

October 24, 2006

**TO:** WI Legislative Council Special Committee on Placement of Sex Offenders.

**FROM:** Mel Flanagan, Milwaukee Circuit Court Branch 4

**RE:** 2006 National Symposium on Sex Offender Management and Accountability, September 24-26, sponsored by the Bureau of Justice Assistance.

I attended the above symposium and tried to collect as much helpful information as I could to assist the committee. I will attempt to summarize some of the information below and I have also attached additional related documents.

1. **The Adam Walsh Child Protection and Safety Act of 2006** was adopted by Congress and mandates that all states be in compliance within 3 years (with 2 possible 1 year extensions for cause). It mandates a registry of sex offenders compatible with the federal registry, requires in-person registrations with photo identification, makes all failure to register offenses felonies, mandates community notification and provides for grants to help develop appropriate management, treatment and registry programs. **See attachment #1.**
2. **Trends in State Legislation and Policies:**
  - A. 21 states have legislation establishing the use of GPS tracking of certain sex offenders at a cost of about \$10.00 per day as compared to \$4.00 per day for electronic monitoring systems. *This does not include the staffing costs required to run the tracking system and monitor offenders.*
  - B. At least 16 states have civil commitment laws (AZ, CA, FL, IL, IA, KS, MA, MN, MO, ND, NJ, DC, TX, VA, WA, and WI).
  - C. At least 17 states prohibit convicted sex offenders from living or working within a certain distance from schools. Another 12 states Prohibit sex offenders from going near certain places where there are children.
  - D. 15 states require lifetime supervision of certain high risk sex offenders.

### 3. Concerns: Are we going in the right direction?

- A. There is a lack of evidence based research evaluating these trends.
- B. One size fits all supervision may not be an effective or economical means of supervising sex offenders.

One example is to compare the supervision of offenders who assault strangers with supervision of offenders who have assaulted non-strangers or family members. Certain forms of supervision which may be effective for one group may in fact be ineffective with the other.

About 20% of reported cases (and 5% of total cases) involve a stranger as offender. The vast majority of the cases are perpetrated by an offender who is known to or related to the victim.

Residency restrictions and geographical boundaries won't necessarily protect potential victims who are related to the offender by blood or marriage. Currently, 61% of reported victims are under the age of 18 and the overwhelming majority of these victims were known to or related to the person who assaulted them.

Mandatory sentences may result in less reporting of offenders, as there would be increased pressure on the victim to not report or to recant. Victims of known offenders most often seek to get the offender into treatment and stop the abuse. A mandatory prison sentence is likely to be a disincentive to reporting.

Programs & scarce resources could be tailored to the specific type of offender rather than on a one size fits all mold. The result could be a more offender specific supervision and the ability to focus resources on the most dangerous offenders.

- C. Many states (including WI) have restrictions on Shared Living Arrangements (SLA) which prohibit sex offenders in the community from living at the same location. Clustering of offenders appears to be a concern of many communities.

States that allow SLA have had measurable success and find it easier to manage, supervise and provide appropriate group treatment to sex offenders in groups of 3-5. Some studies indicate that offenders are less likely to reoffend if they 'monitor' each other and are in SO treatment together. It also is less costly to supervise and house offenders in SLA groups. See **attachment #2**.

- D. GPS programs require more investment in staff, training, and hardware than conventional electronic monitoring. 24 hour supervision and ability to respond to violations has proven to be a very costly system. Given the projected increase in sex offenders on supervision annually, consideration should be given to tracking selected offenders rather than all offenders.

Attached please find a chart projecting the increase of 980 offenders under supervision. *This does not include all sex offenders.. See attachment # 3.*

#### 4. Promising developments:

A. **The use of polygraphs in the treatment and supervision of sex offenders; the containment approach.**

The value of post-conviction polygraph seems undisputed among those states that use it. It provides an independent source of information that is not contingent on the offender's self-report.

Research shows that self-reports and recorded crimes seriously understate actual criminal acts of sex offenders and that managing sex offenders based on these alone would endanger public safety. Findings of multiple, previously undisclosed victims have been reported in the research and it has been effective at determining when an offender is approaching a level of imminent risk of re-offending.

