsors of the 2002 law was one of the most impassioned supporters of the changes. Rep. Lance Horback admitted that he was wrong when we told his constituents that the law had made them safer. According to the Iowa Independent, during floor debate in 2009, he said, “The only time I’m protecting my neighbors is when he or she (the offender) is sleeping. The only time I get them away from children is when the day care or school is closed. If someone has common sense, they’d say ‘You politicians, you think that fixed it?’”

PROBLEMS WITH RESIDENCY RESTRICTIONS

For policymakers across the country, questions remain about the efficacy of residency restrictions in enhancing public safety against sex offenders. Although some research was conducted on this issue, findings were generally inconclusive.

In a 2004 study by the Colorado Department of Public Safety’s Sex Offender Management Board, researchers found that proximity to schools and child care centers did not have a strong correlation to reoffenses committed by sex offenders on community supervision.

“Sex offenders who have committed a criminal offense (both sexual and nonsexual) while under criminal justice supervision appear to be randomly scattered throughout the study areas—there does not seem to be a greater number of these offenders living within proximity to schools and other child care centers than other types of offenders,” the report states.²⁵

Similarly, a 2007 study by the Minnesota Department of Corrections found that residential proximity to a park or school was not a contributing factor to sexual reoffenses by sex offenders in the community. It concluded that residency restrictions

▷ Sex Offender Management in the States

Sex offenders are less likely than other offenders to be arrested again for a sex offense. Yet many recent state policies relating to sex offenders presume that sex offenders reoffend at a rate much higher than the average criminal offender does, that they cannot be cured and that they perpetrate their crimes against strangers.

- ▷ Only 5.3 percent of sex offenders are rearrested for a new sex crime within 3 years of release.
- ▷ Individuals known to the victim and their families commit 90 percent of child sex. Only 23 percent of sex crimes are committed by a stranger.
- ▷ All 50 states and three U.S. territories have public sex offender registries, though they have not been shown to reduce recidivism or increase community safety.
- ▷ As of January 2010, 27 states had enacted residency restrictions that limit the distance a registered sex offender may live to a school, child care center, park or other place children may gather. There is no evidence that residency restrictions reduce incidence of sexual offenses, nor has any correlation been found between an offender's proximity to children and their offenses.
- ▷ 34 states have laws that require or allow the use of Global Positioning Systems (GPS) technology for certain sex offenders. Offenders subject to monitoring demonstrate a slight decrease in recidivism but it can cost between \$10 to \$14 per day per offender—not including the cost for staff to monitor the devices - and use of GPS technology does not mean offenders are supervised at all times.³
- ▷ 20 states allow civil commitment of sexually violent offenders after completion of a prison sentence. Offenders are committed indefinitely to a mental health treatment facility until deemed suitable for release into the community. The average cost of civil commitment is approximately \$94,000 per offender per year. Only 12 percent of civilly committed offenders are released, either completing treatment or on legal grounds. Many refuse treatment while committed.³
- ▷ Studies show that prison sentences without sex offender specific treatment do not reduce recidivism rates. Treatment of a sex offender costs between \$5,000 to \$15,000 per year while incarceration can cost more



than \$22,000 per year per offender, not including any treatment costs.

Some states are working to balance tougher laws and public fears with effective policy to ensure community safety.

- ▷ Ten states have created multidisciplinary sex offender management or policy boards to evaluate state policies for sex offenders, create guidelines for treatment and supervision, make public policy recommendations and some have regulating authority for the agencies and organizations responsible for sex offender management.
- ▷ Many states use risk-based assessment tools that are designed to better predict the likelihood that a sex offender will recidivate, help identify specific risk factors and monitor treatment.
- ▷ At least 35 states use risk-based assessment tools that can aid in sentencing and release decisions, levels of supervision, monitoring and treatment, appropriate application of registration and community notification laws.⁷
- ▷ Several states, including New York, New Jersey, Colorado, Nevada and Texas, as well as local jurisdictions, utilize polygraph examinations to assist in monitoring and treatment of sex offenders under community supervision. Polygraphs provide information for treatment planning and risk assessment purposes, as well as aid in offender accountability, but their use is controversial.

