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Federal Involvement in Sex Offender Registration and Notification: Overview and Issues for Congress, In Brief

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Summary

The federal government plays a role in the management of sex offenders. In a law enforcement capacity, it enforces federal laws involving sexual abuse, online predatory offenses, or other related federal crimes. In addition, Congress has enacted legislation that encourages the development of state sex offender registries, urges states to punish recalcitrant sex offenders, and induces state and local law enforcement to make certain information on sex offenders public, and has taken other steps involving the registration of sex offenders and notification of the community. Federal legislation affecting sex offender policy has largely centered on sex offender registration and notification, and therefore they are the focus of this report.

All states have sex offender registration and notification laws; however, these laws vary widely. Congress has attempted to standardize these laws through legislation, most recently through the Sex Offender Registration and Notification Act (SORNA), a major component of the Adam Walsh Child Protection and Safety Act (Adam Walsh Act; P.L. 109-248) enacted in 2006. Among other things, SORNA created a three-tier classification system for sex offenders based solely on the crime of conviction. To date, 17 states, 3 territories, and many American Indian tribes have been found to have “substantially implemented SORNA.” SORNA stated that jurisdictions that fail to comply with its requirements risk having their annual Justice Assistance Grant (JAG) funds reduced by 10%. While several noncompliant states have chosen to lose 10% of their JAG funds, the majority of noncompliant states have applied to have these funds reallocated and used solely for the purpose of implementing SORNA.

Sex offenses and sex offender management are primarily state and local criminal justice issues; however, the federal government plays a role in sex offender registration and notification as well as other sex offender management issues not discussed in this report. The federal government (1) sets minimum requirements and baseline standards for states for sex offender registration and notification, (2) provides assistance to states via grants and law enforcement support in tracking down noncompliant offenders, (3) maintains a public national website that provides information on registered sex offenders, (4) maintains a national sex offender registry for assisting law enforcement, and (5) receives and transmits information on the international travel of sex offenders.

In recent years, several issues with sex offender registration and notification in the United States have been raised by state governments, the media, and academics alike. Congress may decide to address a number of these issues that fall under federal jurisdiction. Issues include notification of offenders’ international travel, issues with registration of sex offenders in the military, states’ noncompliance with requirements of SORNA, and the effectiveness of SORNA.

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The federal government plays a role in the management of sex offenders. In a law enforcement capacity, it enforces federal laws involving sexual abuse, online predatory offenses, or other related federal crimes. In addition, Congress has enacted legislation that encourages the development of state sex offender registries, urges states to punish recalcitrant sex offenders, and induces state and local law enforcement to make certain information on sex offenders public, and has taken other steps involving the registration of sex offenders and notification of the community.¹ Federal legislation affecting sex offender policy has largely centered on sex offender registration and notification, and therefore they are the focus of this report.

This report begins with a brief background on sex offender crime and policy in the United States, followed by a description of the role of the federal government in sex offender registration and notification. It concludes with a discussion of select issues on which Congress may exercise additional oversight or address through legislation.

Sex Offender Policy in the United States

“Sex offender” is a general term used to describe an individual who has been convicted of a crime involving a sexual act. Researchers have developed classifications of sex offenders based on offense patterns and types of victims and offenses; these classifications include rapists, child abusers, Internet offenders, and female sexual offenders, among others.²

In the United States, sex offender *policy* refers to how the government handles sex offenders both pre- and post-conviction; however, it is how jurisdictions manage sex offenders post-conviction, in particular after they have served sentences for crimes committed, that is a primary focus of policymakers and the public. Sex offenders are subject to a number of different management strategies including civil commitment, residence restrictions, registration and notification, and other policies aimed at preventing sexual offending. As mentioned, federal legislation on this issue has largely focused on sex offender registration and notification.

Sex Offender Registration and Notification

Sex offender registration is a critical way in which the public as well as state and federal authorities can track sex offenders before and after they have been released into communities.³ All states have sex offender registries, but they are not uniform in the information they collect, the manner in which they classify offenders, or the types of offenders they require to register (e.g., several states do not require juveniles to register under most circumstances). To be

¹ For example, federal law created new interstate requirements, including requiring each state to set up procedures for registering offenders from out of state and requiring registered offenders to register in states in which they worked or attended school if different from where they resided.

