ATTACHMENT THREE (3)
November 14, 2012 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

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Agenda Item 3

MEETING MINUTES

Organization: Advisory Committee to Study Laws Concerning Sex Offender Registration

Date: April 5, 2012

Meeting Location: Legislative Counsel Bureau
401 S. Carson Street
Carson City, Nevada 89701
Conference Room # 2134

Video Teleconferenced: Legislative Counsel Bureau
555 E. Washington Avenue
Las Vegas, Nevada 89101
Conference Room # 4401

Committee Attendees:
Keith Munro, Brett Kandt, Assemblyman Richard Carrillo, Susan Roske, Donna Coleman, Curtiss Kull, Scott Shick, Elizabeth Neighbors, Committee Legal Counsel Julie Towler, and Secretary Jan Riherd.

Members of the Public Who Signed In As Present:
Edie Cartwright, Pat Saunders, Char Hoerth, Diane McCord, Wesley Goetz, Patrick Davis, in Carson City and Patricia Hines, Laurie Johnson, Katrina Roger, and Louanne Richter in Las Vegas.

Agenda Item #1:
Call to Order and Roll Call:
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 9:03 am. Mr. Munro asked for roll call, the above members of the committee were present.

Agenda Item #2:
Public Comment:
Mr. Munro called for public comment. The following members of the public came forward and spoke:

Public Comment in Carson City:
Wesley Goetz:
Mr. Goetz stated that he wanted to know if any research was has been completed on Nevada risk assessment scales for sex offenders, if that research was done scientifically, and if he could contribute to the research. Pursuant to item number four (4) on the Agenda, Mr. Goetz inquired if the study on recidivism rates were done on sex offenders or other crimes such as theft. Mr. Goetz stated that in looking at sex offender recidivism rates it is necessary to consider the treatment program attended. In Mr. Goetz's opinion these treatment programs

are not done efficiently. For example, the Sex Offender Treatment Program in the Nevada prison system is only for a couple of hours every two weeks. Mr. Goetz's recommendation is an intensive treatment program several hours a day, five days per week. The creators of the program should understand the physiology of dysfunctional families and the ways someone becomes a sex offender.

Patrick Davis:
Mr. Davis introduced himself as an advocate of Nevadans for Civil Liberties and reformed sex offender laws, and expressed his problems with a five (5) minute public comment availability at only the beginning and the end of the meetings. Mr. Davis felt that the public was not afforded an equal amount of time, and should be given an opportunity to speak after each agenda item. Mr. Davis restated his request from last meeting to be able to give a presentation to the committee. Mr. Davis also knows several doctors who would like to give a presentation on recidivism. These Doctors live in Northern Nevada, would not accept any remuneration for their presentation, and felt would be a good rebuttal to previous presentations.

Response from Keith Munro:
Mr. Munro stated that there is an ACLU representative on this committee, and to contact a committee member if an individual would like to make a presentation. Mr. Munro stated that members of the public have contacted the committee in the past, and one is scheduled to give a presentation at the next meeting. Mr. Munro confirmed on the record that as long as the committee felt the presentation would be beneficial, then it would be put on the agenda. Mr. Munro also invited Mr. Davis to not only comment at the beginning and end of each meeting, but to also submit written comments to the committee and they would be made a part of the record.

Public Comment in Las Vegas:
Pat Heinz:
Mrs. Heinz introduced herself as a long-time advocate for criminal justice reforms. Mrs. Heinz thanked the committee for putting statistics on the agenda and stated her agreement with Patrick Davis' comments. Mrs. Heinz stated that the general population's accessibility to this committee needed to be revised. Mrs. Heinz located a 2007 Human Rights Group report. (*See*, Attachment A.) The Human Rights Watch is dedicated to protecting the human rights of people around the world. They investigate and expose human rights violations and challenge governments to end abusive practices and respect international human rights law. The Human Rights Group conducted an eighteen (18) month study nationwide and compiled this report. Highlights from this report include the information that the registration laws are overboard in scope, over long in duration, requiring people to register that do not pose any safety risk. They are built on myths, hysteria, misconceptions, and most are poorly crafted. The online sex offender registries can be accessed by anyone for purposes that do

not include public safety. Harassment and violence against registrants have been a predictable result. In many cases residency restrictions banish registrants from entire urban areas requiring them to live far away from their families. Evidence is overwhelming that these laws cause great harm to the people subject to them. Supporters of these laws are unable to identify safety gains from the laws. Mrs. Heinz stated that she sees nothing being done in Nevada in the area of prevention of sexual assaults.

Mrs. Heinz also stated that the knowledge of what causes sexual assault needs to be obtained before the prevention can start. Mrs. Heinz expressed an interest/opinion that some of the victims of crime funding to aid should be used to support groups for adult sex offenders and their families. Mrs. Heinz would like this committee to consider not only juvenile sex offenders but also adult sex offenders, and feels that the meetings concerning juvenile sex offenders and adult sex offenders should be separate.

Agenda Item #3
Approve December 22, 2011 Meeting Minutes:
The minutes of the December 22, 2011 meeting were reviewed; Keith Munro called for any suggested additions or corrections, none were voiced. Brett Kandt made a motion to approve the minutes, Scott Shick seconded the motion; all committee members present were in favor of the motion. The motion was carried and the minutes of the December 22, 2011 meeting were approved. (*See*, Attachment B.)

Agenda Item #4
Presentation on Recidivism and Re-Offense Rates of Adult Sex Offenders, by Stephen Brake, Ph.D.:
Dr. Brake received his Ph.D. in Psychology from the University of Texas in the 1970's. Dr. Brake was trained and then worked as an experimental Psychologist for a number of years. Dr. Brake developed and interest in clinical psychology and now has over 22 years' experience in providing clinical evaluation and service to sex offenders. Dr. Brake stated that he brought his training as a Research Psychologist with him to his sex offender clinical practice. Dr. Brake explained that contact offenders are offenders that have committed a hands on offense vs. an internet offender. Internet offenders have not been the subject of as many studies as contact offenders; therefore there are more recidivism studies on contact offenders.

Dr. Brake stated that there is a great variety of results and literature available on recidivism studies and also a variety of treatment results. Studies available reflect a large discrepancy, from a five percent (5%) recidivism rate in one study up to an eighty-eight percent (88%) recidivism rate in another study. Even within a single study there is a variety of results, and a lot of conclusions that can be drawn from the data. Dr. Brake stated there are a number of reasons for the different recidivism numbers. Studies use different ways to calculate recidivism,

some studies use re-arrest, other studies use re-conviction. The offender population may be different from one study to another. One study may be exclusively of child molesters, another may be a study of rapists. The studies may employ different sample sizes, some may study one hundred (100) people, and others may study one thousand (1000) people. Dr. Brake stated that generally the larger the study group the more accurate the results. However, Dr. Brake feels that the difference in the length of time the study is conducted is the largest reason for the variance.

Dr. Brake gave a presentation on the Recidivism Rates of Contact Offenders and the Recidivism and Re-Offense Rates of Adult Sex Offenders. A copy of Dr. Brake's report and power point presentation is attached. (*See*, Attachment C.)

Question by Keith Munro:
Mr. Munro questioned which group has the higher recidivism rates, i.e.: child molesters, rapists, incest offenders, and mixed offenders.

Response by Dr. Brake:
Dr. Brake stated that the literature tends to suggest that incest offenders have the smallest recidivism rates. Additionally, it would be very difficult to say which group has the highest recidivism rates. There is a lot of data and he would be unable to condense the data down to an accurate answer.

Question by Brett Kandt:
Mr. Kandt asked if a majority of people who start out viewing child pornography on the internet progress on to a contact offense.

Response by Dr. Brake:
Dr. Brake stated that this is currently the subject of study and discussion. He did have the results of a couple of studies, one study showed that only twelve percent (12%) of internet offenders had a history of contact offenses prior to their arrest for internet offending, but fifty five percent (55%) self-reported a history. This suggests there is an overlap of internet and contact offending. Another study found that at the time of arrest only twenty-six percent (26%) of internet offenders were known to have a history of contact offenses, but following treatment and polygraph testing eighty-four percent (84%) admitted to such a history. Therefore, the numbers suggest internet offenders may have a secret history of offending, but at this time it is not known if people who start out viewing child pornography on the internet progress on to a contact offense.

Question by Susan Roske:
Ms. Roske inquired if any studies were conducted of juvenile offenders, for example, juveniles who were treated, and then their recidivism rates.

Response by Dr. Brake:
Dr. Brake stated that the work he had conducted was focused on adult sex offenders. Additionally, the literature available on juvenile sex offenders is not as extensive. However, the studies Dr. Brake has reviewed tends to suggest that the results are similar to adult sex offenders. Recidivism rates are underestimates of re-offense rates in juveniles as well as adults. Dr. Brake stated that people tend to be more optimistic about the outcome studies of juveniles, and there are reasons to believe that interventions with juveniles is more effective than interventions with adults.

Question by Keith Munro:
Mr. Munro asked Dr. Brake to elaborate on the reasons interventions with juveniles is potentially more effective.

Response by Dr. Brake:
Dr. Brake stated that in speaking about juveniles the population was varied. A thirteen (13) year old is quite different than a seventeen (17) year old. However, juveniles at all ages are still developing. Brain formation and brain function are not yet solidified. Things that make a difference in behavior, for example, impulsivity and cognitive function, are still developing in juveniles. Therefore, Dr. Brake speculated it stands to reason that interventions designed to aid someone in being less impulsive may be much more effective with juveniles whose minds are still in a formative stage.

Question by Donna Coleman:
Ms. Coleman asked if Dr. Brake had studied sex offenders that are currently on parole or probation, and those offender's recidivism rates. Secondly, Ms. Coleman inquired if Dr. Brake knew of offenders currently on GPS monitoring, and if that GPS monitoring was effective.

Response by Dr. Brake:
Dr. Brake speculated that with regard to offenders being on parole and probation; it seemed that the trend in the literature suggests parole and probation supervision is effective in stopping re-offense. Additionally, studies suggest the longer the supervision the better the outcome. Dr. Brake had no personal knowledge regarding the effects of GPS monitoring, although he speculated that studies have been conducted.

Question by Elizabeth Neighbors:
Dr. Brake had mentioned treatment success correlated with high and low risk offenders, Ms. Neighbors questioned if there was a correlation with type of offense. Also, is there an effect if tested for psychopathy?

Response by Dr. Brake:
Dr. Brake stated that to his knowledge studies had not progressed to comparing for example high risk rapists with high risk child molesters. Dr. Brake stated that

in general people who score higher in psychopathy are higher risk, but this is not always the case. Psychopathy, or strong anti-social personality traits, is certainly one risk factor, but not the only risk factor, in sex offending. But given that people who score high in psychopathy, tend to misbehave in numerous ways and more often that people who score low in psychopathy, would also apply to sex offenders.

Question by Keith Munro:
Mr. Munro asked which are the best studies available, or are the most renown studies.

Response by Dr. Brake:
Dr. Brake stated that his report contained several good studies. Two of the best Dr. Brake knows of come to different conclusions.

One was a study conducted at Atascadero State Hospital in California. At the time this study was being conducted it was touted as the "gold standard" in sex offender treatment outcome research. This study had specifically assigned control groups vs. treatment groups, which is rare and difficult to do in this type of research. It was a well-designed study, the cognitive behavioral techniques treatment methods used were state of the art. The offenders received one to two years of treatment a couple of times per week, and were then followed for approximately one year after release from the treatment program. This study was reported over several intervals as an ongoing project, and at the end of the study no significant differences were found between the treated and the untreated offenders. However, the authors of the study stated that if you "drilled down" into the data, those offenders who "got it" did better than the untreated. The idea was to identify why some did better than others which leads to the idea of focusing on risk and tailoring a treatment program to address specific groups of higher risk offenders. "Risk Need Responsively" is the direction in which the field is progressing.

Another good study is a meta-analysis conducted by Carl Hanson among others as part of the Association for Treatment of Sexual Abusers (ATSA). ATSA is the largest national professional organization working with sex offenders. ATSA has an ongoing meta-analysis research study regarding treatment effectiveness. This is a very well designed study; it has some of the best researchers in the field involved. This study tends to show a small, but statistically significant effect in treatment of offenders on recidivism outcome.

Question by Keith Munro:
Mr. Munro asked Dr. Brake if he had any knowledge of recidivism rates in other crimes vs. sex offense crimes. Mr. Munro also asked if there were any nationwide trends in sex offender laws, other than Adam Walsh and how long sex offender registration had been in effect in the U.S.

Response by Dr. Brake:
Dr. Brake stated that while there are probably studies on recidivism rates among crimes other than sex offense crimes, he has no knowledge of these studies, nor does he have any knowledge of any trends in the law. Dr. Brake speculated sex offender registration in the U.S. started in the mid 1990's.

Question by Susan Roske:
Ms. Roske inquired if there were any studies that look at the recidivism rates since the implementation of a sex offender registry.

Response by Dr. Brake:
Dr. Brake stated that there has been studies in this area. While not being up to date on these studies, Dr. Brake's understanding of this literature is that the findings are mixed, and he does not believe that registration has been shown to lower recidivism rates.

Agenda Item #5
Presentation of the ACLU v. Masto et al. case, by DAG Julie B. Towler:
Ms. Towler presented a summary of the findings in the ACLU v. Masto et al. case; the decision in the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) which is attached. (*See*, Attachment D.) Ms. Towler reported that the Ninth Circuit ruled two (2) different ways on two (2) different laws.

AB579, the Nevada state law component to SORNA as enacted by the Adam Walsh Act, contains the sex offender registration provisions. The Court ruled that the retroactivity argument, which is retroactivity dating back to 1956 in application of the law, is constitutionally sound. The Ninth Circuit reversed the District Court's determination that it was not constitutionally sound. The Ninth Circuit cited *Smith v. Doe*, a Supreme Court case based in Alaska, which is a case previously discussed in this committee. The Ninth Circuit used this case to analogize the effect of AB579, and determined that AB579 does not contain any registration provision materially distinguishing it from *Smith v. Doe*. With regards to the Due Process Cause Claim, the Ninth Circuit found that because registration was based on conviction, there was already Due Process in the system and there would not be a requirement to have an additional hearing. With regards to the Contracts Clause Claim, the Ninth Circuit found that AB579 does not impair plea bargain agreements under the contracts clause.

SB471, which is the movement and residency restriction on sex offenders during their probation, parole, or lifetime supervision. Ms. Towler reported the legal grounds for the appeal was mooted by the Nevada Attorney General's Office in their determination that the law would only be applied prospectively. Therefore, the prospective determination was remanded to District Court for consideration in vacating the decision that the District Court issued in SB471 in favor of a binding consent decree. In summary, the Ninth Circuit reversed the District Court's ruling on AB579 and dismissed the appeal as to SB471as moot and remanded SB471.

Question by Brett Kandt:
Mr. Kandt questioned if the State was communicating with the Counties regarding the next step after the District Court rules on the Petition for Rehearing*.

* Keith Munro confirmed with Ms. Towler that the rehearing request had been denied.

Response by Julie Towler:
Ms. Towler stated that she would have to check with her client, Parole and Probation Records and Technology Sex Offender Registry, but it is her understanding that they have been communicating with the Nevada Counties.

Question by Susan Roske:
Ms. Roske asked if the ACLU was going to file a Writ of Certiorari with the United States Supreme Court. Also, there is no discussion in the case regarding if juvenile delinquency should be treated differently.

Response by Julie Towler:
Ms. Towler stated she had no knowledge if the ACLU's intentions, further she has not heard of the ACLU filing a Writ of Certiorari from Binu Palal, the Deputy Attorney General who is the attorney handling the case for the State. Ms. Towler stated that it was her understanding the challenge was based on the adult scheme, but she would check and verify.

Question by Donna Coleman:
Ms. Coleman asked if this ruling now means the Sex Offender Registry is now prepared to update the Tier Levels of the Offenders.

Response by Julie Towler:
Ms. Towler stated that there are ongoing issues with the appeal; therefore the laws that were in effect prior to the passage of the new laws are still currently in effect.

Continuation of Agenda Item #5
Presentation of the January 23, 2012 letter from the SMART Office by DAG Julie B. Towler:
Ms. Towler reported that the SMART Office responded to the Nevada Attorney General's Office December letter regarding the process by which Nevada can adjust the sex offender registration law in Nevada regarding juveniles who have been adjudicated delinquent and their requirement to be listed on Nevada's community notification website. (*See*, Attachment E.)

In this letter SORNA stated that Nevada can still meet SORNA's substantial implementation standards if it excludes adjudicated juvenile sex offenders from

its public registry website. Further, SORNA stated that Nevada may also choose to continue to display juveniles adjudicated delinquent of sex offenses or some smaller portion of adjudicated juvenile sex offenders, by way of a risk assessment process or other mechanism which fits the needs of the State, however, such procedures would exceed SORNA's minimum requirements.

Agenda Item #6
Presentation on proposed 2013 Legislation regarding juvenile community notification by Scott Shick: (Mr. Shick also asked Susan Roske to come forward for this presentation.) Mr. Shick stated that based on the SORNA Office response, and prior discussions in this committee, the Juvenile Justice Administrators have elected to push forward with legislative changes which would give judicial discretion in juvenile cases regarding sex offences. They have come up with a draft under the assumption that AB579 will be enacted. Ms. Roske elaborated on the statute changes. (*See*, Attachment F.)

As background information, Ms. Roske reported that AB579 deleted the old procedure in which Nevada tracked juvenile sex offenders, and possibly declaring them adult sex offenders for purposes of registration and community notification once they reached the age of twenty one (21). In the past juvenile sex offenders were tracked by Parole and Probation, but were not required to register. Once the juvenile was declared rehabilitated by the court they would no longer be subject to community notification. If the juvenile had not been declared rehabilitated by the time they reached the age of twenty one (21), the court would hold a hearing to determine if they should be declared adult sex offenders for purposes of registration and community notification. Under AB579, juvenile sex offenders fourteen (14) years of age or older would be immediately placed on the adult registry.

Ms. Roske reported that the Juvenile Justice Administrators intention is to bring back the system that was in place prior to the enactment of AB579, and narrowly tailor the juvenile sex offenders who would be subject to registration and community notification to meet the minimum requirements of the Adam Walsh Act. Those minimum requirements are defined as a sexual assault by a juvenile fourteen (14) years of age or older, with oral, vaginal or anal penetration using force or violence and/or threatened substantial bodily harm and/or rendering a victim unconscious. In the new juvenile violent sex offender statute prior notification of the offender and a hearing would be required. Registration requirements would be prospective and not retroactive. The Notification and/or Petition would include language regarding the request of a declaration by the juvenile court that the juvenile was a violent juvenile sex offender, and if adjudicated under the statute the juvenile would be included in the adult registration and community notification scheme. The SMART office has ruled that states may keep juveniles off the public website; therefore this provides that the court can make a determination whether or not to include the juvenile on the adult community notification website, but the juvenile would still be subject to

registration every 90 days or every 120 days for twenty five (25) years to life. Ms. Roske also reported that included in this statutory scheme is the power of the juvenile court to relieve a person of the obligation of registration and community notification. If a juvenile is adjudicated a violent sex offender under the statue, and therefore subject to registration and possibly community notification, after three (3) years the juvenile can petition the juvenile court to relieve him of that obligation. There would be a required standard of proof of rehabilitation in that request.

Question by Keith Munro:
Mr. Munro asked if the old juvenile provisions comply with the letter sent by Linda Baldwin of the SMART Office. Additionally, Mr. Munro inquired if the decision for a juvenile to be on the public website should be a decision made by the judge.

Response by Susan Roske:
Ms. Roske stated she did not believe the old provisions would comply, that under the old juvenile provisions the juvenile sex offenders are not required to register until determined to do so at age twenty one. Ms. Roske confirmed and agreed that the Judge should be given the discretion regarding a juvenile's inclusion in the public website and stated that the decision should be based on an individual assessment of risk and not on the specific crime charged.

Question by Keith Munro:
Mr. Munro asked that if a Judge makes an individual assessment of risk whether to require, or not to require, a juvenile to register and be included in community notification would this be appropriate.

Response by Susan Roske:
Ms. Roske stated that there will be instances that requiring a juvenile violent sex offender to register and be on the community notification website appropriate, but that most times it is not appropriate for the juvenile to be required to register and be on the community notification website.

Question by Keith Munro:
Mr. Munro asked if the new proposal makes a recommendation that tweaks the existing law, but conforms to the guidelines set forth in the SMART Office letter.

Response by Susan Roske:
Ms. Roske stated that the only issue may be with the retroactive requirement. Ms. Roske was not sure if the SMART Office letter included information regarding prospective or retroactive registration requirements. Additionally, Ms. Roske stated that before there is a plea or a finding of guilt there has to be, a notification, and then a hearing must be held regarding registration and community notification under the violent juvenile sex offender statute. Therefore, any juvenile currently under probation would not be included because they had already entered a plea, or found guilty.

*A discussion was held between Mr. Munro and Susan Roske regarding determination of juvenile retroactivity. After discussion it was determined that the two areas Ms. Baldwin's letter did not address regarding Adam Walsh compliance was with juvenile prospective or retroactive registration requirements and if a juvenile can be removed from the registry after a determination of rehabilitation has been made by the judge.

Statement by Susan Roske:
Ms. Roske wanted the committee to be aware that Missouri has recently voted in their Legislature to not become compliant with the Adam Walsh Act. Additionally, the Supreme Court of the State of Ohio recently declared that registration and community notification of juvenile delinquents violates the prohibition against cruel and unusual punishment.

Statement by Scott Shick:
Mr. Shick stated that the Juvenile Justice Administrators' goal is to find the best "middle ground" regarding dealing with sex offenders at the juvenile level and simultaneously stay in compliance with the Adam Walsh Act. They would like to retain flexibility in this venue with respect to what would be allowed by SORNA as they put forth a Bill Draft in the next Legislative Session. Mr. Shick reported that in some cases the Juvenile Justice Administrators are extremely frustrated with the response of particular juvenile sex offenders to their treatment, and would like to see them sooner than twenty one years of age. The Juvenile Justice Administrators want to make sure there is a balance in this Legislation that allows flexibility in properly dealing with each individual juvenile sex offender.

Question by Keith Munro:
For clarification, Mr. Munro stated it is his understanding that there are some juveniles that should be subject to community notification, but not all juveniles should be on the community notification website.

Response by Scott Shick:
Mr. Shick confirmed Mr. Munro's statement of understanding. Additionally, Mr. Shick stated that it should be up to the discretion of the Court, with the involvement of the District Attorney's Office; that some juveniles should not be subject to community notification.

Response by Susan Roske:
Ms. Roske stated that in Judge Voy's Order where he declared AB579 unconstitutional as applied to juveniles, he pointed out the fact that sometimes we have young juvenile sex offenders, for example ten to twelve (10-12) years of age, which would not fall under the Adam Walsh Act legislation because of their young age. However, some juveniles may end up being on probation until they are twenty one (21) years of age for numerous reasons, risky behavior, not complying with treatment, etc. With the present law the Court has the ability to declare those juveniles as adult sex offenders and subject to registration and

community notification. AB579 took that away. Juveniles who were shown to be low risk were required to register, yet some high risk juveniles under the age of fourteen (14) escaped the requirement to register. This is why the Juvenile Justice Administrators wanted to bring back the old law, therefore only a small number of actual high risk juveniles would be subject to registration and community notification.

Question by Keith Munro:
Mr. Munro asked if there were some dangerous juveniles ages ten to thirteen (10-13) who should be subject to registration and community notification.

Response by Susan Roske:
Ms. Roske confirmed that there were juveniles that fall into this category, but not necessarily registration and community notification while they are a child. However, if they are still demonstrating high risk behaviors, even though they have not re-offended, at age twenty one (21) then she feels that registration and community notification would be appropriate. Ms. Roske added studies have shown that juveniles subject to community notification on a public website tend to be ostracized, ridiculed at school, eventually dropping out of school, and probably destroying any hope of rehabilitation.

Question by Donna Coleman:
Ms. Coleman questioned if the juvenile issues would be resolved prior to the legislative session.

Response by Susan Roske:
At present Judge Voy's ruling still stands and the Nevada Supreme Court has yet to rule whether Judge Voy's Order should stand.

Response by Keith Munro:
Mr. Munro commented that we are still at a point where AB579 is still stayed in both State and Federal Court. It is not clear whether the ACLU is going to seek a Writ of Certiorari with the United States Supreme Court. The scope and expansiveness of Judge Voy's Order is not inherently clear and still pending in the Nevada Supreme Court. Therefore, there are a lot of issues pending before we can get a definitive answer.

Statement by Scott Shick:
Mr. Shick notified the committee that the Juvenile Justice Administrators continue to operate under the old statutes, and continue to wait for the Court decisions and the advisement of the Attorney General's Office when the decisions are rendered. The Juvenile Justice Administrators are moving forward with new legislation with the intent to temper the mandatory juvenile requirement to registration and community notification.

Agenda Item #7
Public Comment:

Public Comment in Carson City
Patrick Davis:
Mr. Davis stated that he would like to applaud Scott Shick and Susan Roske. He is taking this information back to a number of organizations that he represents and feels these organizations would be behind their proposals. Mr. Davis feels that these proposals are prospective in the rules, they provide for notice and hearing; they are giving the decision to a Judge who makes determination on a case by case basis specific to an individual juvenile. Mr. Davis stated that the legislature wants to put in place the over broad, over reaching Adam Walsh Act that applies to every juvenile.

Mr. Davis reported that there was a Supreme Court decision in *Reynolds v. United States* in which many of the cases that the Ninth Circuit referred to in the ACLU v. Masto decision were abrogated. There are issues that will be brought back in the Court because the legal law that the Ninth Circuit relied on is no longer there.

Mr. Davis expressed his understanding that AB579 is stayed, and that any application of that law cannot be enforced. Yet at this time his organization is aware of a number of cases that the District Attorney or the Attorney General is trying to take back to Court and adjudicate people that were already adjudicated or have been arrested or facing charges on the more strict enforcement of AB579. Mr. Davis feels this is going to create a number of constitutional issues for the State. Additionally, the Ninth Circuit legal decision was based on the fact that none of this had happened or been applied to a person creating a situation that they were underneath the law, and as soon as this law gets put into place, he knows of a large number of cases that will be filed because at that time the law will be in effect.

Statement by Brett Kandt:
Mr. Kandt stated that if Mr. Davis will provide him with the names, court and case numbers, of any instance he was alluding to in which the Attorney General or a District Attorney has gone back and has attempted to adjudicate under a State Law he will follow up. Mr. Kandt reiterated that he will need names, court, and case numbers.

Public Comment Continuation in Carson City
Patrick Davis:
Mr. Davis stated that he will have to ask permission of the party that has brought those issues to his attention.

Mr. Davis stated that the major study Dr. Brake refers to in his report relates to two hundred fifty one (251) sex offenders in 1988 which determined the sixty one

percent (61%) to eighty eight percent (88%) recidivism rate. This study was of one hundred thirty six (136) rapists and one hundred fifteen (115) child molesters which were determined to be pedophiles. In this study the broadest range of recidivism rate statistic was used, all the way down to the issuance of a traffic ticket for a period of thirty five (35) years. This study is an older study, and was specific to those two types of sex offenders. One of the caveats of this study is that the issue presented was not to be included in a meta-analysis, and not to be generalized.

Mr. Davis would like to know the re-offense rates of Dr. Brake's clients. Mr. Davis feels that if Dr. Brake is putting the issue of therapy and recidivism on the board, his track record of how his therapy has worked with his clients should be available. Mr. Davis stated there are a number of therapists in Nevada who have effectively documented their rates, but in his opinion the committee is reluctant to hear from these Nevada therapists. Mr. Davis stated that Dr. Brake's published research was all done on animals, even though the animal studies might be cognizant for physiological purposes, his published research was not done on humans or sex offenders. Mr. Davis stated that all Dr. Brake's issues are opinions, none of the material presented was peer reviewed or based on a scientific account.

Mr. Davis stated that when you look at the old higher recidivism studies vs. the new lower recidivism studies, the new studies are using specific recidivism instances and a large data population. For example, the 2005-2010 California study using over fifteen thousand (15,000) offenders on parole or probation, the recidivism rate for a re-offense of a sex crime was point one percent (.01%).

Mr. Davis would like to ask the State to authorize a study to be conducted on the actual offenses committed by sex offenders for new sex crimes. A number of years ago the State Legislature put in place a statute to track the statistics for sex offenders, two years later this statute was repealed, and has not been put back into place. In Mr. Davis' opinion the State does not wish to find out the actual recidivism rate statistics for Nevada. Mr. Davis stated in order to conduct a study there needs to be a strict definition of sex crime recidivism, not technical violations. Mr. Davis stated that there are unemployed people on parole who are being sent back to prison for violation of their parole conditions because they can't pay for their therapy. Mr. Davis stated that these are debtor's penalties and these issues are being used as statistics to determine a high likelihood of recidivism.

Wesley Goetz:
Mr. Goetz would like to know if Dr. Brake's study included treatment that he provided sex offenders for the last twenty two (22) years, and if any of the re-offenses were sex crimes or other non-related crimes such as theft. Mr. Goetz stated that Dr. Brake did not discuss what type of treatment is effective and efficient. In Mr. Goetz's opinion if Dr. Brake has been practicing for twenty two

(22) years, he should have provided information on treatment to lower recidivism rates and tier levels. Mr. Goetz stated examples of how people with other disabilities such as alcoholism are treatable. Mr. Goetz also stated that we do not have a warning system for other issues, such as solders coming back from wars' possibility of killing because they have been trained to kill. Mr. Goetz feels that retroactivity back to 1956 is cruel and unusual punishment. Mr. Goetz wants to know if any scientific research was done regarding the tier level changes in Nevada, and if they make the community safer. Mr. Goetz feels that the Adam Walsh Act is a scare tactic to make more tier level three (3) classifications of sex offenders. In reference to Susan Roske's statement that juveniles placed on the community notification website tend to be ostracized and ridiculed, Mr. Goetz stated that the same thing happens to adults. Additionally, moving adult sex offenders to a tier level three (3) makes it more difficult to find employment and housing, making them penniless and homeless, and being penniless and homeless results in reverting back to crime. Mr. Goetz hopes the committee researches scientifically the issues he has brought forward and to find out if the Adam Walsh Act will help the community be safer.

Public Comment in Las Vegas

Laurie Johnson:

Ms. Johnson stated that she has been activity involved in sex offender policy to prevent child sex abuse. Ms. Johnson thanked the committee in advance for bringing author Alyssa Klein to make a presentation this coming summer. Ms. Johnson stated that there is a lot of confusion since the decision in ACLU v. Masto. It has come to her attention that incarcerated sex offenders, and the facility in which they are being housed, are now being referenced on Las Vegas Metropolitan Police Department community notification website. Ms. Johnson sees that this could ultimately become a problem for Director Cox and the Nevada Department of Corrections (NDOC). Rex Reed mentioned at the March 7, 2012 for Administration for Justice Meeting, that the NDOC is responsible for the safety and well-being of the inmates, so they removed the conviction/crime information from the website. Ms. Johnson will submit her findings to the committee by email at a later date. In the March 7, 2012 for Administration for Justice Meeting, Ms. Johnson found that inmates had been getting people to obtain the conviction information from the NDOC website and several inmates were severely injured as a result of this information being given to the inmates. The public is still able to obtain information through the family services division through the NDOC. Now that the information can only be obtained by telephone, this should stop many from obtaining the information. Ms. Johnson feels it is important that a record is kept of those persons obtaining the information.

Ms. Johnson believes that the NDOC be allowed to treat and rehabilitate without any added danger, grief, or conflict. Ms. Johnson is bringing this information to the committee because she feels all the agencies should work together. Ms. Johnson stated that ultimately a huge number of the inmates convicted of sex

crimes will be released back into society, and it is imperative that they have been properly corrected, treated and armored with action plans for not re-offending. Ms. Johnson stated from a community safety standpoint for notification purposes, a three (3) to seven (7) business day advance notice of the release of a sex offender inmate would be sufficient. Victims of sex offenders can already obtain advance notice of offender release or movement. Ms. Johnson stated that subjecting incarcerated sex offenders to potential harm by having them on community website notification, we are doing our community and our children a grave injustice from a prevention standpoint, as they could be vested more in their own safety vs. their rehabilitation treatment.

Pat Heinz:
Ms. Heinz stated that Mr. Davis was correct in needing a definition between a technical violation and a felony charge. Ms. Heinz informed the committee she was in the process of doing research with sex offenders now released and the physic panel process. Sex offenders can't be released because they have not been certified as low risk. Ms. Heinz research includes how many times the sex offenders were denied parole because of minor technical violations, such a missing a counseling session, or drinking a single beer. Ms. Heinz stated that most people in the State, whether it is department staff or general population, are not aware of these technical violations. Ms. Heinz found Dr. Brake's presentation confusing, including a lack of people Ms. Heinz knows in the field missing from the presentation. Ms. Heinz travels the country speaking with other states parole and probation departments, and she has found that Nevada has some of the longest treatment plans for sex offenders. Ms. Heinz would like to see more training for parole and probation staff. Ms. Heinz stated that there is an excellent group in Nevada who are specialists in physiology for sex offenders, and feels that it is deplorable that they have not been asked to give a presentation. Ms. Heinz is also appalled at the lack of statistics being kept in Nevada. If decisions are going to be made using research, then more research should be conducted, and the general population should be educated and not excluded from these types of committees. Ms. Heinz reiterated her statement that the meetings concerning juvenile sex offenders and adult sex offenders should be separate.

Lawrence Rider:
Mr. Ryder stated that recidivism seems to be based on data provided by ex-felons, so unreliable they have to be polygraphed. Or if they are reliable employment bars the right to vote, those other things should be revisited. ACLU v. Masto was limited to ex post facto analysis; they did not evaluate it under the thirteenth (13^{th}) amendment.

Mr. Munro called for additional public comment, none was given. The meeting was adjourned by Keith Munro at 10:54 am.

Minutes respectfully submitted by Jan Riherd.

ATTACHMENT "A"
April 5, 2012 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "A"
April 5, 2012 Minutes

New report highlights problems with current sex offender laws.

Human Rights Watch produced a report in September 2007 titled No Easy Answers: Sex Offender Laws in the U.S. Human Rights Watch's research has revealed that sex offender registration, community notification, and residency restriction laws are ill-considered, poorly crafted, and may cause more harm than good:

- The registration laws are overbroad in scope and overlong in duration, requiring people to register who pose no safety risk;
- Under community notification laws, anyone anywhere can access online sex offender registries for purposes that may have nothing to do with public safety. Harassment of and violence against registrants have been the predictable result;
- In many cases, residency restrictions have the effect of banishing registrants from entire urban areas and forcing them to live far from their homes and families.

The evidence is overwhelming that these laws cause great harm to the people subject to them. On the other hand, supporters of these laws are not able to point to convincing evidence of public safety gains from them.

Human Rights Watch is dedicated to protecting the human rights of people around the world. They investigate and expose human rights violations, and challenge governments to end abusive practices and respect international human rights law. This particular report is informative, however lacks significant perspective from survivors of sexual abuse and assault.

Case Assignments/Transfer of Cases

When an attorney leaves the Office, within **seven (7)** days, a Notice of Substitution or Reassignment of Attorney is to be filed with the appropriate court. This applies to all local, state and federal courts. All cases assigned to that DAG must be re-assigned to another DAG or to the Bureau/Division Chief. This is to ensure that the Office does not miss any EM/ECF filing deadlines. Even if the court does not participate in electronic filing, this policy still applies to ensure all legal mail is properly distributed. A new Notice of Substitution or Reassignment of Attorney may be filed once the position is filled. Also remember to make appropriate changes to the case in ProLaw to reflect the transfer.

If a DAG transfers to another Bureau and/or Division, the above policy still applies to any case the DAG will not take with them to the new Bureau and/or Division.

As to cases the DAG retains upon transfer, the supervising secretary of the new Bureau and/or Division must change the Area of Law in ProLaw to accurately reflect the new Bureau and/or Division on all cases assigned to the DAG to ensure correct monthly management reporting.

ATTACHMENT "B"
April 5, 2012 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "B"
April 5, 2012 Minutes

MEETING MINUTES

Organization: Advisory Committee to Study Laws Concerning Sex Offender Registration

Date: December 22, 2011

Meeting Location: Legislative Counsel Bureau
401 S. Carson Street
Carson City, Nevada 89701
Conference Room # 2134

Video Teleconferenced: Legislative Counsel Bureau
555 E. Washington Avenue
Las Vegas, Nevada 89101
Conference Room # 4401

Committee Attendees:
Keith Munro, Brett Kandt, Senator Ruben Kihuen, Assemblyman Richard Carrillo, Curtiss Kull, Scott Shick, Elizabeth Neighbors, Committee Legal Counsel Julie Towler, and Secretary Jan Riherd.

Members of the Public Who Signed In As Present:
Edie Cartwright, Laurie Johnson, Dr. Jesse Anderson, Wesley Goetz, Mike Wright, Frank Cervantes, Sally Ramm, Julie Butler, Diane McCord, Patrick Davis, Nancy M. Leake, Anthony Leake in Carson City and Laurie Johnson in Las Vegas.

Agenda Item #1:
Call to Order and Roll Call:
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 1:05 am. Mr. Munro asked for roll call, the above members of the committee were present.

Agenda Item #2:
Public Comment:
Mr. Munro called for public comment. The following members of the public came forward and spoke:

No public comment from Las Vegas.