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▷ State Sex Offender Laws

	State-wide Residency Restrictions	Statutory GPS Monitoring for Certain Offenders	Sex Offender Management / Policy Board	Civil Commitment
Alabama	✓	✓		
Alaska				
Arizona	✓	✓		✓
Arkansas	✓	✓		
California	✓	✓	✓	✓
Colorado			✓	
Connecticut				
Delaware		✓	✓	
Florida	✓	✓		✓
Georgia	✓	✓		
Hawaii				
Idaho	✓	✓		
Illinois	✓	✓	✓	✓
Indiana	✓	✓		
Iowa	✓	✓		
Kansas				✓
Kentucky	✓			✓
Louisiana	✓	✓		
Maine				
Maryland	✓			
Massachusetts		✓	✓	✓
Michigan	✓	✓		
Minnesota				✓
Mississippi	✓	✓		
Missouri	✓	✓		✓
Montana		✓		
Nebraska	✓	✓		✓
Nevada				
New Hampshire				✓
New Jersey		✓		✓
New Mexico		✓	✓	
New York	✓			✓
North Carolina	✓	✓		
North Dakota		✓		✓
Ohio	✓	✓		
Oklahoma	✓	✓		
Oregon	✓	✓	✓	
Pennsylvania				✓ *Juveniles only
Rhode Island		✓		
South Carolina	✓	✓		
South Dakota	✓	✓		
Tennessee	✓	✓	✓	
Texas		✓	✓	✓ *Outpatient only
Utah				
Vermont				
Virginia	✓	✓		✓
Washington	✓	✓	✓	✓
West Virginia	✓	✓		
Wisconsin		✓		✓
Wyoming				

would not likely have prevented any of the 224 sex reoffenses, “providing little support for the notion that such restrictions would significantly reduce sexual recidivism.”²⁶

A 2001 study by Jeffery Walker, James Golden and Amy VanHouten, however, found that 48 percent of sex offenders who victimized children in Arkansas lived in close proximity to schools, day care centers, or parks. Although the researchers were unable to draw conclusions regarding the motivations of these offenders, they speculated that their intent in living close to schools, day care centers and parks was to be near potential child victims. This study did not look at the association between the location of child sex offender housing and reoffense rates, as the previously cited studies did.²⁷

While research on the efficacy of sex offender residency restriction is limited, practitioners and policymakers alike have drawn attention to the challenges associated with residency laws. Many of these are highlighted in Iowa’s experience. As in Iowa, many jurisdictions are now facing the unintended consequences of residency restriction laws.

Among the most noted concerns is the availability of appropriate housing for sex offenders returning to the community. In a 2004 survey of sex offenders in Florida, half the offenders reported that the restrictions forced them to move, and nearly half reported that the restrictions prevented them from living with supportive family members.²⁸

For corrections professionals, the lack of housing for sex offenders can be a serious public safety concern. Research indicates that stable relationships, employment and social services can be contributing factors to the success of offenders returning to the community and preventing recidivism. Residency restrictions limit housing options for sex offenders, especially in metropolitan areas, forcing them to relocate to more rural areas where employment and appropriate treatment and services are limited.

“Residence restrictions don’t contribute to public safety,” said

Secretary Roger Werholtz of the Kansas Department of Corrections. “In fact, the consensus of experts in the field of sex offender management supported by available research and experience indicates they do just the opposite. They destabilize offenders, punish their families and thwart law enforcement efforts to effectively supervise sex offenders, make offender registries less reliable and mislead communities into believing they’ve discovered a magic bullet for protecting their children.”

Moreover, experts express concerns over the broad reach of many sex offender residency restrictions, including individuals convicted of low-level sex offenses as well as high-risk sexual offenders.