² These classifications are not exclusive (i.e., offenders may fit more than one classification) and may be further broken down into typologies. For a summary of research findings on classifications and typologies of sex offenders, see Dominique Simons, “Chapter 3: Sex Offender Typologies,” in *Sex Offender Management Assessment and Planning Initiative*, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office), <http://www.smart.gov/SOMAPI>.

³ For those required to register, registration is a mandatory condition for probation and supervised release, 18 U.S.C. §§3563(a)(8) and 3583(d), and 42 U.S.C. §16913.

compliant with federal law, jurisdictions must register incarcerated sex offenders (for the registration offense) *before* they are released from custodial supervision, or within three business days from sentencing for the offense mandating registration in the case of a sentence that does not involve incarceration.

The term “sex offender notification” refers to the manner in which a jurisdiction disseminates relevant information about an offender to other jurisdictions and to the community. For example, the simple act of placing an offender’s name on a public website is one mechanism for notifying the community. Just as all states have registries, all states have notification practices; and as with registries, notification varies from state to state.

Congress has attempted to standardize sex offender registration and notification laws through legislation, most recently through the Sex Offender Registration and Notification Act (SORNA), a major component of the Adam Walsh Child Protection and Safety Act (Adam Walsh Act; P.L. 109-248) enacted in 2006. Among other things, SORNA created a publicly available Internet gateway to the information housed in state registries, accessible by offender name and location. It also created a three-tier classification system for sex offenders based solely on the crime of conviction. To date, 17 states, 3 territories, and many American Indian tribes have been found to have “substantially implemented SORNA,”⁴ while other states have publicly objected to the requirements of SORNA. Federal law stipulates the following:

An appropriate official shall, shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register—

- (1) inform the sex offender of the duties of a sex offender under this subchapter and explain those duties;
- (2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and
- (3) ensure that the sex offender is registered.⁵

Jurisdictions register offenders and notify the community according to a risk classification system. While federal law has attempted to standardize risk classification across the states, there is still considerable variation. For example, New York classifies offenders based on crime of conviction and several other factors⁶ while Pennsylvania classifies offenders based on crime of conviction alone.⁷ Risk classification has implications for the type of information that may be released about an offender and the duration of registration.

⁴ Office of Justice Programs, SMART Office, *SORNA*, <http://www.smart.gov/sorna.htm>.

⁵ 42 U.S.C. §16917(a).

⁶ New York also considers factors regarding the offender, and the risk level is based on a court’s assessment of whether the offender is likely to repeat the same or a similar offense and the danger the offender poses to the community. For more information regarding New York’s risk level determination, see http://www.criminaljustice.ny.gov/nsor/risk_levels.htm.

⁷ For more information regarding Pennsylvania’s risk level determination, see http://www.soab.pa.gov/Pages/default.aspx#.VOJ_ji7092A.

Registered Sex Offenders in the United States

According to the National Center for Missing & Exploited Children (NCMEC), as of December 2014, there are approximately 819,218 registered sex offenders in the United States.⁸ Researchers have characterized the NCMEC data as limited due to its aggregate nature and the likelihood that registered sex offenders are being counted more than once. Some state registries include individuals who are incarcerated, have been deported, or have moved out of state.⁹

Some studies have described the demographics of sex offenders residing in the United States. One study used a sample of over 400,000 registered sex offenders¹⁰ and found that they were largely male (98%) and white (66%), and the mean age was 45 years old. While offenders in all registries were over 90% male, race varied widely across the states. For example, as of 2010 offenders registered in Alaska were 57% native and 36% white, while offenders registered in California were 46% white, 31% Hispanic, and 17% black.¹¹ This study also reported that states varied widely in the ways in which offenses were captured in these registries and how the offenses were described to the public. For example, some registries describe the nature of the victim-offender relationship and provide details of the crime(s) while other registries use only statutory language to describe the offense.¹²

Federal Legislation

Over the last two decades, Congress has passed a series of bills in response to concern over post-conviction management of sex offenders and public safety. The following legislation highlights some of the major changes in federal sex offender registration and notification law and policy, most of which supplement or have been folded into SORNA:¹³

- **Jacob Wetterling Act:** As part of the major omnibus crime bill of 1994 (Title IV of the Violent Crime Control and Law Enforcement Act of 1994; P.L. 103-322), Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Registration Act (Jacob Wetterling Act) to *encourage* and establish guidelines for states to create and maintain a sex offender registration system.

