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**HEARING ON COMBATING CRIMES AGAINST CHILDREN:
ASSESSING THE LEGAL LANDSCAPE**

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WRITTEN TESTIMONY OF:

NICOLE PITTMAN

DIRECTOR, CENTER ON YOUTH REGISTRATION REFORM

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Chairman Goodlatte, Ranking Member Conyers, Chairman Gowdy and Ranking Member Jackson Lee, and Members of the Subcommittee on Crime, thank you for this opportunity to testify on the Legal Landscape of Combating Crimes Against Children. We are all part of this hearing because we care deeply about protecting children from harm. Many of us have dedicated our lives to doing just that.

Over the past 20 years, Congress has passed a series of well-intentioned laws with the safety of children in mind; laws that focus primarily on capturing and tracking adults who prey on children. Unfortunately, aspects of these same laws have unintended consequences that are actually hurting kids. We see this trend in anti-trafficking laws enacted to deter the exploitation of children for profit and in laws crafted to protect children from sexual abuse.

My own expertise is in the area of juvenile sex offender registration, a practice that blurs the significant difference between adult predators and children, who by their very nature are bound to act impulsively and make mistakes. Congress encouraged—indeed mandated—states to register children who engage in sexual misconduct as part of the 2006 Sex Offender Registration and Notification Act, better known as the Adam Walsh Act. In the following pages, I'll explain how including children on lists created to monitor dangerous adults destroys the lives of many kids and families, consumes scarce dollars that could be used to fund interventions that actually work, and arguably makes America less safe.

In hindsight, mandating juvenile sex offender registration is an example of Congress using its considerable authority to push states in the wrong direction. But it's also an area in which Congress can easily reverse course, giving states the opportunity to make sound decisions based on the best research—evidence that wasn't available in 2006 when Congress passed the Adam Walsh Act.

I. THE LANDSCAPE TODAY

More than 200,000 of the roughly 900,000 people currently listed on sex offender registries nationwide were added to those lists as children, some as young as 8 years old.¹ Bobby was only 11 years old when he was registered as a sex offender in Texas—all because of a silly game among kids home alone. In a twist on musical chairs, Bobby's 13-year-old sister turned off the lights and told everyone to undress and then try to quickly re-dress before she turned the lights back on. Bobby, always the clown, thought it would be funny if he left his clothes off—he was only 9 years old at the time.

When the lights came on, Bobby was standing there naked. Everyone laughed, then he got dressed and all the kids ate pizza. But later, when a 7-year-old girl who had taken part in the

¹ Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US* (May 2013) (Hereinafter *Raised on the Registry*).

game told her mother she'd seen his penis, the police got involved and charged Bobby with indecent exposure.² He was adjudicated delinquent in a Texas juvenile court, and from then on, known as a sex offender. In states like Texas, where registration is a lifelong requirement even for juveniles, it's a kind of life sentence, one served not in prison but on the margins of society.

Here's what happened to Bobby: As a sex offender in the state of Texas, he wasn't then and isn't now allowed to live in a "child safety zone," areas marked by invisible fences that extend thousands of feet around schools, parks, movie theaters and any place children might gather. He also can't live with anyone under the age of 14, which meant his own home was off-limits once he was adjudicated delinquent for a sex offense. Too young to incarcerate, the judge placed Bobby with a foster family where he was abused and later ran away. Eventually, he ended up in a juvenile facility where he stayed until he was 17.

His early years hardly prepared him for success in life, and as a young adult Bobby was frequently homeless. Unable to provide a permanent address for the sex offender registry, he was convicted three times for failure to register, and each time sentenced to prison. After his third term in prison, he became increasingly depressed. Unable to find work, he was arrested within a year for receiving stolen property. Calling him a "career criminal," the judge sentenced Bobby to 15 years to life. Now 31 years old, he has spent the majority of his life behind bars.



Bobby, age 11, age at time of arrest

Sadly, Bobby's story is not unusual. A few years ago, I spent months travelling the country, meeting individuals who were placed on sex offender registries as children. Some of them were still children, mostly in their teens. Others were in their 20s or 30s by the time I met them. Before I began this road trip, my colleagues were worried that I would be exposed to people they expected to be sexual predators, "the worst of the worst." But the people I met and talked with in living rooms and around kitchen tables, and often in the company of their loved ones, were nothing of the kind.

² Indecency with a Child Texas Criminal Code Section 21.11(a)(1) is a Tier III Offense registerable for Life.

Instead, I met normal adolescent boys and girls and young men and women who at a younger age had been curious about sex or influenced by peer pressure and who acted without thinking about the consequences. I met people who had been caught up in teenage romances where one or both parties were under the age of consent, and kids whose offenses were imitations of what they saw on television or online. I also met traumatized girls whose behaviors were an outgrowth of their own sexual victimization, as well as mentally ill and developmentally disabled individuals who didn't understand at the time that what they did was wrong or hurtful. In other words, much like Bobby, most kids end up on registries for engaging in behavior that's normative or experiential, if not ideal. Serious offenses are much less common, and even when they do occur are not predictive of future behavior, as I discuss later in my testimony.

Altogether I met with more than 500 individuals who were placed on the registry as juveniles, people directly affected by laws that treated them in the same way as fully formed adult sexual offenders. I also met with their families and their victims. Their stories became the foundation of my 2013 report published by Human Rights Watch, entitled, [*Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*](#). It was the first comprehensive examination of the consequences of placing children on sex offender registries—harms that I discuss in greater detail below. I also authored the 2011 compendium, [*A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A Survey of the United States*](#), and have provided testimony on juvenile sex offender registration in several states across the country. Today I direct the Center on Youth Registration Reform at Impact Justice.

As a leading national expert on the effects of sex offender policies on children, I can say definitely that laws intended to protect kids have robbed thousands upon thousands of a normal childhood, put them and their families in jeopardy, and cast an endless shadow over their future. It's especially remarkable that such a fate befalls children whose cases are handled by juvenile courts, within a system founded on the ideal of rehabilitation. In theory, juvenile justice is all about second chances—holding children accountable and supporting them in ways that help them grow into responsible, law-abiding adults. Registering kids as sex offenders does just the opposite.

Many children branded sex offenders are victims themselves, who need help to heal.

Devon remembers his early childhood as a happy one. Cousins and neighborhood kids congregated on his street in Delaware because it was safe from traffic. He recalls long summer days spent outside, riding bikes and tubing in the lake. Between ages 11 and 12, Devon's good memories faded and life shifted as a result of being repeatedly molested by an uncle who lived nearby. Soon after, Devon had sex with a younger cousin. "I acted out what was done to me," he later said.

At 13, Devon was sent to a juvenile facility in South Carolina for sex offender treatment. He remembers trying to talk about what his uncle did to him, but was told that he was a "perpetrator," not a "victim." His experience is typical. Many treatment programs don't allow youth to talk about their own victimization because it is seen as minimizing whatever harm they committed. These programs also teach kids that they will be sex offenders for life, and like an alcoholic, must accept this fact in order to manage their compulsions. This common but ineffective approach undermines genuine healing and sends a message to both children and their

parents that they are irredeemable. The parallel myth that victims are forever damaged sends a similarly hopeless message to people who we should view as survivors with a rich life ahead of them.

Right before his 16th birthday, Devon returned home only to discover that he was required to publicly register as a sex offender for the rest of his life. Although Devon had hopes for the future and finished high school with a 3.7 GPA, he has spent the past seven years unable to find work or attend college because of his status as a known sex offender. “I had all these dreams and plans after I completed treatment,” Devon said. “It’s like the government wants me to be a monster.”

Like Devon, many children placed on sex offender registries are themselves victims of abuse or neglect, or have experienced other types of trauma. In my own research encompassing 500 registered youth, all of them had experienced some form of abuse or neglect in the year preceding the offense, highlighting the false distinction between young victims and young perpetrators. And when we understand the total life experience of children who engage in sexual misconduct, we can respond in ways that help them to heal, effectively breaking the cycle of abuse.

Recidivism rates are already vanishingly low, and registration does not improve public safety.

There are now more than 100 published studies evaluating the recidivism rates of youth who have sexually offended. The average 5-year recidivism rate is less than 3%. Nine years later it was down even further to 2.5%.³ The latest empirical findings show that over 97% of youth adjudicated of sex offenses will never cause sexual harm again, with or without registration.⁴ In other words, the rate at which juveniles commit new offenses—an already low number—is not further reduced through registration.⁵

Across the 10 states that never registered children adjudicated in juvenile court, the overall rate of sexual crimes committed by juveniles and their recidivism rates are no higher than in states that do register juveniles. In fact, some evidence points to lower recidivism rates in these 10 states.