The containment approach to management of sex offenders combines sex offender treatment, criminal justice supervision and post-conviction polygraphs. The use of the polygraph increases the accuracy of the offender's reported history & behavior, which dictates appropriate supervision and treatment to manage risk. See **attachment #4.**

B. **Sex Offender (SO) treatment does reduce recidivism.**

Appropriate treatment combined with containment can improve public safety and significantly reduces the re-arrest rate of offenders.

A study of paroled sex offenders in Colorado indicated that sex offenders who **have not** had treatment and who are released on parole are at least **8 times** more likely to get arrested for a **violent** crime during the first year out than those who have participated in treatment. For more information see: <http://dcj.state.co.us/ors> & **attachment #5.**

### **C. Specialized Task Forces.**

Some communities have created specialized task forces to monitor sex offenders on supervision in the community and those on the sex offender registry. This requires a state and local partnership to coordinate services and security. The communities have shown great success in integrating the offenders into housing, treatment and employment while also keeping a very close eye on the offenders. To read about this type of program in San Diego, see [www.sdsafe.org](http://www.sdsafe.org).

### **D. Maximize existing state resources:**

States have utilized other existing resources to handle the management and control of sex offenders in their jurisdiction. Mississippi utilizes the State Department of Transportation to issue annual identification cards for sex offenders. In this way they are able to have a state-wide system easily available to all offenders with the ability to record changes in address or circumstances and update photos at little expense.

## **5. Top 5 concerns nationally for effective management & containment**

- A. Lack of housing for sex offenders.**
  - 1. Community education and collaboration needed.
  - 2. Use of SLA housing might in fact provide greater security.
  - 3. Homeless offenders are increasing in numbers.
  - 4. Communities are restricting access of offenders to affordable housing.
- B. Lack of appropriate SO treatment resources and funding.**
- C. Lack of employment resources for sex offenders. Employment can be correlated with lessening recitivism.**
- D. Lack of funding to train staff to properly supervise sex offenders.**
- E. High workload & ratio of supervisory staff to offender undermines the effectiveness of supervision.**

**THE SEX OFFENDER REGISTRATION AND NOTIFICATION PROVISIONS OF THE  
ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006 (P. L. 109-248)**

The Adam Walsh Child Protection and Safety Act includes a comprehensive revision of the national standards for sex offender registration and notification. This statement summarizes the relevant provisions of the Act. The descriptions of these provisions are organized under the following headings:

**I. SEX OFFENDER REGISTRATION AND NOTIFICATION STANDARDS**

- A. Names and purposes
- B. Covered jurisdictions
- C. Covered offenses and offenders
- D. Classes of sex offenders
- E. Required registration information
- F. Disclosure and transmittal of information
- G. Where registration is required
- H. Initial registration
- I. Keeping the registration current
- J. Verification/showup requirements
- K. Duration of registration
- L. Consequences of registration violations
- M. Time for implementation

**II. RELATED FEDERAL GOVERNMENT FUNCTIONS**

- A. Guidelines and regulations
- B. SMART Office
- C. National Sex Offender Registry
- D. National Sex Offender Website
- E. Registry management software
- F. Funding and assistance programs
- G. Studies and reports
- H. Federal and military sex offenders
- I. Sex offenders entering the United States

**I. SEX OFFENDER REGISTRATION AND NOTIFICATION STANDARDS**

A. Names and purposes

The short name for Title I, which contains the sex offender registration and notification standards, is the "Sex Offender Registration and Notification Act." The Act establishes a comprehensive national system for the registration of sex offenders and offenders against children, in order to protect the public from such offenders. The program established by the Act is also referred to as the "Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program." (Relevant provisions: §§ 101-03.)

## B. Covered jurisdictions

The jurisdictions subject to the Sex Offender Registration and Notification Act are the states, the District of Columbia, the principal territories, and Indian tribes to the extent provided in § 127. (Section 127 generally allows an election by Indian tribes between functioning as registration jurisdictions or delegating their registration and notification functions to the states in which they are located.) The general requirement for covered jurisdictions is to maintain a sex offender registration and notification program conforming to the Act's standards. The Attorney General is directed to issue guidelines and regulations to interpret and implement the Act. Jurisdictions and their officials are immune from liability for good faith conduct under the Act. (Relevant provisions: §§ 111(9)-(10), 112, 131.)