⁸ NCMEC obtains sex offender data through a survey of the registries of the 50 states, the District of Columbia, and the territories. Data were prepared by the NCMEC Records and Access Unit and released on December 15, 2014. To view a map consisting of the numbers for each state's and territory's registry, see National Center for Missing & Exploited Children, *Map of Registered Sex Offenders in the United States*, http://www.missingkids.com/en_US/documents/Sex_Offenders_Map.pdf.

⁹ Andrew J. Harris, Jill S. Levenson, and Alissa R. Ackerman, "Registered Sex Offenders in the United States: Behind the Numbers," *Crime & Delinquency*, vol. 60, no. 1 (February 2014), pp. 7-8.

¹⁰ Researchers built a dataset using public registry data from the 50 states, the District of Columbia, Puerto Rico, and Guam. They gathered data using a process called "data scraping" in which "a computer program scrolled through each state registry and extracted offender-level and offense-level information from each case."

¹¹ For complete demographic data, see Alissa R. Ackerman, Andrew J. Harris, and Jill S. Levenson, et al., "Who Are the People in your Neighborhood? A Descriptive Analysis of Individuals on Public Sex Offender Registries," *International Journal of Law and Psychiatry*, vol. 34, no. 3 (May-June 2011), pp. 149-159.

¹² *Ibid.*, p. 156.

¹³ Aside from addressing sex offender registration and notification, these federal laws have amended criminal code, among other things, in the effort to protect the public from sex offenders.

- **Megan’s Law:** In 1996, Congress passed this law (P.L. 104-145) to induce state and local law enforcement agencies to release relevant sex offender information that is necessary to protect the public (i.e., to *notify* the public). Congress also specified that “information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.”
- **Pam Lychner Sexual Offender Tracking and Identification Act of 1996:** This law (Lychner Act; P.L. 104-236) amended the Jacob Wetterling Act to establish within the Federal Bureau of Investigation (FBI) a national database to track certain sex offenders.¹⁴ It also required each sex offender who resides in a state that has not established a “minimally sufficient sexual offender registration program” to register with the FBI. Further, it provided that offenders required to register with the FBI must notify the FBI of changes in residence, and in turn, the FBI must verify the offender’s address. Under this law, the FBI may release relevant information regarding an offender that is necessary to protect the public. This law also required the FBI to disclose offender information to federal, state, and local criminal justice agencies for purposes of law enforcement and community notification.
- **Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (amendments to existing federal sex offender laws):** In 1997, this appropriations act (P.L. 105-119) made several changes to sex offender requirements for states, including a change to the requirement that a state must designate a law enforcement agency to handle sex offender registration and notification. It also directed states to participate in the FBI’s national sex offender registry according to guidelines later issued by the Attorney General. This law also created new interstate requirements, including requiring each state to set up procedures for registering sex offenders from out of state and requiring registered sex offenders to register in states in which they worked or attended school if different from where they resided. The law also directed state courts to consider the recommendation of sex offender experts, victims’ rights advocates, and representatives of law enforcement agencies when considering the status of a sexually violent predator.¹⁵ It also extended registration requirements to sex offenders convicted in federal or military courts and required federal and military authorities to ensure that offenders are notified of the registration requirement.
- **Protection of Children From Sexual Predators Act:** In 1998, this law (P.L. 105-314) required the Director of the Bureau of Justice Assistance to create a Sex Offender Management Assistance Program to assist states with the costs of complying with registration requirements.
- **Campus Sex Crimes Prevention Act:** As part of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386), Congress passed the Campus

¹⁴ The database was established “to track the whereabouts and movement of—(1) each person who has been convicted of a criminal offense against a victim who is a minor; (2) each person who has been convicted of a sexually violent offense; and (3) each person who is a sexually violent predator.” (§170102)

¹⁵ Previously, state courts were directed to consider the opinions of experts on sex offenders but not victim advocates and law enforcement when making status determinations involving sexually violent predators (as proscribed by the Jacob Wetterling Act; Subtitle A of P.L. 103-322).