³ Caldwell (2016). Quantifying the decline in juvenile sexual recidivism rates. *Psychology, Public Policy, and Law*; Caldwell (2010). Study characteristics and recidivism base rates in juvenile sex offender recidivism. *International Journal of Offender Therapy and Comparative Criminology*, 54, 197-212.

⁴ Sharon E. Denniston and Michael F. Caldwell, “Answering the Call to Study the Effects of Juvenile SORN: Lessons from Two Studies,” Presented October 15, 2015 at the ATSA 34th Annual Research and Treatment Conference, Montreal, Quebec, Canada. Caldwell has conducted a meta analysis of 91 studies with 29,734 youth adjudicated of sex offenses with data from the 1940s to 2014. The weighted sexual recidivism rate is 4.59%, however 40 of the studies have recidivism rates below 5% while only 3 have rates over 15%.

⁵ Letourneau, E. J. & Armstrong, K. S. (2008). Recidivism rates for registered and nonregistered juvenile sexual offenders. *Sexual Abuse: A Journal of Research and Treatment*, 20, 393-408; Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 20, 136-153.

In sum, **more than 20 years of research shows no public safety benefits to registering juveniles.** Registration does not lower an already low recidivism rate and does not have any deterrent effect.⁶ This evidence is the key to understanding why registering juveniles is misguided. With all the harm it causes and no public safety benefit, why do it?

In a new study to be published later this year, public health officials at the *Johns Hopkins Moore Center for the Prevention of Child Sexual Abuse* found that rather than improving public safety, registration, “communicates constantly and in a variety of ways that [registered] youth are dangerous, feared, worthless and have no real future.”

Registration triggers a wave of suffering that spreads and lasts.

The psychological harm, social alienation, and life obstacles that Bobby and Devon experienced are typical. In some states, for example, children on the registry are denied a normal education among their peers because much or all of the school environment is off limits to them. Families must relocate if their house is too close to a neighborhood school or park. Like Bobby, some kids are removed from their own homes if they have younger siblings, frequently landing in perilous foster care or juvenile justice settings. Almost universally, these children grow up isolated and depressed. It’s telling that one-in-five kids raised on registries attempt suicide at some point in their lives. Some succeed.

Often the whole family suffers. Some young people are required to post a sign in the window stating, “sex offender lives here.” It’s not uncommon for stigmatization to lead to vigilante attacks. Registered kids and members of their families have been harassed, beaten, shot at, bombed, and even murdered. In some cases, the child or family is a target of repeated threats and actual violence.

In my own research culminating in the report published by Human rights Watch, fully half the families I met had experienced violence or threats of violence that they directly attributed to registration. Here are just three examples:

- After Camilo’s name was added to a list of registered sex offenders when he was just 14 years old, strange cars started following him home from school. “One time a man from one of those cars yelled ‘child molester’ at me.”⁷ A week later, according to Camilo, several bullets were fired from a car driving by. “The bullets went through the living room window as my family and me watched TV.”⁸

⁶ Letourneau, E. J., Harris, A., J., Shields, R. T., Walfield, S., & Kahn, G. (2016). Death and destruction: The effects of sex offender registration on youth. Unpublished manuscript; Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 20, 136-153; Caldwell, M. (2007). Sexual offense adjudication and sexual recidivism among juvenile offenders. *Sexual Abuse: A Journal of Research and Treatment*, 19, 107-113.

⁷ Human Rights Watch Interview with Camilo F., Florida, June 2012.

⁸ Ibid.

- Bruce, the father of two sons placed on the registry at ages 10 and 12 for an offense committed against their younger sister, then age 8, said that a man once held a shotgun to his 10-year-old son's head.⁹
- Isaac E. has been a registered as a sex offender since he was 12 years old, after pleading guilty to a charge of “indecent liberties by forcible compulsion” for touching the chest of a female classmate who was also 12. Because the registry does not provide information about his date of conviction and updates his current age each year,¹⁰ Isaac and other people registered as children begin to look like adult sex offenders. “It is very misleading and makes people very angry, Isaac explained. “My brother, who looks like me, was once harassed and nearly beaten to death by a drunk neighbor who thought he was me.”¹¹

I made a promise to the families that I interviewed for the Human Rights Watch report, that they would not share their heartbreaking personal stories in vain. Since then, I have been working tirelessly to keep that promise. One of the most memorable interviews was with a young woman who was sexually harmed by her brother when she was 10 and he was 12. She explained that because her brother was on the sex offender registry, vigilantes harassed the entire family—throwing Molotov cocktails into the family home, shooting at family members, and spray painting “molester” on their garage. This courageous young woman told me, “What lawmakers and the public do not understand is that a child on the sex offender registry is a family on the registry, and also a victim on the registry.” This is the result of laws that permanently stigmatize kids and families and are at odds with other laws that aim to protect the confidentiality of juvenile records.

My research also reveals that when a child is placed on the registry, families tend to devote their emotional and material resources to helping that child endure life on the registry, and have little left to help the child-survivor. One woman told me that her family was so busy trying to frantically triage her brother's life on the registry that, “they basically ignored me.”

While high profile stories about children abducted and molested by strangers understandably stand out in our memories and imaginations, the fact is that abuse, both minor and more serious, mainly occurs within families. The persistent fantasy that strangers are the real danger also makes it less likely that families will recognize warning signs of sexual behavior problems involving children, and awareness is the key to prevention or speedy intervention.

It's worth repeating that we're branding kids with labels that mark them for life. As adults, many registrants carry drivers' licenses with the identifier “sex offender” printed in bright orange capital letters. They despair of ever finding steady employment, even while they are burdened with mandatory fees that can amount to hundreds of dollars annually, and as a result, like Bobby many become homeless.

⁹ Human Rights Watch interview with Bruce W., Texas, May 1, 2012.

¹⁰ Human Rights Watch interview with Isaac E., Spokane, Washington, August 27, 2012. Human Rights Watch visited the Washington State Sex Offender Registry in December 2011 to verify the difficulty in determining how old a registrant was at the time of conviction or adjudication. Similar difficulty was experienced on other state registries, such as the Ohio State Sex Offender Registry, available at: <http://www.drc.state.oh.us/OffenderSearch/Search.aspx> (accessed April 23, 2013).

¹¹ Human Rights Watch interview with Isaac E., August 27, 2012.

And for those who manage to have children, the label they carry tarnishes their children as well. There are fathers who can't take their own children to school because the school grounds are off limits to registered sex offenders. These kids are at high risk of harassment and ridicule for something their parent did long before they were even born. And they too may grow up ostracized if other children shun them, or simply if their peers can't even visit them at home.

Intervention and treatment works for children.

Children respond very well to evidence-based treatment. Studies show that appropriate treatment reduces the chances that kids will engage in new sexual or non-sexual offenses. Treatment also reduces the likelihood of costly out-of-home placements, including residential treatment.

Dr. Elizabeth Letourneau, the country's leading expert on the prevention of child sexual abuse, believes firmly that "holding children appropriately accountable for harmful behavior and providing them with evidence-based treatment can reduce their likelihood for future offending. Subjecting them to registration cannot."¹²

Also notable, in a June 2016 letter to the U.S. Department of Justice, esteemed members of the Association for the Treatment of Sexual Abusers (ATSA)—a group that has studied and published empirically rigorous research on juvenile sexual offending and responses—concluded that work conducted over the past decade has demonstrated that even seriously delinquent youth respond well to evidence-based interventions.¹³ Given these findings, along with equally compelling evidence that juvenile registration policies fail to improve public safety, have unintended effects on the juvenile justice process, and harm youth and their families, the experts urged the Office of Sex Offender Sentencing, Monitoring, Apprehending, Monitoring, and Tracking (SMART) to emphasize evidence-based treatment rather than registration and waiver as a way to manage youth who have sexually offended.

Given recent research on the developing brain, it should come as no surprise that a young person's actions are not a good indicator of how he or she will behave as an adult. Youth are more likely to act impulsively, but they grow out of risky behavior. They are uniquely amenable to intervention, treatment and change.¹⁴ This understanding underlies important Supreme Court decisions protecting juveniles from the harshest punishments.¹⁵ At this point, sex offender registration stands out as the only lifelong consequence to which young offenders are subject.