In a 2005 report to the Florida legislature, Levenson noted that “all sex offenders are not the same.” Moreover, she warned that “broad strategies may, by lumping all sex offenders together, dilute the public’s ability to truly identify those who pose the greatest threat to public safety. At the same time, classification systems allow limited resources to be used more cost-efficiently to monitor, treat and restrict highly dangerous offenders without unnecessarily disrupting the stability of lower risk offenders and their families.”²⁹

Kentucky’s residency restrictions have had similar effects. “The classification of sex offenders on the registries may be causing some low-risk individuals to move from their neighborhoods where for the last 20 years they have lived as responsible law-abiding citizens,” Kentucky Rep. Robert Damron explained. “One of my constituents lived in a rural area and the subdivision began to build up around him. The county government built a park near his home and he was forced to move. He was within a year of completing his time on the registry. I think we must focus more of our limited resources in monitoring the most violent offenders and predators in our community.”

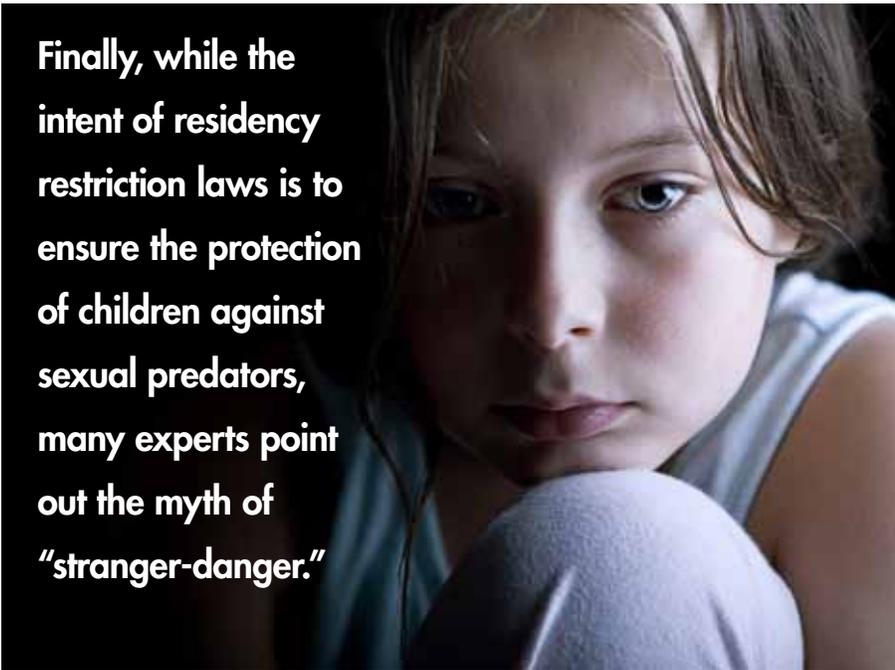
Wicklund, of the American Probation and Parole Association, has

spent many years examining policy affecting offenders re-entering the community. “We have to guard against arbitrarily widening the net in regard to adding individuals to our registries and, consequently, forcing them to abide by exclusion zones,” he said. “The nets we create to protect society from the highest risk, most dangerous sex offenders cannot withstand the added burden of including those individuals that are least likely to re-offend. In the end, the safety net we create will be stretched to the point of making our communities less safe by demanding more than our resources can provide and putting unnecessary hurdles to an individual’s ability to effectively conduct him/her in a legal and legit manner.”

