

PRESIDENT
John Wesley Hall
 Little Rock, AR

PRESIDENT-ELECT
Cynthia Hujar Orr
 San Antonio, TX

FIRST VICE PRESIDENT
Jim E. Lavine
 Houston, TX

SECOND VICE PRESIDENT
Lisa M. Wayne
 Denver, CO

TREASURER
Steven D. Benjamin
 Richmond, VA

SECRETARY
Jerry J. Cox
 Mount Vernon, KY

PARLIAMENTARIAN
Jim E. Lavine
 Houston, TX

IMMEDIATE PAST PRESIDENT
Carmen D. Hernandez
 Washington, DC

DIRECTORS

Chris Adams
 Atlanta, GA

James A. H. Bell
 Knoxville, TN

Blair G. Brown
 Washington, DC

William H. Buckman
 Moorestown, NJ

Jay Clark
 Cincinnati, OH

Anthony Cotton
 Waukesha, WI

Joshua L. Dratel
 New York, NY

Steven J. Feldman
 Pleasantville, NJ

Todd Foster
 Tampa, FL

William R. Gallagher
 Cincinnati, OH

Tracy Green
 Los Angeles, CA

Michael J. Iacopino
 Manchester, NH

Richard S. Jaffe
 Birmingham, AL

Wm. O. "Bill" James, Jr.
 Little Rock, AR

Evan A. Jenness
 Santa Monica, CA

Rick Jones
 New York, NY

Elizabeth Kelley
 Cleveland, OH

Mark J. Mahoney
 Buffalo, NY

E. G. Morris
 Austin, TX

William H. Murphy, Jr.
 Baltimore, MD

Ken Murray
 Phoenix, AZ

Timothy P. O'Toole
 Washington, DC

Barry J. Pollack
 Washington, DC

Mark P. Rankin
 Tampa, FL

Martin A. Sabelli
 San Francisco, CA

Maria H. Sandoval
 San Juan, PR

Mark Satawa
 Southfield, MI

Gail Shifman
 San Francisco, CA

Theodore Simon
 Philadelphia, PA

David B. Smith
 Alexandria, VA

Penelope S. Strong
 Billings, MT

Jennifer Lynn Thompson
 Nashville, TN

Geneva Vanderhorst
 Washington, DC

Deja Vishny
 Milwaukee, WI

James H. Voyles, Jr.
 Indianapolis, IN

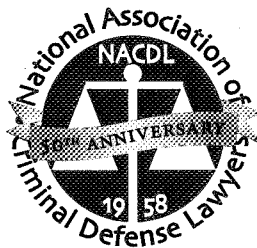
William T. Whitaker
 Akron, OH

Christie N. Williams
 Dallas, TX

C. Rauch Wise
 Greenwood, SC

Vicki Young
 San Francisco, CA

EXECUTIVE DIRECTOR
Norman L. Reimer



NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

John Wesley Hall
 PRESIDENT

March 23, 2009

The Honorable Bobby Scott
 Chairman
 Subcommittee on Crime,
 Terrorism and Homeland Security
 Committee on the Judiciary
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Louie Gohmert
 Ranking Member
 Subcommittee on Crime,
 Terrorism and Homeland Security
 Committee on the Judiciary
 U.S. House of Representatives
 Washington, DC 20515

Re: March 10, 2009 Hearing on "Sex Offender Registration and Notification Act (SORNA): Barriers to Timely Compliance by States"

Dear Chairman Scott and Representative Gohmert:

We are writing on behalf of the National Association of Criminal Defense Lawyers concerning the Sex Offender Registration and Notification provisions of the Adam Walsh Act and the ability of the States to comply with that act. We appreciate this opportunity to include our views in the record for the recent hearing on state compliance with the Offender Registration and Notification Act (SORNA). We commend recent congressional efforts to encourage a nationwide extension of the July 2009 deadline for state SORNA compliance. Congress should take advantage of this period to reexamine SORNA's mandates, which NACDL believes are deeply flawed.

At the outset, it must be recognized that much of the public understanding about sex offenders is steeped in myths. SORNA perpetuates these myths and undermines public-safety goals.

Myth #1: Sex Offender Recidivism. Despite popular belief that sex offenders have high rates of recidivism, the actual evidence reveals otherwise. Sex offenders actually have lower rates of recidivism than all other categories of convicted persons. Research demonstrates that sex offenders are far less likely to repeat their crimes once caught and punished. A study conducted by the United States Justice Department revealed that only 5.3% of persons convicted of a sex crime will commit will be arrested for another sex crime and that only 3.3% of persons convicted of child molestation crimes will be

"LIBERTY'S LAST CHAMPION"

1660 L Street, NW ♦ 12th Floor ♦ Washington, DC 20036

202-872-8600

Fax 202-872-8690

forhall@aol.com

www.nacdl.org

arrested for another sex crime against children.¹ These recidivism rates are substantially less than equivalent rates for other offenders.² Studies conducted by other jurisdictions corroborate these findings.³

Research also reveals that sex offenders who receive treatment, especially in a group setting are even less likely to re-offend than the general cohort of sex offenders.⁴ As early as 1991 research indicates recidivism rates amongst sex offenders who engage in sex offender programming and treatment while incarcerated are lower than recidivism rates for the average convicted felon.⁵ More recent studies have confirmed these findings.