## C. Covered offenses and offenders

The "sex offenders" for whom registration is required include persons convicted under the laws of state, local, tribal, federal, military, or foreign jurisdictions. However, registration based on a foreign conviction is not required if it was not obtained with sufficient safeguards for fundamental fairness and due process as provided in the Attorney General's guidelines or regulations. "Conviction" for purposes of the Act usually means an adult conviction, but it includes delinquency adjudications of juveniles age 14 or older for offenses comparable to aggravated sexual abuse as defined in 18 U.S.C. 2241, or an attempt or conspiracy to commit such an offense. (Roughly speaking, the referenced federal "aggravated sexual abuse" offense encompasses forcible rape or its equivalent, and offenses involving sexual acts with victims below the age of 12.) (Relevant provisions: § 111(1), (5)(B), (6), (8).)

The predicate "sex offenses" for which registration is required in case of conviction include: (i) offenses whose elements involve a sexual act or sexual contact with another (regardless of victim age), (ii) most sex offenses and abduction offenses involving minors (i.e., persons below the age of 18) as specified in the statute, (iii) the principal federal sex offenses as specified in the statute, (iv) military offenses as specified by the Secretary of Defense, and (v) attempts or conspiracies to commit any of the foregoing offenses. However, offenses involving consensual sexual conduct with adults are not covered, unless the adult was under the custodial authority of the offender, and offenses involving consensual sexual conduct with minors are not covered if the victim was at least 13 years old and the offender was not more than 4 years older than the victim. (Relevant provisions: § 111(5)(A), (C), (7), (14).)

## D. Classes of sex offenders

The Act distinguishes three classes of sex offenders ("tiers") based on the nature of the registration offense and the offender's recidivism. Tier I is the lowest (default) category for sex offenders who do not satisfy the criteria for classification in a higher tier. Tier II includes offenders convicted of various sorts of felony sex offenses against minors – generally speaking, the predicate offenses for this tier include offenses involving sexual contact with minors (and attempts and conspiracies to commit such offenses), child prostitution offenses, and production

or distribution of child pornography. Tier II also includes offenders convicted of a felony sex offense that occurred after a prior sex offense conviction. Tier III generally includes felony offenders convicted of sexual assaults involving sexual acts with victims of any age, offenses involving sexual contact with children below the age of 13, nonparental kidnapping of minors, and attempts or conspiracies to commit any of the foregoing offenses. Tier III also includes offenders convicted of a felony sex offense that occurred after a prior conviction or convictions of the offender that would qualify the offender for inclusion in Tier II. (Relevant provisions: § 111(2)-(4).)

Under the Act's standards, the tier classifications have implications for the required duration of registration, the frequency of required showups by sex offenders to verify registration information, and the required public disclosure of information about sex offenders through the Internet. (Relevant provisions: §§ 115, 116, 118(c)(1).)

#### E. Required registration information

The Act requires that the registration information include name, Social Security number, residence address, names and addresses for places of employment and school attendance, license plate number and description for motor vehicles, physical description, text of the law defining the registration offense, criminal history of the offender, current photograph, fingerprints and palm prints, DNA sample, copy of driver's license or identification card, and any other information required by the Attorney General. (Relevant provisions: § 114.)

#### F. Disclosure and transmittal of information

Section 118 of the Act generally requires that all information about each sex offender in the registry must be made available to the public through the Internet, and that the field search capabilities of the Internet sites must include zip code/geographic radius searches, and other field search capabilities needed for full participation in the national sex offender website (established by § 120) as provided by the Attorney General. The Internet posting requirements for sex offender information would be subject to: (i) mandatory exemption of victim identity, Social Security number, and arrests not resulting in conviction, and (ii) discretionary exemption of information about tier I sex offenders not convicted of offenses against minors (as specified in § 111(7)), employer name, and name of educational institution attended. The Attorney General would have the authority to exempt additional information from Internet disclosure. (Relevant provisions: § 118.)