Finally, while the intent of residency restriction laws is to ensure the protection of children against sexual predators, many experts point out the myth of “stranger-danger.” A 1997 report by the Bureau of Justice Statistics found that approximately 75 percent of all sexual assault victimizations are committed by an individual known to the victim, such as a family member, intimate or acquaintance. In addition, offenders are known to rape victims in nearly 90 percent of rape cases involving victims under age 12.³⁰

Further, according a report published by the Bureau of Justice Statistics in 2000, police reports indicate that in reported incidents of juvenile sexual assault cases, the victims identified their perpetrators as family members in 34 percent of cases and acquaintances in 59 percent of cases. Only 7 percent of perpetrators of sexual assault against juveniles were identified as strangers to the victim.³¹

Testifying before the Wisconsin Judiciary Committee in 2006, Elizabeth Barnhill, executive director of the Iowa Coalition Against Sexual Assault, noted, “The sad reality is that most of the time, children know, and often have trusted, the person who sexually abuses them ... Public policy should create community supports to protect children from all sex offenders.”³²



Finally, while the intent of residency restriction laws is to ensure the protection of children against sexual predators, many experts point out the myth of “stranger-danger.”

In many ways, the lack of success of residency restriction laws can be traced to fundamental misconceptions related to sex offenders. The main legislative focus in passing residency restrictions was to provide increased protection to the community from sexual offenses committed by unknown persons when in reality, most sexual abuse is perpetuated by individuals known to the victim.

Although residency restrictions remain a popular policy option to manage sex offenders in the community, some states are looking into alternative approaches, including the development of child safety zones, risk-based restrictions for offenders, and community education efforts promoting strategies to protect children from sexual abuse.

As was the case in Iowa, some states are considering replacing residency restrictions with exclusionary zones. Whereas residency restrictions prohibit sex offenders from living within a certain distance—usually 1,000 to 2,500 feet—of child-oriented locations, child safety zones are designed to prevent sex offenders from loitering within designated areas—typically 300 feet from schools, day care facilities, parks and playgrounds. In addition, in contrast to blanket sex offender residency restrictions, child safety zones often target designated high-

risk sex offenders whose victims were minors.

In Texas, judges may prohibit child sex offenders on probation and certain sex offenders on parole from going within 1,000 feet of schools, day care facilities, playgrounds, youth centers, public swimming pools and video arcades. Further, these offenders are prohibited from supervising or participating in athletic, civic or cultural activities with participants under age 18, although restrictions may be modified if they interfere with an offender’s ability to attend school or maintain employment.

In June 2007, Maine legislators passed a law establishing a new Class D crime of prohibited contact with a minor in a sex offender restricted zone. The new law makes it a crime for registered sex offenders whose victims were under age 14 to have any direct or indirect contact with a child under 14 in designated sex offender restricted zones.

While most state residency restrictions for sex offenders are broad in scope, some state laws target certain high-risk offenders. For instance, Arkansas prohibits level three and four sex offenders (the most serious offenders) from living within 2,000 feet of schools or day care centers. Meanwhile, Washington prohibits sex offenders

convicted of a serious offense with a high-risk assessment from residing within 880 feet of a school or day care facility.

Other states, like Minnesota, make individual determinations about residency restrictions for sex offenders based on risk assessments. Minnesota classifies sex offenders under a three tier ranking system, with tier one representing the lowest-risk offender and tier three including those assessed as having the highest risk of re-offense. Restrictions on an offender’s residential proximity to schools are made on a case-by-case basis among tier three sexual offenders by the agency responsible for the offender’s community supervision.

The Minnesota Department of Corrections, in a report to the legislature, concluded that, “Proximity restrictions, based on circumstances of an individual offender, serve as a valuable supervision tool. Continued use—through extension of conditional release and specific release conditions and restrictions— is appropriate.”³³

LEGISLATING SEX OFFENDER MANAGEMENT: TRENDS IN STATE LEGISLATION 2007 AND 2008

As previously discussed, state lawmakers face an arduous task in finding an appropriate balance between a public that wants to feel safe from sex offenders and policy that is effective in managing this controversial class of offenders. Policymakers across the country continue to seek to identify and implement effective policies and programs that address the myriad issues related to sex offenders and their crimes. Complex issues around sentencing, community supervision and re-entry of sex offenders into society remain critical challenges for state lawmakers.

The public has been calling for more severe sentences for sex offenders even before the Adam Walsh Act was enacted, and this trend continued in 2007 and 2008. There was a clear trend toward lifetime requirements for sex offenders, either in terms of registration requirements or sex of-

fender monitoring, whether by the use of electronic technology or by lifetime probation for certain offenders.