¹² See Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. "Quantifying the Decline In Juvenile Sexual Recidivism Rates, published in *Psychology, Public Policy and Law* (2009); and "The Influence of Sex Offender Registration On Juvenile Sexual Recidivism," *Criminal Justice Policy Review*, 20, 136-153; Letourneau, E. J., Harris, A., J., Shields, R. T., Walfield, S., & Kahn, G. (2016). Death and destruction: The effects of sex offender registration on youth. Unpublished manuscript; Caldwell (2016); Study characteristics and recidivism base rates in juvenile sex offender recidivism. *International Journal of Offender Therapy and Comparative Criminology*, 54, 197-212.

¹³ The press release & link to the letter can be found at: www.jhsph.edu/research/centers-and-institutes/moore-center-for-the-prevention-of-child-sexual-abuse/moore-prevention-news/we-must-remove-children-from-sex-offender-registries

¹⁴ See Laurence Steinberg & Elizabeth S. Scott, "Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty," *American Psychologist*, 58:12 (2003); Laurence Steinberg, "A Social Neuroscience Perspective on Adolescent Risk Taking," *Developmental Review*, 28:1 (2008).

¹⁵ See *Roper v. Simmons* (2005), *Graham v. Florida* (2010), *Miller v. Alabama* (2012), and *Montgomery v. Alabama* (2016).

Everyone wants to live in a safe community where children are protected from sexual abuse. This requires effective laws and policies driven by facts not fear, and the facts are clear. Youth registration doesn't work. Prevention and therapeutic interventions do. We can hold kids accountable for their behavior in ways that allow them to grow into healthy, trust-worthy adults.

Registration is costly, siphoning dollars that could be spent on prevention and treatment.

America spends a fortune tracking low-to-no risk children. One of my closest allies in this work, Eli Lehrer, President of R Street Institute, who has studied the issue extensively, concludes that registering youth is “simply a waste of resources.”¹⁶ Research conducted by eminent benefit-cost analyst Richard Belzer, also of R Street Institute, shows that the practice of registering juveniles produces almost no benefits, does almost nothing to reduce crime and comes with social and government costs totaling roughly \$3 billion annually.¹⁷ An infographic demonstrating this is attached as Exhibit A.

In light of these findings, the report recommends that these funds would be better spent on evidence-based treatment and other efforts that actually work—including services for survivors of abuse. California, for example, has been spending \$145 million dollars annually to register juveniles, while the state General Fund was only contributing \$45,000 a year to support programs for survivors of sexual violence. My organization, the Center for Youth Registration Reform, is currently working with the California Coalition Against Sexual Assault (CALCASA) to allocate resources more effectively—and that begins by raising awareness about the folly of our current policies and how that money could indeed be better spent. What would it look like if even a sizeable portion of the \$145 million used to register children—after a harm has occurred—were reallocated to services and strategies to prevent sexual harm? Ending youth registration is part of a larger conversation and movement to shift resources away from modes of punishment that don't work and toward supporting those who have been harmed.

Juvenile registration probably makes us less safe.

Tracking more than 200,000 people registered as children clogs these databases, making it that much harder to monitor dangerous adults. Mr. Lehrer has testified and presented widely to conservative groups such as Right on Crime and the American Legislative Exchange Council (ALEC) on how cleaning up registries is in the interest of safety, as well as justice, and that “the most obvious group to exclude from the registries are people who committed crimes while they were children themselves and were adjudicated in juvenile court.”¹⁸

Moreover, sex offender registration overburdens law enforcement. Detective Bob Shilling, a 29-year decorated veteran of the Seattle Police Department who spent 20 years as a detective in the

¹⁶ Eli Lehrer (2016). Testimony to the South Dakota House of Representatives. “Fixing South Dakota’s Sex Offender Registry.” Last Accessed at: <http://www.rstreet.org/outreach/fixing-south-dakotas-offender-registries/>

¹⁷ Richard B. Belzer, “The Costs and Benefits of Including Juveniles on Sex Offender Registries,” *R-Street Institute Policy Study No. 41* (September 2015).

¹⁸ Eli Lehrer (2016). Testimony to the South Dakota House of Representatives. “Fixing South Dakota’s Sex Offender Registry.” Last Accessed at: <http://www.rstreet.org/outreach/fixing-south-dakotas-offender-registries/>

Special Victim's Unit, Sex and Kidnapping Offender Detail for the Seattle Police, explained how his officers were required to make home visits to registered sex offenders. He stated that focusing attention and resources on an overly broad group of ex-offenders detracts attention from the smaller number of sexually violent offenses that occur, leaving communities vulnerable to sexual abuse, creating a false sense of security, and exhausting valuable resources by tracking the “wrong offenders”—that is, individuals not likely to ever reoffend sexually. The detective said, “the most recent laws dilute the effectiveness of the registry as a public safety tool, by flooding it with thousands of low risk offenders like children, the vast majority of whom will never commit another sex offense.”¹⁹

Human trafficking is another area in which laws have had unintended consequences.

Human trafficking is another area where we are learning that victims end up being punished by the very laws that were enacted to protect them. Anti-child sex trafficking experts have taught us that survivors and those directly impacted by the specific crimes must be at the forefront of the conversation. By connecting and involving survivors, we are finally beginning to understand how practices, once thought of as effective ways to keep children safe, are actually causing them long-term harm or even revictimizing them.

Beginning at age 14, and for the next two years, Melissa was a victim of sex trafficking. At age 16, with a gun held to her head, she helped someone transport minors across state lines and into New York. Because New York treats any child over the age of 16 as an adult, Melissa was convicted in criminal court of this offense. After getting out of prison she was required to register as a sex offender. Not only traumatized by flashbacks of her ordeal, she also faces insurmountable barriers to housing and jobs because of her registration status.

A recent study by the National Survivor Network looked at the long-term impact of arrest and convictions on survivors of human trafficking. The study surveyed 45 human trafficking survivors, mostly trafficked for sex between the ages of 14 and 15 years old.²⁰ The results are somewhat startling: First, child victims are just as likely as adults to be arrested and prosecuted for crimes. Most significantly, the survey showed that over half of all respondents believed that all their arrests, charges, and convictions were directly related to their trafficking experience—meaning that their criminalization was a direct consequence of their victimization.

II. HOW DID WE GET TO THIS POINT?

The tragic losses of Jacob Wetterling, Megan Kanka, and Adam Walsh—children who were abducted by adult strangers and murdered—have framed the discourse on child sexual abuse for nearly 30 years. These horrific acts became the impetus behind sex offender registration and notification laws, policies developed to protect children from sexual abuse, not to destroy the

¹⁹ Presentation by Bob Shilling, Annual National Juvenile Defender Center Leadership Summit, Seattle, Washington, October 18, 2011 (copy on file at Human Rights Watch).

²⁰ National Survivor Network (NSN). National Survivor Network Members Survey on the Impact of Criminal Arrest and Detention on Survivors of Human Trafficking. (2016). Last accessed on March 15, 2017 at:

<http://nationalsurvivornetwork.org/templates/files/nsn-arrest-criminal-background-survey-report-jan-2016.pdf>

lives of young people and their families. Yet over time, registration morphed into a one-size-fits-all approach completely at odds with responding to sexual offenses committed by children.

When first adopted in 1994, federal sex offender registration and notification laws neither required nor prohibited the inclusion of children whose cases are handled in juvenile or family court. However, in response to “tough on crime” policies and the now-discredited juvenile “super-predator” scare of the mid-1990s,²¹ some states began including children on sex offender registries.

It was not until 2006, with the passage of the Sex Offender Registration and Notification Act (SORNA), typically known as the Adam Walsh Act, that the federal government explicitly required states to register children adjudicated in juvenile court for a sexual offense. The original version of SORNA, promulgated by the National Center for Missing and Exploited Children (NCMEC) and introduced in Congress, did not extend to children in the juvenile justice system. But an amendment made at the last minute, known as the Zyla expansion, stretched the bill to encompass these youth. Congress hastily passed the Zyla expansion in response to a high profile sexual assault committed by a juvenile.²² That young person had already matured into an adult who had never re-offended, but the Zyla family feared he might. (He has still never reoffended.)