Myth #2: Prevalence of Stranger Assault. The second sex offender myth is that strangers pose the highest risk for sexual assault to our children. In fact the opposite is true. The vast majority of sexual assaults on children are committed by people known to the child victim and many are committed in the child victim's own home.

These misunderstandings about sex offenders are the basis upon which the Adam Walsh Act and SORNA are based. As a result, SORNA and its regulations require that states base their registration and notification programs entirely in the offense of conviction and penalize states that seek to employ a more rational risk-based approach. Second, SORNA discourages due process of law in the registration context. Finally, SORNA is unfair and unnecessary when it

¹ Bureau of Justice Statistics, *Recidivism of Sexual Offenders Released From Prison in 1994*, November, 2003.

² The overall re-arrest rate generally for all people released from prison was 68%. People convicted of theft offenses were re-arrested the rate of 77% and motor vehicle thieves were re-arrested at the rate of 79%. *Id.*

³ Hanson R.K. and Morton Bourgon, R.K., *Predictors of Sexual Recidivism: An Updated Meta-Analysis*, Public Safety and Emergency Preparedness Canada (2004); Harris and Hanson, *Sex Offender Recidivism: A Simple Question* (2004); Hanson, R.K. and Bussiere, M., *Predicting Relapse: A Meta-Analysis of Sex Offender Recidivism Studies*, Journal of Consulting and Clinical Psychology (1998); State of Washington Sentencing Guideline Commission, *Special Sex Offender Sentencing Alternative Report* (2004); State of Ohio, *Ten year recidivism Follow Up of 1989 Sex Offender Releases* (2001).

⁴ Losel, F., & Schmucker, M., *The Effectiveness of Treatment for Sexual Offenders: a Comprehensive Meta-analysis*. Journal of Experimental Criminology, 1, 117B146 (2005); Hanson, R. K., Gordon, A., Harris, A. J. R., Marques, J. K., Murphy, W., Quinsey, V. L., & Seto, M. C. *First Report of the Collaborative Outcome Data Project on the Effectiveness of Treatment for Sex Offenders*. Sexual Abuse: A Journal of Research and Treatment, 14(2), 169-194 (2000)

⁵ Berlin, Hunt, et al., *A Five Year Plus Follow Up Survey of Criminal Recidivism within a Treated Cohort of 406 Pedophiles, 111 Exhibitionists and 109 Sexual Aggressives: Issues and Outcome* (1991.)

comes to juvenile offenders.

SORNA Should Permit Registration Based upon True Risk Evaluation.

NACDL generally opposes sex offender registration and community notification laws because they are based on the aforementioned misunderstandings surrounding sex offender recidivism and the true nature of child sexual assaults. Research suggests that community notification laws do little to reduce recidivism.⁶ At least one study found that “the passage of sex offender registration and notification laws have had no systematic influence on the number of rapes committed” in the jurisdictions which were studied.⁷

If such laws are passed, they should classify offenders based upon true risk, with full due process of law, and community notification provisions should be reserved for offenders who are at a high risk to re-offend. Unfortunately, SORNA does not permit classification based on true risk.

Sound research demonstrates that sex offenders are not a homogeneous group and come from a wide range of offenders including the rare but highly dangerous, treatment resistant offender as well as the more common offender who, once convicted, is unlikely to commit additional offenses. Requiring the same registration and notification provisions for all sex offenders or based solely on the offense of conviction diminishes the ability of the community to ascertain the truly dangerous sex offender. It also undermines the ability of the non-dangerous sex offender to maintain employment, family ties, and treatment programs.⁸ NACDL believes that a determination of offender risk must be based upon the individual characteristics of the offender and not solely on the offense for which the offender was convicted. In fact, many states now have registration and notification programs which are tiered upon the basis of individual risk assessment studies performed by competent mental health professionals. SORNA penalizes those states that have chosen to perform a true risk analysis of each sex offender rather than the cookie cutter approach of SORNA.

⁶ See Welchans, S., *Megan's Law: Evaluations of Sexual Offender Registries*, 16 Criminal Justice Policy Review, 123-140 (2005)

⁷ See, Jeffrey T. Walker, et al., *The Influence of Sex Offender Registration and Notification Laws in the United States*, available at: http://www.acic.org/statistics/Research/SO_Report_Final.pdf#search=%22Walker%2C%20J.T.%20AND%20sex%20offender%20registration%22

⁸ See, Jill S. Levenson and L. Cotter, *The Impact of Megan=s Law on Sex Offender Reintegration*, 21 Journal of Contemporary Criminal Justice 49 (2005); Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 Journal of Contemporary Criminal Justice 67 (2005).