In the 2007-2008 legislative biennium, state legislatures considered at least 1,500 bills related to sex offenders; at least 275 of those bills became law. Six states—Arkansas, Montana, Nevada, North Dakota, Oregon and Texas—did not hold a regular legislative session in 2008.

The passage of the Adam Walsh Child Protection and Safety Act heavily influenced sex offender legislation considered during this time period. More than 450 bills were directly influenced by its requirements and July 2009 deadline for compliance. This deadline has since been extended by one year.

In efforts to comply with the Adam Walsh act, states considered legislation making revisions to the information required to be collected to include the Internet identifiers and also revised their classifications systems to possibly fit within SORNA's guidelines. This included the addition of DNA samples and e-mail addresses, screen names and other online identifiers to the registration requirements.

Many states have changed their laws to comply with SORNA's new registration and notification requirements for juvenile sex offenders. SORNA requires that juvenile sex offenders age 14 and older be included on both state and national public sex offender registries. Previously, only juveniles charged as adults were subject to registration and notification requirements. As a result, a juvenile offender's addresses—home, school or work—photograph and description, and license plate number could be made public.

Such laws were enacted in Arizona, Illinois, Missouri, North Dakota and Rhode Island; those laws now allow certain juvenile sex offenders to be included in the state's registries. Rhode Island, however, allows the registration information to be made public only after the juvenile turns 18, and Arizona gives judges discretion to allow community notification for offenders under age 22.

▷ SORNA's Three-Tiered Classification System

According to CSG research and analysis, the sex offender legislation considered in 2007-2008 can be divided into several main categories, although legislation can and often does fit into more than one category. Policymakers have addressed several major categories, introducing bills and enacting laws. Those include:

2007-2008 STATE LEGISLATION ON SEX OFFENDERS, BY POLICY AREA

TOPIC	STATES	BILLS INTRODUCED	LAWS ENACTED
Registration Information Expanded	47	350	62
Sentencing	45	269	53
Victims' Rights	35	113	27
Work and Volunteering Restrictions	36	136	26
Residency Restrictions	46	214	22
Internet / Electronic Crime	26	47	15
Civil Commitment	23	71	14
Electronic Monitoring	31	109	14
Juveniles	30	80	12
Internet Access Restrictions	15	23	9
ID Cards / License Plates	14	24	6
People in a Position of Trust	15	28	5
Child Custody and Visitation	14	24	5
Erectile / Sexual Dysfunction Drugs	5	10	3
Death Penalty	7	7	2
Total	50	1,505	275

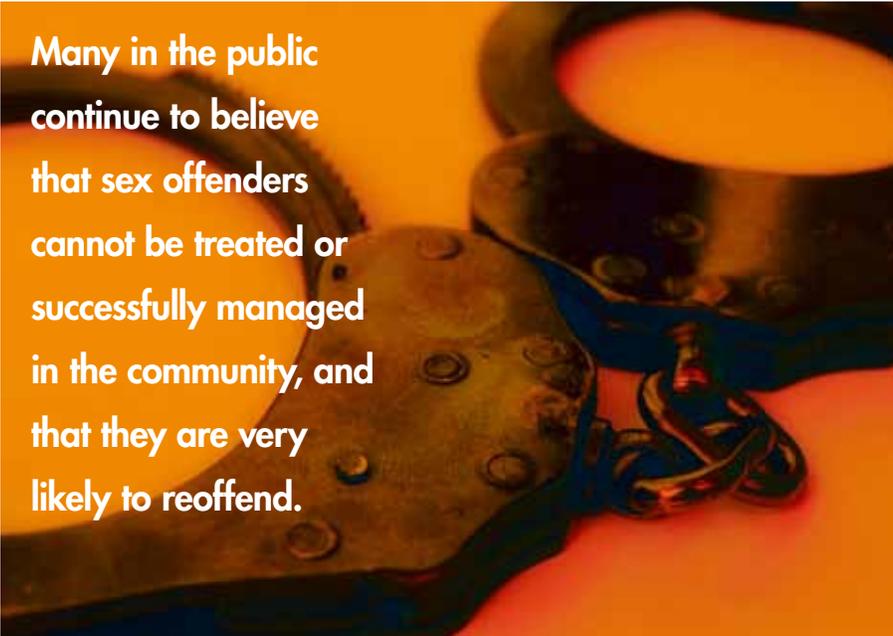
A complete summary of state legislative efforts can be found in CSG's "Legislating Sex Offender Management: Trends in State Legislation 2007 and 2008."