Most advocates and proponents of federal sex offender registration and notification (SORN) laws never intended for youth adjudicated in juvenile court to be included on these registries. Patty Wetterling has deep concerns about the wide-reaching scope of today’s registration laws. She’s the mother of Jacob Wetterling who was abducted in 1989 and never found, and became the namesake for the first federal law to mandate that states create sex offender registries.²³ From her perspective, registries are tools to make it easier for the police to locate adults who with a record of past crimes against children when investigating new crimes.

“I don’t believe in registering juveniles. I don’t see any, not one redeeming quality in doing that,” Patty Wetterling said in a published interview.²⁴ In that same interview, she recalled her thoughts at the time Congress was considering what would become the Adam Walsh Act: “I had great concerns about what [lawmakers] were trying to do when they proposed the [Adam Walsh Act] bill. . . I was told not to worry about the juvenile provisions because that would get thrown out. I was told there was no way that would pass.”²⁵ It’s significant that one of the nation’s leaders on child safety and a current

²¹ See Carpenter, C. (2016). *Throwaway Children: The Tragic Consequences of a False Narrative*. *Law Review*. See generally Simon, J. (2007). *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York: Oxford University; Kupchik, A. (2006). *Judging Juveniles: Prosecuting Adolescents in Adult and Juvenile Courts*. New York: New York University Press. The superpredator myth coined by academic John Dilulio, predicting a meteoric rise in violent juvenile criminals has been discredited. Dire predictions that “the rise in violent arrests of juveniles in the early 1990s would combine with a growing youth population to produce an extended crime epidemic” have proved inaccurate. Juvenile crime rates began a steady decline around 1994, reaching low levels not seen since the late 1970s. Dorfman, L. & Schiraldi, V. (2001). “Off Balance: Youth, Race & Crime in the News.” *Building Blocks for Youth*.

²² Title I, § 111.8 of the Adam Walsh Act, Pub. L. No. 109-248, (2006).

²³ Jacob Wetterling Crimes Against Children Sex Offender Registration Act of 1994

²⁴ Wright, R. (2015). *An Interview with Patty Wetterling*. *Sex Offender Laws, Second Edition: Failed Policies, New Directions*. New York: Springer Publishing Company.

²⁵ Wright, *Supra* note 6.

NCMEC board member is strongly opposed to including children on sex offender registries and consistently speaks out.

Similarly, Stop Child Predators President Stacie Rumenap regrets this particular outcome of the Adam Walsh Act. A national nonprofit organization based in Washington D.C., Stop Child Predators brings together policy experts, law enforcement officers, community leaders, and most importantly, victims of abuse. It was founded in 2005, the year before the Adam Walsh Act become law. “Our group was a very strong proponent of the Act’s passage,” she explains. We testified on Capitol Hill in support of the legislation, we worked with many of the victims of the types of crimes that the Act was attempting to prevent. We brought some of those families to Capitol Hill ... we wanted very strong, tough penalties on specific adults. But, in all the meetings that we had, never once were we discussing registering juveniles.”²⁶

III. A BETTER FUTURE FOR KIDS AND THE COUNTRY: FIX THE ADAM WALSH ACT

The Adam Walsh Act is too broad when it comes to juveniles.

The mandate in the Adam Walsh Act to register kids adjudicated in juvenile court purports to only apply to those who were over the age of 14 when they committed an act of delinquency more severe than “aggravated sexual abuse,” and provides an exception for consensual teen sexual activity—what people call “Romeo and Juliet” offenses. But these carve outs haven’t muted the negative consequences of the law for many kids.

Meet Jason. At 14, he had voluntary sexual intercourse with his 12-year-old girlfriend. They were exactly 15 months apart in age. Both families knew the kids were dating and getting pretty serious. The young couple got pregnant. Jason was scared but wanted to be responsible so he accompanied his pregnant girlfriend and her mother to OB-GYN appointments, except for one visit he couldn’t make because he had a baseball game. That time, she saw a different doctor who did not know Jason or the whole story, and who reported her pregnancy to child protection services.

Jason was arrested, charged, and adjudicated in juvenile court of statutory rape. That’s an “aggravated sexual offense” in South Dakota—not because there was an element of force or compulsion but because Jason’s girlfriend was under the age of 13.²⁷ Because South Dakota seeks to comply with the Adam Walsh Act, Jason must register as a sex offender for the rest of his life. Jason and his girlfriend are now in their 20’s and trying to co-parent their child, who is now almost 10-years old. That’s especially hard because Jason’s status as a known sex offender continues to adversely affect the entire family.

²⁶ Open Letter to Members of Congress, from Stacie Rumenap, President, Stop Child Predators, attached as Exhibit A.

²⁷ People *ex rel.* J.L., 800 N.W.2d at 725 (Meierhenry J. concurring specially). (Had J.L.’s girlfriend been thirteen years old, J.L.’s act would have been considered a misdemeanor rather than an aggravated felony. See S.D. CODIFIED LAWS § 22-22-7 (2015) (providing that “[i]f the victim is at least thirteen years of age and the actor is less than five years older than the victim, the actor is guilty of a Class 1 misdemeanor”).

In addition to children like Jason, there are also many children who were placed on registries for normative behavior, like “sexting,” playing doctor, streaking and other juvenile but inappropriate behavior. These children can be our sons, daughters, nieces, or nephews and are not sexual predators, but simply immature and in need of guidance. These behaviors are a manifestation of a child’s developing brain, where the judgment, reason and impulse centers are not fully developed yet. As with the victims of abuse or neglect and consensual relationships between children close in age, registries are not the solution to this problem.

One of the most concerning things about placing children on registries is that we often see children with developmental disabilities, such as autism, engaging in these types of behavior. On top of a still developing brain and sense of identity, these children often have trouble with social cues and other typical teenage behavior, like courtship and dating.

Tony, a 14-year old boy from rural Minnesota with severe autism and Tourette’s Syndrome, decided to text pictures of his genitals to a girl he liked, Sarah, who was also 14 years old. He lives in one of the many states that does not have a “sexting statute” and was therefore arrested and charged with Distribution of Child Pornography and forced to register as a sex offender for life. We all know that child pornography statutes were not intended to capture Tony’s behavior, and doing so creates the absurd result in which Tony is both the perpetrator and victim of his own crime.

Lessons learned.

We have learned a great deal since laws requiring juveniles to register as sex offenders were first enacted—especially in the 10 years since the Adam Walsh Act was passed.

- We have learned that our registries are full of children who have been victims themselves and that almost none of them will ever commit another sexual offense, even without treatment—although they need and deserve effective treatment to grow into healthy adults.
- We’ve learned that trafficked kids—some of the most vulnerable children in our midst—are at heightened risk of landing on sex offender registries.
- We know that when we put a child on a registry, the stigma and life-altering consequences extend to the entire family, which often includes the victim.
- We know that the steep cost of registering children siphons resources that should be spent on measures that actually help and protect children, which registration does not.
- And we know that registries would be more effective public safety tools if they weren’t cluttered with the names of more than 200,000 people whose only, and often trivial, offense was committed as a child.

Knowledge has spread, and thus, more and more Americans understand the tragic dynamics at play and are calling for change. On this issue, conservative Republicans are just as likely as

liberal Democrats to be lead voices. Stop Child Predators President Stacie Rumenap and Eli Lehrer, founder and head of the conservative Washington D.C. think tank R Street Institute, created *Just Kids*. I'm proud to be a member of this national coalition dedicated to ending the practice of registering kids as sex offenders.

The [American Legislative Exchange Council](#) (ALEC) is considering a model policy relating to youth sex-offense registration, and the Liberty Education Forum and Log Cabin Republicans have likewise [committed themselves](#) to changing youth registration laws.

Researchers and other specialists in juvenile justice are also speaking decisively. In fall 2016, the [Federal Advisory Committee on Juvenile Justice](#) (FACJJ) issued a recommendation to the federal government that all children be removed from sex-offender registries. A copy of the recommendation is attached as Exhibit B.