Public Comment in Carson City:
Wesley Goetz:
Mr. Goetz stated that he was at the previous meeting on October 11, 2011 and at that meeting asked if Nevada's tier levels were scientifically validated and cross validated. Mr. Goetz said he had been conducting research on this subject. He procured an Introduction of a letter from a June 21, 1996 meeting; however Mr.

Goetz is having difficulty locating meeting minutes, or information regarding the 1996 creation of the Risk Assessment Scale for Sex Offenders to determine tier levels. Mr. Goetz inquired if this committee was doing any studies on this subject. It is Mr. Goetz's understanding that the current Risk Assessment Scale was developed by Nevada Parole and Probation with input from law enforcement and correctional personnel, but he does not believe it was scientifically done. Mr. Goetz feels it is important to procure the research to see if this Assessment Scale was scientifically done. Additionally, Mr. Goetz stated that Sex Offenders receive treatment in prison, but would like to know if that treatment is helpful, because it seems to him that the tier level remains the same when the offender is released from prison. If an offender is in prison receiving treatment for example 10 to 15 years it should lower risk assessment. Mr. Goetz stated that in the current Risk Assessment Scale treatment only lowers the risk assessment a few points. However, in the determination of the degree of contact of the offender's crime, three points plus a multiplication of five can be added to the risk assessment. It is Mr. Goetz's opinion that if an offender is receiving effective treatment in prison by a psychologist it should lower the offender's risk assessment by the appropriate number of points and have the ability of multiplication of points by five instead of the current multiplication of points by one.

Agenda Item #3
Approve October 11, 2011 Meeting Minutes:
The minutes of the October 11, 2011 meeting were reviewed; Keith Munro called for any suggested additions or corrections, none voiced. Scott Shick made a motion to approve the minutes, Curtis Kull seconded the motion; all committee members present were in favor of the motion. The motion was carried and the minutes of the October 11, 2011 meeting were approved. (See, Attachment A).

Agenda Item #4
Audio Recording of December 7, 2011 9th Circuit Oral Argument in ACLU v. Masto et al.:
Mr. Munro stated that on December 7, 2011 there was an Argument before the United States Court of Appeals in San Francisco. One of the questions effecting this study group has been the pending case ACLU v. Masto. Several years ago, the United States District Court Judge Mahan issued an injunction, which Mr. Munro explained was a stay, of Nevada's Adam Walsh sex offender laws. Mr. Munro estimated that this case has been on appeal for approximately three years. The 9th Circuit has had an Oral Argument in this matter and the outcome of this case will effect what this group needs to study, and any changes or improvements. Mr. Munro felt that this oral argument needed to be set forth for the record for this committee because next September we will be required to put information together for the Legislature so they can utilize this information in consideration during the upcoming Legislative session. Mr. Munro stated he wanted to play this oral argument and give the committee members and the members of the audience an indication of the difficulty of this issue. Julie Towler,

Legal Counsel for the Committee, was present at the oral argument and played a downloaded recording of the December 7, 2011 9th Circuit Oral Argument. An audio CD of this recording is attached. (See Attachment B). The Oral Argument can also be found online on the 9th Circuit website at: http://www.ca9.uscourts.gov/media/view_subpage.php?pk_id=0000008460

At the conclusion of the playing of this recording Mr. Munro stated that there are a lot of strong questions in this matter, and that there were well prepared litigants, Binu Palal Deputy representing the Attorney General's Office and Maggie McLetchie representing the ACLU. It is also evident that there was a lot of thought from the Judges into this issue and they are trying to come up with the proper resolution.

Mr. Munro asked if anyone wanted to comment on this issue. The following member came forward:

Scott Shick:
When he researched the Nevada Legislature hearings and sessions regarding AB579, their concern was the lack of Juvenile Justice representation or testimony regarding the impact on juvenile law and juvenile sentencing in the Courts and he felt this was reflected in the recording played today.

Agenda Item #5
Presentation of Draft Letter to Linda Baldwin, Director of SMART by Julie Towler:
Mr. Munro stated that Nevada has been certified compliant by the Federal Government regarding the Adam Walsh Act, and has a letter from the Department of Justice to Governor Sandoval stating that Nevada has substantially complied with federal requirements. Now that Nevada has complied with federal requirements, and has a Court decision coming soon that may change the status of Nevada's laws, if Nevada wanted to change some of its law and maintain its certification and retain Byrne Grant Funding. Mr. Munro stated that the committee wanted to research how Nevada would go about this process. The federal guidelines provide no mechanism for this process. Mr. Munro stated he thought there was probably no mechanism in place because very few states have been deemed compliant, and that Nevada is probably the first state to study these issues.

Mr. Munro continued by stating at the last meeting He asked Susan Roske of the Clark County Public Defender's office if she would prepare a draft letter to Linda Baldwin, Director of SMART regarding this process/issue. Ms. Roske did prepare a draft letter and it was an excellent start and used as a framework by committee Legal Counsel Julie Towler to add to this draft letter.

Ms. Towler presented the draft letter to the committee. (See Attachment C). Ms. Towler stated that the letter addresses the most relevant facts. It discusses the

substantial implementation letter, this committee, and the supplemental guidelines that were issued by the SMART office in January 2011. This letter quotes a passage from those guidelines basically stating that there appears to be a discretionary exemption from public website disclosure of sex offenders required to register on the basis of juvenile delinquency adjudication. The letter also discusses AB579 and what is currently required. Additionally, that this committee has not taken a position to accept or reject the premises, but are requesting guidance from the SMART office to determine if there is a process in which the law could be adjusted in preparation for the 2013 Nevada Legislative Session. Ms. Towler called for any questions.

Question by Keith Munro:
Mr. Munro stated that in an effort for clarity, the Federal SMART Office, Department of Justice, has said there is an exception for juveniles regarding community notification.

Answer by Julie Towler:
Ms. Towler responded stating that guidelines specify only public website notification. Community notification encompasses a variety of ways that a community is notified. It is Ms. Towler's understanding that website notification is one part of community notification.

Question by Keith Munro:
Mr. Munro stated that the laws Nevada passed in 2007 do not provide for that type of flexibility.

Answer by Julie Towler:
Mr. Towler confirmed that is her understanding of the way AB579 is written.

Question by Keith Munro:
Mr. Munro stated that if the draft letter to Ms. Baldwin was sent, Nevada would be attempting to determine if we could make that change in Nevada law to allow for a possible juvenile exemption and public website notification and still maintain certification.

Answer by Julie Towler:
Mr. Towler confirmed by stating "Yes".

Statement by Brett Kandt:
Mr. Kandt stated he was the one who requested that the letter be drafted and thanked Ms. Roske and Ms. Towler for their efforts. Mr. Kandt moved that this committee accept this draft letter and submit this letter to Ms. Baldwin.

Statement by Keith Munro:
Mr. Munro stated that he wanted to explore any additional questions before taking a vote on that motion. Mr. Munro asked, without expectation of a firm

position, of Senator Kihuen and Assemblyman Carrillo if this is something the Legislature could potentially address. It is his understanding that the Legislature considers many issues including money, grant funding, public safety and would this possibly assist the Legislature.

Answer by Senator Kihuen:
Senator Kihuen agreed and it was his personal opinion that this would be helpful.

Answer by Assemblyman Carrillo:
Assemblyman Carrillo agreed with Senator Kihuen that this is something we need to move forward on and attempt to get this cleared up.

Statement by Keith Munro:
Mr. Munro agreed and stated that this was just a letter asking for the process.

Statement by Scott Shick:
Mr. Shick stated that he believes that this committee should move forward with the letter, that the Juvenile Justice Administrators are looking for an avenue to have discretion regarding juveniles on the public website, and believes that this is a step in the right direction.

Mr. Munro stated that Mr. Kandt's motion was on the table and called for a second to that motion. Scott Shick seconded the motion. Mr. Munro asked that Mr. Kandt restate the motion prior to the vote. Mr. Kandt re-stated that he moves that this committee approve the letter that has been drafted by Ms. Towler and requests that the letter be sent by the Attorney General to the SMART Office. Mr. Kandt continued by stating that he feels that it is necessary to take this action now and not defer it, that he feels the SMART office might respond by stating that Nevada submit proposed legislative changes and they will inform us if we remain substantially compliant. If the SMART office does respond in this manner, we need to have sufficient time given the deadlines for the submission of bill draft requests to the Legislature.

Statement by Keith Munro:
Mr. Munro stated that if the SMART office does not respond that at least we know the landscape, and our members of the Legislature know that they are taking a risk if any changes are made. However, if we send this letter and receive a response that there could be a mechanism that will allow our public policy makers an opportunity to know there is an avenue for continuing certification before they make any changes.

Mr. Munro having received the motion and the second to that motion called for a vote. The motion was carried unanimously.

Agenda Item #6
Public Comment:

Public Comment in Carson City:
Patrick Davis
Mr. Davis introduced himself as a member of Nevadans for Civil Liberties, and asked the committee to review the registration laws in different states. His organization is bringing these articles to the committee's attention in relation to other States that are having constitutional issues with their registration laws. Mr. Davis stated that that AB579 actually started with SB192, the registration laws in 1997. Mr. Davis went on to state that a lot of issues are constitutionality issues as in Smith v. Doe. If you go back to SB192 in 1997 Mr. Davis feels that it is clear that the registration laws that are in effect at this time, not counting AB579, violate the standards set forth in Smith v. Doe. Mr. Davis informed the committee that there is a member of their organization that will be filing a lawsuit in State Court challenging the validity of SB192 and NRS Chapter 179 regarding registration laws. Mr. Davis stated that a number of other states have had issues with the laws, notably Ohio, who has had to spend millions of dollars revamping their system and dealing with lawsuits regarding the fallout of Adam Walsh issues. Mr. Davis stated that the Legislature in Kentucky overhauled a lot of their sex offender laws based scientific fact and empirical studies, which in his opinion Nevada is ignoring. Mr. Davis went on to state that in 2005 it was mandated that Nevada keep statistics, and two years later that law was repealed. Mr. Davis stated that Nevada does not want to know the true statistics. Therefore, Nevada is left with using statistics from other states, which his organization is supplying to this committee and the Legislature. Mr. Davis stated that these facts/statistics represent the true rate of recidivism, and that the registration laws were imposed for public safety. If there is no public safety reason for these laws to be in effect, because the statistics used to implement that law was wrong, then there is a constitutional challenge to overthrow that law. In most state's that deal with recidivism rates for public safety their organization is discovering that recidivism is between point one percent and five percent, which makes sex offenders the lowest rate of recidivism of any crime in the country. Mr. Davis stated that all the dollars for recidivism are being spent for sex offenders and against no other types of criminals. Mr. Davis stated that in listening to the 9th Circuit argument there are many issues and it is a very complex situation. The committee needs to go back to 1997 in their studies. Mr. Davis presented a number of reports and statistics to the committee for their consideration. (See Attachment D).

Mr. Davis asked the committee to allow for public comment, not only at the beginning of the meeting and the end of the meeting, but also during each individual agenda item. Mr. Davis also stated that he had difficulty locating the minutes from the previous meeting online. He was finally able to procure a copy a few days prior to this meeting and requested that the minutes be available on line within thirty days following the meeting.

Response by Keith Munro:
Mr. Munro stated that this committee is required to meet twice per year. Additionally, Mr. Munro requested that the clerk make sure there is an item placed on the on the next meeting's Agenda that the public may come forward and make any changes to the official minutes of today's meeting. The committee wants the minutes to accurately reflect the meeting, and if there are any concerns to the accuracy of the minutes to please come forward, that this committee strives to make these minutes accurate.

Response by Patrick Davis:
Mr. Davis stated that it was his opinion that the minutes for the previous meeting were accurate and comprehensive. Mr. Davis stated that he appreciated that the statements/points made by each speaker were not edited.

Response by Keith Munro:
Mr. Munro stated that there were two items on the Agenda, and if Mr. Davis wanted to comment on either of these items, he could do so at this time.

Response by Patrick Davis:
Mr. Davis appreciated being given extra time, that he prepared his comments to fit into the five minute time limit. Mr. Davis stated that there are a lot of issues the 9th Circuit brought up, which creates a lot of issues for this committee. It is apparent to Mr. Davis that the 9th Circuit ruling could go either way, and until that ruling this committee is limited. Mr. Davis stated that looking at the Smith v. Doe challenges he feels that it is ex post facto and there are many ways those rulings can be taken for double jeopardy, and that there are other ways to be challenged. As previously stated by Mr. Davis it will be challenged in State Court. Mr. Davis stated that in numerous other rulings the 9th Circuit upheld the challenge in Smith v. Doe, it was the Supreme Court that overturned those challenges. It is Mr. Davis' assumption that the 9th Circuit will rule in favor of the ACLU. In Smith v. Doe, Doe took the case back to State Court and won on ex post facto challenges as to State law.

Public Comment from Carson City
Nancy Leake:
Ms. Leake introduced herself as a member of Nevadans for Civil Liberties and an advocate for offender rights. She is asking the committee to review the recidivism statistics. Ms. Leake read verbatim a portion of a December 22, 2011letter and attachments from Patrick Davis to the Advisory Committee to Study Laws Concerning Sex Offender Registration. (See Attachment E). Ms. Leake stated that each State's law is different, and she believes that the State should look at each person individually, that people change.

Public Comment from Las Vegas

Laurie Johnson:

Ms. Johnson introduced herself as a sexual abuse victim and the mother of a juvenile adjudicated as an adult sex offender. Ms. Johnson stated that in her experiences and knowledge that she has gained first hand as a victim and at the offender level she would like the safest outcome for all. She would like to send the northern committee members a published version of "A Reasoned Approach, Reshaping Sex Offender Policy to Prevent Child Sexual Abuse", a 54 page policy paper by Alisa Klein. Ms. Johnson did not have a copy of the document available at the meeting, but would to submit to the committee at a later date. Ms. Johnson informed the committee that she has previously submitted this document to the Legislative Commission and the Parole Commission. Ms. Johnson requested an extension to fully present this Policy as to enable the author of this document to make the presentation to the committee. Ms. Johnson will provide the committee with scheduling information in an effort to coordinate the author's appearance at a future meeting.

Ms. Johnson expressed her personal opinion regarding the excessive expense of compliance with the Adam Walsh Act. It is her understanding that four states, Arizona, California, Colorado, and Texas have chosen not to comply because of cost issues. The policy presented references Colorado and Texas as states that can be used as examples in forming SOMB's, which are Sex Offender Management Boards. Ms. Johnson stated that her focus, whether compliance with the Adam Walsh Act is met or not, is to zero in on the truly violent dangerous sex offenders using proper assessment instruments. Ms. Johnson stated that we as a state are relying on the behavioral model, which is solely based on the conviction crime, to determine the risk levels of the sex offenders. Ms. Johnson feels that in reading this policy the proven effectiveness of the state implementing Actuarial Risk Assessment Instruments would benefit Nevada. These instruments allow the state to focus on who are the dangerous sex offenders using evidence based policy. Ms. Johnson ran out of time and was unable to complete her presentation. Ms. Johnson's complete presentation was presented in written form to the committee. (See Attachment E)

Response by Keith Munro:

Mr. Munro stated that it is the committee's intent to ask Alisa Klein speak at a future meeting.

Additional Public Comment from Carson City:

Anthony Leake:

Mr. Leake introduced himself as a member of Nevadans for Civil Liberties and an advocate for offender rights. He is asking the committee to review the recidivism statistics. Mr. Leake read verbatim a portion of a December 22, 2011 letter and attachments from Patrick Davis to the Advisory Committee to Study Laws Concerning Sex Offender Registration. (See Attachment G).

Warner Held:
Mr. Held continued to read verbatim a portion of a December 22, 2011 letter and attachments from Patrick Davis to the Advisory committee to Study Laws Concerning Sex Offender Registration. (See Attachment H).

Dr. Jesse Anderson, PhD:
Dr. Anderson stated with regard to recidivism, it is the people at Penn State University that have an issue. Once a person has committed a sexual offence and gone through therapy the recidivism rate is very low. In reference to Ms. Laurie Johnson, a public comment speaker from Las Vegas, and her statement that she was a victim and that her son was a juvenile adjudicated as an adult, Dr. Anderson wanted to submit for the record the following information. With regards to a juvenile and website notification, if the individual is adjudicated as an adult, that notification should remain. Juveniles should not be on the website. Dr. Anderson stated that the reason being because once a juvenile turns 18, and all the background checks required for employment, that publicly available online information would cause problems with the juvenile being able to obtain employment and learn lessons such as punctuality and responsibility. If the implementation of the draft letter and recommendations regarding juveniles to the legislature comes to fruition, then Dr. Anderson believes that there needs to be some leeway to the Courts, the law enforcement personnel, and the Juvenile Justice Administrators, so they can do what is best for each individual. Dr. Anderson does not believe that categorizing all juveniles into one lump, or doing a tier assessment on juveniles is adequate. Dr. Anderson does not want the evaluation of the juveniles to be ambiguous. Ambiguity hurts, specifics are easier to deal with, and then we can evaluate the juveniles one by one.

Wesley Goetz:
Mr. Goetz stated that if Nevada accepts the Adam Walsh Act, it will cause Nevada sex offenders to become more unstable in their ability to find housing and employment making more and more sex offenders penniless and homeless. Mr. Goetz stated that he heard a statistic on the radio that 14,000 children in Nevada were homeless. When an individual is penniless and homeless he turns to crime just to eat. Therefore, he believes that implementing the Adam Walsh Act will cause these problems to Nevada sex offenders. Mr. Goetz stated that he is a sex offender having problems locating employment, and if not for the aid of his family he would be homeless. Mr. Goetz does not believe it is right for Nevada to make sex offenders homeless when there are so many other people already homeless. It would be possible that the sex offenders will revert to crime, maybe not another sex offense, but an offense such as theft, causing increased prison costs. This could result in Nevada becoming penniless. In reference to the policy paper "A Reasoned Approach, Reshaping Sex Offender Policy to Prevent Child Sexual Abuse" that Laurie Johnson submitted, it refers to sex offenders as being monsters, pedophiles, child molesters, etc. which puts a label on sex offenders. This label would make sex offenders penniless and homeless because employers, not wanting their businesses to suffer a loss of revenue

because they hired a sex offender, would not hire the sex offenders. Mr. Goetz believes a better use of Nevada's money would be spent on more treatment for sex offenders, make community support networks for sex offenders, enabling the sex offenders to locate housing and employment. The treatment should enable the sex offender to have a normal healthy life. If the sex offender has a normal healthy life, he will make friends and have a support system. It is Mr. Goetz's opinion that Nevada's Parole and Probation Division want sex offenders to have employment that is "behind the scenes" such as dishwashers and mine workers, not working with the public. It is Mr. Goetz's opinion that when a sex offender is working behind the scenes, it makes the offender feel they are a bad person and they come straight home from work becoming hermits. If a person is a hermit they are anti-social. If a person is anti-social, an offender will be reverted back to crime because there is no one to assist the offender in their emotional problems. It is also Mr. Goetz's opinion that implementing the Adam Walsh Act would not be the right avenue for Nevada. Mr. Goetz referred to Henry Reid's statement that Nevada should be the leaders, and not be left behind. Mr. Goetz stated that if Nevada wants to be a leader, then Nevada should invent ways for the sex offender to get treatment and go back to a normal healthy life with a tier level one; or no tier level at all, without a duty to warn. With the duty to warn, finding employment is difficult. This is information Mr. Goetz would like the committee to consider. Mr. Goetz is unclear as to what the committee is going to do. Mr. Goetz stated that the public was giving more information to the committee than the committee was giving to the public. Mr. Goetz ended his public comment by asking the committee if anyone had read the policy paper provided by Laurie Johnson.

Response by Keith Munro:
Mr. Munro stated that he had read "A Reasoned Approach, Reshaping Sex Offender Policy to Prevent Child Sexual Abuse", a 54 page policy paper written by Alisa Klein.

Mr. Munro called for additional public comment, none was given. The meeting was adjourned by Keith Munro at 2:50 pm.

Minutes respectfully submitted by Jan Riherd.

ATTACHMENT "A"
December 22, 2011 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "A"
December 22, 2011 Minutes

MEETING MINUTES

Organization:	Advisory Committee to Study Laws Concerning Sex Offender Registration
Date:	October 11, 2011
Meeting Location:	Legislative Counsel Bureau 401 S. Carson Street Carson City, Nevada 89701 Conference Room # 2134
Video Teleconferenced:	Legislative Counsel Bureau 555 E. Washington Avenue Las Vegas, Nevada 89101 Conference Room # 4412

Committee Attendees:
Keith Munro, Brett Kandt, Assemblyman Richard Carrillo, Susan Roske, Donna Coleman, Curtiss Kull, Scott Shick, Dane Clauson (on behalf of Katrina Rogers – ACLU), Committee Legal Counsel Julie Towler, and Secretary Jan Riherd.

Members of the Public Who Signed In As Present:
Laurie Johnson, Dr. Jesse Anderson, Wesley Goetz, David Smith, Pat Saunders, Denise Stall, Char Hoerth, Diane McCord, Patrick Davis, Edie Cartwright, Pat Hines, and John Hines.

Call to Order and Public Comment:
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 10:00 am. Mr. Munro called for public comment. The following members of the public came forward and spoke:

No public comment from Las Vegas.

Public Comment in Carson City:
Laurie Johnson:
Ms. Johnson appeared before the committee regarding a document entitled Reshaping Sex Offender Policy to Prevent Child Sexual Abuse. Ms. Johnson did not have a copy of the document available at the meeting, but would to submit to the committee at a later date. Ms. Johnson informed the committee that she has previously submitted this document to the Legislative Commission and the Parole Commission. Ms. Johnson requested an extension to fully present this Policy as to enable the author of this document to make the presentation to the committee. Ms. Johnson will provide the committee with scheduling information in an effort to coordinate the author's appearance at a future meeting. Ms. Johnson expressed her personal opinion regarding the excessive expense of compliance with the Adam Walsh Act. It is her understanding that four states, Arizona, California,

Colorado, and Texas have chosen not to comply because of cost issues. The policy presented references Colorado and Texas as states that can be used as examples in forming SOMB's, which are Sex Offender Management Boards. Ms. Johnson stated that her focus, whether compliance with the Adam Walsh Act is met or not, is to zero in on the truly violent dangerous sex offenders using proper assessment instruments. Ms. Johnson stated that we as a state are relying on the behavioral model, which is solely based on the conviction crime, to determine the risk levels of the sex offenders. Ms. Johnson feels that in reading this policy the proven effectiveness of the state implementing Actuarial Risk Assessment Instruments would benefit Nevada. These instruments allow the state to focus on who are the dangerous sex offenders using evidence based policy.

Dr. Jessie Anderson, PhD:
Dr. Anderson introduced himself as a Doctor in clinical physiology specializing in criminal behavior and sex offences. Dr. Anderson stated that his understanding of the Adam Walsh Act in its meaning was initiated for a good purpose, but felt that it got carried away. From a physiological point of view, he feels that the tier three statuses create a danger to the community. It is Mr. Anderson's opinion if Nevada saturates the system with a large number of individuals with tier three statuses, the community will become complacent to the tier three evaluations. The tier three ranking should only be utilized on the small number of individuals who are a high risk to the community. It is Mr. Anderson's understanding the actual rate of recidivism is very low. Mr. Anderson also addressed juvenile behavior regarding sex offences. Juveniles can be easily rehabilitated, and unless the juvenile behavior is repetitive, or there is some organic malfunction of the brain that will continue the behavior, he feels it is detrimental to require adults to register for something they did as a minor. Mr. Anderson feels that the method the State currently uses to evaluate sex offender's tier ranking is good. Mr. Anderson also believes that implementing the Adam Walsh Act is and will be extremely expensive. From a physiological point of view regarding juvenile registration it is his opinion that the current system, while not perfect, works. Mr. Anderson presented the committee, for their review, a publication entitled, The Psychology Behind the Crime, authored by himself, Jesse W. Anderson, Psy.D. (See, Attachment A.)

Patrick Davis:
Mr. Davis introduced himself as a member of Nevadans for Civil Liberties, a new organization that is attempting to bring forward statistics and studies regarding sex offenders. Specifically Mr. Davis addressed recidivism statistics; because it is his understanding that the registration and notification laws are based on the assumption that there is a high rate of recidivism among sex offenders. Mr. Davis presented results from studies done by several states and organizations. A 2003 Department of Justice study found that the rate of recidivism for a new sex crime was 3.5% within three years of being placed on supervision. This study has been followed up by more recent studies by the Department of Justice which confirm this recidivism fact. In Maryland in a study from July, 2008 to

December, 2009 involving over 2,300 offenders under lifetime supervision, the recidivism rate was one third of one percent. In Colorado, in a study conducted in 2009, less than one percent of offenders actively supervised under lifetime supervision committed a new sex offense. In Arizona, in a study conducted from May, 1993 to August, 2000 the rate of recidivism for offenders under active lifetime supervision was one point eight percent. In a report by Illinois Voices for Freedom, the rate of recidivism for sex offenders is the second lowest rate in the country in relation to new offenses of any kind. In a California study released in July, 2011, very few sex offenders are deemed to be violent predators. In this study of over 31,000 offenders only one third of one percent was deemed to be a sexually violent offender. Mr. Davis requests the committee to review the statistics being generated as they look to changing the law. The Nevadans for Civil Liberties organization will continue to supply the Legislature and other related state agencies with updated statistics. Mr. Davis provided the committee with a packet of statistical information. (See, Attachment B.)

Pat Hines:
Ms. Hines requested to be on all advanced Agenda mailings. She stated that it was difficult to locate the meeting on the internet. She has contacted the LCB building staff and they have indicated to Ms. Hines that if contacted they will add the meeting to their calendar.

Ms. Hines would like to procure copies of the article Reshaping Sex Offender Policy to Prevent Child Sexual Abuse and present them to the committee. Ms. Hines estimates that approximately fifty percent of this article refers to adult sex offenders. Ms. Hines presented information from an article by the Justice Policy Institute regarding getting the Adam Walsh Act started and the software needed, which included a cost estimate of over four million dollars. Ms. Hines questioned whether Nevada wanted to expend that amount of money. Ms. Hines requests that we be truthful, honest, and respectful of each other and share information. She feels that the tier levels are unrealistic and that all people are, including sex offenders, different. They all have different personalities and attitudes and should not be treated the same. Ms. Hines stated that Nevada has the ability to go back to offenses starting in 1956. She hopes that the committee will give considerable attention to adult sex offender tier levels and also keep the juveniles off the registration. In reviewing past meeting minutes Ms. Hines was disappointed that the physic panel situation in Nevada was not referenced. She also requested that Nevada come up with statistics regarding successes, accomplishments, failures, and cost evaluations regarding this issue.

Wesley Goetz:
Mr. Goetz read from the California Penal Code regarding State Authorized Risk Assessment Tools for sex offenders and their requirements for reliable, objective, and well established protocols on recidivism, scientific validation and cross validations. Mr. Goetz's opinion is that Nevada's tier levels should be scientifically validated and cross validated. He believes that Nevada's Sex

Offender Assessment Scale was not scientifically validated. Mr. Goetz requests that a study be done to scientifically validate the Sex Offender Assessment Scale that is used in determining offender's tier levels. Mr. Goetz believes that a factor in determining/evaluating the offender's tier level should include the time the offender spent in prison and the treatment received while incarcerated. Mr. Goetz believes that all members of the physic panel should be professional physiologists licensed by the state. Mr. Goetz referenced NRS 179D.132 regarding Attorney General appointment to this committee of a mental health professional. Mr. Goetz requests that the party appointed by the Attorney General be a professional that is licensed by the state that has experience in treating sex offenders. Mr. Goetz suggested a person by the name of Mr. Earl Nielson that is licensed in Nevada and has experience in the treatment of sex offenders, and is interested in being a member of this committee if appointed. Mr. Goetz also requests that the treatment provided in prison to sex offenders be effective in lowering tier levels.

No further public comment was offered. Public Comment was closed at 10:34 am.

Keith Munro took agenda item number six out of order.

Agenda Item # 6:
David Smith, Nevada Board of Parole Commissioners, presentation on AB 18 to the 2011 Legislative Session Reinstitution of Parole Provisions of SB 471.
Mr. Smith provided information and details on AB 18 submitted during the 2011 Legislative Session. Mr. Smith read the attached prepared remarks to the committee. (See, Attachment C).

Agenda Item #3:
Review and approval of the November 17, 2010 meeting minutes.
The minutes of the November 17, 2010 meeting were reviewed; Keith Munro called for any suggested additions or corrections, none voiced. Brett Kandt made a motion to approve the minutes, Scott Shick seconded the motion; all committee members present were in favor of the motion. The motion was carried and the minutes of the November 17, 2010 meeting were approved. (See, Attachment D).

Agenda Item #4:
Presentation by Julie B. Towler, Deputy Attorney General, on AB 85 entitled "Update on Sex Offender Registration Law".
Julie Towler provided a power point presentation entitled "Update on Sex Offender Registration Law". Ms. Towler provided a written copy of the presentation to the committee. (See, Attachment E). Ms. Towler presented information on the following topics.

New Legislation:
Assembly Bill 57 was sponsored by the Attorney General's Office, passed in the last Legislative Session, and went into effect on May 18, 2011. Transient sex offenders must now report their location, and every additionally report every thirty days if their location changes. Visiting sex offenders must initially report their stay location of thirty days or less, and report again if staying longer than thirty days.

Nevada's Compliance with SORNA:
On May 10, 2011, a letter received by Governor Sandoval from the SMART office specified that Nevada has substantial implemented SORNA. Prior to this letter Nevada had been deemed substantially compliant but for the injunction in ACLU v. Masto et. al. Additionally, the 9th Circuit has scheduled oral arguments in ACLU v. Masto on December 7, 2011.

Ohio Supreme Court Case:
In *Ohio v. Williams* the Court found the imposition of SB 10 on sex offenders who committed an offense prior to the enactment of SB 10 violates Section 28, Article II of the Ohio Constitution, which is Ohio's prohibition against retroactive laws. SB 10 is Ohio's SORNA equivalent to Nevada's AB579. SB 10 went into effect on January 1, 2008. The appellant in this matter was indicted under Ohio state law in November, 2007. The appellant was sentenced according to SB10 and argued that he should be sentenced under older sex offender laws that were in effect when he committed the offense. On appeal it was argued that SB10 can not constitutionally be applied to a defendant whose offense occurred prior to July 1, 2007. The Appellate Court affirmed the decision of the Sentencing Court. Past Ohio Supreme Court decisions held that the chapter concerning sex offender laws was in fact remedial. In reviewing SB 10, and the changes to that chapter as codified in Ohio law, the Ohio Supreme Court held that the chapter containing sex offender registration laws were in fact punitive.

Two U.S. Supreme Court Cases:
US v. Juvenile Male, was decided in June, 2011. The Supreme Court found that the 9th Circuit had no authority to determine that SORNA violates the ex post facto clause when applied to juveniles adjudicated delinquent prior the enactment of SORNA. The respondent is this case was the defendant in the criminal action who admitted to sexually abusing a younger child on an Indian reservation, and was charged under the Federal Juvenile Delinquency Act. The defendant was sentenced to two years of juvenile detention, followed by juvenile suspension until his twenty first birthday. The defendant was to spend the first six months of post confinement supervision in a pre-release center. While in juvenile detention SORNA was enacted. In July, 2007 the trial court determined that the defendant failed to comply with the requirements of the pre-release program. The court revoked the juvenile suspension, imposed an additional six month term of detention, and ordered that the detention be followed by supervision until the defendant's twenty first birthday. The court also imposed a special condition of

supervision that required the defendant to register and keep current as a sex offender. The defendant appealed the special condition of registration to the 9th Circuit, and in May, 2008, while the appeal was still pending, the defendant turned twenty one and the juvenile suspension order requiring him to register as a sex offender expired. The 9th Circuit ruling, which occurred over a year after the defendant turned twenty one, stated that applying SORNA to juvenile delinquents who committed their offenses before SORNA's passing violated the ex post facto clause. The United States petitioned for a Writ of Certiorari to the U.S. Supreme Court, while the Writ was pending the U.S. Supreme Court entered a Per Curium Order certifying a preliminary question to the Montana Law to the Montana Supreme Court. Ultimately the 9th Circuit ruling was vacated and the case was remanded with instructions to dismiss the appeal to the 9th Circuit.

Ms. Towler reported that in the next term the U.S. Supreme Court will hear arguments in *Reynolds v. U.S.* In this case the issue is whether the sex offenders convicted before the enactment of SORNA has standing to challenge the validity of the Attorney General's interim rule. In this case 42 U.S.C. §16913 specified the U.S. Attorney General has the authority to specify SORNA's applicability to sex offenders convicted before SORNA's enactment or SORNA's implementation in a particular jurisdiction. The interim rule issued on February 28, 2007, specified that requirements of SORNA apply to all sex offenders, including sex offenders convicted for the offense in which registration is required, prior to the enactment of SORNA

Two 9th Circuit Cases:

U.S. v. George, which was decided in November, 2010, found that a state's failure to implement SORNA does not preclude a federal prosecution for failure to register as a sex offender in the same state; and that Congress had the power under its broad commerce clause authority to enact SORNA; and that SORNA's registration requirements do not violate the ex post facto clause of the Constitution. In this case the appellant was convicted of a federal sex crime on an Indian reservation and served the sentence for the offense. He failed to register as a sex offender in violation of SORNA; he was convicted to that offense in 2008 pursuant to a conditional guilty plea. He appealed, arguing that his conviction was invalid because Washington, which was the location of the requirement to register, did not implement SORNA. Regarding the ex post facto challenge, the court reasoned that the appellant was under a continuing obligation to register. The SORNA violation was his failure to register as a sex offender after he moved to Washington. The indictment charged the appellant with failure on or about September 27, 2007 which occurred after the statute had been enacted.

The decision in *U.S. v. Valverde* was issued approximately one month after the decision in *U.S. v. George*. The court in *U.S. v. Valverde* found that SORNA became effective retroactively to sex offenders convicted before the statutes enactment on August 1, 2008, which was thirty days following the publication of

the final SMART guidelines along with the Attorney General's response to comments pursuant to the Administrative Procedures Act (APA). In this particular case in 2002, the defendant pled guilty to numerous counts of sex crimes pursuant to California law. He was sentenced to twelve years in prison. Prior to his release he signed a form notifying him that under California Law he was required to register as a sex offender within five days of being released from prison, and if he moved to another state he was required to register with that state within ten days. The defendant was released in 2008 with instructions to report to a parole officer the next day. He failed to report and was apprehended in Missouri living with a family member, he never registered in California or Missouri. In April, 2008 the defendant was indicted for traveling interstate and foreign commerce and knowingly failed to register as a sex offender. In February, 2009 the district court dismissed the indictment on the basis that relevant SORNA provisions are not valid exercises of congressional authority to regulate interstate commerce. The district court did not rule on the defendant's retroactivity argument. This 9th Circuit decision referred to *U.S. v. George* on the commerce clause claim. As previously discussed in *Reynolds v. U.S* the Court discussed at length the interim rule making SORNA applicable to all sex offenders that was issued by the U.S. Attorney General on February 28, 2007. Ms. Towler gave some background information on the Administrative Procedure Act (APA). The APA allows an agency to promulgate valid regulations without complying with procedural requirements of notice, comment period, and notice of final rule with comments published. The exception is allowable for when good cause finds and incorporates the finding and a brief statement of reasons therefore in the rules issued. That notice and public procedure thereon are impracticable, unnecessary, or contrary to public interests. Ms. Towler informed the committee that the U.S. Attorney General relied on this exception when the interim rule was made. The U.S. Attorney General stated that notice and comment was contrary to the public interest. The 9th Circuit found that in this case, the statement with the interim rule provided no rational justification for why complying with the normal requirements of the APA would have resulted in a sufficient risk of harm to justify the issuance of the interim rule on an emergency basis, and the 9th Circuit determined this to be clear error. In this case, the 9th Circuit decision is in a minority of decisions with the 6th Circuit. The 4th Circuit, the 7th Circuit, and the 11th Circuit have all ruled that the interim regulations were in fact valid.

The last case Ms. Towler presented was in the U.S. District Court of Nevada. A decision was issued in 2009 in *U.S. v. Benevento* finding that Nevada's failure to enact a SORNA compliant registration system prior to the time of the Defendant's arrest does not preclude his prosecution for failure to register under SORNA. The Court further found that registration requirements of SORNA are not unconstitutional on the grounds challenged by the defendant, which were, due process, commerce clause, ex post facto clause, non delegation doctrine, the APA, the 10th amendment, and the right to travel. In this case, the defendant was convicted of a sex offense in California in 2003, released from prison on

parole in February, 2005, and registered as a sex offender in California. The Defendant signed a form notifying him of a lifelong obligation to know and understand the changes in the law regarding registration. After initial California registration, the defendant absconded supervision and was a fugitive between April, 2005 and his arrest in April, 2007. His indictment came later in 2007 with federal sex crimes of transportation of a minor for prostitution and failure to register as a sex offender. The defendant brought a Motion to Dismiss the charge of failure to register and challenged SORNA.

Questions by Keith Munro:
Munro:
Mr. Munro requested possible, not definitive, outcomes or answers. Mr. Munro confirmed with Ms. Towler that the U.S. Attorney General's interim rule is that SORNA is retroactive to offenses committed prior. Therefore, that it is a rule that Congress gave the authority to issue.

Response by Towler:
Ms. Towler confirmed pursuant to 42 U.S.C. §16913.

Munro:
In reference to *Reynolds v. U.S.* as to the standing to challenge the validity of the U.S. Attorney General's interim rule, Mr. Munro questioned/stated that if these people have standing then they could get to the issue of whether or not Adam Walsh is retroactive to offenses committed prior.

Response by Towler:
Ms. Towler confirmed that possibility.