New legislation has also been enacted to respond to changing technology. The growth in the use of the Internet and related technology has forced states to continuously update their laws and their own technology to keep up. One such trend over the last several years has been the need to establish new criminal penalties related to electronic or computer-based luring or solicitation of a minor. Chat rooms, social networking sites, instant messengers and even Internet-based games have created new opportunities for potential

predators. According to the Office for Victims of Crime, predators are using e-mail, instant messages, bulletin boards and chat areas to contact children, gain children's confidence and lure them into face-to-face meetings.

In addition, several states enacted legislation to keep certain sex offenders from accessing the Internet, specifically social networking sites, chat rooms or sites frequented by children.

States are also increasingly using global positioning systems or other



Many in the public continue to believe that sex offenders cannot be treated or successfully managed in the community, and that they are very likely to reoffend.

electronic monitoring of sex offenders. The devices are either passive, where the unit simply records the person's movements and can be downloaded at any time, or active, meaning the unit transmits the offender's location in real time. Active systems can be programmed to send an alarm if the offender violates certain conditions, such as leaving the state or other geographical location, tampering with the device, or coming within a certain distance of a prohibited area, such as the victim's residence or a school.

Despite the high cost of equipment and staff time, electronic monitoring is increasingly popular among states. Costs range between \$10 and \$14 per day per offender, not including the cost for staff to monitor the devices. Even then, the use of GPS technology does not mean offenders are supervised at all times.

Indiana, New Jersey and North Dakota passed laws requiring electronic monitoring of certain sex offenders deemed likely to reoffend. In addition, new laws in Delaware and New Mexico require monitoring for offenders on parole. Three of the enacted bills—North Carolina Senate Bill 203, North Carolina House Bill 933 and Texas House Bill 8—require lifetime satellite monitoring of certain sex offenders, generally considered at high risk to reoffend.

LOOKING AHEAD

Sex offender management will continue to be a critical issue for state policymakers. Public safety demands the implementation of policies that reduce the risk of recidivism among sex offenders. Research continues to advance the field of sex offender management, as researchers now have a better understanding of the adults and juveniles who commit such offenses, and the strategies that have proved effective in reducing risk of recidivism.

The Center for Sex Offender Management has produced a report for policy makers detailing “Twenty Strategies for Advancing Sex Offender Management in Your Jurisdiction.”³⁴ These strategies are based on proven research and practice, and each is illustrated by a case study of a jurisdiction.

These strategies include successful policies regarding treatment, assessment, and law enforcement. For example, the Center for Sex Offender Management recommends that jurisdictions establish a comprehensive and ongoing assessment process to take into account the many differences between sex offenders. One-size-fits-all strategies are not effective, and strategies must be tailored to the individual sex offender. This makes assessment tools that predict recidivism a crucial component of sex offender management.

The Center for Sex Offender Management also recommends policymakers work to ensure that sex offenders re-entering communities have appropriate and sustainable housing options. Residency restrictions enacted by states and localities have severely limited housing options for sex offenders, including making many shelters and residential treatment facilities off-limits. Research has shown that stabilization in the community contributes to decreases in reoffense rates among sex offenders. Many jurisdictions, including Washington state, have initiated efforts to promote access to housing for sex offenders to facilitate their successful reentry into the community. This is often done through sex offender management teams at the county level.