The June 2016 letter to DOJ from the Association for the Treatment of Sexual Abusers (ATSA) mentioned previously went on to specifically recommend the following revisions to the Adam Walsh Act itself:

1. Remove all requirements for the registration of youth adjudicated delinquent for sex offenses. Further, remove financial penalties for states and other jurisdictions when such penalties are based solely on the exclusion of adjudicated youth from registration requirements.
2. Remove all language that implicitly or explicitly encourages or appears to encourage the waiver of juveniles to adult criminal court.
3. Insert language that supports the provision of evidence-based treatment services to youth adjudicated delinquent of sex offenses and their caregivers.²⁸

A copy of the FACJJ letter is attached as Exhibit C. The survivors of child sexual abuse and family members who urged Congress to pass the Adam Walsh Act viewed registries as a way to protect children from adults. Indeed, the requirement to register juveniles was added at the last minute by a single lawmaker who mistakenly believed it would expand the safety net for kids. Today, advocates, survivors and lawmakers on both sides of the aisle agree it was a mistake. It's time, indeed past time, to fix the Adam Walsh Act.

²⁸ A link to the letter can be found at: www.jhsph.edu/research/centers-and-institutes/moore-center-for-the-prevention-of-child-sexual-abuse/moore-prevention-news/we-must-remove-children-from-sex-offender-registries

IV. CONCLUSION

The Subcommittee should be commended for holding this hearing. The phalanx of laws intended to protect children from harm should be considered in concert. What we learn about trafficked children and laws designed to prevent sex trafficking can and should affect how we respond to children who themselves engage in sexual offenses, because often we're talking about the same children.

In both realms, and other related area of public policy, we need to avoid imposing negative and lasting consequences on vulnerable children our laws were created to protect. Because many children have a dual status as both "perpetrator" and "victim," it's incumbent upon us to hold them accountable without punishing them for life, and right now we're failing in that regard.

And as we work to remedy problems in the law, we need to monitor how those "fixes" are playing out on the ground. For example, some states have passed legislation to comply with the Trafficking Survivors Relief Act of 2016, which seeks to decriminalize prostitution for minors and allow human trafficking victims to vacate prior convictions and seal their records. However, we're quickly learning that for many trafficking victims, expunging their criminal records means they are no longer eligible for much-needed mental health services and safe housing. Our effort to protect them is harming them in yet another way. These problems are not at all insurmountable, as long as we keep the real needs of children at the center of our discussions and policies. In that regard, I feel privileged to represent the voices of directly affected children and families in this hearing. It's a step in the right direction.

It's tempting to be punitive across the board when the victim of crime is a child. And our country's focus on the most extreme cases of sexual violence against children—all of which involved adult perpetrators—has resulted in a crude solution to label and register all sex offenders irrespective of their age and the level of risk they pose to communities. This isn't fair and it hasn't made anyone safer.

It is vitally important to teach kids the difference between right and wrong, but those lessons must be developmentally appropriate and embedded in a hopeful future for them. When we label kids as sex offenders, however, we rob them of both a childhood and a hopeful future, while doing nothing to benefit society. Let's unite around one of the few issues we can all agree on: protecting children from harm. It's time to put an end to youth registration.

A bill to reauthorize the Adam Walsh Act is pending in Congress. I urge you to eliminate the portion of the law that makes federal funds for criminal justice contingent on registering youth adjudicated in juvenile court for sex offenses. Protect the future Jasons and Bobbies. Protect their families. And realize the original intent of the law, which was to register dangerous adult sex offenders.

EXHIBIT A

Cost infographic: Eliminating Youth Registration to Free Up Resources for Promoting Healing, Rehabilitation and Safety.

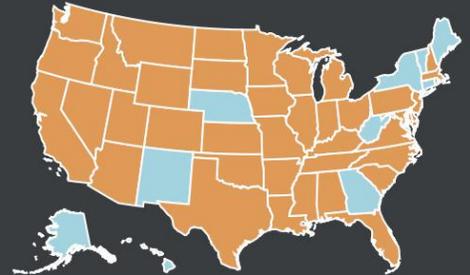
ELIMINATE & REPLACE YOUTH REGISTRATION

Eliminating ineffective policy to promote healing, rehabilitation, and safety within communities.

In 40 states, children charged in juvenile court with sexual offenses can be subject to sex offender registration and notification restrictions.

There are hundreds of thousands of registrants, some for serious crimes and others for 'playing doctor.' Regardless of the offense, research shows that registration is not an effective response. Not only does it cost the country \$3 billion a year, registration of youth does nothing to prevent sexual abuse or reduce recidivism. Instead, it drives kids from their homes, prevents them from finding income or housing, and for a heartbreaking many, ends in suicide.

This system does not work, and comes at too high a cost.



HIGH COST OF MAINTENANCE



FINANCIAL

We spend \$3 billion annually keeping individuals who were accused of committing sexual harm as children on the registry.



HUMAN

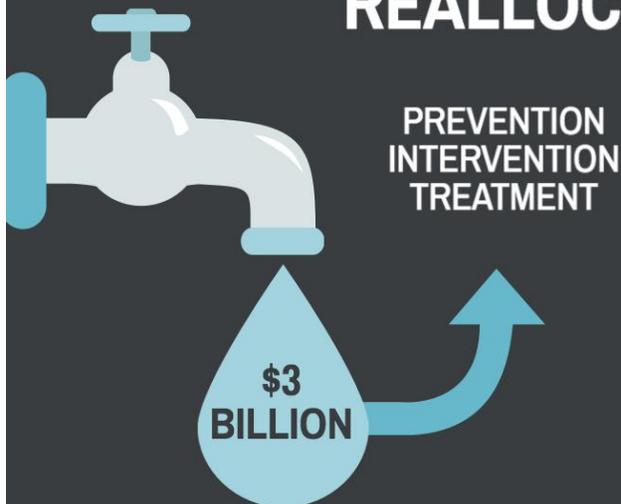
Children on the registry experience severe psychological trauma. Securing housing and education becomes almost impossible.



SOCIETAL

Because most acts are intrafamilial, registering children harms children, survivors, families, our communities, ultimately diminishing public safety.

REALLOCATION OF RESOURCES



PREVENTION INTERVENTION TREATMENT

By ending youth registration, we free \$3 billion to be redistributed across programs that to end cycles of sexual harm.

Our current youth registration practices are ineffective, expensive, and harmful to community safety. Let's eliminate the practice of labeling our children as sex offenders, and reinvest in our youth, support victims and survivors, and enhance community safety.

EXHIBIT B

Stacie Rumenap, President, STOP CHILD PREDATORS
Open Letter to Members of Congress Urging Congress to Remove
Juveniles from the Adam Walsh Act



To: An Open Letter to Members of Congress
From: Stacie Rumenap, President, *Stop Child Predators*
Re: Urging Congress to Amend Title I of the Adam Walsh Act's Sex Offender Registration & Notification Act of 2006 to Remove Juveniles

As president of Stop Child Predators, I urge Congress to remove juveniles from the Title I of the Adam Walsh Act's Sex Offender Registration and Notification Act (SORNA).

Since the early 1990s, state and federal laws have been enacted as a response to public outrage generated by highly publicized, violent, predatory sex crimes against children by strangers. For the past ten years, I have helped create these very laws. Yet, in the overwhelming majority of child abuse cases, children know and trust their abusers. The reality is, the public assumes anyone registered on a sex offender registry is a danger to them and their families. After all, the intention behind public sex offender registries is to keep communities safe.

Having spent my career working on conservative policies and causes—I held a leadership position with the American Conservative Union (ACU) and am heavily involved with the American Legislative Exchange Council—I have made this argument before hundreds of lawmakers, and have found much success in building bipartisan support to pass mandatory prison sentences against the “worst of the worst.” I will continue to do all I can to protect children nationwide from the harms caused to them by violent, predatory offenders who cannot be rehabilitated.

This means protecting all children, even those wrongfully placed on a sex offender registry. Until the passage of the Sex Offender Registration and Notification Act of 2006 (SORNA), only juveniles prosecuted and convicted *as adults* were required to register as sex offenders. Under the current federal law, states risk Byrne JAG funding if they do not register certain juveniles.

Hundreds of thousands of individuals currently on our country's sex offender registry went on as juveniles, as young as 8 and 10 years old—some for serious crimes and others for normative behavior, such as playing doctor, streaking, or teenage romances. Regardless of the offense, though, research shows that registration is not an effective response. Not only does it cost the country \$3 billion a year, overly broad registries have no public safety value. Placing children on registries does not prevent future child sexual abuse. This approach is ineffective and overburdens law enforcement with too many people to monitor, leaving communities vulnerable and exhausting valuable law enforcement resources. In these cases, the law is acting against the interest it set out to protect, and needs to be changed. Taxpayer-money would be better spent on upstream solutions, such as prevention and intervention that prevent sexual harm from occurring in the first place.