Munro:
Mr. Munro stated that if they got to that issue and found that it could not apply retroactively, then Nevada would have to have a two tier system; one tier for people prior to Nevada's enactment, and one tier for those subsequent to the enactment.

Response by Towler:
Ms. Towler confirmed that this would be correct.

Munro:
Mr. Munro questioned if this was the only issue as to standing before the U.S. Supreme Court, or are they getting into the applicability of the rule.

Response by Towler:
Ms. Towler stated that to her knowledge the *Reynolds* case is the only one to be heard next term, and that was the sole issue.

Munro:
In reference to *U.S. v. Juvenile Male,* Mr. Munro stated that Ms. Towler previously stated that this case became moot. For the audience, Mr. Munro explained that there is no longer a pending controversy between the government and the individual because the Juvenile turned eighteen and was no longer subject to the juvenile rules governing sex offenders.

Response by Ms. Towler:
Ms. Towler confirmed this statement.

Munro:
With regard to the Circuit Courts, Mr. Munro questioned how many had ruled on Adam Walsh.

Response by Towler:
Ms. Towler believed that to her knowledge only five Circuit Courts have ruled on the interim rule issue. Ms. Towler will report back to the committee how many Circuit Courts have dealt with any issue regarding the Adam Walsh Act.

Munro:
Mr. Munro stated that to his memory the states in the 9th Circuit were Nevada, California, Oregon, Washington, Arizona, Hawaii, and Alaska. He questioned if Nevada is the only state that has passed a comprehensive Adam Walsh.

Response by Towler:
Ms. Towler was not sure, but will investigate and report back to the committee.

Munro:
Mr. Munro questioned if the 9th Circuit case *ACLU v. Masto et. al.* that is being heard in December is an initial case for the west.

Response by Towler:
Ms. Towler stated that this was correct as to the state provisions that have been enacted.

Munro:
In reference to *U.S. v. Benevento*, Mr. Munro questioned that pursuant to the statement "Nevada's failure to enact a SORNA compliant registration system prior to the time of Defendant's arrest. . ." if this was a federal case.

Response by Towler:
Ms. Towler confirmed that in *U.S. v. Benevento* the crimes were federal. Therefore, the rulings were based off the federal version of SORNA. However, based on that issue Ms. Towler believed that the Court was referring to the State provisions of SORNA.

Question by Susan Roske:
Ms. Roske asked it *Benevento* was a U.S. District Court case, or a 9th Circuit Case.

Response by Towler:
Benevento was a Nevada U.S. District Court case.

Agenda Item #5:
Presentation by Scott Shick on AB326. Proposed Changes Governing Juvenile Sex Offenders.
Scott Shick, representing the Nevada Association of Juvenile Justice Administrators and their consultant Susan Roske of the Las Vegas Public Defender's Office, presented their tabled bill draft AB326. (See, Attachment F).

Mr. Shick stated that an overview regarding the bill draft's proposal was to reinstate provisions that were repealed by AB579, the initial enactment of the Adam Walsh Act in Nevada. This bill draft would allow for a separate community notification scheme for juveniles which would not include public website registration. Mr. Shick stated that Nevada is operating under old statutes until the resolution of the matters currently before the 9th Circuit. The Juvenile Justice Administrators still feel that there is wisdom and merit in pushing forward with this bill in the next legislative session.

Ms. Roske explained the purpose of this bill draft was to repeal AB579 from the 2007 legislative session. Ms. Roske stated that the individuals working in the community with the juveniles felt that AB579 was harmful to the juveniles and not helpful to the community. Ms. Roske agreed with the previous presenter, Dr. Jesse Anderson, that juvenile registration opens the door for the juveniles to be classified as Tier Two and Tier Three offenders when they are actually at a low risk to re-offend, and saturates the system allowing the dangerous, high risk offenders to go under the radar. Ms. Roske stated that the registration was harmful to juveniles, exposing them to vigilante reaction to people on the sex offender website, causing the juveniles to be ostracized, to drop out of school, and ruin the juvenile's lives. Juveniles have a high rate of being rehabilitated and a low risk of recidivism. The purpose of this legislation was to formally re-in act those provisions of the NRS that were repealed by AB579 that apply to juvenile sex offenders. With the federal injunction, and with Judge Voy's ruling which is on appeal, the repealed provisions are in effect at this time. The individuals who work with the juveniles feel that the old laws work. They currently use an individual assessment to determine tier level, there is a separate way to apply community notification laws to high risk juveniles, and there is an ability to remove the children from community notification if they are determined to be rehabilitated. There is also currently a provision that if a juvenile is determined to be a high risk to re-offend that at the age of twenty one the Juvenile Court can deem them to be an adult sex offender for the purposes of registration and

community notification. These provisions protect not only the public, but the juvenile also. The tier level determination under Adam Walsh by offense instead of individual assessment of risk does not work for juveniles. AB326 re-in acts the repealed provisions and adds some narrowly drafted provisions to come into compliance with Adam Walsh. Ms. Roske stated that the juvenile provisions included in AB579 we very broad and went beyond what was required by Adam Walsh. The provisions in AB326 called violent or repetitive sex offender is narrowly drafted to include those juveniles that commit either a violent sexual assault or have committed a subsequent sexual assault after being adjudicated on a specified list of offenses. AB326 was drafted by a committee that included prosecutors, ACLU, public defenders, and individuals that work with juvenile sex offenders. The committee felt very strongly that this should not be retroactive. Additionally, that the statute require notice be given the juvenile that the State would be seeking to adjudicate under this statute, and that after three years the juvenile court would have the authority to remove the juvenile from the requirement to register after proving to the court the juvenile had been rehabilitated.

Question by Brett Kandt:
For clarification, Mr. Kandt questioned if the proposal that she just detailed, was included in AB326.

Response by Susan Roske:
Ms. Roske deferred the question to Scott Shick.

Response by Scott Shick:
Mr. Shick confirmed that proposal was included in AB326, which was tabled in the last legislative session.

Questions by Keith Munro:
Mr. Munro asked who introduced AB326, if it was assigned to a committee, and with regard to the statement that bill was tabled, Mr. Munro asked if it had a hearing, or was it not heard.

Response by Scott Shick:
Mr. Shick stated the Assemblyman Hambrick from Las Vegas introduced the bill, that it was not assigned to a committee, and the bill did not have a hearing.

Question by Susan Roske to Mr. Shick:
Ms. Roske asked for background information on why the bill was tabled.

Response by Scott Shick:
Mr. Shick stated that it was not prioritized and with the pending hearings they had some time to continue discussion, work on the bill and push it forward in the next legislative session.

Statement/Question by Keith Munro:
Mr. Munro stated that we should not speculate on Mr. Hambrick's reasons. He is the elected representative, and it is his decision. Mr. Munro also asked what effect would that bill have had on our certification from the Department of Justice regarding SORNA compliance.

Response by Scott Shick:
Mr. Shick responded that he does not know.

Statement/Question by Keith Munro:
Mr. Munro stated that a stage has been reached with Nevada law that first Nevada was compliant except for the injunction, and now the Department of Justice has come forward and said Nevada is compliant regardless of the injunction. Mr. Munro added that now that Nevada is compliant and just waiting for the 9th Circuit to rule, Nevada has reached a benchmark, and he thinks this bill is raising the issue of whether there is any "wiggle room" within that compliance standard.

Response by Scott Shick:
Mr. Shick responded that he believed that was correct, and hoped that a dialogue can be continued around AB326. Mr. Shick stated that the Juvenile Justice Administrators continues to support the provisions laid out in AB326; and if the 9th circuit case is overturned and Nevada is left with AG579 feels that they would be remiss in not pursuing this bill draft.

Question by Keith Munro:
Mr. Munro questioned both Mr. Shick and Ms. Roske, now that Nevada has a benchmark of compliance, questioned their opinion regarding the ethics in penning a letter to the Department of Justice stating that Nevada does not want to interfere with their compliance, would like to put forth some changes to the next legislature, would this effect Nevada's compliance status.

Response by Scott Shick:
Mr. Shick stated that he believed this was a great suggestion. Mr. Shick also stated that the Juvenile Justice Administrators have always supported the Adam Walsh Act; it was only the juvenile portions with which they had exception. They do not wish to interfere with the remainder of the Adam Walsh Act.

Response by Susan Roske:
Ms. Roske agreed with Mr. Shick. She also stated that there have been some changes made by SORNA regarding how SORNA applies to juveniles. She stated that she believed there was a ruling from the SMART office last year that states are not required to put juveniles on their website. Since then there may have been additional changes as they apply to juveniles. She would like to

suggest considering a redraft to allow the juvenile judge the discretion whether or not to require a juvenile to be on the website.

Question by Keith Munro:
Mr. Munro asked Ms. Roske how that ruling would have affected AB326 and whether portions would have been unnecessary.

Response by Susan Roske:
Ms. Roske stated that she feels the SMART office would require the state to have a means of requiring certain juvenile sex offenders to register in the adult system, but given the discretion regarding whether juveniles should be subject to the public website registry.

Statement by Keith Munro:
Mr. Munro stated for confirmation that AB579 made it compulsory for juveniles to be on the public website.

Response by Susan Roske:
Ms. Roske responded that statement was correct.

Statement by Keith Munro:
Mr. Munro stated that it is his understanding that prior to the 2007 Legislative session the federal government said juveniles had to register and be on the public website. Nevada passed the law, AB579, stating juveniles had to register and be on the public website. Nevada was subsequently enjoined, and during the pendency of that injunction, the federal government came forward and stated that some juveniles do not have to be on the website.

Response by Susan Roske:
Ms. Roske stated tha it is her understanding that the States can have the discretion of whether or not to put juveniles on the website.

Question by Keith Munro:
Mr. Munro asked if the 9th Circuit case that is going to be argued in December upholds AB579, then the issue of whether Nevada wants to require all juveniles to be on the website would be ripe for consideration by this committee.

Response by Susan Roske:
Ms. Roske agreed.

Question by Keith Munro:
Mr. Munro questioned if Mr. Shick and Ms. Roske if they would agree to collaborate on penning a letter to the Department of Justice.

Response by Scott Shick and Susan Roske:

Both Mr. Shick and Ms. Roske agreed to draft a letter to the Department of Justice for review.

Statement by Scott Shick:
Mr. Shick wanted to clarify that even with regard to juveniles; there is a law enforcement working knowledge of the residence, schools, and location parameters of all juvenile sex offenders undergoing treatment is in our regional system.

Question by Brett Kandt:
Mr. Kandt asked that we have an item for possible action on the agenda for the next meeting regarding the request of an Advisory Opinion from the SMART office specifically on the issue that Nevada be permitted under current federal law to enact provisions such as those set forth in AB326 or in the proposal that was just detailed regarding juveniles.

Response by Keith Munro:
Mr. Munro agreed to place this on the next meeting agenda.

Statement by Scott Shick:
Mr. Shick added an additional fact that the Juvenile Justice Administrators did consult with sex offender psychological experts when AB326 was drafted.

Question by Donna Coleman:
Ms. Colman asked that since Nevada is currently is in compliance and Nevada is currently operating prior to AB579, what part of AB326 would be different from the current procedure.

Discussion by Susan Roske, Keith Munro and Donna Coleman:
Brief discussion was held regarding the differences between current procedure and the bill draft, and the issue of compliance. Mr. Munro clarified Nevada's compliance. Mr. Munro stated that AB579 law is deemed to be compliant. Mr. Munro went on to state that the AB579 laws are not in effect because Nevada has had one branch of the federal government state we needed to pass these laws, Nevada passed them, and a second branch of the confirm that AB579 was compliant. Then a third branch (judicial) of the federal government say "no", disregard what the other two branches said, you are unconstitutional with regard to the US Constitution. Pending what happens in 9th Circuit Nevada will find out what is accurate.

Agenda Item #7:
Public Comment:
Keith Munro opened the meeting up to Public Comment.

Public Comment in Las Vegas:
Florence Jones:

Ms. Jones stated that her comments are with regard to sex offender paroles. Ms. Jones has had two sex offenders paroled directly to her home, the last being a year ago, so there may have been a correction to this situation. They were both released with a cursory meeting and not an actual meeting with their parole officer and without any specific curfew or rules. They did not find out until almost two weeks later that they had a seven pm curfew. Ms. Jones suggests that until the parolee can meet with their parole officer and received specific rules that they are released with a general curfew and rule base. She assumes that this is a P&P issues, but felt this committee may be of assistance.

Public Comment in Carson City:
Patrick Davis:
Mr. Davis stated that Julie Towler did not refer to *Smith v. Doe* in Alaska. Mr. Davis feels that this committee needs to be concerned that Adam Walsh is a new enactment and because of the scope and issues that law is going to be challenged many times. If this committee is only concerned with bringing Nevada into compliance with Adam Walsh, that is one thing. However, if the State is concerned with making the registration and notification laws harsher in relation to ex post facto purposes, Nevada is going to have to be concerned with how punitive these laws are made and the affirmative restraints and disabilities this places on them. Mr. Davis is aware of a number of people and organizations looking to challenge the registration laws because of the affirmative restraints and disabilities it places on an offender and the myriad of issues involved in registering. There is not a comprehensive registration scheme; there are a number of registrations for example drivers' license registration, yearly registrations etc, all of these registration issues effectively enforce felony penalties for not registering properly. Mr. Davis stated that Nevada should look at making registration more coherent and consider tying all these laws together, and giving and implementing an interconnected system that gives offender a single registration requirement. Mr. Davis informed the committee that they will need to be more aware of current and new litigation nationwide regarding the seriousness of Adam Walsh and its restraints. Mr. Davis continued and stated that any attempt to make the requirements too harsh will make it a punitive scheme which could be overturned.

Mr. Munro called for additional public comment, none was given.
The meeting was adjourned by Keith Munro at 11:32 am.

Minutes respectfully submitted by Jan Riherd.

ATTACHMENT "B"
December 22, 2011 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "B"
December 22, 2011 Minutes

Attachment B is a CD of the audio recording of the December 7, 2011 9th Circuit Oral Argument in ACLU v. Masto.

This audio recording can also be found online at:

http://www.ca9.uscourts.gov/media/view_subpage.php?pk_id=0000008460

ATTACHMENT "C"
December 22, 2011 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "C"
December 22, 2011 Minutes

December 9, 2011

Via U.S. Mail

Linda Baldwin, Director
SMART Office
U.S. Department of Justice
810 7TH St., N.W.
Washington, D.C. 20531

Dear Ms. Baldwin:

On May 10, 2011, on behalf of the Smart Office of the United States Department of Justice, you sent a letter to the Honorable Brian Sandoval, the Governor of the State of Nevada, specifying that the SMART Office deemed Nevada to have substantially implemented SORNA.

This substantial implementation was based upon the passage of Assembly Bill 579 during the 2007 Nevada Legislative Session. Assembly Bill 579 had previously been enjoined from enforcement due to pending federal litigation in *ACLU of Nevada, v. Masto et al.* Case No. 2:08-cv-00822-JCM-PAL.

In response to this federal injunction, the Nevada Legislature has formed an Advisory Committee to Study Laws Concerning Sex Offender Registration. In preparing for our next Legislative Session beginning in 2013, the committee would like some guidance as to whether and how the State of Nevada may adjust Assembly Bill 579 if the legislature wishes to do so and still be in compliance with SORNA. The committee is not aware if there is a process for a State to make changes to its sex offenders requirements and still maintain its certification as substantially compliant with the SORNA requirements.

This letter results from a particular decision made by the Department of Justice. In January 2011, the Department of Justice issued its Supplemental Guidelines for Sex Offender Registration and Notification, located at 76 Fed. Reg. 1630-1640 (Jan. 11, 2011). These new guidelines set requirements that are different from what had been previously required by the Department of Justice.

The Supplemental Guidelines state, "While the SORNA Guidelines endeavored to facilitate jurisdictions' compliance with this (public notification) aspect of SORNA...resistance by some jurisdictions to public disclosure of information about sex offenders in this class has continued to be one of the largest impediments to SORNA implementation. Hence, the Attorney General is exercising his authority under 42 U.S.C. 16918(c)(4) to create additional discretionary exemptions from public Web site disclosure to allow jurisdictions to exempt from public Web site disclosure information concerning sex offenders required to register on the basis of juvenile delinquency adjudications.

This change creates a new discretionary, not mandatory, exemption from public Web site disclosure. It does not limit the discretion of jurisdictions to include information concerning sex offenders required to register on the basis of juvenile delinquency adjudications on their public Web sites if they so wish. The change regarding public Web site disclosure does not authorize treating sex offenders required to register on the basis of juvenile delinquency adjudications differently from sex offenders with adult convictions in other respects."

A.B. 579 requires juveniles who are at least fourteen (14) years of age and who have been adjudicated delinquent for committing certain sexual offenses to register as sex offenders, and these juveniles' names will appear on Nevada's Community Notification Website.

This study group has not taken a position to accept or reject the premises as stated in the Supplemental Guidelines noted above. However, in preparing for the next Legislative Session beginning in 2013, the committee would like some guidance as to how the Nevada Legislature may adjust Assembly Bill 579 if the Legislature wishes to do so and still be in compliance with SORNA.

We are specifically interested in guidance concerning the process by which we can adjust the law to reflect the fact that juveniles who are at least fourteen (14) years of age and who have been adjudicated delinquent for committing certain sex offenses would not have to be listed on Nevada's community notification website.

Although the Supplemental Guidelines seem to imply this may be done at the discretion of the State, the committee wishes to be sure the process by which we reflect this in our law meets with your approval and will not endanger our compliance with SORNA. Your guidance detailing a specific process to achieve this would help us to remain in compliance with SORNA.

Thank you for your assistance in this matter. The Committee appreciates any guidance that the SMART Office can provide us on this issue.

KGM;jmr:mas
cc: Lori McPherson, SMART Office Senior Policy Advisor
Patrick Conmay, Division Administrator, Records and Technology, Nevada Criminal History Repository

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November 2, 2011

Lori McPherson
Senior Policy Advisor
SMART Office
U.S. Department of Justice/OJP
Sent via email: lori.mcpherson@usdoj.gov

Dear Ms. McPherson:

I am a member of the Nevada State Bar Advisory Committee to Study Laws Concerning Sex Offender Registration. As you may be aware, in 2007 the Nevada Legislature passed Assembly Bill 579 in order to become compliant with SORNA. The changes in AB 579 which include adjudications of delinquency were found to be unconstitutional by our local juvenile court. Later, the bill as a whole was found to be unconstitutional by the federal district court. Both rulings are still pending appeal.

Many advocates for children in the State of Nevada (including myself) believe that the provisions in AB 579 regarding adjudications of delinquency are harmful to children and unnecessary to ensure public safety. Further, these provisions are much broader than the limited requirements of the Adam Walsh Act regarding juvenile delinquency adjudications. I am advocating that our state legislature reenact the laws which were repealed by AB 579 and return our state law to the system used prior to AB 579 (and still in effect now as AB 579 was found to be unconstitutional). Advocates in our community drafted a narrower proposed statute to attempt to be compliant with SORNA. I am enclosing the proposed statutes with a question to you-if the state legislature were to enact this proposed legislation, would it take the State of Nevada out of compliance with SORNA?

The prior system which was repealed by AB 579 provides that a child adjudicated delinquent for the offenses of sexual assault, battery with intent to commit sexual assault, use of a minor in or promoting a minor in pornography, or lewdness with a minor are subject to community notification as a juvenile-separate from the adult notification system (there is no lower age limitation). They are obligated to notify their probation officer if they move or change schools and the probation department must notify law enforcement. They are not on a registry and not on the website. The level of community notification is based upon an individualized assessment of risk. The juvenile court has the power to relieve them of community notification upon finding the child has been rehabilitated. If the court has not relieved the child of community notification, upon his or her 21st birthday the juvenile court must conduct a hearing to determine whether the child must register and be subject to community notification as an adult sex offender. The enclosed statutes would restore this system.

The statute drafted to attempt to be compliant with SORNA is denominated as "Violent or Repetitive Juvenile Sex Offender." It provides that a child 14 years of age or older adjudicated delinquent for the offense of sexual assault, battery with intent to commit sexual assault or an attempt or conspiracy to commit these offenses which involves force or threat of serious violence, substantial bodily harm, rendering a victim unconscious or has a prior adjudication of delinquency for one of the enumerated offenses may be subject to registration and community notification in the adult registry and website. The statute requires notice and a hearing on the issue, thus it is not retroactive. Further, it allows the juvenile court to consider individualized assessment of risk to determine whether to grant or deny a request to adjudicate under this statute. Additionally, a statute is proposed to give the juvenile court the power to relieve a child of being subject to registration and community notification upon finding clear and convincing evidence that the child has been rehabilitated to the satisfaction of the juvenile court.

Our committee would be interested in knowing if this action were to be undertaken by the state legislature, would it take us out of compliance with SORNA.

Thank you very much for any assistance, input and or guidance you can provide us on these issues.

Sincerely,

Susan Deems Roske
Chief Deputy Public Defender

NRS 62A.030 "Child" defined.

1. "Child" means:

(a) A person who is less than 18 years of age;

(b) A person who is less than 21 years of age and subject to the jurisdiction of the juvenile court for an unlawful act that was committed before the person reached 18 years of age; or

(c) A person who is otherwise subject to the jurisdiction of the juvenile court as a juvenile sex offender pursuant to the provisions of NRS 62F.200 to 62F.<, inclusive,

2. The term does not include:

(a) A person who is excluded from the jurisdiction of the juvenile court pursuant to NRS 62B.330;

(b) A person who is transferred to the district court for criminal proceedings as an adult pursuant to NRS 62B.335; or

(c) A person who is certified for criminal proceedings as an adult pursuant to NRS 62B.390 or 62B.400.

(Added to NRS by 2003, 1023; A 2007, 2773; 2009, 49)

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NRS 62B.410 Termination and retention of jurisdiction. Except as otherwise provided in NRS 62F.110 and 62F.220 to 62F.<, inclusive, if a child is subject to the jurisdiction of the juvenile court, the juvenile court:

1. May terminate its jurisdiction concerning the child at any time, either on its own volition or for good cause shown; or

2. May retain jurisdiction over the child until the child reaches 21 years of age.

(Added to NRS by 2003, 1030)

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62F.200. "Sexual offense" defined

As used in NRS 62F.220 and 62F.260, unless the context otherwise requires, "sexual offense" means an adjudication of delinquency means:

1. Sexual assault pursuant to NRS 200.366;
2. Battery with intent to commit sexual assault pursuant to NRS 200.400;
3. An offensive involving pornography and a minor pursuant to NRS 200.710 or 200.720;
4. Lewdness with a child pursuant to NRS 201.230; or
5. An attempt to commit an offense listed in this section.

62F.210. Applicability of provisions

Except as otherwise provided in subsection 2 of NRS 62F.260, the provisions of NRS 62F.200 to 62F.260, inclusive, do not apply to a child who is subject to registration and community notification pursuant to NRS 179D.010 to 179D.550, inclusive, before reaching 21 years of age.

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62F.220. Additional duties of juvenile court with respect to juvenile sex offender; jurisdiction of juvenile court not terminated until child no longer subject to community notification

1. In addition to any other action authorized or required pursuant to the provisions of this title, if a child is adjudicated delinquent for an unlawful act that would have been a sexual offense if committed by an adult or is adjudicated delinquent for a sexually motivated act, the juvenile court shall:

(a) Notify the Attorney General of the adjudication, so the Attorney General may arrange for the assessment of the risk of recidivism of the child pursuant to the guidelines and procedures for community notification;

(b) Place the child under the supervision of a probation officer or parole officer, as appropriate, for a period of not less than 3 years;

(c) Inform the child and the parent or guardian of the child that the child is subject to community notification as a juvenile sex offender and may be subject community notification pursuant to NRS 179D.010 to 179D.550, inclusive, if the child is deemed an adult sex offender pursuant to NRS 62F.250; and

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(d) Order the child, and the parent or guardian of the child during the minority of the child, while the child is subject to community notification as a juvenile sex offender, to inform the probation officer or parole officer, as appropriate, assigned to the child of a change of the address at which the child resides not later than 48hours after the change of address.

2. The juvenile court may not terminate its jurisdiction concerning the child for the purposes of carrying out the provisions of NRS 62F.200 to 62F.260, inclusive, until the child is no longer subject to community notification as a juvenile sex offender pursuant to NRS 62F.200 to 62F.260, inclusive.

62F.230. Notification to local law enforcement agency

1. If a child has been adjudicated delinquent for a sexual offense or a sexually motivated act, the probation officer or parole officer, as appropriate, assigned to the child shall notify the local law enforcement agency in whose jurisdiction the child resides that the child:

(a) Has been adjudicated delinquent for a sexual offense or a sexually motivated act; and

(b) Is subject to community notification as a juvenile sex offender.

2. If the probation officer or parole officer, as appropriate, assigned to the child is informed by the child or the parent or guardian of the child that the child has changed the address at which the child resides or if the probation officer or parole officer otherwise becomes aware of such a change, the probation officer or parole officer shall notify:

(a) The local law enforcement agency in whose jurisdiction the child last resided that the child has moved; and

(b) The local law enforcement agency in whose jurisdiction the child is now residing that the child:

(1) Has been adjudicated delinquent for a sexual offense or a sexually motivated act; and

(2) Is subject to community notification as a juvenile sex offender.

62F.240. Power of juvenile court to relieve child of being subject to community notification

1. If a child who has been adjudicated delinquent for a sexual offense or a sexually motivated act has not previously been relieved of being subject to community notification as a juvenile sex offender, the juvenile court may, at any appropriate time, hold a hearing to determine whether the child should be relieved of being subject to community notification as a juvenile sex offender.

2. If the juvenile court determines at the hearing that the child has been rehabilitated to the satisfaction of the juvenile court and that the child is not likely to pose a threat to the safety of others, the juvenile court may relieve the child of being subject to community notification as a juvenile sex offender.

62F.250. Hearing to determine whether to deem child adult sex offender; termination of registration and community notification

Except as otherwise provided in NRS 62F.200 to 62F.260, inclusive:

1. If a child who has been adjudicated delinquent for a sexual offense or a sexually motivated act is not relieved of being subject to community notification as a juvenile sex offender before the child reaches 21 years of age pursuant to NRS 62F.240, the juvenile court shall hold a hearing when the child reaches 21 years of age to determine whether the child should be deemed an adult sex offender for the purposes of registration and community notification pursuant to NRS 179D.010 to 179D.550, inclusive.

2. If the juvenile court determines at the hearing that the child has been rehabilitated to the satisfaction of the juvenile court and that the child is not likely to pose a threat to the safety of others, the juvenile court shall relieve the child of being subject to registration and community notification.

3. If the juvenile court determines at the hearing that the child has not been rehabilitated to the satisfaction of the juvenile court or that the child is likely to pose a threat to the safety of others, the juvenile court shall deem the child to be an adult sex offender for the purposes of registration and community notification pursuant to NRS 179D.010 to 179D.550, inclusive.

4. In determining at the hearing whether the child has been rehabilitated to the satisfaction of the juvenile court and whether the child is not likely to pose a threat to the safety of others, the juvenile court shall consider the following factors:

(a) The number, date, nature and gravity of the act or acts committed by the child, including:

(1) Whether the act or acts were characterized by repetitive and compulsive behavior; and

(2) Whether the act or acts involved the use of a weapon, violence or infliction of serious bodily injury.

(b) The extent to which the child has received counseling, therapy or treatment, and the response of the child to any such counseling, therapy or treatment.

(c) Whether psychological or psychiatric profiles indicate a risk of recidivism.

(d) The behavior of the child while subject to the jurisdiction of the juvenile court, including the behavior of the child during any period of confinement.

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(e) Whether the child has made any recent threats against a person or expressed any intent to commit any crimes in the future.

(f) Any physical conditions that minimize the risk of recidivism, including physical disability or illness.

(g) Any other factor that the juvenile court finds relevant to the determination of whether the child has been rehabilitated to the satisfaction of the juvenile court and whether the child is not likely to pose a threat to the safety of others.

5. If a child is deemed to be an adult sex offender pursuant to this section, the juvenile court shall notify the Central Repository so the Central Repository may carry out the provisions for registration of the child as an adult sex offender pursuant to NRS 179D.450.

62F.260. Records not sealed during period of community notification; delinquent act of child who has been deemed adult sex offender deemed criminal for certain purposes and records relating to such child must not be sealed

1. The records relating to a child must not be sealed pursuant to the provisions of NRS 62H.100 to 62H.170, inclusive, while the child is subject to community notification as a juvenile sex offender.

2. If a child is deemed to be an adult sex offender pursuant to NRS 62F.250, adjudicated as a violent or repetitive juvenile sex offender pursuant to NRS 62F.< , is convicted of a sexual offense, as defined in NRS 179D.097, before reaching 21 years of age or is otherwise subject to registration and community notification pursuant to NRS 179D.010 to 179D.550, inclusive, before reaching 21 years of age:

(a) The records relating to the child must not be sealed pursuant to the provisions of NRS 62H.100 to 62H.170, inclusive; and

(b) Each delinquent act committed by the child that would have been a sexual offense, as defined in NRS 179D.097 if committed by an adult shall be deemed to be a criminal conviction for the purposes of:

(1) Registration and community notification pursuant to NRS 179D.010 to 179D.550, inclusive; and

(2) The statewide registry established within the Central Repository pursuant to chapter 179B of NRS.

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NRS 62F.< (new statute on AG Guidelines)

1. The Attorney General shall establish guidelines and procedures for community notification concerning juvenile sex offenders who are subject to the provisions of NRS 62F.220 to 62F.260, inclusive.

2. Upon receiving notification from a probation officer or parole officer, as appropriate, assigned to a juvenile sex offender, the local law enforcement agency receiving the notification shall disclose information regarding the juvenile sex offender to the appropriate persons pursuant to the guidelines and procedures established by the Attorney General pursuant to this section.

3. Each person who conducts an assessment of the risk of recidivism of a juvenile sex offender must be given access to all records of the juvenile sex offender that are

necessary to conduct the assessment, including, but not limited to, records compiled pursuant to this title, and the juvenile sex offender shall be deemed to have waived all rights of confidentiality and all privileges relating to those records for the limited purpose of the assessment.

NRS 62F.<: Violent or Repetitive Juvenile Sex Offender (new statute)

1. The district attorney may request the juvenile court to conduct a separate hearing to determine whether a child is a violent or repetitive juvenile sex offender, but only if the child is at least 14 years of age at the time of the offense and the child is adjudicated for:

(a) Sexual assault pursuant to NRS 200.366;

(b) Battery with intent to commit sexual assault pursuant to NRS 200.400, or

(c) An attempt or conspiracy to commit an offense listed in paragraph (a) or (b).

2. If the district attorney intends to make a request for a separate hearing pursuant to subsection 1, the district attorney must provide written notice to the child and the parent or guardian of the child before the juvenile court accepts an admission of guilt from the child or before the child has been adjudicated delinquent. The written notice may be provided in a document served upon the child or the attorney of the child or may be provided by reference to the provisions of this section in the charging document. If the written notice is provided in a separate document, a copy of the written notice and proof of service must be filed with the juvenile court. The written notice must:

(a) Inform the child that if the child is adjudicated delinquent for committing an offense listed in subsection 1, a separate hearing may be requested to determine whether the child is a violent or repetitive juvenile sex offender; and

(b) Cite to this section as the authority for the request.

3. If proper notice has been provided pursuant to subsection 2, the juvenile court must conduct a separate hearing to determine whether the child is a violent or repetitive juvenile sex offender upon request of the district attorney. The juvenile court may adjudicate a child as a violent or repetitive juvenile sex offender only if the prosecuting attorney proves to the juvenile court by clear and convincing evidence that the child committed an offense listed in subsection 1 and that:

(a) The offense committed by the juvenile sex offender involved the use of force or threat of serious violence against the victim;

(b) The juvenile sex offender caused substantial bodily harm to the victim;

(c) The offense committed by the juvenile sex offender involved rendering the victim unconscious or administering a drug to the victim without the consent of the victim; or

(d) The juvenile sex offender, at the time of the offense, previously had been adjudicated delinquent for committing any of the following:

(1) Sexual assault pursuant to NRS 200.366;

(2) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(3) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405 if the felony is an offense listed in subparagraphs (1) to (14), inclusive;

(4) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408 if the crime of violence is listed subparagraphs (1) to (14), inclusive;

(5) Abuse of a child pursuant to NRS 200.508 if the abuse involved sexual abuse or sexual exploitation;

(6) An offense involving pornography and a minor pursuant to NRS 200.710 or 200.720;

(7) Incest pursuant to NRS 201.180;

(8) Solicitation of a minor to engage in the infamous crime against nature pursuant to NRS 201.195;

(9) Open or gross lewdness pursuant to NRS 201.210, if punishable as a felony;

(10) Indecent or obscene exposure pursuant to NRS 201.220, if punishable as a felony;

(11) Lewdness with a child pursuant to NRS 201.230;

(12) Sexual penetration of a dead human body pursuant to NRS 201.450;

(13) Luring a child or person with mental illness pursuant to NRS 201.560, if punishable as a felony;

(14) An attempt or a conspiracy to commit any of the acts or offenses listed in subparagraphs (1) to (13), inclusive;

(15) An offense that is determined to be sexually motivated pursuant to NRS 62F.010; or

(16) An offense committed in any other jurisdiction that, if committed in this State, would be an offense listed in this paragraph.

4. When it deems appropriate, the juvenile court may consider evidence regarding whether a juvenile sex offender poses a threat to the safety of others and the level of risk of recidivism in determining whether to adjudicate the juvenile sex offender as a violent or repetitive juvenile sex offender.

5. A child who has been adjudicated as a violent or repetitive juvenile sex offender is subject to registration and community notification set forth in NRS 179D.010 to 179D.550, inclusive, and the juvenile court shall notify the Central Repository so the Central Repository may carry out the provisions for registration of the child as a sex offender pursuant to NRS 179D.450.

6. For the purposes of NRS 62D.030, a separate hearing conducted pursuant to this section is part of the proceedings to which a child is entitled to be represented by an attorney.

7. A juvenile court that adjudicates a child as a violent or repetitive juvenile sex offender may determine whether to exempt the juvenile sex offender from inclusion in the community notification website. If the juvenile court provides such an exemption, the juvenile court must notify the Director of the Department of Public Safety who shall ensure that information concerning the juvenile sex offender is excluded from the community notification website.

8. A child who has been adjudicated as a violent or repetitive juvenile sex offender remains subject to the requirements for supervision set forth in NRS 62F.220(1)(b).

9. The juvenile court may not terminate its jurisdiction over a child who has been adjudicated as a violent or repetitive juvenile sex offender until the child is relieved of the requirements for registration and community notification as a juvenile sex offender pursuant to NRS 62F.> (Power of juvenile court to relieve child of being subject to registration and community notification provisions of NRS 179D).

NRS 62F.>. Power of juvenile court to relieve child of being subject to registration and community notification provisions of NRS 179D (new statute)

1. A child who has been deemed an adult sex offender pursuant to NRS 62F.250 or who has been adjudicated as a violent or repetitive juvenile sex offender pursuant to NRS 62F.< and who is required to comply with registration and community notification in the manner set forth in NRS 179D.010 to 179D.550, inclusive, may petition the juvenile court to be relieved of such registration and community notification:

(a) At any time after registering as a sex offender if the child has been deemed an adult sex offender pursuant to NRS 62F.250; or

(b) Not sooner than 3 years after registering as a sex offender if the child was adjudicated as a violent or repetitive juvenile sex offender pursuant to NRS 62F.< *(Violent or Repetitive JSO).*

2. A juvenile court shall not grant a petition pursuant to subsection 1 unless the petitioner proves to the juvenile court by clear and convincing evidence that the petitioner has been rehabilitated and is not likely to pose a threat to the safety of others.

3. In determining whether to grant the petition, the juvenile court shall consider the following factors:

(a) The number, date, nature and gravity of the act or acts committed by the petitioner, including, without limitation:

(1) Whether the act or acts were characterized by repetitive and compulsive behavior; and

(2) Whether the act or acts involved the use of a weapon, violence or infliction of serious bodily injury.

(b) The extent to which the petitioner has received counseling, therapy or treatment, and the response of the petitioner to any such counseling, therapy or treatment.

(c) Whether psychological or psychiatric profiles of the petitioner indicate a risk of recidivism.

(d) The behavior of the petitioner while subject to the jurisdiction of the juvenile court, including, without limitation, the behavior of the petitioner during any period of confinement.

(e) Whether the petitioner has made any recent threats against a person or expressed any intent to commit any crimes in the future.

(f) Any physical conditions of the petitioner that minimize the risk of recidivism, including, without limitation, physical disability or illness.

(g) Any other factor that the juvenile court finds relevant to the determination of whether the petitioner has been rehabilitated to the satisfaction of the juvenile court and whether the petitioner is not likely to pose a threat to the safety of others.

4. At the hearing held on a petition pursuant to this section, the juvenile court may consider any evidence, reports, statements or other material which the juvenile court determines is relevant and helpful to determine whether to grant the petition.

5. The juvenile court must file written findings of fact and conclusions of law setting forth the factual basis and legal support for any decision to grant or deny a petition pursuant to this section.

NRS 179D.030 "Community notification" defined. "Community notification" means notification of a community pursuant to the guidelines and procedures established by the attorney general pursuant to NRS 62F.< (new statute on AG Guidelines) or notification of a community pursuant to NRS 179D.475, as applicable.