Section 121 of the Act provides that, immediately after a sex offender registers or updates a registration, an appropriate official shall immediately provide the information in the registry (other than information exempted from disclosure by the Attorney General) to:

- (i) The Attorney General, for inclusion of the information in the National Sex Offender Registry (established by § 119(a)) or other appropriate databases.

(ii) Appropriate law enforcement (including probation) agencies and schools and public housing agencies in areas in which the sex offender resides, works, or goes to school.

(iii) Each jurisdiction in which the sex offender resides or works or goes to school, and each jurisdiction from or to which a change of residence, employment, or student status occurs. (Two related provisions – §119(b) provides that the Attorney General shall ensure that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions; § 113(c) provides that a jurisdiction in which a sex offender appears to report a change of name, residence, employment, or student status must immediately provide that information to all other jurisdictions in which the offender is required to register.)

(iv) Agencies responsible for employment-related background checks under the National Child Protection Act.

(v) Social service entities responsible for protecting minors in the child welfare system.

(vi) Volunteer organizations in which contacts with minors or other vulnerable individuals might occur.

(vii) Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction.

The requirement that the information be provided “immediately” is qualified to allow that the entities referenced in (vi) and (vii) – volunteer organizations and other requesters – may elect to receive the notification no less frequently than once every five business days. (Relevant provisions: § 121.)

#### G. Where registration is required

Sex offenders are required to register and keep the registration current in each jurisdiction in which they reside, work, or go to school. A sex offender must also initially register in the jurisdiction in which convicted if it is different from the jurisdiction of residence. (Relevant provisions: §§ 111(11)-(13), 113(a).)

#### H. Initial registration

Initial registration is generally required prior to completing a sentence of imprisonment, or not later than three business days after sentencing if the sex offender is not sentenced to imprisonment. At the time of initial registration, an appropriate official must inform the sex offender of his or her registration duties, obtain a signed acknowledgment, and ensure that the sex offender is registered. The Attorney General has the authority to prescribe rules for the registration of sex offenders who cannot be registered within the normal time frame, and to specify the applicability of the Act’s requirements to sex offenders convicted before its

enactment or its implementation in a particular jurisdiction. (Relevant provisions: §§ 113(b), (d), 117.)

I. Keeping the registration current

Sex offenders are required to keep the registration current in each jurisdiction in which they reside, work, or go to school. This includes appearing in person in at least one such jurisdiction within three business days to report any change of name, residence, employment, or student status. (Relevant provisions: § 113(c).)

J. Verification/showup requirements

The Act requires that a sex offender periodically appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which the offender is required to be registered. The required frequency of such showups is at least annually for tier I sex offenders, at least semiannually for tier II sex offenders, and at least quarterly for tier III sex offenders. (Relevant provisions: § 116.)

K. Duration of registration

The required registration period is 15 years for a tier I sex offender, 25 years for a tier II sex offender, and life for a tier III sex offender. However, for a tier I sex offender, the registration period could be reduced from 15 years to 10, and for a tier III sex offender registered on the basis of a juvenile delinquency adjudication, the registration period could be reduced from life to 25 years, if the offender maintains a "clean record." A clean record in the relevant sense means not having a subsequent felony or sex offense conviction, successfully completing any period of supervision, and successfully completing an appropriate sex offender treatment program certified by a jurisdiction or the Attorney General. (Relevant provisions: § 115.)

L. Consequences of registration violations

The Act provides that each jurisdiction (other than an Indian tribe) shall provide felony penalties for the failure of a sex offender to comply with its requirements. Appropriate officials are to notify the Attorney General and appropriate law enforcement agencies of sex offenders' failure to comply with registration requirements and to revise the jurisdiction's registry to reflect the nature of the violation; the officials and agencies involved are to take any appropriate action to ensure compliance. (Relevant provisions: §§ 113(e), 122.)

M. Time for implementation

Jurisdictions have three years to implement the new sex offender registration and notification requirements; the Attorney General may authorize up to two 1-year extensions of this deadline. Jurisdictions which fail to substantially implement the Act within the applicable time frame are subject to a 10% reduction of Byrne Grant funding. The principal pre-existing