In addition, the Center for Sex Offender Management encourages legislators to promote informed policies and engage the public to counter incorrect perceptions about sex offenders. “With the heightened concerns about sex offenders and sexual victimization and the public's demand for legislative responses, sex offense-specific laws have been passed at unprecedented rates... Enactment of [such] laws is typically reactive, in response to high-profile cases that fuel citizens' fears about their safety.”³⁵

The Center for Sex Offender Management concludes that the resulting policies, which are often costly and far-reaching, have not necessarily been developed with a thorough understanding of sex offenders, victims and effective management strategies, leading to an absence of evidence-based policies that reduce recidivism and prevent sexual victimization.

Many in the public continue to believe that sex offenders cannot be treated or successfully managed in the community, and that they are very likely to reoffend. They call on their legislators to increase punishment and provide longer sentences, which is becoming financially unfeasible for many states. Most sex offenders, however, will eventually be

released back into communities, and it is therefore in the best interest of public safety to employ practices that have proved successful. Public acceptance of sex offender management strategies employed by a jurisdiction is a key to its success.

In order to create policy based on evidence-based practices, at least nine states have created multidisciplinary sex offender management or policy boards to evaluate state policies for sex offenders, create guidelines for treatment and supervision, make public policy recommendations and some have regulating authority for the agencies and organizations responsible for sex offender management.

The Kansas Sex Offender Policy Board was created jointly by the 2006 Kansas legislature and then-Gov. Kathleen Sebelius. Established under the auspices of the Kansas Criminal Justice Coordinating Council, the board was authorized to advise the council on issues relating to the treatment, rehabilitation, reintegration and supervision of sex offenders. Further, the board was tasked with reporting its findings to the council, as well as the governor, attorney general, chief justice of the Kansas Supreme Court, chief clerk of the House of Representatives and the secretary of the Senate.

In January 2007, the Sex Offender Policy Board submitted the results of a yearlong study of sex offender management with recommendations to the Kansas legislature. On the

issue of residency restrictions, for example, the board found, “although resident restrictions appear to have strong support, there is no evidence to support its efficacy. It is imperative that policymakers enact laws that will actually make the public safe and not laws giving a false sense of security.”³⁶

Sex offender boards have been active in guiding policy development in other states as well. The Colorado General Assembly established the Sex Offender Management Board in 1992 to develop and oversee guidelines for the treatment, evaluation and supervision of sexual offenders. The board is a collaborative effort comprising representatives from the Colorado Department of Corrections, the judicial department, local law enforcement, district attorneys, the public defender’s office, polygraph examiners, the Department of Safety, the Department of Human Services, licensed mental health professionals experienced in treating sex offenders, victims advocates and the of Community Corrections.

In a March 2004 report to the Colorado General Assembly, the board stated that, “Placing restrictions on the location of correctional supervised sex offender residences may not deter the sex offender from re-offending and should not be considered as a method to control sexual offending recidivism.”³⁷ Lawmakers decided against passing statewide residency restrictions.

CONCLUSION

Sex offender management is an extremely complex issue that continues to pose enormous challenges for state policymakers, who struggle to identify and implement effective and evidence-based policies and programs that are not merely reactions to individual tragic events. Myths about sex offenders continue to abound, such as the widespread belief that most victims are targeted by strangers, while in fact it is much more likely to be perpetrated by someone the victims know. These myths continue to influence policymakers and may have detrimental effects on public safety.

Successful strategies must take into account current research on sex offender management, most notably the distinctions between various types of sex offenders and the different risk levels they pose to the public. Organizations such as the Center for Sex Offender Management have proposed several policy solutions that are based on sound research about sex offenders. To prevent additional victimization, jurisdictions must take a comprehensive approach to sex offender management, one that includes assessment, appropriate treatment and supervision, and registration requirements.

Additional research into sex offenders will continue to provide policymakers with the evidence-based solutions that protect the public and prevent further victimization.

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