(Added to NRS by 1997, 1647; A 2007, 2763)

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NRS 179D.035 "Convicted" defined. "Convicted" includes, but is not limited to, an adjudication of delinquency by a court having jurisdiction over juveniles if:

1. The offender has been deemed an adult sex offender pursuant to NRS 62F.250; or

2. The offender has been adjudicated as a violent or repetitive juvenile sex offender pursuant to NRS 62F.< (Violent or Repetitive JSO statute).

(Added to NRS by 1999, 1290; A 2001, 1311, 2795; 2003, 45, 1122, 1389; 2007, 2763)

Deleted: adjudication of delinquency is for the commission of a sexual offense *that is listed in NRS 62F.200; and*

Deleted: was 14 years of age or older at the time of the offense.

NRS 179D.0559 "Offender convicted of a crime against a child" and "offender" defined.

1. "Offender convicted of a crime against a child" or "offender" means a person who, after July 1, 1956, is or has been:

(a) Convicted of a crime against a child that is listed in NRS 179D.0357; or

(b) Adjudicated delinquent by a court having jurisdiction over juveniles of a crime against a child pursuant to NRS 62F.< (Repetitive or Violent Juvenile Sex Offender), if the offender was 14 years of age or older at the time of the crime.

2. The term includes, without limitation, an offender who is a student or worker within this State but who is not otherwise deemed a resident offender pursuant to subsection 2 or 3 of NRS 179D.460.

(Added to NRS by 2007, 2757)

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NRS 179D.095 "Sex offender" defined.

1. "Sex offender" means a person who, after July 1, 1956, is or has been:

(a) Convicted of a sexual offense listed in NRS 179D.097; or

(b) Adjudicated delinquent by a court having jurisdiction over juveniles of a sexual offense pursuant to NRS 62F.< (Repetitive or Violent Juvenile Sex Offender) if the offender was 14 years of age or older at the time of the offense.

2. The term includes, without limitation, a sex offender who is a student or worker within this State but who is not otherwise deemed a resident offender pursuant to subsection 2 or 3 of NRS 179D.460.

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NRS 179D.450 Registration after conviction; duties and procedure; offender or sex offender informed of duty to register; effect of failure to inform; duties and procedure upon receipt of notification from another jurisdiction or Federal Bureau of Investigation.

1. If the Central Repository receives notice from a court pursuant to NRS 176.0926 that an offender has been convicted of a crime against a child pursuant to NRS 176.0927, that a sex offender has been convicted of a sexual offense or pursuant to NRS 62F.< (Repetitive or Violent Juvenile Sex Offender), that a juvenile has been adjudicated delinquent for an offense for which the juvenile is subject to registration and community notification pursuant to NRS 179D.010 to 179D.550, inclusive, the Central Repository shall:

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(a) If a record of registration has not previously been established for the offender or sex offender, notify the local law enforcement agency so that a record of registration may be established; or

(b) If a record of registration has previously been established for the offender or sex offender, update the record of registration for the offender or sex offender and notify the appropriate local law enforcement agencies.

2. If the offender or sex offender named in the notice is granted probation or otherwise will not be incarcerated or confined, the Central Repository shall:

(a) Immediately provide notification concerning the offender or sex offender to the appropriate local law enforcement agencies and, if the offender or sex offender resides in a jurisdiction which is outside of this State, to the appropriate law enforcement agency in that jurisdiction; and

(b) Immediately provide community notification concerning the offender or sex offender pursuant to the provisions of NRS 179D.475.

3. If an offender or sex offender is incarcerated or confined and has previously been convicted of a crime against a child as described in NRS 179D.0357 or a sexual offense as described in NRS 179D.097, before the offender or sex offender is released:

(a) The Department of Corrections or a local law enforcement agency in whose facility the offender or sex offender is incarcerated or confined shall:

(1) Inform the offender or sex offender of the requirements for registration, including, but not limited to:

(I) The duty to register initially with the appropriate law enforcement agency in the jurisdiction in which the offender or sex offender was convicted if the offender or sex offender is not a resident of that jurisdiction pursuant to NRS 179D.445;

(II) The duty to register in this State during any period in which the offender or sex offender is a resident of this State or a nonresident who is a student or worker within this State and the time within which the offender or sex offender is required to register pursuant to NRS 179D.460;

(III) The duty to register in any other jurisdiction during any period in which the offender or sex offender is a resident of the other jurisdiction or a nonresident who is a student or worker within the other jurisdiction;

(IV) If the offender or sex offender moves from this State to another jurisdiction, the duty to register with the appropriate law enforcement agency in the other jurisdiction;

(V) The duty to notify the local law enforcement agency for the jurisdiction in which the offender or sex offender now resides, in person, and the jurisdiction in which the offender or sex offender formerly resided, in person or in writing, if the offender or sex offender changes the address at which the offender or sex offender resides, including if the offender or sex offender moves from this State to another jurisdiction, or changes the primary address at which the offender or sex offender is a student or worker; and

(VI) The duty to notify immediately the appropriate local law enforcement agency if the offender or sex offender is, expects to be or becomes enrolled as a student at an institution of higher education or changes the date of commencement or termination of the offender or sex offender's enrollment at an institution of higher education or if the offender or sex offender is, expects to be or becomes a worker at an institution of higher education or changes the date of commencement or termination of the offender or sex offender's work at an institution of higher education; and

(2) Require the offender or sex offender to read and sign a form stating that the requirements for registration have been explained and that the offender or sex offender understands the requirements for registration, and to forward the form to the Central Repository.

(b) The Central Repository shall:

(1) Update the record of registration for the offender or sex offender;

(2) Provide community notification concerning the offender or sex offender pursuant to the provisions of NRS 179D.475; and

(3) Provide notification concerning the offender or sex offender to the appropriate local law enforcement agencies and, if the offender or sex offender will reside upon release in a jurisdiction which is outside of this State, to the appropriate law enforcement agency in that jurisdiction.

4. The failure to provide an offender or sex offender with the information or confirmation form required by paragraph (a) of subsection 3 does not affect the duty of the offender or sex offender to register and to comply with all other provisions for registration.

5. If the Central Repository receives notice from another jurisdiction or the Federal Bureau of Investigation that an offender or sex offender is now residing or is a student or worker within this State, the Central Repository shall:

(a) Immediately provide notification concerning the offender or sex offender to the appropriate local law enforcement agencies;

(b) Establish a record of registration for the offender or sex offender; and

(c) Immediately provide community notification concerning the offender or sex offender pursuant to the provisions of NRS 179D.475.

(Added to NRS by 1997, 1655; A 1999, 1300; 2001, 2058; 2001 Special Session, 227; 2003, 289, 573, 1122; 2007, 2765, 3252)

NRS 179D.490 Duration of duty to register; termination of duty; procedure; exceptions.

1. An offender convicted of a crime against a child or a sex offender shall comply with the provisions for registration for as long as the offender or sex offender resides or is present within this State or is a nonresident offender or sex offender who is a student or worker within this State, unless the period of time during which the offender or sex offender has the duty to register is reduced pursuant to the provisions of this section or NRS 62F.> (Power of Juvenile Court to relieve child of being subject to registration and community notification).

2. Except as otherwise provided in subsection 3, the full period of registration is:

(a) Fifteen years, if the offender or sex offender is a Tier I offender;

(b) Twenty-five years, if the offender or sex offender is a Tier II offender; and

(c) The life of the offender or sex offender, if the offender or sex offender is a Tier III offender,

➥ exclusive of any time during which the offender or sex offender is incarcerated or confined.

3. If an offender or sex offender complies with the provisions for registration for an interval of at least 10 consecutive years, if the offender or sex offender is a Tier I offender other than an offender or sex offender who was adjudicated delinquent for the offense which required registration as an offender or sex offender,

➥ during which the offender or sex offender is not convicted of an offense for which imprisonment for more than 1 year may be imposed, is not convicted of a sexual offense, successfully completes any periods of supervised release, probation or parole, and successfully completes a sex offender treatment program certified by the State or by the Attorney General of the United States, the offender or sex offender may file a petition to reduce the period of time during which the offender or sex offender has a duty to register with the district court in whose jurisdiction the offender or sex offender resides or, if he or she is a nonresident offender or sex offender, in whose jurisdiction the offender or sex offender is a student or worker. For the purposes of this subsection, registration begins on the date that the Central Repository or appropriate agency of another jurisdiction establishes a record of registration for the offender or sex offender or the date that the offender or sex offender is released, whichever occurs later.

4. If the offender or sex offender satisfies the requirements of subsection 3, the court shall hold a hearing on the petition at which the offender or sex offender and any other interested person may present witnesses and other evidence. If the court determines from the evidence presented at the hearing that the offender or sex offender satisfies the requirements of subsection 3, the court shall, if the offender or sex offender is a Tier I offender, reduce the period of time during which the offender or sex offender is required to register by 5 years.

5. If the offender or sex offender was adjudicated delinquent for an offense which required registration as an offender or sex offender, the offender or sex offender may file a petition pursuant to NRS 62F.> (Power of the juvenile court to relieve child of being subject to registration and community notification) with the juvenile court having jurisdiction over the offender or sex offender to relieve the offender or sex offender from the duty to register.

(Added to NRS by 1997, 1659; A 1999, 1305; 2001, 2062; 2007, 2770)

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(b) For an interval of at least 25 consecutive years, if t

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(b) If the offender or sex offender is a Tier III offender adjudicated delinquent for the offense which required registration as an offender or sex offender, reduce the period of time during which the offender or sex offender is required to register from the life of the offender or sex offender to that period of time for which the offender or sex offender meets the requirements of subsection 3

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ATTACHMENT "D"
December 22, 2011 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "D"
December 22, 2011 Minutes

December 22, 2011

Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV 89701
Conference Room # 2134

Patrick Davis
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

TO: Advisory Committee to Study Laws Concerning Sex Offender Registration

RE: Current Registration Legal Issues

Committee Members:

I am a member of the public, a citizen of the State of Nevada, an advocate for offender rights, and a member of Nevadans for Civil Liberties.

I am asking the Committee to review these recent articles concerning the registration laws in different states. Our organization is bringing these articles to your attention in relation to other States that are having constitutional issues with their registration laws.

This is in relation to the Registration laws contained in Section 179 of the Nevada Revised Statutes that were implemented for public safety.

When the Committee looks to changing the laws relating to registration or making them harsher for an offender, they should refer to the actual statistics that are being generated in study after study that are confirming the mis-information presented to the public by law enforcement and politicians that sex offenders have the highest recidivism rate in the country, when in fact they have the second lowest rate of recidivism in the country. It is not economically feasible for the State to say that this registration law is needed to protect the public due to this mis-information.

Due to the registration law being found unconstitutional in Ohio, the State has had to spend millions of dollars to overhaul the registration system, and to defend itself from well-placed lawsuits, pursuant to the violations of constitutional rights.

Kentucky has completely revamped their sex offender laws to be smart on crime, instead of wasteful of State funds, due to the fact that they recognize the fallacy of high recidivism rates.

In Wisconsin, after many published studies were presented, they are considering many changes to their laws. The same issue applies in Idaho, now that true statistics and facts are being presented.

In Michigan, they are actually having conferences that allow this type of information to be presented and discussed, in front of the Legislature and Committees.

We would like to ask that a study be done on factual recidivism rates and be presented as an agenda item, with our organization involved. It is time the State of Nevada recognized that they were mis-informed about this information and correct this situation.

We are currently aware of a member of our organization who is challenging the registration laws in State Court, based on constitutional grounds. This suit will probably be filed within the next 90 days, and will ask the Court to determine a vast number of issues for this Committee and the Legislature.

As a member of the public, I am very concerned about the implementation of harsher penalties and conditions for registration that do not take actual facts into account, and which are proven by States that have implemented studies and by the United States Government. I am asking the Committee to further review the statistics related to recidivism before they proceed with any other decisions relating to registration on sexual offenders.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Patrick Davis

ORT NEWS
Winter 2010
SATA

Holidays and High Risk Situations

by Stephen Price

Stephen Price is the Director of the Justice and Healing Center for Trauma and Addiction, in Silver Spring, MD. As a practicing therapist he specializes in sex offender treatment, treatment of compulsive sexual behaviors, and trauma. Stephen holds a Master's degree in Applied Sociology/Criminology and in Pastoral Counseling. He is the former President of the Sex Abuse Treatment Alliance (SATA) and now serves as a consulting director. Stephen also serves as interim-pastor in his local Church.

The holidays are coming up on us quickly and it seems like a good time to talk about how they function as a High Risk Situation for sex offenders in prison. Holidays are difficult for many people, but when you are behind bars they are especially difficult. The loneliness, separation, and guilt for what your behavior has done to your loved ones may be particularly strong at this time. Also many offenders come from very dysfunctional families and their memories of the holidays as children are traumatic. They don't have memories of loving Thanksgiving Day dinners or carols around the Christmas tree; they have instead things like memories of Mom throwing the turkey through the window in a drunken rage, or Dad setting the Christmas tree on fire in a psychotic episode. Other, less dramatic but equally traumatizing memories may come to mind for you.

The point is that taking care of yourself during the holidays is an important thing. I'd like to suggest a couple of ways to do that; both of which are consistent with the previous articles on various parts of the Cycle. You'll remember that High Risk Situations are those emotional situations that make us feel *out of control, less than, put down, powerless, shame filled*. For many folks the holidays do all of this. The first thing that you can do to take care of yourself is to **recognize** what is going on. High Risk Situations sneak up on us. We are often not conscious of them until we catch ourselves dropping into a Negative Emotional State or even behaving in one of the ways that we use to medicate ourselves and stop the feeling that makes us unhappy. For example, if you suddenly find yourself drawn to holding up in your cell with your stash of porn...that stash that you'd almost forgotten about cause you have been doing other, healthy stuff...you might want to ask "what am I feeling?" and "what is it that jumpstarted these feelings?" Talking to someone about this: a social worker, a chaplain, a friend you trust, a 12 Step sponsor will help take some of the 'poison' out of the situation. You may still feel sad (or lonely, or whatever), but you'll know what it is that's going on. This kind of self reflection, this looking inside to see why we're behaving and feeling a certain way is called an Internal Intervention.

The second thing you can do is to do something for someone else. Actions that we take like this are called External (or outside) Interventions. For example, Angel Tree is a program that helps get Christmas gifts for the children of inmates. Your facility chaplain will be familiar with it and other programs that you might be able to volunteer to help with. I know a group of inmates who one year raised money for the Jane Doe Fund by sponsoring a Walk-a-Thon inside the prison. They got pledges from staff for each mile walked and used the track at their facility. Be creative. Take your focus and put it on helping someone else during the holiday season. Then, when your thoughts start going to, "see, I'm a screw up...I can't do anything...all I do is ruin stuff" the healthy part of you can say, "No, I'm helping...

Con't on page 3

From the Editor's Desk

By Bob Brown

Many thanks for your tremendous early response to, *When Someone on the Registry Moves into My Neighborhood.* This guide fills a critical need in our communities, and we look forward to your feedback.

As we draw near the end of 2010, if you believe, as we do, in SATA's mission, we need your financial help. With your help we can continue to support the countless individuals and families affected by the issue of sexual abuse through our newsletters, website, phone support, special projects and more. Since all SATA work is accomplished through dedicated volunteers, 100% of your donation goes to further our work. We ask you to consider SATA as a worthy recipient of your 2010 tax deductable, charitable contribution. Our thanks for your continued support of this very important mission. On behalf of SATA, I wish you happy Holiday season. We look forward to serving you in 2011.

Fighting Fear with Facts: Safe and Successful Community Reintegration of Sex Offenders

Early this fall **The Washtenaw County Michigan Prisoner Re-Entry Initiative** sponsored an innovative conference to educate community leaders about sex offenders and sex offenses. The conference was the idea of Joe Summers, a local Episcopalian minister. The hope was that the conference would openly discuss objective facts and that attendees would share what they learned with their colleagues and co-workers.

The conference began with each attendee taking a pre-test about sex offenders, recidivism rates, treatment, and more. During the course of the afternoon attendees would learn the correct answers to the questions.

Next on the agenda was a panel comprised of three people who had sexually offended and served prison time, plus a mother of an individual who had sexually offended. Each person briefly described how the sex offense affected them and what is helpful or hurtful to an individual working to safely and successfully re-integrate into society.

The panel discussion was followed by presentations from 3 experts, each of whom approached the topic from a unique perspective. First was Barbara Levine, the Executive Director of the Citizens Alliance on Prisons and Public Spending (CAPPS). CAPPS researched Michigan recidivism rates and published their findings in a 2009 report, *Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?*. After analyzing 76,721 cases of Michigan prisoners sentenced to indeterminate terms after 1981 and released for the first time from 1986 through 1999 they found that 3.1% committed another sex offense within four years of being released. Their analysis also showed that keeping sex offenders in prison longer does not reduce their rate of committing another sex offense.

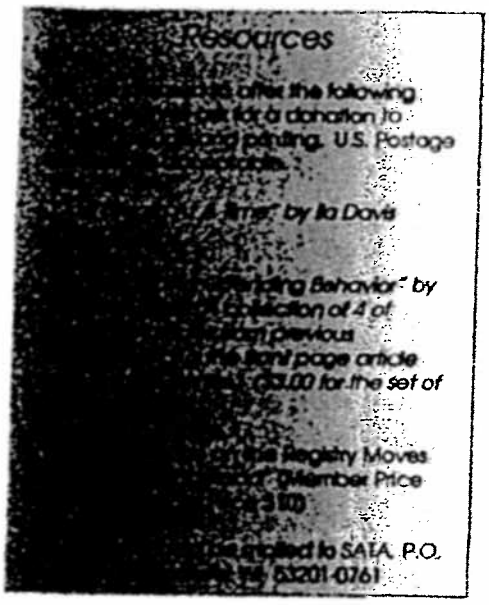
The next presenter was John Simpson, the Director of Sex Offender Treatment Services and member of Arbor Psychological Consultants who provides sex offender therapy for released Michigan prisoners in Washtenaw County. Simpson stressed that there are different types of offenders with different characteristics and different dangers to society. He reported that less than 5% of sex offenders are pedophiles, that most sex offenses against children are actually child abuse, and that treatment programs reduce recidivism.

The final speaker was Kristin Garnon, the Area Manager for Parole and Probation Services for the Michigan Department of Corrections who spoke of the new practices they are implementing in Washtenaw County for managing people on parole for a sex offense conviction. In this approach a team of professionals, such as the therapist, a police agent, a victim advocate, and a parole agent, are assigned to each parolee. They meet periodically as a group to discuss the parolee and to adjust his or her management plan.

The last part of the afternoon was devoted to questions and planning next steps.

For more information about this conference, contact The Washtenaw County Michigan Prisoner Re-Entry Initiative at washtenawmpri@gmail.com. SATA does NOT have printed copies of the previously mentioned research available.

PLEASE NOTE: *Check the date on your mailing label to determine if your membership is due to expire. Also please let us know if your address changes - especially inmates - because your mail will not be forwarded. Be sure to include your prison I.D. number to guarantee proper mailing.*



Holidays and High Risk Situations

Con't from page 1

someone else out this year. I can do something that is positive and good even if I'm locked up right now."

The truth is that for many people, inside prison and out, the holidays suck. There's a lot of it that we can't control. But we can control the things we've talked about above. So the High Risk Situations that come between now and the New Year can be an opportunity for practicing your recovery. Using simple Internal and External Interventions will only become habit if we practice them.

One final suggestion. Most faith communities (Christian, Jewish, Muslim, Buddhist) will be doing something different during this season. Many of them celebrate important moments of their faith during this time. Maybe this is a time for rediscovering your own spiritual roots. For remembering that all the great religions teach that despite whatever we may have done, we were made by a Creator who loves us and offers us the chance to change and be in relationship. If that's not your thing, then perhaps just sitting quietly and meditating for a few moments can bring you a sense of peace.

Finally, on a personal note.... some of you have written to say the articles on the Cycle have been helpful. I am glad to know that. There will be more to follow until we've gone through the entire Cycle together. But most of all, I want to wish you this holiday...no matter where you are...or why you're there...Peace...Shalom-Alechum...Namastay...Buddha Namo...As-Salaam-o-Aleckum. And may the New Year be one of recovery and healing for us all.

Remembering Three SATA Supporters

It is with sadness that we mark the passing of three SATA supporters: Lori Hall of Georgia, Eugene Dunagan of Wisconsin, and Michael Meisheimer of Maryland.

We recently learned from Lori Hall's website that she had passed away in August, 2009. Lori was formerly a practicing therapist in Detroit, Michigan, and moved to Atlanta in 2007. Wayne Bowers had the privilege of participating in several workshops with Lori while he lived in Michigan, and we will miss her.

Eugene Dunagan was an inmate in Wisconsin who had participated in support of SATA and CURE-SORT for several years. The Wisconsin Department of Corrections stated he passed away January 30, 2010 at Dodge Correctional Facility.

Michael Meisheimer, a long-time friend and associate of SATA, died in July 2010 from continued complications from emphysema in Westminster, MD. In 2003 he developed B4U-Act, an innovative program to publicly promote services and resources for self-identified individuals (adults and adolescents) who are sexually attracted to children and seek therapeutic assistance. The organization also educates mental health providers in Maryland regarding the approaches helpful for these specific clients. The work continues and memorial donations are welcome. Contact SATA, attention Wayne Bowers, for more information on contributing.

SATA CURE-SORT News

SATA CURE-SORT News is published by Sex Abuse Treatment Alliance and its program Sex Offenders Restored Through Treatment, an issue chapter of Citizens United for the Rehabilitation of Errants (CURE). For more information, send letters to:

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To become a SATA member or make a donation, fill in, detach, and mail this form to:

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N19-3

Residency Law Ruled Unconstitutional, Then Judgment Stayed

by Wayne Bowers

Residency laws throughout the country continue to be challenged. The following article details one such challenge and the subsequent appeals court update.

A decision made by Los Angeles Superior Judge Peter Espinoza in early November could hold landmark implications nationally about where a person on the sex offender registry may live. Judge Espinoza issued a 10-page ruling that the legislation known as Jessica's Law was unconstitutional after four registered sex offenders had petitioned the court. The judge ruled the persons were being made to decide between prison or homelessness due to the law, known in California as Proposition 83, which restricts how close former offenders can live from parks or schools.

The judge said the court had received about 650 habeas corpus petitions raising similar legal issues and hundreds more were being prepared by the public defender's office.

It is important for everyone to understand the case is in a trial court and will likely be appealed. However, the decision is very likely a solid one with all facts taken into consideration, and that the comments appear that the judge is quite aware of what makes the public safe and what does not, and has made that his priority in his decision.

This case does not relate to the entire nation or even to all of California. The criteria to qualify under this **temporary** order (applicable only in Los Angeles county, CA) are:
1) The individual must be on parole;
2) The residency law where the individual lives is such that he/she cannot find a place to live;
3) The individual has been told that if he/she does not find a place to live, he/she will go back to prison.

Effectively the judge said: The residency law (for folks under the above circumstances) is unconstitutional because it effectively banishes them (where banishment under California law has been declared punishment) and if those folks fail to follow the law (which is impossible to comply with) they will be returned to prison which constitutes punishment.

Other jurisdictions will have to wait for the final decision on this case before any further jurisdictions can seek to call their law unconstitutional, but you can be assured this decision has the attention of many people, including judges, attorneys, and lawmakers.

Parts of this article were taken from a story in the **Los Angeles Times** written by Andrew Blankstein on November 4, 2010. Additional thoughts were contributed by the blog at:
www.sexoffenderresearch.blogspot.com

Update: Judgment Stayed

Before this newsletter could be published, a California appeals court ordered a temporary stay on the aforementioned decision by Judge Espinoza. Watch for additional updates on this important story.

SATA does NOT have printed copies of the Los Angeles Times article available.

Did You Know?

A 2007 report by the Minnesota Department of Corrections tracked 224 sex offenders released from prison between 1999 and 2002 who committed new sex crimes prior to 2006. The first contact between victim and offender never happened near a school, daycare center or other place where children congregate. The report concluded, "Not one of the 224 sex offenses would likely have been deterred by a residency restriction law." The study warned that these laws isolate offenders in rural areas with little social and treatment support, with poor transportation access and with few job opportunities.

Rather than lowering sexual recidivism, the report said, "Housing restrictions may work against this goal by fostering conditions that exacerbate sex offenders' reintegration into society."

(Contributed by Chris Domin, Retired Reporter.)

Study shatters online-predator mold

Contrary to stereotypes, Internet sex offenders are not molesters "who use trickery and violence to assault children," a study shows. Instead, most target vulnerable teens, grooming them to see the relationships as romantic or sexual adventures. The study also says children who use social networks MySpace and Facebook do not appear to increase their risk of being victimized by online predators. Rather, it is risky online interactions such as talking online about sex to unknown people that increases vulnerability, according to the researchers at the Crimes Against Children Research Center at the University of New Hampshire. Teens particularly vulnerable to predators include "boys who are gay or questioning their sexual orientations; youths with histories of sexual or physical abuse; and those who frequent chatrooms, talk online to unknown people about sex, or engage in patterns of risky off- or online behavior," the report says. The study was based on three surveys — two comprising telephone interviews of a combined 3,000 Internet users ages 10 to 17, and one involving 612 interviews with federal, state and local law enforcement officials. The study is published in the February/March issue of the American Psychological Association's *American Psychologist.* 2/20/08

st easygoing tribe members so rapidly turn shifty-eyed and mistrustful?

Stephanie Booth
Psychology Today - Dec. '11

Few of us will find ourselves competing on that reality show, but Freeman believes we now live in an era that brings out the paranoia in us. "More than ever, we're reminded through newspapers, magazines, and television shows of all the threats facing us, from terrorists to criminals to pedophiles," says Freeman. "This overreporting leads us to overestimate the likelihood of the occurrence of these dangers." Perils are exaggerated; threats, magnified. View enough coverage of a child abduction case and you'll begin to wonder whether your neighborhood isn't crawling with kidnappers too. "It's hard to stay cool when everyone else is panicking," Freeman adds.

Across a lifetime, one person could even temporarily slide up the paranoia scale, experiencing more suspiciousness while unusually stressed, anxious, or depressed—say, during a period of unemployment. After losing a job, struggling to find health care, and missing payments on a credit card, student loans, and condo fees, someone who's never suffered from regular paranoid thoughts may suddenly spiral into

Psychology Today

Article on paranoia: Stephanie Booth, Dec. '11

Media

paranoia

Subj: Re: Fwd: a note from [redacted]
Date: 3/17/2008 12:54:53 P.M. Pacific Daylight Time
From: ing2094@sbcglobal.net
To: [redacted]

Dear [redacted]

I applaud your writing to Dr. Phil and I encourage you to write his boss Oprah too. I just wrote a letter to a paper in Yerington that had published a large editorial piece of vigilantism and by God, they published it! I can hardly believe it. I challenged them to attend one of my groups to find out for themselves about what these men are like. I invite you to do the same on my behalf to Phil and Oprah.

A pedophile is someone who has an arousal to children (prepubescent) and has had this arousal for at least six months. Not all pedophiles are child molesters and not all child molesters are pedophiles because there are those pedophiles who are aroused to these thoughts but never act out on them in a criminal fashion. [redacted], and the vast majority of offenders against children are not pedophiles in that they do not have a generalized interest in children--they had a situational interest in one child. They do not cruse playgrounds, they do not masturbate to Disney films. They are not interested in children. They are not pedophiles. Example: just as one may have a shoe fetish for example and never offend against anyone...or that same individual may one day become so aroused that he pulls the shoe right off of a woman to hold it and fondle it (a battery against the woman).

The idea that there is "no cure" for sex offending is an odd statement on the face of it because one might act out in a sexually criminal manner for a number of reasons--power, drunkenness, general mischief, AD/HD but there is no one monolithic reason why sexual offenders act out--there is no sex offender gene, no "sex offender" diagnosis. One may have committed indecent exposure because some buddies dared one to streak across the parking lot. Doing that may be a result of a need for acceptance, the impulsivity of AD/HD, the immaturity of youth or a desire to create mischief. Who could say these are incurable. Now AD/HD is treatable--not curable but the others are certainly something one can grow out of and treatment can help in all of these cases.

When we are talking about rape and other types of sex crimes even there the response that the crimes are incurable makes no sense. First, ask the person to define "curable." Is alcoholism curable (no, strictly speaking it's treatable, but incurable...like diabetes) But is depression curable? Well, we treat it and it goes away, sometimes forever sometimes for years sometimes for only a brief time but no one in the field considers depression incurable!

The recidivism rate for sex offenders as a class is among the lowest for all criminals. Please look at the Center for Sex Offender Management web site for their study on recidivism. Also, look at Human Rights Watch for their study No Easy Answers--both are very informative.

Nice to hear from you as always. Keep up the good fight.

Steve

email from Steven Ing

Thursday, December 15, 2011

Wisconsin Sex Offender Registration Laws Balance Offenders' and Victims' Rights

This is debatable. Wisconsin is the home of the author of the Adam Walsh Act. Fairness in wisconsin?

12-15-2011 Wisconsin:

Wisconsin's laws regarding sex offender registration attempt to balance the rights of both offenders and victims.

Wisconsin's sex offender registration laws have come under fire recently in light of a highly publicized expose performed by Milwaukee's "12 News" team that revealed that roughly half of the state's roughly 20,000 registered sex offenders are under little or no direct law enforcement supervision. That means that they -- once their jail terms, court-ordered therapy and probationary periods are completed -- are essentially free to move about the state unimpeded. This is good news for those whose sex offenses were a one-time crime and they have already been appropriately punished and rehabilitated, but raises alarms for some parents and children's rights organizations.

The registry requires that people who were "sentenced, in an institutional setting, discharged or on field supervision" for a sex-related crime provide their name, date of birth, address, place of employment or school enrollment, email or website addresses and a DNA sample to the Wisconsin State Department of Corrections. Victims' right advocates claim that the registry is vital to keeping children across the state safe by giving parents, teachers and other responsible adults a way to "keep tabs" on convicted offenders.

Statistics support the opposite position, however -- recidivism rates for even violent sex offenders are only between 10 and 15 percent, which is actually much lower than many other crimes. Putting generalized restrictions on the movement of everyone convicted of a sex-related crime could possibly be considered unconstitutional and akin to double jeopardy for those who have already served their sentence. Unfortunately, a conviction for a sex-related offense is in some ways like a life sentence; there is the possibility of lifelong registration, public stigma and the loss of housing, job and educational opportunities. With such potentially harsh consequences on the line, it is vitally important for anyone facing a sex crimes charge have a skilled criminal defense attorney fighting to protect their rights. ..Source.. by Kohn & Smith

Sunday, July 31, 2011

Ohio sex offender registry a mess

7-31-2011 Ohio:

Supreme Court has twice ruled it unconstitutional

Four years after Ohio hurried to comply with a federal law by retroactively toughening the reporting and registration requirements for sex offenders, the state could be forgiven for having buyer's remorse.

Ohio's law has twice been declared unconstitutional, which opponents had warned would happen.

Thousands of sex offenders have been or will be reclassified — two times.

The funding the state stood to lose if it did not conform — typically hundreds of thousands of dollars a year — has been offset by millions spent complying with the law and defending against thousands of lawsuits.

"It was a colossal boondoggle," said Jay Macke, an assistant state public defender.

And the issue remains unsettled, despite the Ohio Supreme Court striking down more of the law this month in a decision that could have implications across the country.

In 2007, Ohio adopted the federal Sex Offender Registration and Notification Act, part of a broader 2006 federal law named for Adam Walsh, a 6-year-old Florida boy who was abducted and killed in 1981.

It won unanimous approval from the legislature partly because there was a price for not going along – a 10 percent reduction in federal law-enforcement assistance grants. The federal government in 2009 applauded Ohio for becoming the first state to "substantially implement" the sex-offender law, which created a national system for the registration of sex offenders.

Ohio offenders were reclassified into three tiers based on the crime, no longer considering their likelihood of reoffending. They had to register for longer periods and report to authorities more often, and some once considered lower-level offenders were added to the registry for life instead of a decade.

The changes were applied retroactively to 26,000 sex offenders who committed their crimes before the law went into effect in 2008, something critics at the time said was blatantly unconstitutional.

It turns out they were right.

While the Ohio Supreme Court initially declined to step in and block the law from taking effect, it struck down portions of the law in 2010, reverting 19,000 offenders back to their status under Ohio's previous sex-offender statute, Megan's Law.

Then, about 7,000 offenders benefited from a major ruling this month that said the law could not change their punishment after the fact.

"When we name laws after people, it's usually a mistake," said Jeff Gamso, former legal director for the American Civil Liberties Union of Ohio who has fought Ohio's retroactive sex-offender law. " They're driven by immediate passions and not by a whole lot of attention to what makes sense."

Ohio, he said, has a lot of work ahead in deciding how to handle the fallout from the latest Supreme Court decision.

It is a crime for sex offenders to fail to register and verify their whereabouts. But some still listed on the registry would have come off by now under Megan's Law, or possibly would not have had to register in the first place.

What if they were jailed for not registering or checking in with authorities under an unconstitutional law?

"The years of confusion continue," Gamso said.

Attorney General Mike DeWine has another concern — making sure sex offenders affected by the latest ruling still have to sign up for the registry. His office began meeting with lawmakers last week to discuss their status.

DeWine said he is not sure yet whether new legislation will be needed.

"The court has told us what we can't do, which we accept," he said. "What we need to make sure is if they are still covered under the previous law.

"We have a duty to look at this and make sure we get it right."

Sex offender George Williams of Cincinnati — one of thousands to challenge Ohio's law — won the latest legal fight in the state's high court. Now 23, he pleaded guilty to having unlawful sexual conduct with his 14-year-old girlfriend when he was 19.

For critics, Williams is the poster child for what is wrong with the sex-offender registry.

At the time of the crime, he likely would have been labeled a sexually oriented offender and been required to register for 10 years. However, under the Adam Walsh Act provisions, he was subject to 25 years.

Williams was sentenced to two months of jail and three years of community control, similar to

probation. He and the victim had a child together, and she and her family wanted him to have contact with the child.

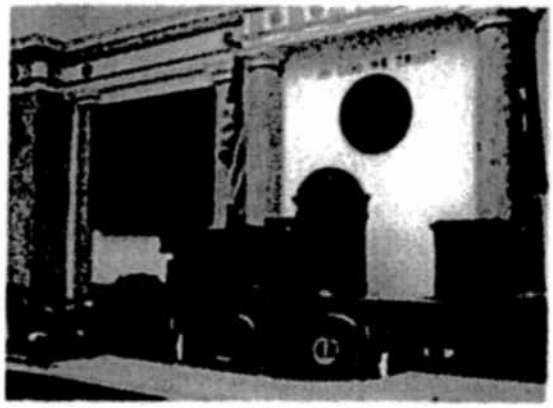
"If I have some predator living near me, I'd like to know that. But does this really get it done?" asked Franklin County Common Pleas Judge David E. Cain.

He questioned whether the public is served by a registry with tens of thousands of offenders on it. Tougher reporting requirements and more restrictions on where offenders can live make it more likely they will not comply and leave their whereabouts unknown, he said.

"I'm not sure it ever had a chance of doing what (legislators) intended, to make the state safer from sexual offenders," Cain said. "They have the right intentions, but they don't always think them out too well." ..Source.. by David Eggert, The Columbus Dispatch

How a 'Tough-on-Crime' State Became Smart on Crime

SPECIAL REPORT



Inside the Kentucky State Capitol
Photo by kaintuckeean via Flickr

Kentucky's overhaul of its criminal justice system this spring is a textbook example of genuine bipartisanship.

For three decades, Kentucky politicians proved they were tough on crime. At every opportunity, they stiffened sentences and added offenses to the state's penal code.

They nearly bankrupted the state.

Kentucky's corrections budget grew from $30 million in 1980 to nearly $470 million in 2010, even as lawmakers cut $1.8 billion from the state's budget in the grip of a deep recession. The prison population grew 80 percent between 1997 and 2009, the year Kentucky led the nation in the rate of incarceration.

Of 22,000 state felons that year, 8,000 were in county jails that became dependent on state funding.

But the crime rate remained relatively flat, below the national average, and about what it was when the tough on crime movement began.

The state's justice system seemed ripe for change. But no one expected it to be easy.

When some legislators in the Kentucky General Assembly tried to reduce the strain imposed on the state budget by prison overcrowding in 2009, by inserting parole credit provisions in the budget to release around 1,500 prisoners, prosecutors and law enforcement howled.

A challenge from a local prosecutor and the state attorney general to remove the provisions lost in court.

Nevertheless, few could have predicted what happened in late February this year. After a year of study, Kentucky lawmakers overhauled the state's drug laws, as well as its sentencing, probation and parole system. Following passage in the Kentucky House (Feb. 17) and Senate (Feb. 28), the bill became law upon the signature of Gov. Steve Beshear on March 3.

The law's provisions include:

Alternative sentencing for non-violent offenders and strengthening supervision of high risk parolees, while providing incentives for reduced time for lower risk parolees. It also calls for greater supervision of prisoners reentering the community;

Swift, but measured sanctions for parole violators;

More information on sentences for crime victims;

On drug sentencing, it distinguishes between simple drug possession and commercial trafficking, and provides for more drug treatment options for drug offenders.

Half the accrued savings of the reform are required to be ploughed back into the corrections budget and half of that is to be set aside to assist county jail costs. It also requires a certificate-of-need process before any new jail can be constructed.

The reform is expected to lower prison populations, expand drug treatment and save the state more than $420 million over the next decade.

It was a landmark of bipartisanship, accomplished in the face of the kind of polarized political climate that has defeated similar reform attempts elsewhere.

Democrats and Republicans each control one chamber of the legislature, and the leader of the Republican Senate was openly planning to challenge the incumbent Democratic governor in the 2011 election.

The story of how it happened might serve as an object lesson to other states.