The registry also drives kids from their homes, prevents them from finding work or housing, and, for a heartbreaking many, ends in suicide.

Sex offender registries stigmatize and isolate children, ensuring that their youthful indiscretions follow them into adulthood, limiting their opportunities for healthy growth, and exacerbating the kinds of vulnerabilities that our juvenile justice system tries to protect. When youth are put on registries, their names, photos, and addresses are often made public, leading to vigilante violence, stigmatization, severe psychological harm, homelessness, and unemployment. One in five kids on the registry attempts suicide.

It's important to underscore that we're labeling kids for life who, by and large, are not dangerous. The research is clear: Young people who commit sexual harm do not grow into adults who prey on children or hurt other adults. At least 95% of children adjudicated in juvenile court for sex offenses will never cause sexual harm again, and some studies document recidivism rates as low as 1%. That's in large part because most of them naturally outgrow the behavior that raised concerns. As for the much smaller number of children whose behavior is more serious and harmful, research suggests that more than 85% of these kids are themselves victims of abuse or neglect. They must be held accountable but they also need to heal—and they do respond very well to treatment and other interventions in the community.

Meanwhile, placing kids on registries isn't just harmful to the registrants. Most *child-on-child sexual harm* is intrafamilial and, therefore, the practice damages the lives of survivors and families as well. Because the survivor is often a sibling, they too are exposed and may be targeted by vigilante violence. As one survivor spoke out, "A child on the registry is a family on the registry, and also a victim on the registry."

Stop Child Predators is a national nonprofit organization based in Washington D.C., that brings together policy experts, law enforcement officers, community leaders, and most importantly, victims. Our organization was founded in 2005, just before the SORNA was enacted. Our group was a very strong proponent of the Act's passage. We testified on Capitol Hill in support of the legislation, and worked with many of the victims of the types of crimes that the Act was attempting to prevent. We even brought some of those families to Capitol Hill to help facilitate the dialogue between federal and state lawmakers to see what portions of the Act we could all agree on, what we could get into law, with the idea being that we wanted very strong, tough penalties on specific adults. In all the meetings that we had, never once did we discuss registering juveniles.

The survivors of child sexual abuse and family members who urged Congress to pass the Adam Walsh Act—our compatriots—viewed registries as a way to protect children from adults. Indeed, the requirement to register juveniles was added at the last minute by a single lawmaker who thought it would expand the safety net for kids. Today, advocates, survivors and lawmakers on both sides of the aisle agree it was a mistake. It's time, indeed past time, to fix the Adam Walsh Act.

A bill to reauthorize the Adam Walsh Act is pending in Congress. We urge you to eliminate the portion of the law that makes federal funds for criminal justice contingent on registering youth adjudicated in juvenile court for sex offenses. This targeted change to the Adam Walsh Act will realize the original intent of the law regarding sex offender registries. It will also send a strong message to states that sex offender registries focused on dangerous adults are more fair and effective.

Thank you for your consideration. Please don't hesitate to contact me with any questions.

EXHIBIT C

THE FEDERAL ADVISORY COMMITTEE ON JUVENILE JUSTICE (FACJJ)

Recommendation to the Federal government that all children be removed from sex-offender registries.



George W. Timberlake
Chair – Illinois

July 15, 2016

Starcia Ague
Vice-Chair – Washington

* * *

Aileen Jo Artero
Guam

Vernon C.R. Daniels
Nebraska

Amy M. Davenport
Vermont

Tony R. Jones
Florida

ViEve Martin-Kohrs
Louisiana

Kenya Shantel Lee
Maryland

Robin L. Lubitz
Arizona

Justin Miller
Kentucky

Jim Moeser
Wisconsin

Christine Perra Rapillo
Connecticut

Tawny R. Spinelli
Tennessee

* * *

Jeff Slowikowski
Designated Federal Official
U. S. Department of Justice

To: Mr. Robert Listenbee, Administrator
Office of Juvenile Justice and Delinquency Prevention (OJJDP)

From: George W. Timberlake, Chair and Starcia Ague, Vice Chair
Federal Advisory Committee on Juvenile Justice (FACJJ)

Re: Recommendations of the Federal Advisory Committee on Juvenile
Justice

Through this correspondence we respectfully convey to you the policy recommendation of the FACJJ to amend federal law to exempt juveniles from sex offender registration, community notification and residency restriction laws, as approved by the FACJJ in May 2016. This recommendation was developed with careful consideration of current research and data on the characteristics of youth with sexual behavior problems and the interventions most likely to prevent further sexual offending, support victims and strengthen families – as well as the impact of sex offender registration and collateral consequences of registry on youth, victims and families. This research indicates no net measurable public safety benefits of registry of youth as sex offenders, while identifying a range of unintended negative consequences to youth, victims of sexual abuse and families of both. The recommendation and its underlying rationale is discussed in more detail below.

Thank you for your support of the FACJJ, including your consideration and responsiveness to our prior recommendations. We look forward to continued dialogue related to these recommendations as well. We commend you for the important vision and leadership you have provided to OJJDP and extend our appreciation for the support other OJJDP staff have provided to us in our work.

RECOMMENDATION: Existing federal law should be amended to explicitly exempt juveniles (all persons who were below the age of 18 at the time of their offense) from all sex offender registration, community notification, and residency restriction laws.



Rationale: Since the passage of federal law requiring the registration of juvenile sex offenders, a wealth of studies have shown no net measurable public safety benefits but have identified multiple unintended negative consequences to youth, victims of sexual abuse and families of both:

Youth are different from adults

Offender registries and community notification laws were developed with adult predatory offenders in mind. But juveniles are not younger versions of adult predatory sex offenders. Studies of adolescent brain development reveal that children and teenagers are impulsive, emotional, and present-oriented. Their developing brains often ignore, discount, or fail to comprehend the consequences of their actions for themselves or others. Sexual offending by juveniles is generally less aggressive, less deviant, often experimental, and occurs over shorter periods of time, compared to the predatory offending envisioned by proponents of registries. As the adolescent brain matures, risky and illegal behaviors, including sexual offending, tend to disappear into adulthood.

Juvenile sex offenders are at very low risk of reoffending

Recidivism rates for juvenile sex offenders are consistently low, less than 10% in most studies, with most re-offenses of a non-sexual nature. Studies show that only 2.5% to 5% of juvenile sex offenders are reconvicted for a sex crime.

Registration does not reduce recidivism

Studies indicate that the registration of juvenile sex offenders is not associated with reductions in future sex crimes, or other crimes, and may in fact create barriers to the types of positive development, education, employment and interpersonal relationships which reduce risks for reoffending. Consequently, registries produce no measurable public safety benefit.

Registration undermines the charging process

Studies indicate that prosecutors are more likely to drop charges, reduce charges, or engage in plea bargaining to avoid triggering juvenile sex offender registration requirements, thus circumventing the law's intent, creating inconsistent patterns of practice and potentially undermining public confidence in the juvenile justice system.

Registration has life-long negative impacts on juveniles

Juveniles placed on sex offender registration experience social stigma, isolation, depression, financial burdens and suicidal thoughts. They face numerous obstacles to completing education, seeking employment, obtaining housing, and maintaining stable family relationships. Together these effects may increase risks for criminal conduct and minimize a young person's long term chances of becoming contributing members to society.



Registration may harm victims of sexual offending

When juveniles engage in sexually abusive behaviors, victims are often members of the immediate or extended family due, in large part, to the unique developmental underpinnings of problematic youth sexual behavior. As a result, the registration, community notification and restrictions on housing and other community activities imposed on youth may also have profound harmful and lasting consequences for victims of sexual offending.

Registration laws across the country are a hodgepodge of inconsistency

While intended to promote uniformity and consistency, the opposite has occurred. Only seventeen states are substantially in compliance with the federal requirements and five states have refused to cooperate. Of those that do comply, or are struggling to comply, there is wide variation in the offenses included, the costs required, the length of registration, and the specific restrictions on the juvenile offender.

Federal requirements limit states' abilities to craft local solutions to youth offending

States seeking to align their law and policy with research on reducing risks for reoffending, protecting victims and improving youth outcomes are disadvantaged by federal requirements for the registration of youth and potential penalties for failure to comply. Removing juveniles from federal registry requirements would allow states to craft evidence-based law and policy to protect public safety and improve youth and victim outcomes.