SORNA Discourages Due Process of Law

The SORNA one-size-fits-all registration and notification scheme discourages due process of law. Many offenses that implicate registration under SORNA may be committed by people who do not pose any kind of ongoing sexual threat to the public. Placing a person on a public sex offender list not only impairs successful reintegration, but also demands significant resources on the part of the government and law enforcement. Merely tracking thousands of former sex offenders requires significant law enforcement resources. The fact that thousands of former sex offenders will be unable to find employment and housing will impact the social services system.

For these reasons, only those who pose a risk to the public should be placed on sex offender registries. This determination can only be made if the person is evaluated and all the factors of the offense, the evaluation, and other relevant circumstances are considered and subject to review. Notice and hearing are necessary to allow development of all the relevant facts. These simple due process provisions should not be ignored when the stakes are so high for the offenders, the government and the public. SORNA and its regulations should be amended to allow the States the leeway to provide due process.

Children are Different

The NACDL opposes the application SORNA to any juvenile offender for four basic reasons: 1) juveniles have lower offense rates recidivism rates; 2) registration interferes with effective treatment and rehabilitation; 3) public registration puts kids at risk of exploitation; and, 4) brain development continues until a person is in their early 20's (regardless of whether the person has been legally certified as an "adult").

Juveniles Have Lower Offense Rates. According to the National Center on Sexual Behavior of Youth (based on research sponsored by the US DOJ), juveniles have lower offense rates, commit less serious and less violent sexual offenses, rarely become sexual predators as adults and have lower recidivism rates than adults. They also have lower recidivism rates than juveniles who commit other crimes. In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even though the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.⁹

Juvenile Registration Interferes with Effective Treatment and Rehabilitation. Requiring public registration of juveniles is contrary to the core purposes, functions and objectives of the juvenile justice system in that it strips away the confidentiality and rehabilitative emphasis that form the basis of effective intervention and treatment for youthful offenders. The public shaming of a child will likely have a chilling effect on the identification and proper treatment of youth who

⁹ Zimring, F.E. (2004). An American Tragedy. University of Chicago Press

exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seeking appropriate treatment, parents will be more inclined to hide their child's problem and not seek help when they learn that their child may be required to register for life as a sex offender. Parents will also fear the stigma that will be placed on the entire family and on the offender's innocent siblings.

In addition, public registration and community notification requirements can complicate the rehabilitation and treatment of these youth. Youth required to register have been known to be harassed at school, forcing them to drop out.¹⁰ The stigma that arises from community notification serves to exacerbate the poor social skills many juvenile offenders possess destroying the social networks necessary for rehabilitation.¹¹

Public Registration Puts Kids at Risk of Exploitation. Registering juvenile offenders undermines public safety objective of protecting the public from sex offenders and offenders against children. SORNA registration will expose vulnerable youth who are clearly already struggling with sexual boundary issues to adult offenders who have not sought or benefitted from treatment. Just as members of the public will be able to access the registry via the Internet and identify offenders in any and every community, adults who are inclined to exploit and abuse children and youth will be able to access the registry via the Internet and identify SORNA registered youth in the community.

Brain Development Continues Until a Person Is In Their 20s. Adolescence -- the period of growth between the onset of puberty and maturity -- spans from age 10 to age 25. The brain develops well into a person's early 20s. The prefrontal cortex, which is responsible for decision-making and impulse control, is the last area of the brain to mature. Holding juvenile offenders responsible for actions that take place when they quite literally are not functioning with their whole brain is unjust and poor policy. In 2005, the U.S. Supreme Court outlawed the juvenile death penalty based in part on the research into brain development that has been done in the last 10-15 years. The fact that a juvenile has committed an offense as an adolescent should not condemn him or her to a lifetime of punishment, public ridicule and suspicion. SORNA compliance guarantees that result. The statute and the regulations should be amended to prohibit the public registration of juvenile offenders.

¹⁰ Freeman-Longo, R.E. (2000). Pg. 9. *Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem.* American Probation and Parole Association. <http://www.appa-net.org/revisitingmegan.pdf>

¹¹ Garfinkle, E., Comment, 2003. *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles.* 91 California Law Review 163.

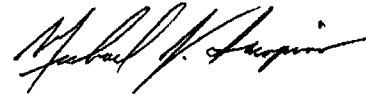
In summary, NACDL believes SORNA should be amended to allow the states to employ rational risk-based evaluation techniques in the registration of sex offenders. Any process that requires public registration should include appropriate procedures to protect due process rights. Finally, SORNA registration should be eliminated for juveniles.

Thank you for considering our views on this matter.

Sincerely,



John Wesley Hall
President
National Association of
Criminal Defense Lawyers



Michael J. Iacopino
Chair
Sex Offender Policy Task Force
National Association of
Criminal Defense Lawyers