'Stars in Alignment'

"(It happened) because all of the stars came into alignment and because of our ability to build on prior work," recalls Justice and Public Safety Secretary J. Michael Brown.

Indeed, the tentative steps to reduce costs and prison populations two years earlier by granting inmates parole credits set the template for what happened this year. Two committees had studied the problem. But the discussion became serious when the legislature appropriated $200,000 to help fund a Pew Center of the States study of the problem.

A bi-partisan task force representing all three branches of government, and including a prominent defense attorney, former prosecutor and a county executive, was appointed.

Recognizing Kentucky's conservative trend and its burgeoning illicit drug problems, the task force decided to involve stakeholders to build as much support as possible for reforms.

According to Brown, the fact that the "early parolees" released under the 2009 cost-cutting measures didn't go on a crime spree was crucial to easing lawmakers' fears about the consequences of reducing prison populations.

That may have helped win a joint endorsement from Beshear, Democratic House Speaker Greg Stumbo and Republican Senate President David Williams of a task force working with Public Safety Performance Project of the Pew Center for the States to formulate statutory reforms.

"You sort of had the top lined up," Brown adds. "So the task became (reaching) the individual stakeholders who had deeply divided interests."

That still could have meant trouble. Those stakeholders included law enforcement, prosecutors, and county governments whose jails depended on state funding for housing felons whom the prisons couldn't accommodate.

Bleeding County Budgets Dry

Jails were bleeding county budgets dry, but counties feared the task force would recommend changing low-level felonies to misdemeanors, thus shifting inmates and additional costs to them.

The task force included a noted defense attorney, Guthrie True, and an equally noted former prosecutor, Tom Handy. They co-authored an op-ed piece arguing that reform reduced costs and increased public safety. The Supreme Court Chief Justice was a member, as was Brown and a county judge/executive.

The co-chairs were the legislature's Judiciary Committee chairmen: Democratic Rep. John Tilley, a former prosecutor; and Republican Sen. Tom Jensen, a criminal defense attorney.

Pew provided research about what had worked in other states, such as Texas, which reduced costs while lowering the crime rate. Polling showed the public preferred "swift and certain punishment" to long, costly sentences. The polls also indicated the public favored treatment over incarceration for nearly three-quarters of Kentucky inmates who were addicts.

Beginning in June of last year, the task force held public meetings, asking stakeholders for suggestions, hoping to head off public anxiety and political fears of lawmakers.

Sometimes the entire task force met with the groups, often incorporating suggestions. It convened in June of 2010 and met through early January 2011 when the state General Assembly convened in Frankfort. Tilley and Jensen traveled the state, meeting with prosecutors, county officials, and law enforcement.

Describing the process later, Jensen said the task force decided to focus on drug crimes, treatment options and recidivism.

He and Tilley were in constant talks with Chris Cohron, a prosecutor and past president of the Commonwealth Attorneys Association who helped soothe prosecutors' fears. They softened the financial blow to counties by allowing state inmates to serve their final months in jails at state expense, and mandated a portion of savings produced by reform be set aside to help counties with jail costs.

Cohron said prosecutors understood the budget situation. "It was abundantly clear that they were going to do something," he said. "If we didn't participate in the process we'd be stuck with whatever they came up with."

At the last minute, hospitals got an amendment to the bill, over Tilley's and Jensen's objections, to prohibit so-called "prisoner dumping," or furloughing inmates for treatment without county liability for costs.

Counties weren't happy with this amendment. Jensen immediately gathered both sides and told them to work out an agreement "by tomorrow morning."

Tommy Turner, the county Judge/Executive on the task force and Vince Lang, head of the County Judge/Executives Association, jointly determined that counties would live with the provision in exchange for guaranteed Medicaid rates for prisoners.

Public Vote

However reluctantly, stakeholders were now on board. The next and possibly hardest step loomed ahead. Lawmakers—vaguely aware of what the task force had been doing—suddenly faced a public vote on the bill.

The debate at first followed familiar rhetoric.

"You're not asking us to vote for being soft on crime, are you?" asked a House committee chairman.

Tilley responded that the bill "is not soft on crime; it's smart on crime."

It didn't, for example, soften sentences for violent offenders or sexual crimes, he and other defenders noted. For further proof, they could point to Texas, which—though hardly known for a light touch on crime—passed similar legislation which saved millions even as its crime rate went down.

Another lawmaker told skeptics to talk to their local prosecutors, judge/executives and jailers.

"It'll be all right," the legislator insisted. "Just ask your people back home."

They found them ready for change.

In the legislature, meanwhile, Jensen told Senate President Williams he'd resign his Judiciary Committee chairmanship if he were unable to persuade colleagues to pass the bill. He also told a member of the Democratic House leadership.

House Democrats concluded they could comfortably support the bill without having the Republican Senate exploit their votes for political advantage.

And the relaxation of Kentucky's often-heated partisan climate was mirrored at the top. Jensen and Tilley, who had barely known each other previously, developed a bond and trust. Neither feared being grandstanded or sandbagged by the other.

Together they briefed each party's caucuses in both chambers. The relationship was critical, said Chief Justice John Minton, who looked on as the bill passed the House with only two nay votes.

"They were from two different parties, from two separate parts of the state, but their perseverance caused all of us to lay down our differences for the greater good," he recalled.

The key, Tilley said, for any state, especially a conservative one like Kentucky, was the willingness "to meet with anybody who had any interest in these issues and to give lawmakers assurance (that) their local officials' voices were heard.

After House passage, the more conservative Senate passed the bill unanimously.

Members in both chambers rose to their feet and cheered.

Kentucky's lawmakers had finally decided to be smart on crime.

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Sex Offender Sentencing in Washington State: Recidivism Rates

The 2004 Legislature directed the Washington State Institute for Public Policy to analyze the impact and effectiveness of current sex offender sentencing policies.[1] Because the topic is extensive, we are publishing a series of reports.

This report describes the recidivism rates of Washington State sex offenders. It examines the 4,091 sex offenders placed in the community from 1994 to 1998 after release from prison or jail or a community supervision sentence. Typically, news articles report sex offender recidivism with one number. This study examines recidivism from multiple perspectives, looking at the type of sex offender (child victim, rapist, sex offender with priors) and the categories of crimes after release (sex, violent, non-violent, misdemeanor).

This study defines recidivism as a conviction occurring during the first five years after release to the community. In addition, the time between the date of a recidivism offense and the conviction for that offense—the adjudication period—is taken into account. Our previous work indicates that a one-year adjudication period captures nearly all convictions.[2]

Summary

This report describes the recidivism rates of Washington State sex offenders.

Findings

- **Compared with the full population of felony offenders, sex offenders have the lowest recidivism rates for felony offenses (13 percent) and violent felony offenses (6.7 percent) but the highest recidivism rates for felony sex offenses (2.7 percent).**
- **Sex offenders who victimize children have the lowest felony recidivism rates as well as the lowest sex (2.3 percent) and violent felony (5.7 percent) recidivism rates. Rapists have the highest sex (3.9 percent) and violent felony (9.5 percent) recidivism rates. Some select populations of sex offenders in the state have been found to have much higher recidivism rates.[3]**
- **Sex offenders who complete SSOSA,[4] an outpatient treatment sentence, have the lowest recidivism rates in all categories. In contrast, sex offenders sentenced to prison have the highest rates. Those sentenced to jail or community supervision have rates similar to, but slightly below, the recidivism rates of those sentenced to prison.**

The relatively low "base rate" of recidivism makes it challenging to predict reoffending. Subsequent reports will cover this topic in detail.

[1] ESHB 2400, Chapter 176, Laws of 2004.

[2] Robert Barnoski, 2005, *Sex Offender Sentencing in Washington State: Measuring Recidivism*, Olympia: Washington State Institute for Public Policy, Document No. 05-08-1202. Only offenses that result in a conviction are included in the measurement of recidivism.

[3] Cheryl Milloy, 2003, *Six-Year Follow-Up of Released Sex Offenders Recommended for Commitment Under Washington's Sexually Violent Predator Law, Where No Petition Was Filed*, Olympia: Washington State Institute for Public Policy, Document No. 03-12-1101.

[4] Special Sex Offender Sentencing Alternative.

Exhibit 1 compares the recidivism rates of sex offenders to other violent and then to non-violent offenders. The recidivism rates are based on the most serious offense that is involved in the reoffending.[5]

Compared with other felony offenders, felony sex offenders have the lowest recidivism rate for felony offenses (13 percent), the lowest rate for violent felony recidivism (6.7 percent), but the highest recidivism rate for felony sex recidivism (2.7 percent).

Other violent offenders have the highest recidivism rate for violent felony offenses (16.6 percent). The non-violent offenders have the highest felony recidivism rate (33.7 percent) and the highest rate for felony non-violent offenses (25.2 percent), which are primarily drug and property offenses.

When looking at misdemeanor offenses, we find sex offenders are most often convicted of crimes involving assault.[6] Less than 1 percent of sex offenders reoffend with a misdemeanor sex offense. Less than 3 percent of sex offenders are convicted for failure to register as a sex offender.

Exhibit 1
Comparing Felony Sex and Other Felony Offenders: Five-Year Recidivism Rates

Most Serious Recidivism Offense	Sex	Other Violent	Non-Violent
Number of Offenders	4,091	15,952	49,380
Percentage Distribution	5.9%	23.0%	71.1%
Felony	**13.0%**	**31.5%**	**33.7%**
Sex	**2.7%**	**0.9%**	**0.7%**
Violent (Not Sex)	**4.0%**	**15.7%**	**7.8%**
Violent Total	**6.7%**	**16.6%**	**8.4%**
Property	3.1%	7.4%	12.6%
Drug	2.3%	6.4%	11.8%
Other	0.9%	1.0%	0.9%
Non-Violent Total	6.3%	14.8%	**25.2%**
Misdemeanor	11.5%	16.9%	13.5%
Sex	0.1%	0.3%	0.4%
Failure to Register	**2.4%**	0.1%	0.0%
Assault	4.9%	9.7%	5.2%
Other	4.1%	6.9%	7.8%
Total Recidivism	24.5%	48.4%	47.2%

Exhibit 2 displays the recidivism rates for all sex offenders, and then separately for offenders convicted of felony sex involving a child victim, rape, and other felony sex offenses.[7] Sex offenders convicted of offenses against children are the most prevalent (69 percent).[8]

Child victim sex offenders have the lowest felony recidivism rate (10.5 percent) as well as the lowest for sex (2.3 percent) and violent felony (5.7 percent). Rapists have the highest sex (3.9 percent) and violent felony (9.5 percent) recidivism rates. Other sex offenders have rates similar but slightly lower than the rates of rapists.

Exhibit 2
Comparing Types of Felony Sex Offenders: Five-Year Recidivism Rates

Most Serious Recidivism Offense	Total	Type of Felony Sex Offender: Rape	Child Sex	Other Felony Sex
Number of Sex Offenders	4,091	661	2,821	609
Percentage Distribution	100%	16.2%	69.0%	14.9%
Felony	**13.0%**	**17.4%**	**10.5%**	**20.0%**
Sex	**2.7%**	**3.9%**	**2.3%**	**3.3%**
Violent (Not Sex)	**4.0%**	**5.6%**	**3.3%**	**5.1%**
Violent Total	**6.7%**	**9.5%**	**5.7%**	**8.4%**
Property	3.1%	3.3%	2.7%	4.9%
Drug	2.3%	3.0%	1.4%	5.7%
Other	0.9%	1.5%	0.7%	1.0%
Non-Violent Total	6.3%	7.9%	4.8%	11.7%
Misdemeanor	11.5%	13.0%	11.1%	12.0%
Sex	0.1%	0.3%	0.1%	0.0%
Failure to Register	2.4%	2.6%	2.4%	2.5%
Assault	4.9%	5.1%	4.7%	5.4%
Other	4.1%	5.0%	3.8%	4.1%
Total Recidivism	24.5%	30.4%	21.5%	32.0%

Exhibit 3 subdivides violent felony reoffending by sex offenders into specific types of offenses. All recidivism rates are low because the overall violent reoffending rate is low. Child victim sex reoffending is the most prevalent. Two percent of all sex offenders reoffend with a felony child sex offense, including 2.1 percent for child victim sex offenders and 2.6 percent for other felony sex offenders. Very few rapists recidivate with a child victim sex offense (0.9 percent). Rapists have the highest recidivism rate for rape, 2.4 percent.

[5] Homicide is the most serious felony offense followed by sex offenses, robbery, assault, property, drug, and then other felonies.

[6] Misdemeanors are less serious than felonies.

[7] Rape is ranked the most serious followed by child sex and then other felony sex. Less than 1 percent of those convicted of rape also have a child sex conviction.

[8] Child victim sex offenses include Child Molestation, Child Pornography, Communication With a Minor for Immoral Purposes, Incest, Indecent Liberties With Victim Under 14, Luring of Minor, Patronizing a Juvenile Prostitute, Rape of a Child, Sex Misconduct With a Minor, Statutory Rape, and Sexual Exploitation of a Minor. Adult sex offenses include Carnal Knowledge and Custodial Sexual Misconduct.

Exhibit 3
Comparing Types of Felony Sex Offenders: Violent Felony Five-Year Recidivism Rates

Most Serious Violent Recidivism Offense	Type of Felony Sex Offender: Total	Rape	Child Sex	Other Felony Sex
Child Victim Sex	**2.0%**	**0.9%**	**2.1%**	**2.6%**
Assault	1.7%	2.1%	1.5%	2.0%
Firearm	0.7%	0.6%	0.6%	1.1%
Rape	**0.5%**	**2.4%**	**0.1%**	**0.3%**
Domestic Violence	0.5%	0.9%	0.4%	0.5%
Kidnapping	0.3%	0.8%	0.2%	0.2%
Robbery	0.2%	0.5%	0.1%	0.5%
Other Violence	0.2%	0.2%	0.2%	0.2%
Other Sex	0.2%	0.6%	0.1%	0.3%
Murder	0.2%	0.3%	0.1%	0.3%
Dom. Viol. Assault	0.1%	0.2%	0.1%	0.0%
Burglary 1	0.1%	0.2%	0.1%	0.3%

Exhibit 4 displays the number of sex offenders recidivating with a felony sex offense. Numbers are presented because percentages are quite small. The exhibit indicates that few offenders have a subsequent felony sex offense within a five-year follow-up period that results in a conviction.

Exhibit 5 displays the recidivism rates for sex offenders by type of sentence they received: jail/community supervision, Special Sex Offender Sentencing Alternative (SSOSA) and prison.[9] SSOSA offenders have the lowest felony, felony sex, and violent felony recidivism rates, while those sentenced to prison have the highest rates. Those sentenced to jail/community supervision have rates similar to, but slightly lower than, the recidivism rates of those sentenced to prison.

Exhibit 4
Comparing Types of Felony Sex Offenders: Felony Sex Five-Year Recidivism Counts

Most Serious Sex Offense Recidivism	Type of Felony Sex Offender: Total	Rape	Child Sex	Other Felony Sex
Number of Sex Offenders	4,091	661	2,821	609
Number Recidivating With Felony Sex Offense	112	26	66	20
Rape 1	6	5	1	0
Rape 2	7	4	2	1
Rape 3	9	7	1	1
Sexual Exploitation of a Minor	2	0	1	1
Child Pornography	3	0	3	0
Communicating With Minor for Immoral Purpose	24	1	18	5
Patronize Juvenile Prostitute	1	0	1	0
Luring of Minor	2	1	1	0
Rape of a Child 1	5	1	3	1
Rape of a Child 2	4	0	3	1
Rape of a Child 3	14	1	9	4
Child Molestation 1	17	0	13	4
Child Molestation 2	6	2	4	0
Child Molestation 3	3	0	3	0
Sodomy	1	0	1	0
Indecent Liberties	4	2	1	1
Incest	1	1	0	0
Promote Prostitution 1	1	1	0	0
Promote Prostitution 2	2	0	1	1

Exhibit 5
Comparing Types of Sentences for Sex Offenders: Five-Year Felony Recidivism Rates

Most Serious Recidivism Offense	Type of Sentence: Total	Jail	SSOSA	Prison
Number of Sex Offenders	4,091	1,055	1,097	1,939
Percentage Distribution	100%	25.8%	26.8%	47.4%
Felony	**13.0%**	**14.5%**	**4.7%**	**16.9%**
Sex	**2.7%**	**3.2%**	**1.4%**	**3.2%**
Violent (Not Sex)	**4.0%**	**4.3%**	**1.5%**	**5.2%**
Violent Total	**6.7%**	**7.5%**	**2.8%**	**8.5%**
Property	3.1%	3.1%	1.2%	4.2%
Drug	2.3%	3.0%	0.5%	2.9%
Other	0.9%	0.9%	0.2%	1.2%
Non-Violent Total	6.3%	7.0%	1.9%	8.3%
Misdemeanor	11.5%	15.2%	4.9%	13.3%
Sex	0.1%	0.2%	0.0%	0.2%
Failure to Register	2.4%	2.0%	1.0%	3.5%
Assault	4.9%	7.2%	2.1%	5.2%
Other	4.1%	5.8%	1.8%	4.4%
Total Recidivism	24.5%	29.7%	**9.7%**	30.1%

‡ Jail includes those sentenced to jail and/or community supervision.

[9] Another report in the Institute's sex offender sentencing series analyzes the sentencing decision.

Exhibit 6 displays violent recidivism rates. Recidivism for a child victim sex offense is the most prevalent violent reoffense for all three types of sentences, with an overall recidivism rate of 2 percent. SSOSA offenders have the lowest child victim sex offense recidivism rate, while those sentenced to jail have the highest rate. Those sentenced to prison have the highest rape reoffense rate (0.9 percent).

Exhibit 6
Comparing Types of Sentences for Sex Offenders: Violent Felony Five-Year Recidivism Rates

Most Serious Violent Recidivism Offense	Total	Type of Sentence: Jail	SSOSA	Prison
Child Sex	**2.0%**	**2.6%**	**1.2%**	**2.1%**
Assault	1.7%	1.9%	0.8%	2.0%
Firearm	0.7%	0.9%	0.2%	0.8%
Rape	**0.5%**	**0.5%**	**0.0%**	**0.9%**
Domestic Violence	0.5%	0.5%	0.1%	0.7%
Kidnapping	0.3%	0.1%	0.1%	0.5%
Robbery	0.2%	0.2%	0.0%	0.4%
Other Violence	0.2%	0.2%	0.0%	0.3%
Other Sex	0.2%	0.2%	0.2%	0.3%
Murder	0.2%	0.1%	0.1%	0.3%
Dom. Viol. Assault	0.1%	0.3%	0.2%	0.0%
Burglary 1	0.1%	0.0%	0.0%	0.3%

Exhibit 7 displays the recidivism rates for offenders with any felony sex offense conviction in their Washington State adult criminal history. This sample includes offenders with past as well as current sex offense convictions; it contains 4,952 persons, or 861 more than in the previous sample. This group of sex offenders has slightly higher recidivism rates than those in the 1994 to 1998 sample.

Child victim sex offenders are by far the largest group; 63 percent of these offenders have a child sex conviction (and no rape conviction) in their criminal history.

Rapists have the highest recidivism rates, followed by other sex offenders, and then child sex offenders with the lowest rates. Rapists have the highest violent recidivism rate (13.6 percent) and child victim sex offenders have the lowest violent offense recidivism rate (7.3 percent).

Exhibit 7
Offenders With History of Felony Sex Convictions: Five-Year Recidivism Rates

Most Serious Recidivism Offense	Total	Type of Felony Sex Offender: Rape	Child Sex	Other Felony Sex
Number of Sex Offenders	4,952	1,115	3,107	730
Percentage Distribution	100%	22.5%	62.7%	14.7%
Felony	20.6%	29.9%	13.5%	36.3%
Sex	3.1%	4.3%	2.6%	3.3%
Violent (Not Sex)	6.2%	9.3%	4.7%	7.8%
Violent Total	9.3%	13.6%	7.3%	11.1%
Property	5.3%	7.4%	3.6%	9.3%
Drug	5.2%	7.4%	2.0%	15.1%
Other	0.8%	1.3%	0.6%	0.8%
Non-Violent Total	11.3%	16.2%	6.2%	25.2%
Misdemeanor	12.5%	14.7%	11.7%	12.3%
Sex	0.2%	0.3%	0.2%	0.3%
Failure to Register	**2.2%**	2.4%	2.3%	1.4%
Assault	5.5%	6.7%	4.9%	6.0%
Other	4.6%	5.3%	4.3%	4.7%
Total Recidivism	44.3%	60.8%	31.5%	48.6%

Exhibit 8 highlights the type of violent offense involved in recidivism. For this sample of current and previous sex offenders, assault is the most prevalent violent recidivism offense, followed by felony child sex recidivism.

Exhibit 8
Offenders With History of Felony Sex Convictions: Violent Felony Five-Year Recidivism Rates

Most Serious Violent Recidivism Offense	Total	Type of Felony Sex Offender: Rape	Child Sex	Other Felony Sex
Assault	**2.6%**	**3.2%**	**2.0%**	**4.0%**
Child Sex	**2.1%**	**1.5%**	**2.3%**	**2.3%**
Domestic Violence	1.0%	1.7%	0.7%	1.1%
Firearm	0.9%	1.3%	0.9%	0.8%
Robbery	0.6%	1.4%	0.3%	0.8%
Rape	**0.6%**	**2.1%**	**0.2%**	**0.3%**
Kidnapping	0.3%	1.0%	0.1%	0.3%
Other Sex	0.3%	0.7%	0.1%	0.7%
Other Violence	0.2%	0.2%	0.2%	0.0%
Burglary 1	0.2%	0.3%	0.1%	0.3%
Murder	0.2%	0.2%	0.2%	0.5%
Dom. Viol. Assault	0.1%	0.1%	0.2%	0.0%

For further information, contact Robert Barnoski, (360) 586-2744 or barney@wsipp.wa.gov.

Document No. 05-08-1203

New York State Division of Probation and Correctional Alternatives

Eliot Spitzer
Governor

Research Bulletin: Sex Offender Populations, Recidivism and Actuarial Assessment

Robert Maccarone
State Director

During the summer of 2006, the Division of Probation and Correctional Alternatives (DPCA) conducted a survey of County Probation Departments to assess sex offender management practices. Among the resulting recommendations was that DPCA draft and disseminate a series of research bulletins on issues related to sex offender management so that probation officers in the field would have the latest information.

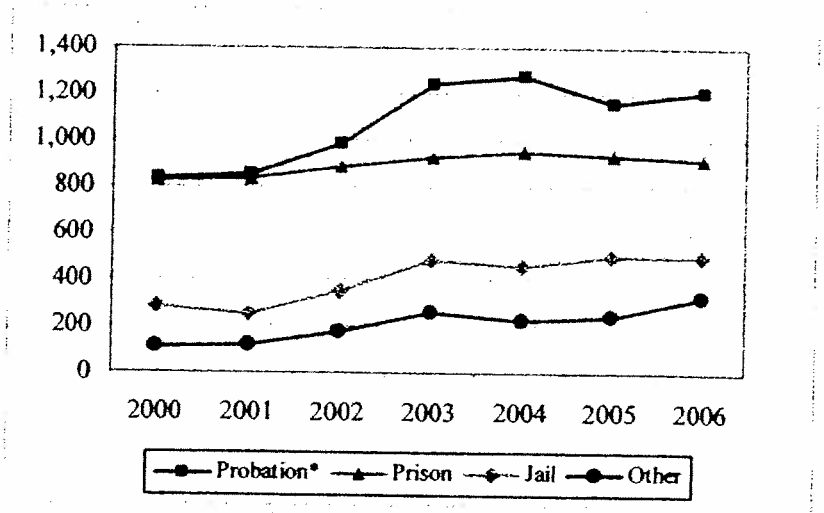
This bulletin represents the first in a series expected to be completed by the end of 2007 that will bring together issues in managing sex offenders on probation, including assessment, pre-sentence investigation, treatment, supervision strategies to reduce risk, the use of technology such as Global Positioning Systems (GPS), and forensic computer searches.

A copy of the survey and results can be found at:

http://www.dpca.state.ny.us

Probation is the most common sentence for sex offenders in New York State. Of the 2,944 sentences for offenses requiring registration on the Sex Offender Registry (SOR) in 2006, 1,206 were to probation, representing 41.0% of the total. Sentences to prison accounted for 31.0% (913) and sentences to local jails accounted for 16.9% (500). There were 325 offenders in the "other" sentencing category, including fines and conditional discharges. A small number of sentences were categorized as unknown (120).

Figure One: Criminal Sentences for Sex Offenses Requiring Registration: 2000-2006[1]



*Probation includes split sentences to jail and probation.
Source: New York State Division of Criminal Justice Services, Computerized Criminal History system (as of 4/07).

In mid-2006, probation departments reported supervising 3,671 sex offenders requiring SOR registration. They also identified 1,970 offenders who, although not required to register because of youthful offender status or pleading to a charge that does not require registration, were also being supervised as sex offenders due to the nature of the offense for a total of 5,641 supervised sex offenders. Specialized supervision typically includes enhanced pre-sentence investigation protocol, intensive supervision, small and/or specialized caseloads, and specialized probation officers or units within the department to supervise the offenders.

[1] Includes Youthful Offenders, who are not required to register. These figures were included because probation departments may supervise such offenders under the same supervision levels and protocols as sex offenders who are required to register. In 2006, YOs made up 9.9% of the total sentences for registerable offenses, but account for 16.0% of the registerable sentences to probation. Increases in sentences may reflect changes in sentencing laws that increased the number of offenses requiring SORA registration.

On a daily basis, probation officers must make decisions on sentencing recommendations, supervision levels and tactics, filing violations for non-compliance with the orders and conditions of the court, and multiple other areas that affect public safety. Risk assessment methods enhance decision-making by ensuring that factors empirically proven to predict risk are considered in a systematic manner.

The purpose of this bulletin is to summarize the research on sex offender recidivism rates, and to provide an overview of the availability, validity and usefulness of actuarial risk assessment instruments specific to sex offenders. Six instruments are included: the Minnesota Sex Offender Screening Tool Revised (MnSOST-R); the Rapid Risk Assessment of Sex Offender Recidivism (RRASOR); the Risk Matrix 2000; Sexually Violent Predator Assessment instruments from Colorado; Static-99; and the Vermont Assessment of Sex Offender Risk (VASOR).

Actuarial assessment is only one type of assessment method. Other types include structured professional judgment and clinical assessment. Structured professional judgment was developed in the area of violence assessment and combines informed judgment with instruments that reflect current theory, empirical research and clinical experience about the behavior being assessed (Kropp, 2002). This approach uses multiple assessment resources to arrive at a final judgment.

Clinical assessments may be unstructured; or clinicians may use items such as an interview schedule, actuarial assessments, or behavior rating protocols such as the DSM-IV-R (American Psychiatric Association, 2000), among other options.

Both structured professional judgment and clinical assessment are an important part of sex offender management and will be addressed in a subsequent bulletin.

Issues in Actuarial Assessment of Sex Offenders

Several issues relevant to sex offender assessment must be addressed before discussing the instruments themselves, as well as why specialized sex offender assessment instruments are preferable to those that predict general (non-sexual) recidivism:

- Recidivism rates for sex offenders differ from those of other offenders.

- Generalized assessment instruments predict general offending, but are not designed to predict sexual offending. Therefore, those instruments should be used only to predict general offending. The theoretical underpinnings of general recidivism differ from sexual recidivism. Generalized instruments tend to not measure the underlying theoretical constructs driving sexual recidivism and may guide officers down the incorrect path in supervising sex offenders.

- Most generalized assessment instruments base recidivism rates on a two to five year follow-up period for offending. However, sex offenders remain at risk for a significantly longer period of time, possibly up to age 60. It has been estimated that when the follow-up period for offending is limited to 24 to 36 months, only about 1/3 of new sexual offenses committed by rapists, and 1/4 of those committed by child molesters would have been detected (Prentky, Lee, Knight and Cerce, 1997).

- Sex offenders are often compliant while under community supervision, or are able to avoid detection, and therefore a much longer follow-up period for re-offending is necessary for proper validation. On the other hand, one must take into account historical factors that may affect the results when a longer follow-up period is used, such as changes in sentencing laws, public policy initiatives, and access to treatment.

Relevant to any discussion on assessment is an understanding of the actual recidivism rates of the

type of population under consideration, and predictors of recidivism.

Recidivism Rates of Sex Offenders v. Non-Sex Offenders

Recidivism can be defined as a new arrest, charge, conviction or incarceration, which also affects the reported rates. Any figures presented will underestimate re-offense rates because not all offenses are reported to police, and some that are reported are not cleared by arrest. For example, Prentky, Lee, Knight and Cerce (1997) estimate that true sexual re-offense rates are underestimated by 30-40% when using the simple proportion of offenders rearrested.

Methodologies also vary. Basing recidivism rates on a new conviction or incarceration decreases the rate because offenders who are arrested but not convicted, convicted of a non-sex offense, and those convicted but not incarcerated are potentially excluded.

A meta-analysis of 85 studies on sex offender recidivism indicates that sex offenders have comparably high rates of recidivism for all offenses, but the rate of sexual re-offending is significantly lower (i.e. 36.3% v. 13.4%) over an average period of 4 to 5 years (Hanson and Bussière, 1998):[2]

- Sexual Offense: 13.4%
- Non-Sexual Violent Offense: 12.2%
- Any Offense: 36.3%

This finding was reflected in the DPCA survey as well. Of the 133 cases in 2005 where a violation was filed on a sex offender for a new arrest, only 15 involved an arrest for a new sex offense (11.3%; 75.9% of departments reported data).

Most sex offender recidivism studies have focused on sex offenders released from prison, and those rates may differ from those found in a community correction sample. A Bureau of Justice Statistics report released by the Department of Justice (Langan, Schmitt and Durose, 2003) indicates:

- Of the 9,691 inmates convicted of a sex offense and released in 1994, 43.0% were arrested for any type of crime and 24.0% were convicted for any type of crime within three years of release.

- 5.3% were arrested for any new sex crime within three years of release, and 3.5% were convicted of any new sex crime.

An analysis conducted by the Division of Criminal Justice Services (DCJS) of all registered sex offenders indicates that they are more likely to be arrested for any type of offense than a sex offense. Of a sample of 19,458 male sex offenders appearing on the Sex Offender Registry, 15% were arrested for a new offense within a year, and 2% were arrested for a new sex offense. This pattern held through the eight year mark but the differences increased in magnitude, as illustrated in Table One.

Table One: Proportion of Registered Sex Offenders Rearrested (Among 19,827 offenders on the registry on March 31, 2005)

Time from Registration Date	Any New Arrest	Any New Registerable Sex Offense
~ 1 Year	15%	2%
~ 2 Years	24%	3%
~ 5 Years	41%	6%
~ 8 Years	48%	8%

Source: DCJS: NYS Sex Offender Registry and NYS Computerized Criminal History Data Base.

The DCJS data above included probationers, as well as parolees, those under custody and offenders whose sentence had expired. Specific analysis of the recidivism rates of sex offenders on probation in New York State has yet to be undertaken.

Research on a sample of 917 sex offenders on probation across the U.S. in 17 states from 1986 to 1989 indicates that while under probation supervision, 11.7% were arrested for a non-sex offense during a three year follow-up period, and 4.5% were arrested for a new sex crime within three

[2] There is substantial research that indicates recidivism rates vary by type of offender (rapist, child molester, etc.). This issue is important to sex offender management and will be addressed in detail in a subsequent bulletin.

years (Meloy, 2005). Another study involving sex offender probationers revealed that after five years, 5.6% were arrested for a new sex offense (Krutschnitt, Uggen and Shelton, 2000).

For comparison purposes, criminal history and probation registration data recently analyzed by DCJS indicates that for the 41,974 sentences to probation in 2003 for *any* type of crime (misdemeanor and felony), 8.7% were arrested for a Violent Felony Offense (NY Penal Law § 70.02-1), 7.0% for a felony drug offense, and 14.8% were arrested for other felony offenses within three years. Thus, sex offenders are arrested and/or convicted of committing a new sex crime at a *lower* rate than other offenders who commit other new non-sexual crimes.

Predictors of Recidivism

In the adult offender population, meta-analysis has confirmed the static factors most highly associated with recidivism include age, criminal history, and family rearing practices. Dynamic factors include antisocial personality traits, social companions, criminogenic needs,[3] interpersonal conflict and social achievement (Gendreau, Little and Goggin, 1996).

A meta-analysis conducted by Hanson and Bussière (1998) revealed that with sex offenders, the risk of recidivism was increased when offenders:

- had prior sexual offenses
- victimized strangers, selected male or extrafamilial victims
- had started offending at an earlier age
- had engaged in diverse sex offending
- failed to complete sex offender treatment

A recent update to the original 1998 meta-analysis found that several dynamic factors are related to sexual recidivism that typically would not be precursors to offending in the general population:

- deviant sexual interests measured by phallometry
- sexual interest in children or paraphilic interests
- emotional identification with children (i.e. adults who have children as friends)
- conflicts with intimate partners

Measures of antisocial personality were also shown to predict sexual recidivism, as were offenders with general self-regulation problems (lifestyle instability, impulsiveness). Furthermore, employment instability was found to predict sexual recidivism in the later analysis but was not in the previous analysis (Hanson and Morton-Bourgon, 2004).

A few notable factors that failed to predict recidivism with an acceptable level of accuracy include: phallometric measurements revealing an interest in rape/violence, social skill deficits, loneliness, general psychological problems such as anxiety and depression, and low self-esteem (Hanson and Bussière 1998; Hanson and Morton-Bourgon, 2004).

Research conducted by the Washington State Institute for Public Policy found that sex offenders with a conviction for failure to register as required had higher rates of recidivism (conviction) in all categories when compared to sex offenders without a conviction for failure to register: 4.3% v. 2.8% for felony sex convictions; any felony conviction 38.5% v. 22.9%; and violent felony conviction 15.8% v. 9.4%. However, it was not possible to predict which offenders would fail to register based on demographic and criminal history information (Barnoski, 2006). Therefore, the static predictors that make up many of these instruments are unlikely to predict failure to register.

Most sex offender assessment instruments do not count failure to register as a sexual offense to be considered in scoring or are silent on the issue. It may be advisable to review whether failure to register would contribute to the accuracy of the models as a predictive variable of its own rather than an outcome.

[3] Defined as "antisocial attitudes supportive of an antisocial lifestyle and behavior regarding education, employment" (Gendreau, Little and Goggin, 1996, p. 597).

Sex offender registration requirements are intended to inform and protect the public. Generally speaking, assignment to a level can be based on an objective or actuarial classification instrument, clinical judgment, or at the discretion of the judge. In theory, the levels should be associated with reoffending levels (e.g. Level 3, considered the highest risk, should have the highest rate of recidivism).

In 1999, the End of Sentence Review Committee of Washington State adopted the Washington State Sex Offender Risk Classification Tool.[4] This extensive instrument contains a risk assessment and a section on community notification considerations. It also contains the Rapid Risk of Sexual Offense Recidivism (RRASOR), and only the highest scores (4 to 6) are included in the overall risk score. In this instance, the researchers found that the instrument had weak accuracy in predicting recidivism (Barnoski, 2005). Therefore, a level of risk assigned in association with Sex Offender Registry may not, in fact, be a valid predictor of risk.

Sex Offender Assessment Instruments

It should be noted that this summary reflects current research, but new studies are emerging. Several important studies were released already this year (Knight and Thornton, 2007; Langton, Barbaree, Seto, Peacock, Harkins and Hansen, 2007) and several are being published that analyze the comparative predictive ability of these instruments. One research study notes:

> "...it remains unclear from the results reported here which instruments might be recommended under what circumstances or whether the use of multiple instruments in a given case may increase prediction accuracy. As well, the essentially atheoretical approach taken in the development of these instruments does little to advance our understanding of sexual offending behavior..." (Langton et. al. 2007, p. 56).

This research bulletin should be regarded as a preliminary overview of the current state of sex offender risk assessment since both the knowledge and theoretical foundations underlying the instruments continue to grow at a rapid pace. For example, these types of instruments have a history of being combined to create new ones; and the authors of the Static-99 are currently researching the effect of adding items to the instrument. Finally, other instruments exist that are based on clinical and professional judgment, which may be more accurate in some situations.

Assessment instruments differ from each other in many respects. In evaluating this group of assessment instruments for use in probation departments, the following items were taken into consideration:

- Assessment instruments differ on how they define recidivism: arrest, charge, (re)conviction or (re)incarceration. Although there is evidence that arrest is the preferred definition because it is a more inclusive category and eliminates the issue of plea bargaining to a non-sexual offense, most of the instruments defined recidivism as a conviction (Knight and Thornton, 2007).

- The type of outcome measured may differ: sexual or nonsexual reoffending and violent or non-violent reoffending. Some broadly define any sexual recidivism involving attempted or completed contact as violent recidivism. Other instruments combine sexually-violent and non-sexually violent offenses together to improve predictive accuracy. Therefore, sex offender assessment instruments should be used to predict sex offending behavior, and not general or violent offending. Although several of the tools highlighted here state that they predict general offending, research indicates that they are better predictors of sexual offending, and as such, should be used *only* to predict sexual offending.

- There has been some research on the validity of the instruments based on whether the offender is classified as a rapist or child molester, and predictive accuracy can vary by offender type and over time (Knight and Thornton, 2007).