Registration is an expensive unfunded mandate on states

Many states have struggled with the costs associated with establishing or expanding their offender registry and adding additional law enforcement resources to ensure offender compliance. Furthermore, states not in compliance are subject to hefty financial penalties that cut funding from other important programs designed to enhance public safety.

CONCLUSION:

Existing federal law should be amended to explicitly exempt all persons who were below the age of 18 at the time of their offense from all sex offender registration, community notification, and residency restriction laws. Federal juvenile sex offender registration laws are inconsistent with research and evidence based practice; fail to promote public safety; have long-term adverse impacts on registrants; may harm victims of intrafamilial abuse; are not cost effective; limit states' abilities to craft evidence-based policy and practice, are being substantially resisted or undermined at the state level; and fundamentally ignore the burgeoning science of adolescent brain development. The time is ripe to remove juveniles from federal registry requirements.



Sources: *“Raised on the Registry, The Irreparable Harm of Placing Children on Sex Offender Registries in the US,”* Human Rights Watch, 2013; *“Child Maltreatment, Our Minds Are Made Up So Don’t Confuse Us With The Facts: Commentary Concerning Children with Sexual Behavior Problems and Juvenile Sex Offenders,”* Mark Chaffin, Sage Publications, 2009; *“Revising Harmful Policy: An Inside Look At Changes to US Juvenile Sex Crime Laws,”* Elizabeth J. Letourneau, Presentation to the Federal Advisory Committee on Juvenile Justice, March 18, 2016; *“Youths Who Sexually Abuse: What Works,”* Sue Righthand, Presentation to the Federal Advisory Committee on Juvenile Justice, March 18, 2016; *“Community Based Services for Youth with Problematic Sexual Behavior, Child Victims and Caregivers,”* Jane F. Silovsky, Presentation to the Federal Advisory Committee on Juvenile Justice, March 18, 2016; *“Juvenile Sex Offenders and SORNA, National Conference of State Legislatures,”* May 2011; *“Costs And Benefits Of Subjecting Juvenile to Sex-Offender Registration and Notification,”* Richard B. Belzer, R Street Policy Study #41, September 2015; *“Improving Illinois’s Response to Sexual Offenses Committed By Youth: Recommendations for Law, Policy and Practice,”* Illinois Juvenile Justice Commission, March 2014; *“Some States Refuse to Implement SORNA, Lose Federal Grants,”* Prison Legal News, September 2014.

EXHIBIT D

JOHN HOPKINS MOORE CENTER FOR THE PREVENTION OF CHILD SEXUAL ABUSE & THE SCIENTIFIC EXPERTS

The June 2016 letter to US DOJ from the Association for the Treatment of Sexual Abusers (ATSA) recommending removing all juveniles adjudicated delinquent from the Adam Walsh Act.

June 7, 2016

Via Electronic Submission
<http://www.regulations.gov>

ATTN: Luis C. deBaca, Director
SMART Office. Office of Justice Programs
United States Department of Justice
810 7th St. NW.
Washington, DC 20531

FROM: Researchers with Expertise on Juvenile Sexual Offending

RE: Comments on The Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act; Docket no. OAG 151; AG Order No. 3659-2016

Dear SMART Office Director deBaca:

We, the undersigned, have published empirically rigorous research pertaining to juvenile sexual offending, including research on (a) sexual recidivism risk and its assessment; (b) evaluating the effects of juvenile registration and notification policies; (c) the effects of waiving youth to adult court; and (d) the effective treatment of youth who have sexually offended. In brief, and as detailed below, our work demonstrates that sexual offense recidivism among juveniles is quite low (below 3% in recent years). Furthermore, juvenile registration policies fail to improve public safety, have unintended effects on the juvenile justice process, and harm youth and their families. Waiver of youth to adult court is a process fraught with bias and, in new research, has been demonstrated to increase the risk of new convictions for youthful sex offenders. Perhaps most importantly, our work has demonstrated that even seriously delinquent youth respond well to evidence-based interventions.

Given these findings, we recommend that the SMART Office emphasize evidence-based treatment rather than registration and waiver as a way to manage youth who have sexually offended. Specifically we recommend the following revisions to the Proposed Supplemental Guidelines:

1. Remove all requirements for the registration of youth adjudicated delinquent for sex offenses. Further, remove financial penalties for states and other jurisdictions when such penalties are based solely on the exclusion of adjudicated youth from registration requirements.
2. Remove all language that implicitly or explicitly encourages or appears to encourage the waiver of juveniles to adult criminal court.
3. Insert language that supports the provision of evidence-based treatment services to youth adjudicated delinquent of sex offenses and their caregivers.

The evidence supporting these three recommendations is reviewed next.

I. Youth Who Sexually Reoffend are Exceedingly Rare and Impossible to Accurately Identify

Our research has indicated exceedingly low rates of sexual recidivism among youth with a first offense, demonstrated that existing measures fail to accurately capture youth who ultimately do reoffend sexually, and demonstrated that sexual recidivism rates are similar between youth with sexual and nonsexual offenses. Thus, **the fact that a youth has committed one sex offense is not predictive of the likelihood that he or she will commit a second sex offense.**

- A. Caldwell (2010) reviewed 63 data sets examining sexual recidivism among more than 11,000 juvenile sex offenders. The mean 5-year sexual recidivism rate was 7%. In a new meta-analysis, Caldwell (in press) reviewed 106 data sets examining sexual recidivism rates among more than 33,000 juvenile sex offenders. Studies from the past 15 years (i.e., the more contemporaneous studies) reveal a mean 5-year recidivism rate of 2.75%, confirming the decline in sexual abuse rates noted by others (e.g., Finkelhor & Jones, 2004). Specifically, this study documented that the base rate for juvenile sexual offense recidivism has declined by 73% in the past 30 years.
- B. Based on his new meta-analysis Caldwell (in press) has concluded that the current sexual recidivism base rate of 2.75% makes it technically impossible to identify juveniles “more likely than not” to reoffend. To do so requires an assessment tool that could identify a subgroup that is more than 15 times the base rate, and the best any scale has ever achieved is identifying a subgroup that is about 4 times the base rate.
- C. Youth who offend sexually pose similar risks as youth who have committed nonsexual offenses. Caldwell and Dickinson (2009) compared the sexual recidivism risk scores of 106 registered and 66 unregistered youth and found that registered youth scored significantly *lower* on scales that most accurately predicted general recidivism. Caldwell (2007) compared the recidivism patterns of 249 youth adjudicated of sex offenses and 1780 youth adjudicated of nonsex offenses. Across a 5-year follow-up, the nonsex offending youth were equally likely to commit a new sex offense as the sex offending youth. Indeed, 85% of the new sex offenses were committed by the non-sex offending youth.

II. Juvenile Registration Policies Do Not Improve Public Safety

Our research has examined the impact of juvenile registration policies on several outcomes including recidivism, first-time offending, unintended impacts on juvenile case processing, and iatrogenic collateral consequences to youth. **Every one of these studies points to the failure of juvenile registration policies to improve public safety in any way.**

- A. Juvenile Registration does not Deter Crime
 - i. Letourneau and Armstrong (2008) compared the recidivism rates of 111 matched pairs of youth adjudicated for similar sexual offenses. Across an average 4.3-year follow-up, just 2 of the 222 youth (< 1%) reoffended with a new sex offense. Youth subjected to registration were no less likely to reoffend with any offense including violent offense than nonregistered youth.
 - ii. Letourneau, Bandyopadhyay, Sinha, and Armstrong (2009a) evaluated the impact of registration on the recidivism risk of all male youth adjudicated delinquent for a sex offense in South Carolina between 1990 and 2010. Across an average 9-year follow-up, just 2.5% of youth had a new sex offense adjudication or conviction. Registration status was not associated with new sex or nonsex offense adjudications or convictions. Registration status was associated with higher likelihood of new sex and nonsex offense arrests (but, again, not convictions), suggesting a surveillance effect on the part of adults rather than behavioral differences on the part of youth.