[4] http://www.doc.wa.gov/cpu/docs/05-729.pdf

- The role of "hands off" offending, such as exhibitionism or voyeurism, is not clearly understood or systematically assessed. Research indicates that convicted offenders tend to engage in such behavior while in the community and it is included as a predictor of reoffending in at least two instruments (Static-99, Risk Matrix 2000; it is taken into account with the overall score in the VASOR):
    - In a sample of 180 sex offenders who underwent a polygraph examination of their sexual offending history and/or behaviors during community supervision, 46.7% engaged in exhibitionism, 53.9% in voyeurism, 38.3% viewed pornography, 46.7% masturbated to deviant fantasies, and 65.6% engaged in other offenses, such as grooming behavior, engaging in prostitution or having deviant sexual fantasies (English, Jones, Patrick and Passini-Hill, 2003).
    - Offenders who committed non-contact offenses were more likely to recidivate than those whose offenses involved physical contact with a victim (Hanson and Morton-Bourgon, 2004).
- Many of these instruments were designed with specific purposes in mind that may or may not coincide with the intended use by probation departments. In addition to predicting recidivism rates, instruments have been developed to identify sexually violent predators or candidates for civil commitment.

All of the assessment instruments discussed here require training, which is critical to successful and reliable implementation. Officers must understand how the scale is constructed, scored, be able to interpret and communicate the results, and know how the distribution of scores fits with local supervision policy (e.g. what risk levels correspond with level of supervision, case planning, home visits, collateral contacts, etc.), and supervisors must periodically review the forms for accuracy in scoring.

The reliability of the instrument is established in the validation phase, but departments that choose to implement any of these instruments have a responsibility to provide quality assurance so that reliability in the field is not compromised by inconsistent or inaccurate scoring. This is particularly important with instruments that have a tight range of scores where an error of one point may change a risk level. The more complex or difficult the coding structure, the greater potential for error and the more critical training and quality assurance becomes.

Five instruments were selected for inclusion, each of which has reached an acceptable level of validity in predicting sexual reoffending (one additional instrument is included as an example). This is partially due to the fact that they tend to measure the same constructs. However, base rate calculations and distributions vary. None of the instruments have been sufficiently cross-validated on a purely community corrections sample representing the racial diversity of New York State. Cut points are generally provided with the instruments, but corresponding recidivism rates should be viewed with caution, as they do not necessarily reflect what would be found in a sample of sex offender probationers in New York State.

Statistical Methods

A current statistical method used to gauge the predictive accuracy of assessment instruments is the Area Under the Curve (AUC) statistic associated with the Receiver Operating Characteristics (ROC) curve (see Hanley and McNeil, 1982; Swets, 1986). The metric ranges from 0 (no predictive ability) to 1 (perfect predictive ability), and .5 is chance (i.e. a guess). The AUC statistic can be interpreted as "...the probability that a randomly selected recidivist would have a higher score than a randomly selected nonrecidivist" (Thornton, et. al., 2003, p. 227). Higher numbers are associated with greater validity: values above .7 with small confidence intervals and statistical significance ($p. < .05$ or greater) are considered acceptable.

One advantage is that ROC/AUC statistics are not constrained by base rates or selection ratios. In

other words, when dealing with an event that does not occur with great frequencies, large samples are normally required to establish predictive outcomes with statistical reliability. Using the ROC/AUC statistical methodology allows for evaluation of accuracy with smaller samples and low base rates. Table Two is a summary of the major studies indicating AUC values and confidence intervals (when available), interrater reliability (if established), the number of questions on each instrument, information necessary to score the instrument, and what the instrument predicts. The values presented are from the most recent study that compared the accuracy of the instruments with a sample of 571 incarcerated Canadian adult sex offenders (Langton, et. al., 2007). A second study compared the predictive accuracy of the instruments in a sample of offenders from the Bridgewater Treatment Facility in Massachusetts (Knight and Thornton, 2007). Those data are presented in Table Three.

Table Two: Comparison of Basic Elements of Selected Sex Offender Assessment Instruments

	MnSOST-R	RRASOR	Risk Matrix 2000/Sexual	Static-99	VASOR
AUC	.70***	.68***	not tested	.64**	not tested
Confidence Interval‡†	.62 to.77	.61 to .75		.57 to .71	
AUC from Other Studies‡	.65 (Barbaree, et. al., 2001; dynamic items omitted from analysis)	.73** (Barbaree, et. al., 2001)	.60 (2 years) .68 (5 years) (Craig, et al. 2006)	.68* (Barbaree, et. al., 2001)	.75** (Langton, et. al, 2002)
Interrater Reliability	.83†	.94†	not located	.88†	.83 (McGrath, et. al, 2001)
All instruments are designed to be used with adult, male sex offenders age 18 and above.					
Questions	16	4	7	10	19
Information Required for Scoring	Criminal, sexual offense and supervision history; victim/offense information; treatment (sex offense/chemical dependency) information; age	Sex offense history; victim characteristics; age	Sexual and criminal offense history; age, victim characteristics, single	Criminal history; victim/offense information; single; age	Criminal, sexual offense and supervision history; victim and offense characteristics; deviant sexual fixation; substance use patterns; address changes; employment or school history
Predicts	Arrest for non-violent sexual recidivism (hands-on); any criminal offense; highest scores are referred for civil commitment	Conviction for a sexual offense	Conviction for a sexual offense Five, ten and fifteen year reconviction rates on UK sample	Conviction for a sexual offense	"Sexual reoffending"; assessment of violence history

‡ AUC values provided for sexual recidivism only.
†Langton, Barbaree, Seto, Peacock, Harkins and Hansen, 2007 (using conviction to measure recidivism); other studies are cited in the table when data are reported.
* $p. < .05$; ** $p < .01$; *** $p < .001$.

The most recent information available indicates acceptable levels of predictive accuracy on four of the five instruments under consideration. As indicated in Table Three, those instruments meet validity standards, and do so over three, ten and fifteen year intervals. The VASOR was not included in this particular study; nor were the Colorado SVP instruments.

Table Three: AUC Values for Serious Sexual Charges (Confidence Intervals in parentheses; Knight and Thornton, 2007, Table Five, p. 122).

Scale	3 Years	10 Years	15 Years
MnSOST-R Total Sample	.684*** (.618-.729)	.672*** (.603-.742)	.664** (.564-.765)
RM2000/Sexual Total Sample	.674*** (.603-.745)	.644*** (.575-.714)	.633*** (.538-.727)
Static-99 Total Sample	.713*** (.650-.777)	.684*** (.619-.749)	.647** (.557-.736)
RRASOR Total Sample	.669*** (.603-.735)	.681*** (.615-.748)	.649** (.559-.739)

* p. < .05; ** p < .01; *** p < .001

All instruments under discussion have reached an acceptable level of construct validity in that they measure similar concepts and domains, and have consistently predicted sexual recidivism across multiple samples. What is not known, however, is how the scores predict recidivism in the New York State community corrections population. Therefore, utility is limited until research can establish recidivism rates within our population.

Overview of Actuarial Sex Offender Assessment Instruments

MnSOST-R (Minnesota Sex Offender Screening Tool- Revised)

The MnSOST-R was Developed by the Minnesota Department of Corrections in 1991 to identify predatory and violent sex offenders, and not intended to be used with incest offenders. It was designed to be scored from existing correctional records by case managers, developed based on existing instruments and research, and revised in 1996.

MnSOST-R Items: Prior sex convictions; length of sexual offending history; under supervision at offense; offense in public place; use of force; multiple acts on a single victim/event; age range of victim(s); statutory offending; victim stranger; history of antisocial behavior; pattern of substantial drug or alcohol use; employment history; disciplinary history while incarcerated; chemical dependency and sex offender treatment; age at release.

Although the instrument contains four items under the heading "Institutional/Dynamic Variables" it can be adapted for community use. Probation compliance could be substituted for disciplinary history; sex offender and chemical dependency treatment are equally relevant to community supervision; and current age can be used instead of age at release. The effect of this type of modification is unknown until the instrument is tested on the appropriate population.

Predictive ability was confirmed in the development sample for sexual reoffending (AUC .77, CI .71-.83) and a cross-validation sample (AUC .73, .CI 65-.82 over six years; Epperson, et. al. 2003). Two early cross-validation studies did not indicate predictive accuracy reaching acceptable levels (Barbaree, et. al. 2001; Bartosh, Garby, Lewis, Gray, 2003) but more recent studies indicate acceptable levels of predictive ability (Knight and Thornton, 2007; Langton, et. al. 2007).

It is interesting to note that the authors of a 2007 study point out that the difference in the lack of predictive significance of the MnSOST-R between the 2001 study and the significant predictive ability found in the 2007 study may be due to the amount of training received. In the earlier study, coders had received a single day of training on scoring the MnSOST-R; but in the 2007 study, coders had received three weeks of training on all of the instruments tested (Langton, et. al., 2007, p. 56).

RRASOR (Rapid Risk Assessment of Sexual Offense Recidivism) and the Static-99

The RRASOR and Static-99 are the most widely used and validated instruments in the U.S. and

abroad. It is comprised of a short, four item version (RRASOR) and a full ten item instrument (Static-99). It was developed by merging the Canadian RRASOR with the Structured Anchored Clinical Judgment Scale (SAC-J) used in England and Wales.

RRASOR and Static-99 Items:
RRASOR: Prior sex offenses; unrelated and male victims; age
Static-99: Prior sex offenses, sentencing dates; convictions for non-contact offenses; stranger, unrelated and male victims; age; single

Analysis of a Canadian prison sample suggests that the RRASOR is more correlated with child sexual abuse, persistence, and male victims; while the Static-99 appears to be more correlated with detached predatory offenders who are young, single, and less likely to victimize females (Barbaree, Langton and Peacock, 2006).

The Static-99 has shown promise for prediction of technical violations with sex offenders on probation (Austin, Peyton and Johnson, 2003) in two samples with different follow up periods:

Table Three: Violation Rates by Static-99 Risk Level in a two Probation Samples (p. 18).

Static-99 Risk Level	Sample					
	Six Year Follow Up			12 Month Follow Up		
	R	T	C	R	T	C
Low	32.9	25.9	7.1	25.4	20.9	4.5
Medium-Low	54.9	37.2	17.7	35.3	29.4	5.9
Medium-High	70.7	45.5	25.3	44.7	36.2	8.5
High	61.0	37.3	23.7	66.7	41.7	25.0

Cells indicate percent R=Recidivated (arrests, return to prison or deaths); T=Technical Violation; and C=Convicted.

One potential drawback of the Static-99 is the coding rules for prior and current (index) offenses are complex and thus subject to error. Offense history must be parsed on several dimensions that sometimes overlap: prior sex offenses, prior sentences, any non-contact offenses, index non-sexual violence, and prior non-sexual violence. What constitutes a conviction also has several underlying dimensions, such as military dismissals, official reprimands, professional sanctions, probation violations, etc.

While this issue can be addressed through training, practice scoring test cases, and quality assurance review, there is potential for impact on risk levels with even the slightest error. While the Static-99 instrument includes ten items and a score of up to 12, the scoring instructions group all offenders with a score of six and higher into the high risk category. The scoring weights for prior sex offenses leave slight room for error (i.e. 2 to 3 convictions or 3 to 5 charges warrants a score of 2), the other four categories are a yes/no determination (i.e. they each may add one point.)

With proper cautions, the Static-99 and RRASOR are appropriate for use in gauging risk when access to information is limited. However, the resulting scores should not be used as the sole source of information on which to base decisions where public safety concerns are salient, and other factors are more relevant.

Recent research was published that evaluated an update to the Static-99 (Langton, et. al., 2007). The Static-2002 represents an overhaul of the Static-99 where single status is dropped, and 13 items are arranged into five domains: age at release, persistence of sexual offending, deviant sexual interests, relationship to victim(s), and general criminality. In this study, the Static-2002 outperformed the Static-99 (AUC and CI of .71 and .64 to .78, $p < .001$, compared to .64 $p < .01$ and .57 to .71, $p < .01$).

Risk Matrix 2000

This instrument was developed for and validated on a sample from the United Kingdom prison releases. It is intended to measure sexual reoffending, violent reoffending, or a combination of scores in three different scales. The instrument is based on the theoretically and empirically derived Structured Anchored Clinical Judgment framework in use by prison, police and probation services in the U.K. and was revised in 2000.

Risk Matrix 2000 Items:
Sexual: age; sexual appearances; criminal appearances; male, stranger victims; single; non-contact sex offense
Violence: age, violent appearances, burglary

The assessment process includes up to three steps: 1) score sexual reoffense risk factors and categorize the offender on risk of sexual reoffense (low, medium, high, very high), then consider aggravating factors that may increase the sexual reoffense (S) risk level and determine final sexual offense risk level; 2) score the violence risk factors and determine violence (V) risk level; and 3) add the levels and determine the combined (C) score. To determine the risk of sexual reoffense score, only complete the first step.

Unfortunately, this instrument has not been widely used or tested on U.S. community corrections populations even though it is considered by many to be easier to score on sexual and criminal history offenses than the Static-99.

Sexually Violent Predator Assessment Screening Instrument; Sex Offender Risk Scale; and SOMB Checklist - Colorado

A collaborative effort spearheaded by the Colorado Division of Criminal Justice, the Sex Offender Management Board (SOMB) and the Office of Research and Statistics involved criminal justice, research, mental health and law enforcement officials and resulted in a series of assessment instruments. It offers a model for states that wish to develop their own instruments: a ten item Sex Offender Risk Scale (SORS) used in placement decisions; a SOMB Checklist covering seven dimensions, three of which are elements of the SORS; a Sexually Violent Predator Screening Instrument (SVAPSI) for use by the SOMB to classify offenders for registration and parole purposes (includes the SORS); and a lengthy sexual history disclosure form intended to be used in conjunction with post-conviction polygraph examination.

The SVPASI/SORS are the only instruments located during this review that report to be appropriate for use with female sex offenders, but are limited to use with felony sex offenders. The SVPASI is also unique in that probation and an approved clinician each fill out their respective sections of the form. The clinical criteria were developed through the collaboration of the SOMB, Parole Board, Division of Parole, treatment providers and victim services agencies.

SORS Items: juvenile and adult felony convictions; employment at arrest; failure of first or second grade; possessed a weapon during current crime; use (ingested or administered) of alcohol or drugs by the victim prior to the current crime; SOMB-scales for denial, deviancy and motivation.

The SPVASI and SORS were created for specific uses within the State of Colorado. It is not necessarily appropriate for use in New York, but is included here to demonstrate the utility of stakeholders collaborating to develop instrument(s) that are tailored to the needs, policies and procedures of their state.

VASOR (Vermont Assessment of Sexual Offense Recidivism)

The VASOR was developed by the Vermont Department of Corrections in 1994 to assist probation and parole officers with placement decisions. The validity of the VASOR has been established through a series of studies, but it has yet to be tested with large and diverse populations outside of Vermont. Nevertheless, this instrument shows promise for several reasons. The level of information required to score the instrument gives probation officers a very broad view of their case and fosters the collaborative approach to sex offender management.

VASOR Items: Prior sex and adult, violent, and weapons convictions; violations of probation or court orders; use of force and level of harm; relationship to victims; male victims/history of exhibitionism; deviant sexual fixation; alcohol, drug use; change of address; status of and amenability to treatment; sexual intrusiveness of current offense; victim age and status.

A complimentary instrument has also been developed by the Vermont Department of Corrections, the Treatment Progress Scale (TPS), which will be discussed in a subsequent bulletin. The TPS is a dynamic assessment scale for sex offenders that can be used with either the VASOR or the Static-99 and has shown good predictive ability for sexual offending in a community corrections sample.

Discussion and Comparison of Instruments

Each of the instruments discussed here has reached an acceptable level of validity. However, for the instruments to be useful, we must understand how they predict recidivism among a population of sex offenders on probation in New York.

While they all predict sexual recidivism, varying amounts of information are needed. For example, the RRASOR can be coded from four static factors usually available from a criminal history file. In contrast, the VASOR requires more information that must be obtained through multiple methods, including file and record reviews, interviews with the offender and victim, and collateral resources.

Which of these instruments are appropriate for use depends on the goals of the assessor and level of information available. Quick decisions where public safety is not imperative can be made with relatively little static information. Situations where public safety is imperative requires more accurate assessment, which in turn requires more information. The tradeoff in the loss of information by selecting an instrument requiring fewer items should not be underestimated.

Summary

Two items illustrate the importance of assessment in sex offender management. The first is a quote from prominent researchers in the field. The second is another quote and a figure illustrating the role of assessment throughout the criminal justice system and process:

> "Despite the demand for accurate decisions about sex offenders, the judges, attorneys, examiners, and clinicians who are required to implement "special" sex offenders laws have had to rely on extant assumptions of dangerousness and reoffense risk that are often ill-informed or erroneous. Inaccurate decisions lead to suboptimal dispositions and increase the likelihood of further victims and additional expense. Indeed, all facets of the social and political response to sexual violence, from the enactment of more effective legislation to enhancing the efficacy of discretionary decisions, rely upon an informed, empirically sound understanding of the offense risks posed by different groups of sex offenders." (Prentky, Lee, Knight and Cerce, 1997, p. 655).

Dr. Andrew J. Harris makes several relevant observations in a 2006 article published in Federal Probation titled *Risk Assessment and Sex Offender Community Supervision: A Context-Specific Framework*:

> "Ultimately, the relative superiority of one method [actuarial v. clinical] over another is highly dependent on the questions we are asking. If our primary concern deals with the aggregated long-term risk posed by a group of individuals, actuarial instruments almost certainly provide the most valid means of assessing such risk. If we are concerned with setting forth the relative probability that a particular individual will re-offend at some undetermined point in the future, actuarial instruments provide a moderate degree of accuracy, albeit one prone to errors.
>
> Yet as soon as we turn to different types of questions, the relative utility of currently available actuarial instruments dissipates considerably. Under what circumstances would this person be most likely to reoffend? What is the probable timeframe of reoffense? How has this person's risk been mitigated by our interventions? What is the probable impact of treatment and supervision?" (p. 36).

Figure Two: Overview of Assessment from Federal Probation, September 2006

Service Domains	Policy & Management • Strategy • Resource Allocation • Quality Management Baseline Case Planning • Classification • Special Conditions • Terms of Supervision	Ongoing Case Management • Sex Offender Treatment • Housing & Employment • Ancillary Services • Case Plan Adjustments	Acute Interventions • Enhanced Supervision & Surveillance • Crisis Intervention • Police Action
Primary Orientation	Nomothetic		Idiographic
Risk Emphasis	Prediction of General Risk		Measurement of Specific Risk
Applicable Risk Factors	Static	Stable	Acute
Primary Methods	Actuarial	Practitioner	Judgment
Frequency of Assessment	Once at Baseline	Periodic	Ongoing

Source: *Federal Probation*, September 2006 (http://www.uscourts.gov/fedprob/September_2006/framework_figure1.html)
Reproduced with permission.

Figure Two introduces several concepts relevant to discussion on assessment. Aside from the broad array of service domains that can benefit from assessment, the orientation of the assessment, emphasis on type of risk and applicable risk factors, assessment methods and frequency are also important considerations.

Primary orientation refers to the scope of factors considered. The nomothetic tends to focus on abstract, general or universal statements of law (e.g. general risk of recidivism relative to a non-recidivist). As such, prediction of risk based on universal laws requires actuarial instruments based on static (unchangeable) factors.

At the other end of the spectrum lies an ideographic orientation, or one that deals with unique, individual risk measured by two types of dynamic factors. Stable risk factors are those that are amenable to change only over a long period of time. Acute risk factors are those associated with immediate risk of recidivism. Both require the judgment of practitioners, probation officers, clinicians, or their collaboration. These types of assessments are the heart of case management and supervision work, and as such are considered to be periodic or ongoing, depending on the issue.

Although the clinical-actuarial debate rages, Dr. Harris points out that "...the majority of sex offender management practice calls for operating on a "middle ground" that draws from both approaches....the clinical-actuarial continuum is only one dimension within a broader practical framework that integrates a range of related constructs." (2006, p. 7)

He makes the case that actuarial assessment is more appropriate for determining sentencing recommendations, orders and conditions, and classification (baseline case planning). Clinical assessment and professional judgment are more appropriate for supervision (ongoing case management) and acute interventions when other risk factors are present, such as a failed polygraph examination or being caught with pornography.

In conclusion, there are several actuarial assessment instruments available to probation practitioners,

specific to sex offenders, that appear to be relatively simple to use. The next step is to determine the most appropriate instruments and decision points at which to use them, and the implications of each. Key considerations include:

- For what purpose will the assessment be used (e.g. sentencing recommendations, SOR registration level, supervision levels or plans?) and is it consistent with the rationale for the development of the instrument?
- Will all of the necessary information be available to accurately score the instrument?
- Is training available or can it be developed?
- How will coding reliability (i.e. quality assurance) be accomplished?
- What polices are necessary to guide officers in the use of these instruments?

Recommendations

The instruments outlined in this bulletin have individual strengths and weaknesses, and potential issues with scoring and access to information. It is critical that the rates of sexual reoffending for the New York probation population be determined and that they correspond with each risk level for these instruments to be useful to probation officers in the field. Considering the various research methodologies used in validating each instrument, it is unclear whether the recidivism rates indicated by the research can be transferred to a population of sex offenders in the community. Only the RRASOR/ Static-99 has been sufficiently cross-validated with a number of samples to cautiously use the rates of reoffending presented with the instrument. The other instruments show a great deal of promise.

Considering the vast array of decisions that may be made using risk assessment instruments, such as pre-trial release, sentencing recommendations that may include incarceration, and levels of supervision and treatment, careful considerations must be given to the context in which the assessments are used.

With the implementation of any assessment instrument, training is required. Modules should include the theoretical foundations and predictors of sex offending, typologies of offenders, issues with recidivism rates, and effective use and communication of the results. Officers should be required to demonstrate competency by accurately scoring a number of instruments prior to use in the field.

This bulletin was researched and written by Jami Krueger, Community Correction Representative II. Comments and clarifications may be directed to jami.krueger@dpca.state.ny.us.

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References Cited

American Psychiatric Association. (2002). Diagnostic and Statistical Manual of Mental Disorders, IV-Text Revision. Author.

Austin, Peyton and Johnson. (2003). Reliability and Validity Study of the Static-99/RRASOR Sex Offender Risk Assessment Instruments. Washington, DC: Institute on Crime, Justice and Corrections at the George Washington University.

Barbaree, Langton and Peacock. (2006). The Factor Structure of Static Actuarial Items: Its Relation to Prediction. Sexual Abuse: A Journal of Research and Treatment. 18(2), 207-226.

Barbaree, Seto, Langton and Peacock. (2001). Evaluating the Predictive Accuracy of Six Risk Assessment Instruments. Criminal Justice and Behavior. (28)4 490-521.

Barnoski. (2006). Sex Offender Sentencing in Washington State: Failure to Register as a Sex offender-Revised. 06-01-1203A. Olympia: Washington State Institute for Public Policy.

Bartosh, Garby, Lewis, Gray. (2003). Differences in the Predictive Validity of Actuarial Risk Assessments in Relation to Sex Offender Type. International Journal of Offender Therapy and Comparative Criminology. 47(4), 422-438.

Colorado Sex Offender Management Board. (2003). Handbook: Sexually Violent Predator Assessment Screening Instrument for Felons: Background and Instruction. Colorado: Author.

English, Jones, Patrick and Pasini-Hill. (2003). Sexual Offender Containment: Use of the Polygraph. Annals of the New York Academy of Sciences. 989, 411-427.

English, Retzlaff and Kleinsasser. (2002). The Colorado Sex Offender Risk Scale. Journal of Child Sexual Abuse. 11(2), 77-96.

Epperson, Haul, Hout, Goldman and Alexander. (2003). Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) Technical Paper: Development, Validation, and Recommended Risk Level Cut Scores. Unpublished Manuscript.

Gendreau, Little, and Goggin. (1996). A Meta-Analysis of the Predictors of Adult Offender Recidivism: What Works! Criminology. 34(4), 575-607.

Hanley and McNeil. (1982). The Meaning and use of the Area under a Receiver Operating Characteristic (ROC) Curve. Radiology. 143, 29-36.

Hanson and Bussière. (1998). Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies. Journal of Consulting and Clinical Psychology. 66(2) 349-362.

Hanson and Morton-Bourgon. (2004). Predictors of Sexual Recidivism: An Updated Meta-Analysis. Public Works and Government Services Canada.

Hanson and Thornton (1999). Static 99: Improving Actuarial Risk Assessments for Sex Offenders. Department of the Solicitor General of Canada.

Harris. (2006). Risk Assessment and Sex Offender Community Supervision: A Context-Specific Framework. Federal Probation. 70(2). www.uscourts.gov/fedprob/September_2006/framework.html

Harris, Phenix, Hanson and Thornton. (2003). STATIC-99 Coding Rules Revised - 2003. Solicitor General of Canada.

Knight and Thornton (2007). Evaluating and Improving Risk Assessment Schemes for Sexual Recidivism: A Long-Term Follow-Up of Convicted Sex Offenders. U.S. Department of Justice (unpublished; award no. 2003-WG-BX-1002).

Kropp. (2002). A Prevention-Based Paradigm for Violence Risk Assessment: Clinical and Research Applications. Criminal Justice and Behavior. 29(5), 617-658.

Kruttschnitt, Uggen and Shelton. (2000). Predictors of Desistance Among Sex Offenders: The Interaction of Formal and Informal Social Controls. Justice Quarterly. 17(1), 61-87.

Langan, Schmitt, and Durose. (2003). Recidivism of Sex Offenders Released from Prison in 1994. U.S. Department of Justice NCJ 198281.

Langton, Barbaree, Seto, Peacock, Harkins and Hansen. (2007). Actuarial Assessment of Risk for Reoffense Among Adult Sex Offenders: Evaluating the Predictive Accuracy of the Static-2002 and Five Other Instruments. Criminal Justice and Behavior. 34(1), 37-59.

McGrath and Hoke. (2001). Vermont Assessment of Sex Offender Risk Manual, Research Edition 2001. Vermont: Author.

Meloy. (2005) The Sex Offender Next Door: An Analysis of Recidivism, Risk Factors, and Deterrence of Sex Offenders on Probation. Criminal Justice Policy Review. 16(2) 211-236.

Prentky, Lee, Knight, and Cerce. (1997). Recidivism Rates Among Child Molesters and Rapists: A Methodological Analysis. Law and Human Behavior. 21(6), 635-659.

Swets. (1986). Form of Empirical ROCs in Discrimination and Diagnostic Tasks: Implications for Theory and Measurement Performance. Psychological Bulletin. 99(2), 181-198.

Thornton, Mann, Webster, Blud, Travers, Friendship and Erikson. (2003). Distinguishing and Combining Risks for Sexual and Violent Recidivism. Annals of the New York Academy of Sciences. 989, 225-235.

Thursday, July 14, 2011

Few sex offenders deemed 'violent predators,' audit finds

Number of Referrals in Each Step of the Sexually Violent Predator Commitment Process
2005 Through 2010

ENTITY	STEP IN THE COMMITMENT PROCESS	2005	2006	2007	2008	2009	2010*	TOTAL	PERCENTAGE OF TOTAL REFERRALS
Department of Corrections and Rehabilitation	Referrals to Mental Health	512	1,850	[illegible]	7,338	[illegible]	6,126	[illegible]	100.0%
Department of Mental Health (Mental Health)	Administrative reviews	[illegible]	1,448	[illegible]	7,137	[illegible]	6,013	[illegible]	95.6
	Clinical screenings†	1	304	[illegible]	3,537	[illegible]	3,823	[illegible]	48.4
	Evaluations	217	594	[illegible]	1,366	[illegible]	887	[illegible]	20.5
	Recommendations to designated counsel	49	92	181	99	52	51	521	1.7
The Court System	Designated counsel petitions	46	88	169	92	39	23	457	1.5
	Probable cause hearings	46	88	169	92	38	23	456	1.4
	Trials	37	77	150	72	22	4	362	1.2
	Offenders committed‡	15	27	47	16	3	0	108	0.3

Source: Bureau of State Audits' analysis of data collected from Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

7-14-2011 California:

The year before California voters passed Jessica's Law, a broad crackdown on sex offenders, the state prison system referred 512 potentially "violent predators" for examination.

By 2007, the year after the law (Proposition 83) passed, that number had rocketed by more than 1,600 percent. Meanwhile, the number of convicts actually deemed sexually violent predators almost tripled, from 15 in 2005 to 43 in 2007.

But the number of convicts considered violent predators has dwindled in the years since, according to a report released yesterday by the California State Auditor. After a significant uptick in sexually violent predator commitments in 2006 and 2007, the number dropped to 16 in 2008 and just three in 2009, according to data collected by the auditor.

The auditor's examination [PDF] also found that the Department of Corrections and Rehabilitation has been referring far more inmates for examination as possible sexually violent predators than the law permits. Rather than discerning which sex offenders to refer, the prison system has instead forwarded all such offenders for review.

Further, the corrections department has not given the state Department of Mental Health the required six-month lead time for examinations.

Corrections officials confirmed the findings. "We agree that improvements can be made in

streamlining the process and have already implemented steps to improve the timeliness of our referrals to DMH," wrote Scott Kernan, the corrections undersecretary.

Offenders deemed predators are committed to treatment by the mental health department after finishing their prison sentences.

Jessica's Law made it easier to designate a predator in two ways. First, it expanded the number of criminal offenses that can earn a convict that label. Second, it changed the law so that all sex offenders who have one victim of a criminal sex act can potentially be deemed a predator; in the past, an offender had to have committed crimes against at least two victims.

Perhaps the most noteworthy finding in the audit report is how few convicts the state's court system has committed as sexual predators.

Since 2005, 59 percent of California's released sex offenders violated their parole; however, just 1 percent (134 convicts) committed a new offense. One committed a new sex offense.

The auditor concluded that the corrections department forwarded for review all inmates convicted of any sex offense, not just those designated under Jessica's Law. More than 14,000 cases (45 percent of all referrals) were sent to the mental health department, despite the fact that the agency had previously concluded the inmates were not sexually violent offenders.

The report concludes the huge number of referrals is the result of unintended consequences.

"By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism." ..Source.. by Ryan Gabrielson for California Watch. Story courtesy of our media partners at California Watch (A Project of the Center for Investigative Reporting)

Monday, December 22, 2008

Arizona Recidivism

1998 (Fact Sheet):

FACT SHEET 98-06

SEX OFFENDER RECIDIVISM

During September 1998, the Research Unit of the Arizona Department of Corrections. (ADC) completed an analysis of sex offenders released from ADC custody over the ten-year period from July 1988 through June 1998. A released offender was included in the study if he or she was serving time for one or more sex offenses just prior to release from incarceration. Offenders were tracked only with reference to the first release from a given criminal sentence.

The record of each targeted sex offender was reviewed to determine if the offender returned to the custody of the Department by June 30, 1998, and if so, under what circumstances. Returns for technical violations were distinguished from returns with new felony convictions. In cases of new convictions, information was recorded concerning the nature of all new conviction offenses. Preliminary findings from the study are as follows:

2,444 sex offenders were released from ADC custody over the ten-year period. The average period of follow-up (to June 30, 1998) for all sex offenders was 54.5 months. Among the 2,444, 509 or 20.8 % returned at least once to the custody of the Department, including 346 or 14.2% with new felony convictions. While sex offenders returned to prison for a variety of new crimes, 78 or 3.2% returned for a new felony sex offense, and an additional 90 or 3.7% returned for a new violent felony offense.

Among the 2,444 released sex offenders, 1,087 (44.5%) were released to the supervision of ADC parole officers. Among this group, eight (8) or 0.7% were found to have committed a new sex offense during the period of parole supervision. Among the eight (8), one (1) or 0.1% returned to custody with a new sex offense conviction while still under supervision. The remaining seven (7) were returned to custody after termination of the period of supervision.

The most serious new sex offense committed by the 78 sex offense recidivists was:

Child molestation or sexual conduct with a minor 34(44%)
Rape or sexual assault 22(28%)

Sexual indecency (exposing) 14(18%)
Sexual abuse 8(10%)

Among the 78 sex offense recidivists, the timing of the commission of new sex offenses was as follows:
35 (45%) were committed within the first year after release;
19 (24%) were committed within the second year after release;
8 (10%) were committed within the third year after release;
3 (4%) were committed within the fourth year after release;
6 (8%) were committed within the fifth year after release;
4 (5%) were committed within the sixth year after release;
3 (4%) were committed within the seventh year after release.

The Department of Corrections is currently working with the Federal Bureau of Investigation (FBI) to determine if data can be accessed for the completion of the second phase of the research. Further study will be undertaken if data is available to ascertain if any of the offenders in the study have re-offended and have entered secure custody in other jurisdictions. It is anticipated that the report on the first phase of the research will be published before the end of the year. For further information, please contact the Department of Corrections.

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics

Recidivism of Sex Offenders Released from Prison in 1994

Offender characteristics

Sentences and criminal records

Comparisons to other offenders

Rearrests and reconvictions

Rearrests for sex crimes against children

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Recidivism of Sex Offenders Released from Prison in 1994

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November 2003, NCJ 198281

Introduction

In 1994, prisons in 15 States released 9,691 male sex offenders. The 9,691 men are two-thirds of all the male sex offenders released from State prisons in the United States in 1994. This report summarizes findings from a survey that tracked the 9,691 for 3 full years after their release. The report documents their "recidivism," as measured by rates of rearrest, reconviction, and reimprisonment during the 3-year followup period.

This report gives recidivism rates for the 9,691 combined total. It also separates the 9,691 into four overlapping categories and gives recidivism rates for each category:

- 3,115 released rapists
- 6,576 released sexual assaulters
- 4,295 released child molesters
- 443 released statutory rapists.

The 9,691 sex offenders were released from State prisons in these 15 States: Arizona, Maryland, North Carolina, California, Michigan, Ohio, Delaware, Minnesota, Oregon, Florida, New Jersey, Texas, Illinois, New York, and Virginia.

Highlights

The 15 States in the study released 272,111 prisoners altogether in 1994. Among the 272,111 were 9,691 men whose crime was a sex offense (3.6% of releases).

On average the 9,691 sex offenders served 3½ years of their 8-year sentence (45% of the prison sentence) before being released in 1994.

Rearrest for a new sex crime

Compared to non-sex offenders released from State prisons, released sex offenders were 4 times more likely to be rearrested for a sex crime. Within the first 3 years following their release from prison in 1994, 5.3% (517 of the 9,691) of released sex offenders were rearrested for a sex crime. The rate for the 262,420 released non-sex offenders was lower, 1.3% (3,328 of 262,420).

The first 12 months following their release from a State prison was the period when 40% of sex crimes were allegedly committed by the released sex offenders.

Recidivism studies typically find that, the older the prisoner when released, the lower the rate of recidivism. Results reported here on released sex offenders did not follow the familiar pattern. While the lowest rate of rearrest for a sex crime (3.3%) did belong to the oldest sex offenders (those age 45 or older), other comparisons between older and younger prisoners did not consistently show older prisoners' having the lower rearrest rate.

The study compared recidivism rates among prisoners who served different lengths of time before being released from prison in 1994. No clear association was found between how long they were in prison and their recidivism rate.

Before being released from prison in 1994, most of the sex offenders had been arrested several times for different types of crimes. The more prior arrests they had, the greater their likelihood of being rearrested for another sex crime after leaving prison. Released sex offenders with 1 prior arrest (the arrest for the sex crime for which they were imprisoned) had the lowest rearrest rate for a sex crime, about 3%; those with 2 or 3 prior arrests for some type of crime, 4%; 4 to 6 prior arrests, 6%; 7 to 10 prior arrests, 7%; and 11 to 15 prior arrests, 8%.

Rearrest for a sex crime against a child

The 9,691 released sex offenders included 4,295 men who were in prison for child molesting.

Of the children these 4,295 men were imprisoned for molesting, 60% were age 13 or younger.

Half of the 4,295 child molesters were 20 or more years older than the child they were imprisoned for molesting.

On average, the 4,295 child molesters were released after serving about 3 years of their 7-year sentence (43% of the prison sentence).

Compared to the 9,691 sex offenders and to the 262,420 non-sex offenders, released child molesters were more likely to be rearrested for child molesting. Within the first 3 years following release from prison in 1994, 3.3% (141 of 4,295) of released child molesters were rearrested for another sex crime against a child. The rate for all 9,691 sex offenders (a category that includes the 4,295 child molesters) was 2.2% (209 of 9,691). The rate for all 262,420 non-sex offenders was less than half of 1% (1,042 of the 262,420).

Of the approximately 141 children allegedly molested by the child molesters after their release from prison in 1994, 79% were age 13 or younger.

Released child molesters with more than 1 prior arrest for child molesting were more likely to be rearrested for child molesting (7.3%) than released child molesters with no more than 1 such prior arrest (2.4%).

Rearrest for any type of crime

Compared to non-sex offenders released from State prison, sex offenders had a lower overall rearrest rate. When rearrests for any type of crime (not just sex crimes) were counted, the study found that 43% (4,163 of 9,691) of the 9,691 released sex offenders were rearrested. The overall rearrest rate for the 262,420 released non-sex offenders was higher, 68% (179,391 of 262,420).

The rearrest offense was a felony for about 75% of the 4,163 rearrested sex offenders. By comparison, 84% of the 179,391 rearrested non-sex offenders were charged by police with a felony.

Reconviction for a new sex crime

Of the 9,691 released sex offenders, 3.5% (339 of the 9,691) were reconvicted for a sex crime within the 3-year followup period.

Reconviction for any type of crime

Of the 9,691 released sex offenders, 24% (2,326 of the 9,691) were reconvicted for a new offense. The reconviction offense included all types of crimes.

Returned to prison for any reason

Within 3 years following their release, 38.6% (3,741) of the 9,691 released sex offenders were returned to prison. They were returned either because they received another prison sentence for a new crime, or because of a technical violation of their parole, such as failing a drug test, missing an appointment with their parole officer, or being arrested for another crime.

Rearrest and reconviction

All sex offenders

Based on official arrest records, 517 of the 9,691 released sex offenders (5.3%) were rearrested for a new sex crime within the first 3 years following their release (table 21). The new sex crimes for which these 517 men were arrested were forcible rapes and sexual assaults. For virtually all of the 517, the most serious sex crime for which they were rearrested was a felony. Their victims were children and adults. The study cannot say what percentage were children and what percentage were adults because arrest files did not record the victim's age.

Of the total 9,691 released sex, 3.5% (339 of the 9,691) were reconvicted for a sex crime (a forcible rape or a sexual assault) within 3 years.

Sex offenders compared to non-sex offenders

The 15 States in this study released a total of 272,111 prisoners in 1994. The 9,691 released sex offenders made up less than 4% of that total. Of the remaining 262,420 non-sex offenders, 3,328 (1.3%) were rearrested for a new sex crime within 3 years (not shown in table). By comparison, the 5.3% rearrest rate for the 9,691 released sex offenders was 4 times higher.

Assuming that the 517 sex offenders who were rearrested for another sex crime each victimized no more than one victim, the number of sex crimes they committed after their prison release totaled 517. Assuming that the 3,328 non-sex offenders rearrested for a sex crime after their release also victimized one victim each, the number of sex crimes they committed was 3,328. The combined total number of sex crimes is 3,845 (517 plus 3,328 = 3,845). Released sex offenders accounted for 13% and released non-sex offenders accounted for 87% of the 3,845 sex crimes committed by all the prisoners released in 1994 (517 / 3,845 = 13% and 3,328 / 3,845 = 87%).

Rapists and sexual assaulters

Of the 3,115 rapists, 5.0% (155 men) had a new arrest for a sex crime (either a sexual assault or another forcible rape) after being released. Of the 6,576 released sexual assaulters, 5.5% (362 men) were rearrested for a new sex crime (either a forcible rape or another sexual assault).

A total of 100 released rapists were reconvicted for a sex crime. The 100 men were 3.2% of the 3,115 rapists released in 1994. Among the 6,576 released sexual assaulters, 3.7% (243 men) were reconvicted for a sex crime.

Child molesters and statutory rapists

After their release, 5.1% (221 men) of the child molesters and 5.0% (22 men) of the statutory rapists were rearrested for a new sex crime (table 22). Not all of the new sex crimes were against children. The new sex crimes were forcible rapes and various types of sexual assaults.

Following their release, 3.5% (150 men) of the 4,295 released child molesters were convicted for a new sex crime against a child or an adult. The sex crime reconviction rate for the 443 statutory rapists was 3.6% (16 reconvicted men).

Table 21. Of sex offenders released from prison in 1994, percent rearrested and percent reconvicted for any new sex crime, by type of sex offender

	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years	5.3%	5.0%	5.5%
Percent reconvicted for any new sex crime within 3 years*	3.5%	3.2%	3.7%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted. Due to data quality concerns, calculation of percent reconvicted excluded Texas prisoners classified as "other type of release."

Table 22. Of child molesters and statutory rapists released from prison in 1994, percent rearrested and percent reconvicted for any new sex crime

	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years	5.1%	5.0%
Percent reconvicted for any new sex crime within 3 years*	3.5%	3.6%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted. Due to data quality concerns, calculation of percent reconvicted excluded Texas prisoners classified as "other type of release."

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2010-116

July 12, 2011

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the state's Sex Offender Commitment Program (program), which targets a narrow subpopulation of sex offenders (offenders)—those who represent the highest risk to public safety because of mental disorders. Our analysis shows that between 2007 and 2010 less than 1 percent of the offenders whom the Department of Mental Health (Mental Health) evaluated as sexually violent predators (SVPs) met the criteria necessary for commitment.

Our report concludes that the Department of Corrections and Rehabilitation (Corrections) and Mental Health's processes for identifying and evaluating SVPs are not as efficient as they could be and at times have resulted in the State performing unnecessary work. The current inefficiencies in the process for identifying and evaluating potential SVPs stems in part from Corrections' interpretation of state law. These inefficiencies were compounded by recent changes made by voters through the passage of Jessica's Law in 2006. Specifically, Jessica's Law added more crimes to the list of sexually violent offenses and reduced the required number of victims to be considered for the SVP designation from two to one, and as a result many more offenders became potentially eligible for commitment. Additionally, Corrections refers all offenders convicted of specified criminal offenses enumerated in law but does not consider whether an offender committed a predatory offense or other factors that make the person likely to be an SVP, both of which are required by state law. As a result, the number of referrals Mental Health received dramatically increased from 1,850 in 2006 to 8,871 in 2007, the first full year Jessica's Law was in effect. In addition, in 2008 and 2009 Corrections referred 7,338 and 6,765 offenders, respectively. However, despite the increased number of referrals it received, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law. In addition, the courts ultimately committed only a small percentage of those offenders. Further, we noted that 45 percent of Corrections' referrals involved offenders whom Mental Health previously screened or evaluated and had found not to meet SVP criteria. Corrections' process did not consider the results of previous referrals or the nature of parole violations when re-referring offenders, which is allowable under the law.

Our review also found that Mental Health primarily used contracted evaluators to perform its evaluations—which state law expressly permits through the end of 2011. Mental Health indicated that it has had difficulty attracting qualified evaluators to its employment and hopes to remedy the situation by establishing a new position with higher pay that is more competitive with the contractors. However, it has not kept the Legislature up to date regarding its efforts to hire staff to perform evaluations, as state law requires, nor has it reported the impact of Jessica's Law on the program.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Bureau of Justice Statistics

Bulletin

October 2010, NCJ 231327

National Crime Victimization Survey

Criminal Victimization, 2009

Jennifer L. Truman, Ph.D.
Michael R. Rand
BJS Statisticians

In 2009, U.S. residents age 12 or older experienced an estimated 20 million violent and property victimizations, according to the National Crime Victimization Survey (NCVS). These criminal victimizations included an estimated 4.3 million violent crimes, 15.6 million property crimes, and 133,000 personal thefts. Rates of violent and property crime in 2009 were at the lowest overall levels recorded since 1973, the first year for which victimization estimates from the survey were produced.

The overall victimization rate for violent crimes declined from 19.3 to 17.1 victimizations per 1,000 persons between 2008 and 2009 (table 1). A decline in simple assault (down 13%) contributed to the overall decline in the violent crime rate during this period. Due to a decline in the rate of theft (down 6%), the overall property crime rate also declined between 2008 and 2009.

Rates for every type of violent and property crime measured by the NCVS declined from 2000 to 2009. During the 10-year period, the violent crime rate declined by 39% and the property crime rate decreased by 29%. Declines ranged from 57% for rape or sexual assault to 19% for household burglary among the individual types of crimes.

Table 1
Criminal victimization, numbers, rates, and percent change, by type of crime, 2008 and 2009

	Number of victimizations		Rates[a]		Percent change
Type of crime	2008	2009	2008	2009	2008-2009[b]
All crimes	21,312,400	20,057,180	~	~	
Violent crime[c]	4,856,510	4,343,450	19.3	17.1	-11.2%*
Serious violent crime[d]	1,595,590	1,483,040	6.3	5.8	-7.7%
Rape/sexual assault[e]	203,830	125,910	0.8	0.5	-38.7**
Robbery	551,830	533,790	2.2	2.1	-4.0
Assault	4,100,850	3,683,750	16.3	14.5	-10.8*
Aggravated	839,940	823,340	3.3	3.2	-2.7
Simple	3,260,920	2,860,410	12.9	11.3	-12.9*
Personal theft[f]	136,710	133,210	0.5	0.5	-3.3%
Property crime	16,319,180	15,580,510	134.7	127.4	-5.5%*
Household burglary	3,188,620	3,134,920	26.3	25.6	-2.6
Motor vehicle theft	795,160	735,770	6.6	6.0	-8.4
Theft	12,335,400	11,709,830	101.8	95.7	-6.0*

Note: Detail may not sum to total because of rounding. Total population age 12 or older was 252,242,520 in 2008 and 254,105,610 in 2009. Total number of households was 121,141,060 in 2008 and 122,327,660 in 2009. See appendix table 1 for standard errors.

~Not applicable.

*Difference is significant at the 95%-confidence level. Differences are described as higher, lower, or different in text.

**Difference is significant at the 90%-confidence level. Differences are described as somewhat, slightly, marginally, or some other indication in text.

[a]Victimization rates are per 1,000 persons age 12 or older or per 1,000 households.

[b]Percent change calculated based on unrounded estimates.

[c]Excludes murder because the NCVS is based on interviews with victims and therefore cannot measure murder.

[d]Includes rape/sexual assault, robbery, and aggravated assault.

[e]See *Methodology* for discussion on changes in the rate of rape/sexual assault between 2008 and 2009.

[f]Includes pocket picking, completed purse snatching, and attempted purse snatching.

Highlights

- An estimated 4.3 million violent crimes, 15.6 million property crimes, and 133,000 personal thefts were committed against U.S. residents age 12 or older in 2009.
- Rates of violent (down 39%) and property (down 29%) crimes decreased between 2000 and 2009.
- The overall rate of firearm violence declined from 2.4 to 1.4 victimizations per 1,000 persons age 12 or older between 2000 and 2009.
- Armed offenders committed 22% of all violent crime incidents in 2009, including 8% by offenders with a firearm.
- Violence against males, blacks, and persons age 24 or younger occurred at higher or somewhat higher rates than the rates of violence against females, whites, and persons age 25 or older in 2009.
- Females knew their offenders in almost 70% of violent crimes committed against them; males knew their offenders in 45% of violent crimes committed against them.
- About half (49%) of all violent crimes and about 40% of all property crimes were reported to the police in 2009. Violent crimes against females (53%) were more likely to be reported than violent crimes against males (45%).

For a list of publications in this series, go to http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=6.

HB 473/SB 280

CRIMINAL PROCEDURE - SEX OFFENDERS - LIFETIME SUPERVISION

Improving Maryland's ability to reduce sex offender recidivism in our communities

Sex Offender Lifetime Supervision: Success Stories of Other States

COLORADO:

FY 2009

- 1,496 offenders were sentenced to prison under lifetime supervision provisions
- 166 offenders were sentenced to probation under lifetime supervision provisions
- 590 offenders were under active lifetime supervision
- 52 sex offenders (sentenced between 1998 and 2009) had their lifetime supervision sentences terminated.
- **Less than 1% of actively supervised offenders committed new felonies (3) and misdemeanors (1).** Remaining offenders' probations were revoked due to technical violations, deportation, death, abscission, and judgments set aside.

(Source: Lifetime of Supervision of Sex Offenders, Annual Report, State of Colorado, 2009.)

ARIZONA:

In 1985, the Arizona State Legislature passed a statute that permitted lifetime probation for certain sex offenders. This statute was the impetus for the creation of Maricopa County's specialized sex offender supervision program, which began in 1987 and became formal in 1993, under the authority of the county Adult Probation Office.

May 1993 - August 2000

- 2,344 offenders were under active lifetime supervision
- Approximately 6.8% committed a new criminal offense (160 offenders)
- Of those, 1.8% committed new sex offenses (42 offenders)
- Further analysis of the new sex offenses revealed that the crimes generally occurred after family or friends allowed access to children, even when they were aware of the offender's history.

FY 2009

- 1,666 under active lifetime supervision
- 2.9% new felony convictions
- 33.8% revoked to Department of Corrections

(Sources: Case Studies on the Center for Sex Offender Management's National Resource Sites, 2nd Edition, Center for Sex Offender Management, April 2001. 2009 Annual Report, Maricopa County Adult Probation)

STATES WITH SOME FORM OF LIFETIME SUPERVISION FOR QUALIFYING SEX OFFENDERS

AZ, CO, FL, GA, IL, IA, KS, MA, ME, MO, MS, NE, NH, NJ, NV, NY, OR, RI, TN, UT, VT, WA, WI

HB 473/SB 280

CRIMINAL PROCEDURE - SEX OFFENDERS - LIFETIME SUPERVISION

Improving Maryland's ability to reduce sex offender recidivism in our communities

Mandatory Lifetime Supervision will

- Reduce violence against children and others by expanding Maryland's successful supervision and management of our most serious sex offenders
- Extend proven supervision strategies to sex offenders released in our communities
- Protect the public from false reliance on lifetime registration by ensuring lifetime supervision of our most serious sex offenders
- Aid law enforcement in effectively monitoring and enforcing offenders through state-of-the art technology
- Send offenders who violate lifetime supervision back to jail and out of our communities

HB 473/SB 280 Summary:

- Requires courts to sentence certain serious sex offenders and multiple offenders to lifetime supervision
- Requires lifetime supervision to be consecutive to any sentence or probationary term imposed for underlying offense
- Requires pre-sentence investigation prior to imposing lifetime supervision conditions such as GPS
- Establishes criminal penalties for violations
- Eliminates dim credits for offenders on lifetime
- Authorizes a person to petition the court for discharge from supervision following original sentence plus 3 years of lifetime supervision
- Requires courts, with DPP, to make finding that the offender is not an unacceptable risk to the community

Sex Offender Supervision:
Maryland's Success Story

During the 2006 Special Session, the Maryland General Assembly passed HB 2.

Within months of enactment, DPP had established and trained specialized sex offender management and enforcement teams throughout Maryland

Today, 83 special agents manage 2300 sex offenders

Agents use state-of-the-art technology to augment supervision:

- Clinical Polygraph Examination
- Computer Monitoring (of offender's computer activity)
- GPS tracking

231 offenders are on GPS today. Since the program's inception in February 2009, 1300 offenders have been on GPS.

During the 18 months from July 2008 through December 2009:

Between 87% and 94% of sex offender cases closed each month were closed in satisfactory status or by revocation in response to a *technical* violation.

In other words, these offenders were not convicted of new offenses while under DPP supervision.

Less than *one-third of one percent* of the sex offenders under active DPP supervision were charged with new *sex* offenses.

Qualifying Convictions for Lifetime Supervision:

1° rape; attempted 1° rape, 2° rape, attempted 2° rape, 1° sexual offense, attempted 1° sexual offense, certain 2° and 3° sexual offenses, and sexual abuse of a minor; and multiple offenses

Approximately 24 states have some form of lifetime supervision for qualifying sex offenders including AZ, CO, FL, GA, IL, KS, MA, NH, NY, RI, TN, UT, WA

GOCCP
GOVERNOR'S OFFICE OF CRIME CONTROL & PREVENTION

How a 'Tough-on-Crime' State Became Smart on Crime

Kentucky's overhaul of its criminal justice system this spring is a textbook example of genuine bipartisanship.

For three decades, Kentucky politicians proved they were tough on crime. At every opportunity, they stiffened sentences and added offenses to the state's penal code.

They nearly bankrupted the state.

Kentucky's corrections budget grew from $30 million in 1980 to nearly $470 million in 2010, even as lawmakers cut $1.8 billion from the state's budget in the grip of a deep recession. The prison population grew 80 percent between 1997 and 2009, the year Kentucky led the nation in the rate of incarceration.

Of 22,000 state felons that year, 8,000 were in county jails that became dependent on state funding.

But the crime rate remained relatively flat, below the national average, and about what it was when the tough on crime movement began.

The state's justice system seemed ripe for change. But no one expected it to be easy.

When some legislators in the Kentucky General Assembly tried to reduce the strain imposed on the state budget by prison overcrowding in 2009, by inserting parole credit provisions in the budget to release around 1,500 prisoners, prosecutors and law enforcement howled.

A challenge from a local prosecutor and the state attorney general to remove the provisions lost in court.

Nevertheless, few could have predicted what happened in late February this year. After a year of study, Kentucky lawmakers overhauled the state's drug laws, as well as its sentencing, probation and parole system. Following passage in the Kentucky House (Feb. 17) and Senate (Feb. 28), the bill became law upon the signature of Gov. Steve Beshear on March 3.

The law's provisions include:

Alternative sentencing for non-violent offenders and strengthening supervision of high risk parolees, while providing incentives for reduced time for lower risk parolees. It also calls for greater supervision of prisoners reentering the community;

Swift, but measured sanctions for parole violators;

More information on sentences for crime victims;

On drug sentencing, it distinguishes between simple drug possession and commercial trafficking, and provides for more drug treatment options for drug offenders.

Half the accrued savings of the reform are required to be ploughed back into the corrections budget and half of that is to be set aside to assist county jail costs. It also requires a certificate-of-need process before any new jail can be constructed.

The reform is expected to lower prison populations, expand drug treatment and save the state more than $420 million over the next decade.

It was a landmark of bipartisanship, accomplished in the face of the kind of polarized political climate that has defeated similar reform attempts elsewhere.

Democrats and Republicans each control one chamber of the legislature, and the leader of the Republican Senate was openly planning to challenge the incumbent Democratic governor in the 2011 election.

The story of how it happened might serve as an object lesson to other states.

'Stars in Alignment'

"(It happened) because all of the stars came into alignment and because of our ability to build on prior work," recalls Justice and Public Safety Secretary J. Michael Brown.

Indeed, the tentative steps to reduce costs and prison populations two years earlier by granting inmates parole credits set the template for what happened this year. Two committees had studied the problem. But the discussion became serious when the legislature appropriated $200,000 to help fund a Pew Center of the States study of the problem.

A bi-partisan task force representing all three branches of government, and including a prominent defense attorney, former prosecutor and a county executive, was appointed.

Recognizing Kentucky's conservative trend and its burgeoning illicit drug problems, the task force decided to involve stakeholders to build as much support as possible for reforms.

According to Brown, the fact that the "early parolees" released under the 2009 cost-cutting measures didn't go on a crime spree was crucial to easing lawmakers' fears about the consequences of reducing prison populations.

That may have helped win a joint endorsement from Beshear, Democratic House Speaker Greg Stumbo and Republican Senate President David Williams of a task force working with Public Safety Performance Project of the Pew Center for the States to formulate statutory reforms.

"You sort of had the top lined up," Brown adds. "So the task became (reaching) the individual stakeholders who had deeply divided interests."

That still could have meant trouble. Those stakeholders included law enforcement, prosecutors, and county governments whose jails depended on state funding for housing felons whom the prisons couldn't accommodate.

Bleeding County Budgets Dry

Jails were bleeding county budgets dry, but counties feared the task force would recommend changing low-level felonies to misdemeanors, thus shifting inmates and additional costs to them.

The task force included a noted defense attorney, Guthrie True, and an equally noted former prosecutor, Tom Handy. They co-authored an op-ed piece arguing that reform reduced costs and increased public safety. The Supreme Court Chief Justice was a member, as was Brown and a county judge/executive.

The co-chairs were the legislature's Judiciary Committee chairmen: Democratic Rep. John Tilley, a former prosecutor; and Republican Sen. Tom Jensen, a criminal defense attorney.

Pew provided research about what had worked in other states, such as Texas, which reduced costs while lowering the crime rate. Polling showed the public preferred "swift and certain punishment" to long, costly sentences. The polls also indicated the public favored treatment over incarceration for nearly three-quarters of Kentucky inmates who were addicts.

Beginning in June of last year, the task force held public meetings, asking stakeholders for suggestions, hoping to head off public anxiety and political fears of lawmakers.

Sometimes the entire task force met with the groups, often incorporating suggestions. It convened in June of 2010 and met through early January 2011 when the state General Assembly convened in Frankfort. Tilley and Jensen traveled the state, meeting with prosecutors, county officials, and law enforcement.

Describing the process later, Jensen said the task force decided to focus on drug crimes, treatment options and recidivism.

He and Tilley were in constant talks with Chris Cohron, a prosecutor and past president of the Commonwealth Attorneys Association who helped soothe prosecutors' fears. They softened the financial blow to counties by allowing state inmates to serve their final months in jails at state expense, and mandated a portion of savings produced by reform be set aside to help counties with jail costs.

Cohron said prosecutors understood the budget situation. "It was abundantly clear that they were going to do something," he said. "If we didn't participate in the process we'd be stuck with whatever they came up with."

At the last minute, hospitals got an amendment to the bill, over Tilley's and Jensen's objections, to prohibit so-called "prisoner dumping," or furloughing inmates for treatment without county liability for costs.

Counties weren't happy with this amendment. Jensen immediately gathered both sides and told them to work out an agreement "by tomorrow morning."

Tommy Turner, the county Judge/Executive on the task force and Vince Lang, head of the County Judge/Executives Association, jointly determined that counties would live with the provision in exchange for guaranteed Medicaid rates for prisoners.

Public Vote

However reluctantly, stakeholders were now on board. The next and possibly hardest step loomed ahead. Lawmakers—vaguely aware of what the task force had been doing—suddenly faced a public vote on the bill.

The debate at first followed familiar rhetoric.

"You're not asking us to vote for being soft on crime, are you?" asked a House committee chairman.

Tilley responded that the bill "is not soft on crime; it's smart on crime."

It didn't, for example, soften sentences for violent offenders or sexual crimes, he and other defenders noted. For further proof, they could point to Texas, which—though hardly known for a light touch on crime—passed similar legislation which saved millions even as its crime rate went down.

Another lawmaker told skeptics to talk to their local prosecutors, judge/executives and jailers.

"It'll be all right," the legislator insisted. "Just ask your people back home."

They found them ready for change.

In the legislature, meanwhile, Jensen told Senate President Williams he'd resign his Judiciary Committee chairmanship if he were unable to persuade colleagues to pass the bill. He also told a member of the Democratic House leadership.

House Democrats concluded they could comfortably support the bill without having the Republican Senate exploit their votes for political advantage.

And the relaxation of Kentucky's often-heated partisan climate was mirrored at the top. Jensen and Tilley, who had barely known each other previously, developed a bond and trust. Neither feared being grandstanded or sandbagged by the other.

Together they briefed each party's caucuses in both chambers. The relationship was critical, said Chief Justice John Minton, who looked on as the bill passed the House with only two nay votes.

"They were from two different parties, from two separate parts of the state, but their perseverance caused all of us to lay down our differences for the greater good," he recalled.

The key, Tilley said, for any state, especially a conservative one like Kentucky, was the willingness "to meet with anybody who had any interest in these issues and to give lawmakers assurance (that) their local officials' voices were heard.

After House passage, the more conservative Senate passed the bill unanimously.

Members in both chambers rose to their feet and cheered.

Kentucky's lawmakers had finally decided to be smart on crime.

Ronnie Ellis writes for CNHI News Service and is based in Frankfort, Ky. He received the 2009 Anthony Lewis Media Award for his reporting on public defenders. He may be contacted by email at rellis@cnhi.com. *Follow CNHI News Service stories on Twitter at* www.twitter.com/cnhifrankfort.

ATTACHMENT "E"
December 22, 2011 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "E"
December 22, 2011 Minutes

December 22, 2011

Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV 89701
Conference Room # 2134

Patrick Davis
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

TO: Advisory Committee to Study Laws Concerning Sex Offender Registration

RE: Current Recidivism Statistics

Committee Members:

I am a member of the public, a citizen of the State of Nevada, an advocate for offender rights, and a member of Nevadans for Civil Liberties.

I am asking the Committee to review these recidivism statistics. Our organization is bringing these statistics to your attention in relation to the fallacy of high rates of recidivism for new sexual offenses by previous offenders.

We are supplying the following statistics to inform you of the very low rates of recidivism across the country. We are asking you to include these statistics in the minutes of the meeting today, and are further requesting that they be available online, just the same as any document submitted by any Agency of the State of Nevada.

The statistics we are supplying are as follows: Please see attached documented statistics in ongoing current lawsuit by one of our members against the State of Nevada.

This is in relation to the Registration laws contained in 179 of the Nevada Revised Statutes that were implemented for public safety. This recidivism rate was quoted as being frighteningly high...when in fact, it is shockingly low, the second lowest rate of recidivism in the country.

Read Issue #2 in its entirety.

When the Committee looks to changing the laws relating to registration or making them harsher for an offender, they should refer to the actual statistics that are being generated in study after study that are confirming the mis-information presented to the public by law enforcement and politicians that sex offenders have the highest recidivism rate in the country, when in fact they have the second lowest rate of recidivism in the country.

This fallacy of high recidivism has to stop being perpetrated by these State Agencies and the truth needs to be represented, and our organization and many others are prepared to do that. We will be continuously supplying the Legislature, the members of the Legislature and every other State Agency that is related to the truth of these statistics, and we will make them aware of them.
Due to many Court decisions across the country, including Supreme Court decisions regarding registration and notification, the Committee needs to be very careful when they decide to make any further changes, as this might cause the law to be challenged, as it is already on shaky grounds by the affirmative disabilities and restraints it currently causes an offender.

As a member of the public, I am very concerned about the implementation of harsher penalties and conditions for registration that do not take actual facts into account, and which are proven by States that have implemented studies and by the United States Government. I am asking the Committee to further review the statistics related to recidivism before they proceed with any other decisions relating to registration on sexual offenders.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Patrick Davis

Issue #2: Due Process: Determination of Fact: Recidivism Statistics:

According to the sponsor of the bill, Senator Mark James, one of the most important reasons that the Nevada Legislature enacted SB 192, in 1995, and imposed the "special sentence" of Lifetime Supervision, pursuant to NRS 176.0931, NRS 213.1243, and NAC 213.290, upon Defendant and all others similarly situated; was the "fact", presented by law enforcement, of the "high rates of recidivism" that are "known" to be a problem amongst previously convicted sex offenders. There was no documented evidence, study, or statistic that related to this "high rate of recidivism", presented or documented in the legislative record.

The second reason given, was the "fact" that if a new sexual offense occurs, the police first look to the known sex offenders and "most of the time, it is more than likely that the perpetrator will be found within this group". This is again presented without supporting evidence by law enforcement.

The last reason given for SB 192, (1995), in relation to Lifetime Supervision, was that it was intended to provide law enforcement personnel with a *non-punitive* tool to assist them in solving new sex crimes.

The legislative record of SB 192, (1995), has many statements by individual legislative members and law enforcement were made concerning this "high rate of recidivism" of convicted sex offenders. However, there is not one documented study or statistic that a person can refer to in the legislative record that points to this "high rate of recidivism". There is nothing at all that specifically points to any study or statistic in regards to Lifetime Supervision, though the record does reflect two (2) State Supreme Court decisions from other States, relating to civil commitment.

In order to look at recidivism, Defendant asserts the following reasonable definition, as this is one of the most easily tracked statistics in the country. While there can be problems with definitions, Defendant asserts that "recidivism", is "a second or subsequent sexual offense perpetrated by an already convicted sex offender for a new sexual offense.

It may well be argued that these types of crimes are underreported, and that the true rate of offenses is unknown, and that assertion, in that context, may be true. But, these types of statements can not be applied to a study that is conducted in relation to the actual rates of sexual offenses, and the actual rates of re-offense when comparing a new sexual offense by a previously convicted sex offender. If one were to extrapolate the results of these documented studies and statistics that have been done, and apply them to the as yet undocumented and unknown sexual

offenses, Defendant would assert that the same rate of recidivism as currently documented would apply to those cases also, due to the fact of the size of these studies that have been performed on convicted sex offenders for many years.

Statistics can be misused with or without malice. One of the main statistics that the Supreme Court uses in analyzing the "facts" about recidivism is quoted in Smith v. Doe, 538 U.S. 84, 123 S. Ct. 1140, (2003). This was a presented in a recent case for the Court in relation to the determination of recidivism in McKune v. Lile, 536 U.S. 24, 122 S. Ct. 2017, (2002), where they looked at some of the statistics that resulted from a Study done in 1997, by the Department of Justice.

One of the conclusions of the Study was that: "When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault". See Sex Offenses 27, U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6, (1997). States thus have a vital interest in rehabilitating convicted sex offenders. *McKune*, Id. at 32. This statement by itself is correct.

However, to use this one fact, in an improper context, to describe the recidivism rate of convicted sex offenders is a malicious misrepresentation of the Study, and its results. This fact is only true in the relationship between convicted sex offenders and those convicted of other crimes. Convicted rapists and pedophiles are four (4) times more likely to re-offend for that specific crime, than other convicted offenders. Most sex offenders do not fall into one of these two categories, and this does not relate to the recidivism rate of sex offenders in general.

In a point of fact, in this study and in many other recent studies conducted since that time, the re-arrest rate for a convicted sex offender for a new sex crime is roughly 5.3% for all sex offenders, including rapists and pedophiles. The re-conviction rate is even less, averaging around 3.5% for all convicted sex offenders accused of committing a new crime. This is a very telling statistic. When you apply the rate quoted above, that rapists and pedophiles are four (4) times more likely to reoffend than any other type of offender, then that effectively drops the recidivism rate for all other sex offenders who have been convicted of a sex crime that is not related to rape or pedophilia, down to less than 1% for all of the new sex crimes that are committed every day. Another rather telling statistic, which adds perspective in relation to this, is that over 90% of all sex crimes are committed by a new offender.

In *Mckune*, the statement is made that "sex offenders are a serious threat in this Nation". In 1995, an estimated 355,000 rapes and sexual assaults occurred nationwide. U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 1, (1997).

In many recent studies by the U.S. Dept. of Justice, Bureau of Justice Statistics, and the Federal Bureau of Investigation, it has been found that the rates for this type of offense have dropped off dramatically over the last 12 years. In Bulletin NCJ 231327, entitled Criminal Victimization, 2009, the rates for rape/sexual assault had dropped to a rate of 125,910 reported

cases in 2009 from a reported rate of 355,000 cases in 1995, a 65% decrease in the number of confirmed and documented cases. This is consistent with a drop in several other categories of crimes. (DOJ, Criminal Victimization, 1997).

Defendant asserts that it is not due to the fact of the registration laws, or any other laws aimed directly as sex offenders. This rate is dropping even with the huge increase in the number of sex offender laws that are constantly being put in place across the country. And this is continually dropping even with an increase in the sexting laws, the registration laws, the reporting laws, the pornography laws, and all other sex offense related laws.

Defendant is presenting to the Court many studies and statistics which confirm the "low rate of recidivism" of convicted sex offenders, in relation to committing a new sexual offense.

In 2004, the Department of Justice, Bureau of Justice statistics released a study entitled "Recidivism of Sex Offenders Released from Prison in 1994". In this study, the re-arrest rate for a convicted released sex offender was 5.3% in the first three (3) years. In looking at this even closer, the re-conviction rate for those arrests was 3.5%. That statistic would be the accurate rate of "recidivism" as defined above.

This study followed 9,691 male prisoners released during 1994 who were convicted as sex offenders, The study also followed 262,420 male prisoners who were released in 1994 and not convicted of a sex crime, but were convicted of other felony crimes. The study totaled 272, 111 actual prisoners released in 1994 in 15 states. Many significant factors and statistics resulted from this study, which is more recent that the study listed in *Mckune* and *Smith*. Defendant asserts them as follows:

(1) The re-arrest rate is only 5.3% of all new sexual offenses, and the re-conviction rate for those arrests is only 3.5%, due to the fact of false allegation, and the fact that almost all new sex offenses are committed by new offenders, not previously convicted sex offenders.

(2) When comparing offense numbers, out of a total of 272,111 prisoners, the actual number of released sex offenders who committed a new crime of any type was 4,163 offenders, however the actual number of other offenders who committed a new crime of any type was 179, 391.

(3) In a conclusion to this study, it was determined that contrary to widespread opinion, once-caught sex offenders have a very low recidivism rate. With or without

treatment, more that 87% of the once-caught offenders do not commit another sex crime, and with treatment, the likelihood of re-offending is even lower.

(4) In contrast, according to the study, 69 % of all other types of criminals go back to prison, and they do so within five (5) years. Over a longer period of time, other FBI statistics show that about 74% of all other types of offenders return to prison.

(5) When that figure is compared to only 2% to 13%, the recidivism rate for sex offenders in reality is only a tiny fraction of what it is for all other types of crime.

This is not what the public believes and certainly not what they have heard.

Recently, many studies have been done on recidivism rates, and the Defendant would like to present a number of them to the Court, in summary form, and will include all of them as exhibits, to further corroborate the true "low rate of recidivism" of convicted sex offenders.

(1) The State of Washington, in 2004, directed the State Institute for Public Policy to analyze the impact and effectiveness of current sex offender sentencing policies. This report describes the recidivism rates of 4,091 Washington State sex offenders from 1994 to 1998. (Exhibit 29). In the summary of the report, it states that

(a) compared with the full population of felony offenders, sex offenders have the lowest recidivism rates for felony offenses, (13%), and

(b) sex offenders have the lowest recidivism rates for violent felony offenses, (6.7%), but

(c) sex offenders have the highest rates for felony sex offenses, (2.7%). This statistic compares favorably with the DOJ studies, and all of the studies that Defendant has included for the Court's review.

(d) This rate is compared against other offenders released from prison, so when you look at the actual result of that, it means that 97.3% of the time, it is a new sex offender who is committing a new sexual offense, not a previously convicted offender.

In a conclusion that bolsters another part of this argument concerning therapy, sex offenders who complete SSOSA, an outpatient treatment program, have the lowest recidivism rates in all categories. In a quote from the study, it states that "the relatively low 'base rate' of recidivism makes it challenging to predict re-offending".

(2) A recently released study entitled "The California Sex Offender Management Board's

Report to the Legislature and Governor's Office, January 2008, (Exhibit 30), states the following:

(a) Solid information about the recidivism of sex offenders is one of the key building blocks for good policy and effective management in sex offender treatment.

(b) There is a growing body of solid knowledge about sex offender recidivism.

(c) In fact, the majority of sex offenders do not re-offend sexually over time.

(d) Additionally, research studies over the past two decades have consistently indicated that recidivism rates for sex offenders are, in reality, lower than the re-offense rates for most other types of offenders.

(e) Many of the preconceived notions surrounding sexual abuse appear to be based on myths and misconceptions rather than empirical studies.

(f) In a definition supplied by this study, they look at "recidivism risk" and state that "it is conceptually defined as the strength of an individual's tendency to relapse into a previous condition or mode of behavior, after the person has experienced an official intervention such as imprisonment. Any offender who re-offends after the initial official intervention would be conceptually considered to be a recidivist."

(g) In a summary of the study, after a 3 year follow up, only 3.55% of the convicted sexual offenders were returned to prison for a new sexual related offense.

(h) Only 4.57 of the convicted sexual offenders were returned to prison for a new non-sexual related offense.

(i) This study was conducted on 4,287 sex offenders released from CDCR Institutions in 2003.

(j) In the majority of the time, the released sex offenders were returned to prison for a violation of parole, which for sex offenders, is the harshest parole in the country in relation to the restraints that are imposed upon a parolee.

(3) In Arizona, a study was conducted of 3,205 sex offenders who were released over a 15 year period from 1984 to 1998. (Exhibit 30, pg. 77). Among the sex offenders releases, the following was stated:

(a) 25.2% returned to prison once, with an average time of 6.85 years for a new felony conviction.

(b) However, they returned with only a 5.5% recidivism rate for a new sexual offense.

(c) No study was done of how therapy might have interacted with the rates.

(d) This study did not differentiate between new sexual offenses, and technical violations of parole, which have a large influence on the statistics, as a return to prison for possessing pornography or something similar is not really a new sexual offense, and care needs to be taken when looking at some of these studies.

(4) The State of Ohio Department of Rehabilitation and Corrections, (ODRC), completed a 10 year follow up study for sex offender recidivism. (Exhibit 30, pg. 78). ODRC followed 879 sex offenders released in 1989. The report, dated April 2001, provided the following results.

(a) Re-commitment for a new non-sexual offense was 14.3%.

(b) Re-commitment for a new sex offense, which was significantly lower, was 8.0%.

(c) Sex offenders who returned for a sex related offense did so with a few years of release, 50% within 2 years, and 67% within 3 years.

(d) No study was done of how therapy might have interacted with the rates.

(e) This study did not differentiate between new sexual offenses, and technical violations of parole, which have a large influence on the statistics, as a return to prison for possessing pornography or something similar is not really a new sexual offense, and care needs to be taken when looking at some of these studies.

(5) The New York State Department of Correctional Services, Division of Program Planning, Research and Evaluation completed a 9 year follow up study on 556 prisoners with sex offenses released in 1986. (Exhibit 30, pg. 78). The study found the following:

(f) The rate of return for a non-sexual offense was 16%.

(g) The rate of return for a sexual offense, which was significantly lower, was 6%.

(h) No study was done of how therapy might have interacted with the rates.

(i) This study did not differentiate between new sexual offenses, and technical violations of parole, which have a large influence on the statistics, as a return to prison for

possessing pornography or something similar is not really a new sexual offense, and care needs to be taken when looking at some of these studies.

(6) The Minnesota Department of Corrections reported in April of 2007, the results of a 12 year study on recidivism. (Exhibit 30, pg. 78). This study was conducted on 3,166 who were released between 1990 and 2002.

(a) The rate of return to prison for a new sexual offense was 12%.

(b) The conviction rate for a new sexual offense was less, at 10%.

(c) And the re-incarceration rate of those new convictions was even less, at 7%.

(d) This study did not differentiate between new sexual offenses, and technical violations of parole, which have a large influence on the statistics, as a return to prison for possessing pornography or something similar is not really a new sexual offense, and care needs to be taken when looking at some of these studies.

(7) In another study done in Arizona, the Arizona Department of Corrections, (ADC), completed an analysis of sex offenders released from ADC custody over a 10 year period from July 1988 through June 1998. (Exhibit 32). 2,444 sex offenders were released from ADC custody over the ten year period.

(a) 20.8% returned at least once to the custody of the ADC,

(b) But, only 14.2% returned for a new felony conviction, and

(c) Only 3.2% returned for a new felony sex offense.