- iii. Caldwell and Dickinson (2009) compared the recidivism rates of 106 registered and 66 unregistered youth. Across an average 4.1-year follow-up, registered youth were charged with new sex crimes at rates similar to unregistered youth.
- iv. Batastini, Hunt, Present-Koller and DeMatteo (2011) examined the SORNA classification system to predict future offending of a sample of 112 youth adjudicated for sex offenses. Across a 2-year follow-up period, re-offense rates were similar for youth who met criteria for registration and youth who did not meet registration criteria.
- v. Shifting focus from recidivism to first-time offenses, Letourneau, Bandyopadhyay, Armstrong, and Sinha (2010) examined the impact of juvenile registration on first time sex crimes. Evaluating trends from 1990 through 2004 and based on data from more than 3,000 sex offense charges, there was no evidence indicating that juvenile registration was associated with declines in juvenile sex crimes. In new research, Letourneau and colleagues have replicated this finding using National Incident-Based Reporting System data from four states (Sandler, Letourneau, Vandiver, Shields, & Chaffin, 2016).

B. Juvenile Registration is Associated with Unintended Impacts on Case Processing

- i. Letourneau and colleagues found that juvenile registration was associated with unintended effects on case processing including increased diversion and dismissal of juvenile sex crime cases (Letourneau, Bandyopadhyay, Sinha, & Armstrong (2009b) and dramatically increased plea bargains from sex to nonsex offenses (Letourneau, Armstrong, Bandyopadhyay, & Sinha, 2013). This pattern was not replicated with other juvenile violent offending, supporting our conclusion that these case processing changes occurred in response to registration policies.

C. Juvenile Registration is Associated with Harm to Children

- i. Harris and colleagues surveyed 265 therapists from across the U.S. who provide treatment services to youth who have sexually offended (Harris, Walfield, Shields, & Letourneau, in press). Therapists overwhelmingly perceived negative consequences associated with juvenile registration requirements across the domains of youth mental health, harassment and unfair treatment, school problems, and living instability.
- ii. In a new study, Letourneau and colleagues have surveyed more than 220 youth ages 12 to 17 who are in treatment for sexually intrusive or abusive behavior. Approximately one-third of these youth have been subjected to sex offender registration requirements. Compared to nonregistered youth, youth currently or previously registered report significantly higher rates of seriously considering and/or attempting suicide and significantly higher rates of being approached by adults for sex (Letourneau, Harris, Shields, Walfield, & Kahn, 2016).

III. Waiver Policies Do Not Improve Public Safety

The guiding logic underlying juvenile waiver or transfer to adult criminal court is that, for youth who commit serious acts of violence, the adult system is better equipped to administer punishment than the more lenient juvenile court. However, as we summarize in a new study, **evaluations of juvenile transfers suggest that these policies are ineffective in reducing juvenile offending and these policies are subject to bias, with Black and other minority youth more likely to be waived to criminal court than White youth** (Rinehart, Armstrong, Shields, & Letourneau, in press).

- A. In our new study we provide the first formal evaluation of a waiver policy as applied to youth who have sexually offended. Specifically we compared 83 youths charged with a sex offense and adjudicated in criminal court with a matched sample of 83 youths charged with a sex offense and adjudicated in family court. There were no differences in rates of new arrests, just rates of new

convictions. Youth convicted in criminal court were 4.9 times more likely to be convicted of a new violent offense than youth adjudicated delinquent in family court. This pattern of findings suggests that, for youth convicted of sex offenses, the effect of transfer is not on youth behavior (which should be reflected in lower arrest rates if prosecution in criminal court has an ameliorative effect) but rather on the reaction to youth by adults. That is, youth with adult sex crime convictions may be viewed as more dangerous than youth with juvenile sex crime convictions and thus subjected to harsher consequences for equivalent behavior.

- B. Our study also revealed that a greater portion of youth waived to adult criminal court for sexual offenses were Black.

IV. Evidence-based Treatments Do Improve Public Safety

Our research has demonstrated the effectiveness of treatment for youth who have sexually offended (Borduin, Henggeler, Blaske, & Stein, 1990; Borduin, Schaeffer, & Heiblum 2009; Letourneau et al., 2009; Letourneau et al., 2013). However, as observed by Dopp, Borduin, and Brown (2015), in light of recent estimates that only 5 percent youth who have committed serious offenses of any kind receive an evidence-based treatment, **there is a strong need to ensure that more youth who commit sexual offenses are treated with empirically supported interventions.**

- A. In recent reviews of the treatment evidence base (Dopp et al., 2015; Dopp, Borduin, Rothman, & Letourneau, 2016) we evaluated the published juvenile sex offense-specific treatment outcome studies. Results indicated that Multisystemic Therapy for Problem Sexual Behavior (MST-PSB) is an effective treatment for these youth. In several randomized controlled trials, MST-PSB has been associated with significant reductions in sexual recidivism rates, nonsexual recidivism rates, and sexual risk behaviors; associated with other positive outcomes (e.g., reduced substance use, improved parenting); and associated with significant reductions in rates of jail, incarceration, and other costly out-of-home placement (e.g., residential treatment).
- B. We (Caldwell, 2011; Caldwell, 2013; Caldwell, McCormick, & Umstead, 2007; Caldwell, McCormick, Wolfe, 2012; Caldwell, Skeem, Salekin, & Van Rybroek, 2006; Caldwell, & Van Rybroek, 2005; Caldwell, Vitacco, & Van Rybroek, 2006) have also demonstrated that even adolescents with psychopathic features and a history of violence respond to evidence-based treatment with significant reductions in general and violent offending in both institutional and community settings. Specifically, studies have shown that appropriate treatment of juveniles with psychopathic features can reduce their risk of violent recidivism by half as compared to a matched but untreated group. And while this research was not specific to juvenile sexual offending, approximately one-third of the young offenders studied had committed sexual offenses.

V. Conclusions

There are few areas of U.S. policy where the evidence of failure is clearer or where there is stronger consensus regarding what we should be doing differently. Juvenile registration is a failed policy that must end (Letourneau & Caldwell, 2013; Letourneau & Miner, 2005). Rather than improving public safety, registration, akin to youth imprisonment, “communicates constantly and in a variety of ways that [registered] youth are dangerous, feared, worthless and have no real future” (McCarthy, 2015).

Holding children appropriately accountable for harmful behavior and providing them with evidence-based treatment can reduce their likelihood for future offending. Subjecting them to registration cannot.

Respectfully,

Elizabeth J. Letourneau, Ph.D.
Associate Professor, Department of Mental Health
Director, Moore Center for the Prevention of Child Sexual Abuse
Johns Hopkins Bloomberg School of Public Health
Johns Hopkins University

Michael F. Caldwell, Psy.D.
Lecturer in Psychology
University of Wisconsin - Madison

Ryan T. Shields, Ph.D.
Assistant Scientist, Department of Mental Health
Johns Hopkins Bloomberg School of Public Health
Johns Hopkins University

Co-Signatories

Barbara L. Bonner, Ph.D.
Endowed Chair and Professor of Pediatrics
University of Oklahoma Health Sciences Center

Charles M. Borduin, Ph.D.
Professor, Department of Psychological Sciences
Director, Missouri Delinquency Project
University of Missouri - Columbia

Frank DiCataldo, Ph.D.
Associate Professor of Psychology
Coordinator of Graduate Programs in Psychology
Roger Williams University

Alex R. Dopp, M.A.
Doctoral Candidate, Department of Psychological Sciences
University of Missouri

Amanda Fanniff, Ph.D.
Assistant Professor
Pacific Graduate School of Psychology
Palo Alto University

Andrew J. Harris, Ph.D.
Associate Professor of Criminology and Justice Studies
University of Massachusetts Lowell

Jill S. Levenson, Ph.D., LCSW
Associate Professor of Social Work
Barry University Center for Human Rights and Social Justice

Michael H. Miner, Ph.D., L.P.
 Professor, Department of Family Medicine and Community Health
 Research Director, Program in Human Sexuality
University of Minnesota Medical School

David S. Prescott, LCSW, LICSW
 Director of Professional Development and Quality Improvement,
Becket Family of Services

Jane F. Silovsky, Ph.D.
 Professor
 Director, Children with Problematic Sexual Behavior Program
University of Oklahoma Health Sciences Center

Donna M. Vandiver, Ph.D.
 Assistant Dean, College of Applied Arts
 Professor, School of Criminal Justice
Texas State University

Franklin Zimring, J.D.
 Simon Professor of Law
University of California (Berkeley)

Disclaimer

The opinions expressed herein are those of the signatories and do not necessarily reflect the views of the institutions where the signatories are employed.

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