(d) This study did take into account the difference between technical violations and prisoners released with no parole, and with parole, and found that

(e) Among the 2,444 released, 1,087 were released on parole, and

(f) Among this group, only 0.7% were found to have committed a new sex offense, if they were under parole supervision at one time, and

(g) Out of that figure, only 0.1% committed the offense while under active parole supervision.

(8) In a recent study in California in July of 2011, (Exhibit 35), when looking to the civil commitment of sex offenders, the State documented a recidivism rate for sex offenders released on parole since 2005. In the study the results were:

(a) Out of over 14, 000 offenders referred to the evaluation of the Department of Mental Health, it was found that over 59% of the released sex offenders violated their parole due to technical reasons.

(b) However, out of that rate only 1% of the paroled sex offenders committed a new crime, for which they were convicted, and

(c) Out of the entire 14, 000 inmates released on parole since 2005, only one had committed a new sex offense, thereby making the recidivism rate for paroled sex offenders in California since 2005, less than 0.1 percent.

In looking at the recidivism rates of sex offenders on Lifetime Supervision, or Community Supervision for Life, in three (3) states that have published the results of state sponsored studies, (Exhibit 33), they have shown that:

(1) In Maryland, (Exhibit 32), during the 18 months from July of 2008 to December of 2009, over 2300 sex offenders were under active supervision, and the statistics show:

(a) Between 87% and 94% of sex offender cases closed each month were closed in satisfactory status or by revocation in response to a "technical" violation.

(b) These offenders were not convicted of a new offense.

(c) Less than one third of one percent, (0.03%), of the sex offenders under active supervision were charged with a new sexual offense.

(2) In Colorado, (Exhibit 32), during 2009, 590 sex offenders were on active supervision, and in 2009, 1,496 offenders were sentenced to prison, and 166 were granted probation for a sexual offense, and the following statistic was documented:

(a) less that 1% of actively supervised offenders committed new felonies and misdemeanors.

(b) Remaining offenders were revoked for "technical" violations of probation or parole.

(c) No study was done of how therapy might have interacted with the rates.

(3) In Arizona, (Exhibit 32), 2,344 offenders were under active lifetime supervision, during a period from May of 1993 to August of 2000, and the rates showed:

(a) Approximately, 6.8% of the convicted sex offenders committed a new criminal offense.

(b) Of those, only 1.8% committed a new sexual offense.

(c) In 2009, only 2.9% were convicted of a new felony charge, including sex offenses.

(d) In 2009, 33.8% were returned to prison for a technical violation, due to the fact that parole and probation restrictions on sex offenders are the harshest in the country.

Defendant would like to offer the Court the following studies and statistics relating to the effects of therapy on convicted sex offenders. The public has been told for many years that "treatment doesn't work", and that for "sex offenders nothing works", but there are a number of major studies that indicates otherwise.

(a) The Campbell Collaboration analysis of over 22,000 individuals found that treatment reduced recidivism by 37%.

(b) Canada's Karl Hanson's 2000 analysis found a reduction of 41%.

(c) Oshkosh Correctional's meta-analysis from 79 separate studies of over 11,000 sex offenders found that people who participated in treatment programs had a 59% re-arrest reduction for any crime.

(d) According to Alexander's 1998 study, since 1943 those who were treated in jails, hospitals, and outpatient clinics found their way back to prison at a rate of 33% compared to those who had no treatment.

(e) By 2005, almost all relevant preventative programs showed that re-arrest rates were being reduced by greater that half. With some new treatment philosophies, reductions have been reported as high as 91%.

Exaggerated fear is a poor basis for public policy. It raises a nearly unbreachable barrier to the truth. And a policy that is based on the realities...of low recidivism, of responsiveness to treatment and of the relationship between the vast majority of offenders and their victims....offers the only hope for reducing or eliminating one of our society's saddest and most challenging problems.

If the reality is kept in mind, that once a sex offender is caught, most of the problem ceases, that preventative programs can help almost all the rest of the once caught, then clearly treatment must be the goal. When a politician is calling for tougher sentences and not backing it up with any programs, then he is looking for votes, not solutions. The public's fear would not be

so intense today if it were not being propelled by all the exaggerated and often totally false recidivism claims.

Courts must look at the actual facts of recidivism in the correct context, and enjoin constitutionally illegal laws that have been placed on offenders due to the undocumented and malicious hearsay presented as "fact" by proponents of bills and by legislators who are knowingly and willingly letting these distorted "facts" be presented.

ATTACHMENT "F"
December 22, 2011 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "F"
December 22, 2011 Minutes

Good afternoon Chairman Munro, and all distinguished Members of your Committee Reviewing the Sex Offender Registry! My name Laurie Johnson, J*o*h*n*s*o*n and I thank you for allowing me to go on the record this morning, as a Citizen of Nevada, as a Previous Child Sexual Abuse Victim and as a mother of a Juvenile immediately adjudicated to an Adult Sex Offender. With the experiences and knowledge that I've gained 1st hand on a victim and offender level I simply want the safest outcome for all!

I'd actually like to begin with being certain that all Northern Committee Members received their published version of "A Reasoned Approach: Reshaping Sex Offender Policy to Prevent Child Sexual Abuse." As I hand delivered them to Michele Smaltz on October 11, 2011 soon after the meeting that day. And for the record I'd like to also add, that I am officially handing these out to your Southern Committee Members today. I will ask again that each of you take the short amount of time in your busy schedules to read this small 54 page policy paper chock full of proven research driven results. The author Alisa Klein cc'd me on her correspondence to Chair Munro and is delighted to come to our state after January with a 3 month window for scheduling to present to Nevada. I'm very interested in her presenting her own policy paper to our leaders here in Nevada. I would also like to thank Michele Smaltz for always being so very prompt in responding back to me with any of request, questions, etc.

Costs & safety are my focus today:

Costs: As we are all here, well aware of the efforts w/in our state to implement the Adam Walsh Act and with I do believe all of us being aware of the costs involved starting at $4.1 Million which has us spending out of pocket over $3 Million higher to implement compared to the money we stand to loose. While reading an article dated February 15, 2009 in the Las Vegas Sun titled, Sex Offender Act might not be worth it's cost to nevada http://www.lasvegassun.com/news/2009/feb/15/sex-offender-act-might-not-be-worth-its-cost/
In this article you'll see that California is being referenced by their SOMB's Sex Offender Management Boards from your published version of "A Reasoned Approach" and yes California is one of several now who has chosen to decline to AWA Compliance while utilizing the again, proven research proven results approach of this policy paper. Again it would behoove us to have the author, Alisa Klein, who volunteered so very kindly to come to our state at the bear minimum of her costs to present to our Nevada State Leaders.

With cost still in mind, many of our sex offenders are being dumped for 1-3 years back to prison for technicalities having nothing to do with committing another sex crime while being paroled and then on to lifetime supervision. On average for our state it costs $20,639 per year to house an s.o. in minimum security state prison. So to simply take 1 s.o. being dumped back for a technicality having nothing to do with another sex crime and multiply that by 1 yr we spend $20,639 but if that s.o. is dumped for the full 3 years we spend $61,917 and to go further if we have 100 that year dumped, which is very easy to do as the laws stand today, we taxpayers will be spending in a 3 year time frame $6,191,700 or annually $2,063,900. These projected figures are alarming to me as we

will be taking from other majorly important areas such as education to pay for these ridiculous figures. And we must bear in mind those projected figures will continue to grow while we incure the costs to implement AWA which is $3 Million dollars over what we stand to loose on our Byrne grant money. So it will all be adding up and we will be literally going broke to continue on the path that we are on.

Safety is another important aspect for me today! As I mentioned on October 11, 2011 again for the record, we as a state use the Behavioral Model to determine risk levels, which in all actuality sex offense described as in our states according to NRS 179D.097 http://www.leg.state.nv.us/nrs/NRS-179D.html#NRS179DSec095 starts with letter (a)-murder of the first degree committed in the perpetration of sexual assault or of sexual abuse or sexual molestation of a child less then 14 yrs of age thru letter (r)-an offense that is determined to be sexually motivated continuing on to letters r & t of that statute as well as any attempted variation of any of those crimes...this to me means that any offense could be determined as high risk...so they are all truly lumped into the 1 statute just mentioned. How are we able to know which are dangerous??? They've all become thee most dangerous! While reflecting back to our policy paper at hand, we also as a state must utilize Actuarial Risk Assessment Instruments...as an example static-99 has been proven cost efficient and effective for many years now. Why have to go thru a list of 1000's of s.o.'s to find a missing child when we could narrow it down to thee most dangerous and save a child more often than not??? It is imperative that we zero in on the dangerous thru the policy paper that in all actuality, I'm practically begging for each of you to read! We must focus on facts vs myths and I ask each of you today 1 question??? Are our children any safer with the laws as they stand??? We must protect all children including our Former Sex Offenders children...these children are being affected in a traumatic way. Are we really willing to risk some children to save others? In December 2010 just a year ago a 13 y/o boy was visiting his RSO father in Daytona Beach Florida due to the Registry, a vigilante husband and wife team came to the residence and shot this boy in the face mistaking him for his father. In Georgia due to residency restrictions just a few months prior to that we had an RSO and his non RSO wife abduct, sexually abuse and kill a 6 y/o son of another RSO...he was found in a trash back not too far from the trailer park they all lived in. Now I ask as I have many other stats on the deaths due to the registry with ages ranging from 6 years old to seniors...some suicide, some vigilante, some homeless freezing to death...the list goes on and on. Sacrificing 1 life for another is just not right! This list also includes 3 deaths from our own state of Nevada!

I'm also going to include my link for further prevention measures in protecting our children form child sexual abuse www.nv-ma.org nv ma for short.

Thanks so much for allowing me to share more with you on this touchy and confusing subject today! I am always available to speak with any members on the Sex Offender Crisis at hand! Again my name is Laurie Johnson for the record J*o*h*n*s*o*n

ATTACHMENT "G"
December 22, 2011 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "G"
December 22, 2011 Minutes

December 22, 2011

Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV 89701
Conference Room # 2134

Patrick Davis
Member
Nevadans for Civil Liberties
P.O. Box 60672
Reno, NV 89506
info@nevadans-for-civil-liberties.org

TO: Advisory Committee to Study Laws Concerning Sex Offender Registration

RE: Current Recidivism Statistics

Committee Members:

I am a member of the public, a citizen of the State of Nevada, an advocate for offender rights, and a member of Nevadans for Civil Liberties.

I am asking the Committee to review these recidivism statistics. Our organization is bringing these statistics to your attention in relation to the fallacy of high rates of recidivism for new sexual offenses by previous offenders.

We are supplying the following statistics to inform you of the very low rates of recidivism across the country. We are asking you to include these statistics in the minutes of the meeting today, and are further requesting that they be available online, just the same as any document submitted by any Agency of the State of Nevada.

The statistics we are supplying are as follows: Please see attached documented statistics in ongoing current lawsuit by one of our members against the State of Nevada.

This is in relation to the Registration laws contained in 179 of the Nevada Revised Statutes that were implemented for public safety. This recidivism rate was quoted as being frighteningly high...when in fact, it is shockingly low, the second lowest rate of recidivism in the country.

Read Issue #2 in its entirety.

When the Committee looks to changing the laws relating to registration or making them harsher for an offender, they should refer to the actual statistics that are being generated in study after study that are confirming the mis-information presented to the public by law enforcement and politicians that sex offenders have the highest recidivism rate in the country, when in fact they have the second lowest rate of recidivism in the country.

This fallacy of high recidivism has to stop being perpetrated by these State Agencies and the truth needs to be represented, and our organization and many others are prepared to do that. We will be continuously supplying the Legislature, the members of the Legislature and every other State Agency that is related to the truth of these statistics, and we will make them aware of them. Due to many Court decisions across the country, including Supreme Court decisions regarding registration and notification, the Committee needs to be very careful when they decide to make any further changes, as this might cause the law to be challenged, as it is already on shaky grounds by the affirmative disabilities and restraints it currently causes an offender.

As a member of the public, I am very concerned about the implementation of harsher penalties and conditions for registration that do not take actual facts into account, and which are proven by States that have implemented studies and by the United States Government. I am asking the Committee to further review the statistics related to recidivism before they proceed with any other decisions relating to registration on sexual offenders.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Patrick Davis

Issue #2: Due Process: Determination of Fact: Recidivism Statistics:

According to the sponsor of the bill, Senator Mark James, one of the most important reasons that the Nevada Legislature enacted SB 192, in 1995, and imposed the "special sentence" of Lifetime Supervision, pursuant to NRS 176.0931, NRS 213.1243, and NAC 213.290, upon Defendant and all others similarly situated; was the "fact", presented by law enforcement, of the "high rates of recidivism" that are "known" to be a problem amongst previously convicted sex offenders. There was no documented evidence, study, or statistic that related to this "high rate of recidivism", presented or documented in the legislative record.

The second reason given, was the "fact" that if a new sexual offense occurs, the police first look to the known sex offenders and "most of the time, it is more than likely that the perpetrator will be found within this group". This is again presented without supporting evidence by law enforcement.

The last reason given for SB 192, (1995), in relation to Lifetime Supervision, was that it was intended to provide law enforcement personnel with a *non-punitive* tool to assist them in solving new sex crimes.

The legislative record of SB 192, (1995), has many statements by individual legislative members and law enforcement were made concerning this "high rate of recidivism" of convicted sex offenders. However, there is not one documented study or statistic that a person can refer to in the legislative record that points to this "high rate of recidivism". There is nothing at all that specifically points to any study or statistic in regards to Lifetime Supervision, though the record does reflect two (2) State Supreme Court decisions from other States, relating to civil commitment.

In order to look at recidivism, Defendant asserts the following reasonable definition, as this is one of the most easily tracked statistics in the country. While there can be problems with definitions, Defendant asserts that "recidivism", is "a second or subsequent sexual offense perpetrated by an already convicted sex offender for a new sexual offense.

It may well be argued that these types of crimes are underreported, and that the true rate of offenses is unknown, and that assertion, in that context, may be true. But, these types of statements can not be applied to a study that is conducted in relation to the actual rates of sexual offenses, and the actual rates of re-offense when comparing a new sexual offense by a previously convicted sex offender. If one were to extrapolate the results of these documented studies and statistics that have been done, and apply them to the as yet undocumented and unknown sexual offenses, Defendant would assert that the same rate of recidivism as currently documented would apply to those cases also, due to the fact of the size of these studies that have been performed on convicted sex offenders for many years.

Statistics can be misused with or without malice. One of the main statistics that the Supreme Court uses in analyzing the "facts" about recidivism is quoted in Smith v. Doe, 538 U.S. 84, 123 S. Ct. 1140, (2003). This was a presented in a recent case for the Court in relation to the determination of recidivism in McKune v. Lile, 536 U.S. 24, 122 S. Ct. 2017, (2002), where they looked at some of the statistics that resulted from a Study done in 1997, by the Department of Justice.

One of the conclusions of the Study was that: "When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault". See Sex Offenses 27, U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6, (1997). States thus have a vital interest in rehabilitating convicted sex offenders. *McKune*, Id. at 32. This statement by itself is correct.

However, to use this one fact, in an improper context, to describe the recidivism rate of convicted sex offenders is a malicious misrepresentation of the Study, and its results. This fact is only true in the relationship between convicted sex offenders and those convicted of other crimes. Convicted rapists and pedophiles are four (4) times more likely to re-offend for that specific crime, than other convicted offenders. Most sex offenders do not fall into one of these two categories, and this does not relate to the recidivism rate of sex offenders in general.

In a point of fact, in this study and in many other recent studies conducted since that time, the re-arrest rate for a convicted sex offender for a new sex crime is roughly 5.3% for all sex offenders, including rapists and pedophiles. The re-conviction rate is even less, averaging around 3.5% for all convicted sex offenders accused of committing a new crime. This is a very telling statistic. When you apply the rate quoted above, that rapists and pedophiles are four (4) times more likely to reoffend than any other type of offender, then that effectively drops the recidivism rate for all other sex offenders who have been convicted of a sex crime that is not related to rape or pedophilia, down to less than 1% for all of the new sex crimes that are committed every day. Another rather telling statistic, which adds perspective in relation to this, is that over 90% of all sex crimes are committed by a new offender.

In *Mckune*, the statement is made that "sex offenders are a serious threat in this Nation". In 1995, an estimated 355,000 rapes and sexual assaults occurred nationwide. U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 1, (1997).

In many recent studies by the U.S. Dept. of Justice, Bureau of Justice Statistics, and the Federal Bureau of Investigation, it has been found that the rates for this type of offense have dropped off dramatically over the last 12 years. In Bulletin NCJ 231327, entitled Criminal Victimization, 2009, the rates for rape/sexual assault had dropped to a rate of 125,910 reported cases in 2009 from a reported rate of 355,000 cases in 1995, a 65% decrease in the number of confirmed and documented cases. This is consistent with a drop in several other categories of crimes. (DOJ, Criminal Victimization, 1997).

Defendant asserts that it is not due to the fact of the registration laws, or any other laws aimed directly as sex offenders. This rate is dropping even with the huge increase in the number of sex offender laws that are constantly being put in place across the country. And this is continually dropping even with an increase in the sexting laws, the registration laws, the reporting laws, the pornography laws, and all other sex offense related laws.

Defendant is presenting to the Court many studies and statistics which confirm the "low rate of recidivism" of convicted sex offenders, in relation to committing a new sexual offense.

In 2004, the Department of Justice, Bureau of Justice statistics released a study entitled "Recidivism of Sex Offenders Released from Prison in 1994". In this study, the re-arrest rate for a convicted released sex offender was 5.3% in the first three (3) years. In looking at this even closer, the re-conviction rate for those arrests was 3.5%. That statistic would be the accurate rate of "recidivism" as defined above.

This study followed 9,691 male prisoners released during 1994 who were convicted as sex offenders, The study also followed 262,420 male prisoners who were released in 1994 and not convicted of a sex crime, but were convicted of other felony crimes. The study totaled 272, 111 actual prisoners released in 1994 in 15 states. Many significant factors and statistics resulted from this study, which is more recent that the study listed in *Mckune* and *Smith*. Defendant asserts them as follows:

(1) The re-arrest rate is only 5.3% of all new sexual offenses, and the re-conviction rate for those arrests is only 3.5%, due to the fact of false allegation, and the fact that almost all new sex offenses are committed by new offenders, not previously convicted sex offenders.

(2) When comparing offense numbers, out of a total of 272,111 prisoners, the actual number of released sex offenders who committed a new crime of any type was 4,163 offenders, however the actual number of other offenders who committed a new crime of any type was 179, 391.

(3) In a conclusion to this study, it was determined that contrary to widespread opinion, once-caught sex offenders have a very low recidivism rate. With or without treatment, more that 87% of the once-caught offenders <u>do not</u> commit another sex crime, and with treatment, the likelihood of re-offending is even lower.

(4) In contrast, according to the study, 69 % of all other types of criminals go back to prison, and they do so within five (5) years. Over a longer period of time, other FBI statistics show that about 74% of all other types of offenders return to prison.

(5) When that figure is compared to only 2% to 13%, the recidivism rate for sex offenders in reality is only a tiny fraction of what it is for all other types of crime.

This is not what the public believes and certainly not what they have heard.

Recently, many studies have been done on recidivism rates, and the Defendant would like to present a number of them to the Court, in summary form, and will include all of them as exhibits, to further corroborate the true "low rate of recidivism" of convicted sex offenders.

(1) The State of Washington, in 2004, directed the State Institute for Public Policy to analyze the impact and effectiveness of current sex offender sentencing policies. This report describes the recidivism rates of 4,091 Washington State sex offenders from 1994 to 1998. (Exhibit 29). In the summary of the report, it states that

(a) compared with the full population of felony offenders, sex offenders have the lowest recidivism rates for felony offenses, (13%), and

(b) sex offenders have the lowest recidivism rates for violent felony offenses, (6.7%), but

(c) sex offenders have the highest rates for felony sex offenses, (2.7%). This statistic compares favorably with the DOJ studies, and all of the studies that Defendant has included for the Court's review.

(d) This rate is compared against other offenders released from prison, so when you look at the actual result of that, it means that 97.3% of the time, it is a new sex offender who is committing a new sexual offense, not a previously convicted offender.

In a conclusion that bolsters another part of this argument concerning therapy, sex offenders who complete SSOSA, an outpatient treatment program, have the lowest recidivism rates in all categories. In a quote from the study, it states that "the relatively low 'base rate' of recidivism makes it challenging to predict re-offending".

(2) A recently released study entitled "The California Sex Offender Management Board's Report to the Legislature and Governor's Office, January 2008, (Exhibit 30), states the following:

(a) Solid information about the recidivism of sex offenders is one of the key building blocks for good policy and effective management in sex offender treatment.

(b) There is a growing body of solid knowledge about sex offender recidivism.

(c) In fact, the majority of sex offenders do not re-offend sexually over time.

(d) Additionally, research studies over the past two decades have consistently indicated that recidivism rates for sex offenders are, in reality, lower than the re-offense rates for most other types of offenders.

(e) Many of the preconceived notions surrounding sexual abuse appear to be based on myths and misconceptions rather than empirical studies.

(f) In a definition supplied by this study, they look at "recidivism risk" and state that "it is conceptually defined as the strength of an individual's tendency to relapse into a previous condition or mode of behavior, after the person has experienced an official intervention such as imprisonment. Any offender who re-offends after the initial official intervention would be conceptually considered to be a recidivist."

(g) In a summary of the study, after a 3 year follow up, only 3.55% of the convicted sexual offenders were returned to prison for a new sexual related offense.

(h) Only 4.57 of the convicted sexual offenders were returned to prison for a new non-sexual related offense.

(i) This study was conducted on 4,287 sex offenders released from CDCR Institutions in 2003.

(j) In the majority of the time, the released sex offenders were returned to prison for a violation of parole, which for sex offenders, is the harshest parole in the country in relation to the restraints that are imposed upon a parolee.

(3) In Arizona, a study was conducted of 3,205 sex offenders who were released over a 15 year period from 1984 to 1998. (Exhibit 30, pg. 77). Among the sex offenders releases, the following was stated:

(a) 25.2% returned to prison once, with an average time of 6.85 years for a new felony conviction.

(b) However, they returned with only a 5.5% recidivism rate for a new sexual offense.

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(a) Out of over 14, 000 offenders referred to the evaluation of the Department of Mental Health, it was found that over 59% of the released sex offenders violated their parole due to technical reasons.

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(c) Out of the entire 14, 000 inmates released on parole since 2005, only one had committed a new sex offense, thereby making the recidivism rate for paroled sex offenders in California since 2005, less than 0.1 percent.

In looking at the recidivism rates of sex offenders on Lifetime Supervision, or Community Supervision for Life, in three (3) states that have published the results of state sponsored studies, (Exhibit 33), they have shown that:

(1) In Maryland, (Exhibit 32), during the 18 months from July of 2008 to December of 2009, over 2300 sex offenders were under active supervision, and the statistics show:

(a) Between 87% and 94% of sex offender cases closed each month were closed in satisfactory status or by revocation in response to a "technical" violation.

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(c) Less than one third of one percent, (0.03%), of the sex offenders under active supervision were charged with a new sexual offense.

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(3) In Arizona, (Exhibit 32), 2,344 offenders were under active lifetime supervision, during a period from May of 1993 to August of 2000, and the rates showed:

(a) Approximately, 6.8% of the convicted sex offenders committed a new criminal offense.

(b) Of those, only 1.8% committed a new sexual offense.

(c) In 2009, only 2.9% were convicted of a new felony charge, including sex offenses.

(d) In 2009, 33.8% were returned to prison for a technical violation, due to the fact that parole and probation restrictions on sex offenders are the harshest in the country.

Defendant would like to offer the Court the following studies and statistics relating to the effects of therapy on convicted sex offenders. The public has been told for many years that "treatment doesn't work", and that for "sex offenders nothing works", but there are a number of major studies that indicates otherwise.

(a) The Campbell Collaboration analysis of over 22,000 individuals found that treatment reduced recidivism by 37%.

(b) Canada's Karl Hanson's 2000 analysis found a reduction of 41%.

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(e) By 2005, almost all relevant preventative programs showed that re-arrest rates were being reduced by greater that half. With some new treatment philosophies, reductions have been reported as high as 91%.

Exaggerated fear is a poor basis for public policy. It raises a nearly unbreachable barrier to the truth. And a policy that is based on the realities...of low recidivism, of responsiveness to treatment and of the relationship between the vast majority of offenders and their victims....offers the only hope for reducing or eliminating one of our society's saddest and most challenging problems.

If the reality is kept in mind, that once a sex offender is caught, most of the problem ceases, that preventative programs can help almost all the rest of the once caught, then clearly treatment must be the goal. When a politician is calling for tougher sentences and not backing it up with any programs, then he is looking for votes, not solutions. The public's fear would not be

so intense today if it were not being propelled by all the exaggerated and often totally false recidivism claims.

Courts must look at the actual facts of recidivism in the correct context, and enjoin constitutionally illegal laws that have been placed on offenders due to the undocumented and malicious hearsay presented as "fact" by proponents of bills and by legislators who are knowingly and willingly letting these distorted "facts" be presented.

ATTACHMENT "H"
December 22, 2011 Minutes

Advisory Committee to Study Laws Concerning
Sex Offender Registration

ATTACHMENT "H"
December 22, 2011 Minutes

December 22, 2011

Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV 89701
Conference Room # 2134

Patrick Davis
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TO: Advisory Committee to Study Laws Concerning Sex Offender Registration

RE: Current Recidivism Statistics

Committee Members:

I am a member of the public, a citizen of the State of Nevada, an advocate for offender rights, and a member of Nevadans for Civil Liberties.

I am asking the Committee to review these recidivism statistics. Our organization is bringing these statistics to your attention in relation to the fallacy of high rates of recidivism for new sexual offenses by previous offenders.

We are supplying the following statistics to inform you of the very low rates of recidivism across the country. We are asking you to include these statistics in the minutes of the meeting today, and are further requesting that they be available online, just the same as any document submitted by any Agency of the State of Nevada.

The statistics we are supplying are as follows: Please see attached documented statistics in ongoing current lawsuit by one of our members against the State of Nevada.

This is in relation to the Registration laws contained in 179 of the Nevada Revised Statutes that were implemented for public safety. This recidivism rate was quoted as being frighteningly high...when in fact, it is shockingly low, the second lowest rate of recidivism in the country.

Read Issue #2 in its entirety.

When the Committee looks to changing the laws relating to registration or making them harsher for an offender, they should refer to the actual statistics that are being generated in study after study that are confirming the mis-information presented to the public by law enforcement and politicians that sex offenders have the highest recidivism rate in the country, when in fact they have the second lowest rate of recidivism in the country.

This fallacy of high recidivism has to stop being perpetrated by these State Agencies and the truth needs to be represented, and our organization and many others are prepared to do that. We will be continuously supplying the Legislature, the members of the Legislature and every other State Agency that is related to the truth of these statistics, and we will make them aware of them. Due to many Court decisions across the country, including Supreme Court decisions regarding registration and notification, the Committee needs to be very careful when they decide to make any further changes, as this might cause the law to be challenged, as it is already on shaky grounds by the affirmative disabilities and restraints it currently causes an offender.

As a member of the public, I am very concerned about the implementation of harsher penalties and conditions for registration that do not take actual facts into account, and which are proven by States that have implemented studies and by the United States Government. I am asking the Committee to further review the statistics related to recidivism before they proceed with any other decisions relating to registration on sexual offenders.

Thank you for your time and effort in regards to this very serious matter.

Sincerely,

Patrick Davis

Issue #2: Due Process: Determination of Fact: Recidivism Statistics:

According to the sponsor of the bill, Senator Mark James, one of the most important reasons that the Nevada Legislature enacted SB 192, in 1995, and imposed the "special sentence" of Lifetime Supervision, pursuant to NRS 176.0931, NRS 213.1243, and NAC 213.290, upon Defendant and all others similarly situated; was the "fact", presented by law enforcement, of the "high rates of recidivism" that are "known" to be a problem amongst previously convicted sex offenders. There was no documented evidence, study, or statistic that related to this "high rate of recidivism", presented or documented in the legislative record.

The second reason given, was the "fact" that if a new sexual offense occurs, the police first look to the known sex offenders and "most of the time, it is more than likely that the perpetrator will be found within this group". This is again presented without supporting evidence by law enforcement.

The last reason given for SB 192, (1995), in relation to Lifetime Supervision, was that it was intended to provide law enforcement personnel with a *non-punitive* tool to assist them in solving new sex crimes.

The legislative record of SB 192, (1995), has many statements by individual legislative members and law enforcement were made concerning this "high rate of recidivism" of convicted sex offenders. However, there is not one documented study or statistic that a person can refer to in the legislative record that points to this "high rate of recidivism". There is nothing at all that specifically points to any study or statistic in regards to Lifetime Supervision, though the record does reflect two (2) State Supreme Court decisions from other States, relating to civil commitment.

In order to look at recidivism, Defendant asserts the following reasonable definition, as this is one of the most easily tracked statistics in the country. While there can be problems with definitions, Defendant asserts that "recidivism", is "a second or subsequent sexual offense perpetrated by an already convicted sex offender for a new sexual offense.

It may well be argued that these types of crimes are underreported, and that the true rate of offenses is unknown, and that assertion, in that context, may be true. But, these types of statements can not be applied to a study that is conducted in relation to the actual rates of sexual offenses, and the actual rates of re-offense when comparing a new sexual offense by a previously convicted sex offender. If one were to extrapolate the results of these documented studies and statistics that have been done, and apply them to the as yet undocumented and unknown sexual offenses, Defendant would assert that the same rate of recidivism as currently documented would apply to those cases also, due to the fact of the size of these studies that have been performed on convicted sex offenders for many years.

Statistics can be misused with or without malice. One of the main statistics that the Supreme Court uses in analyzing the "facts" about recidivism is quoted in Smith v. Doe, 538 U.S. 84, 123 S. Ct. 1140, (2003). This was a presented in a recent case for the Court in relation to the determination of recidivism in McKune v. Lile, 536 U.S. 24, 122 S. Ct. 2017, (2002), where they looked at some of the statistics that resulted from a Study done in 1997, by the Department of Justice.

One of the conclusions of the Study was that: "When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault". See Sex Offenses 27, U.S. Dept. of Justice, Bureau of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6, (1997). States thus have a vital interest in rehabilitating convicted sex offenders. *McKune*, Id. at 32. This statement by itself is correct.

However, to use this one fact, in an improper context, to describe the recidivism rate of convicted sex offenders is a malicious misrepresentation of the Study, and its results. This fact is only true in the relationship between convicted sex offenders and those convicted of other crimes. Convicted rapists and pedophiles are four (4) times more likely to re-offend for that specific crime, than other convicted offenders. Most sex offenders do not fall into one of these two categories, and this does not relate to the recidivism rate of sex offenders in general.

In a point of fact, in this study and in many other recent studies conducted since that time, the re-arrest rate for a convicted sex offender for a new sex crime is roughly 5.3% for all sex offenders, including rapists and pedophiles. The re-conviction rate is even less, averaging around 3.5% for all convicted sex offenders accused of committing a new crime. This is a very telling statistic. When you apply the rate quoted above, that rapists and pedophiles are four (4) times more likely to reoffend than any other type of offender, then that effectively drops the recidivism rate for all other sex offenders who have been convicted of a sex crime that is not related to rape or pedophilia, down to less than 1% for all of the new sex crimes that are committed every day. Another rather telling statistic, which adds perspective in relation to this, is that over 90% of all sex crimes are committed by a new offender.

In *Mckune*, the statement is made that "sex offenders are a serious threat in this Nation". In 1995, an estimated 355,000 rapes and sexual assaults occurred nationwide. U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 1, (1997).

In many recent studies by the U.S. Dept. of Justice, Bureau of Justice Statistics, and the Federal Bureau of Investigation, it has been found that the rates for this type of offense have dropped off dramatically over the last 12 years. In Bulletin NCJ 231327, entitled Criminal Victimization, 2009, the rates for rape/sexual assault had dropped to a rate of 125,910 reported cases in 2009 from a reported rate of 355,000 cases in 1995, a 65% decrease in the number of confirmed and documented cases. This is consistent with a drop in several other categories of crimes. (DOJ, Criminal Victimization, 1997).

Defendant asserts that it is not due to the fact of the registration laws, or any other laws aimed directly as sex offenders. This rate is dropping even with the huge increase in the number of sex offender laws that are constantly being put in place across the country. And this is continually dropping even with an increase in the sexting laws, the registration laws, the reporting laws, the pornography laws, and all other sex offense related laws.

Defendant is presenting to the Court many studies and statistics which confirm the "low rate of recidivism" of convicted sex offenders, in relation to committing a new sexual offense.

In 2004, the Department of Justice, Bureau of Justice statistics released a study entitled "Recidivism of Sex Offenders Released from Prison in 1994". In this study, the re-arrest rate for a convicted released sex offender was 5.3% in the first three (3) years. In looking at this even closer, the re-conviction rate for those arrests was 3.5%. That statistic would be the accurate rate of "recidivism" as defined above.

This study followed 9,691 male prisoners released during 1994 who were convicted as sex offenders, The study also followed 262,420 male prisoners who were released in 1994 and not convicted of a sex crime, but were convicted of other felony crimes. The study totaled 272, 111 actual prisoners released in 1994 in 15 states. Many significant factors and statistics resulted from this study, which is more recent that the study listed in *Mckune* and *Smith*. Defendant asserts them as follows:

(1) The re-arrest rate is only 5.3% of all new sexual offenses, and the re-conviction rate for those arrests is only 3.5%, due to the fact of false allegation, and the fact that almost all new sex offenses are committed by new offenders, not previously convicted sex offenders.

(2) When comparing offense numbers, out of a total of 272,111 prisoners, the actual number of released sex offenders who committed a new crime of any type was 4,163 offenders, however the actual number of other offenders who committed a new crime of any type was 179, 391.

(3) In a conclusion to this study, it was determined that contrary to widespread opinion, once-caught sex offenders have a very low recidivism rate. With or without treatment, more that 87% of the once-caught offenders do not commit another sex crime, and with treatment, the likelihood of re-offending is even lower.

(4) In contrast, according to the study, 69 % of all other types of criminals go back to prison, and they do so within five (5) years. Over a longer period of time, other FBI statistics show that about 74% of all other types of offenders return to prison.

(5) When that figure is compared to only 2% to 13%, the recidivism rate for sex offenders in reality is only a tiny fraction of what it is for all other types of crime. This is not what the public believes and certainly not what they have heard.

Recently, many studies have been done on recidivism rates, and the Defendant would like to present a number of them to the Court, in summary form, and will include all of them as exhibits, to further corroborate the true "low rate of recidivism" of convicted sex offenders.

(1) The State of Washington, in 2004, directed the State Institute for Public Policy to analyze the impact and effectiveness of current sex offender sentencing policies. This report describes the recidivism rates of 4,091 Washington State sex offenders from 1994 to 1998. (Exhibit 29). In the summary of the report, it states that

(a) compared with the full population of felony offenders, sex offenders have the lowest recidivism rates for felony offenses, (13%), and

(b) sex offenders have the lowest recidivism rates for violent felony offenses, (6.7%), but

(c) sex offenders have the highest rates for felony sex offenses, (2.7%). This statistic compares favorably with the DOJ studies, and all of the studies that Defendant has included for the Court's review.

(d) This rate is compared against other offenders released from prison, so when you look at the actual result of that, it means that 97.3% of the time, it is a new sex offender who is committing a new sexual offense, not a previously convicted offender.

In a conclusion that bolsters another part of this argument concerning therapy, sex offenders who complete SSOSA, an outpatient treatment program, have the lowest recidivism rates in all categories. In a quote from the study, it states that "the relatively low 'base rate' of recidivism makes it challenging to predict re-offending".

(2) A recently released study entitled "The California Sex Offender Management Board's Report to the Legislature and Governor's Office, January 2008, (Exhibit 30), states the following:

(a) Solid information about the recidivism of sex offenders is one of the key building blocks for good policy and effective management in sex offender treatment.

(b) There is a growing body of solid knowledge about sex offender recidivism.

(c) In fact, the majority of sex offenders do not re-offend sexually over time.

(d) Additionally, research studies over the past two decades have consistently indicated that recidivism rates for sex offenders are, in reality, lower than the re-offense rates for most other types of offenders.

(e) Many of the preconceived notions surrounding sexual abuse appear to be based on myths and misconceptions rather than empirical studies.

(f) In a definition supplied by this study, they look at "recidivism risk" and state that "it is conceptually defined as the strength of an individual's tendency to relapse into a previous condition or mode of behavior, after the person has experienced an official intervention such as imprisonment. Any offender who re-offends after the initial official intervention would be conceptually considered to be a recidivist."

(g) In a summary of the study, after a 3 year follow up, only 3.55% of the convicted sexual offenders were returned to prison for a new sexual related offense.

(h) Only 4.57 of the convicted sexual offenders were returned to prison for a new non-sexual related offense.

(i) This study was conducted on 4,287 sex offenders released from CDCR Institutions in 2003.

(j) In the majority of the time, the released sex offenders were returned to prison for a violation of parole, which for sex offenders, is the harshest parole in the country in relation to the restraints that are imposed upon a parolee.

(3) In Arizona, a study was conducted of 3,205 sex offenders who were released over a 15 year period from 1984 to 1998. (Exhibit 30, pg. 77). Among the sex offenders releases, the following was stated:

(a) 25.2% returned to prison once, with an average time of 6.85 years for a new felony conviction.

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(c) No study was done of how therapy might have interacted with the rates.

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