- Sex Crimes Prevention Act to require any individual who is required to register in a state to also notify each institution of higher education in that state at which the individual works or is a student, including notification of changes in enrollment or employment status. It also required that state procedures ensure that information collected on the individual is (1) promptly shared with the law enforcement agency with jurisdiction over the institution and (2) entered into the respective state data system. It amended the Higher Education Act of 1965 to require certain institutions of higher education¹⁶ to advise the campus community about where sex offender registry data may be obtained.
- **Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act:** In 2003, this law (P.L. 108-21) encouraged that the release of information on registered sex offenders also include the maintenance of the website containing such information. It also required the Department of Justice (DOJ) to create a national website that links all state websites containing registry data and authorized appropriations for FY2004-FY2007 to assist states in complying with new requirements. Further, it authorized the use of Community Oriented Policing Services (COPS)¹⁷ funding in assisting state and local law enforcement with sex offender registry management and offender compliance.
 - **Sex Offender Registration and Notification Act (SORNA):** In 2006, SORNA (Title I of the Adam Walsh Child Protection and Safety Act; P.L. 109-248) absorbed and replaced many of the earlier registration and notification components noted above and amended federal standards for sex offender registration and notification in the states to make them more uniform and inclusive, among other things.¹⁸ It established the Office of Sex Offender Sentencing, Monitoring, Apprehending, and Tracking (SMART Office) within DOJ to administer the sex offender registration and notification standards, administer grant programs relating to the law's implementation,¹⁹ and assist jurisdictions and organizations involved in sex offender registration and notification activities. Of note, it implemented a 10% reduction in funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program²⁰ for states that failed to comply with requirements of SORNA.
 - **Keeping the Internet Devoid of Sexual Predators Act of 2008:** This law (P.L. 110-400) expanded SORNA to require sex offenders to report "internet identifiers"²¹ to registries but specified that these records would remain private.

¹⁶ The requirement applied to those institutions of higher education that are already required to disclose campus security policy and campus crime statistics data under the Higher Education Act of 1965.

¹⁷ CRS Report RL33308, *Community Oriented Policing Services (COPS): In Brief*.

¹⁸ For a legal sketch of the Adam Walsh Act, see CRS Report RS22646, *Adam Walsh Child Protection and Safety Act: A Sketch*.

¹⁹ SORNA established the Sex Offender Management Assistance (SOMA) program to award grants to jurisdictions to offset the costs of implementing SORNA.

²⁰ For more information about the JAG Program, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*.

²¹ For purposes of the law, the term "internet identifiers" means email addresses and other designations used for self-identification or routing in Internet communication or posting. See 42 U.S.C. §16915a(e).

Role of the Federal Government

While sex offense investigations and sex offender management are primarily state and local criminal justice issues, the federal government plays a significant role in sex offender registration and notification as well as other sex offender management issues not discussed in this report. Aside from its role in processing federal and military sex offenders (see “Issues with Registration of Sex Offenders in the Military”), the federal government addresses sex offender registration and notification in multiple ways. The federal government (1) sets requirements and baseline standards for states for sex offender registration and notification, (2) provides assistance to states via grants and law enforcement support in tracking down noncompliant offenders, (3) maintains a public national website that provides information on registered sex offenders, (4) maintains a national sex offender registry for assisting law enforcement, and (5) receives and transmits information on the international travel of sex offenders.

Baseline Standards for States

As noted, several federal laws have established standards for sex offender registration in states. Most recently, SORNA did the following:

- set tier classification of offenders²² based solely on the crime of conviction while
 - making changes in the required minimum length of registration;²³
 - expanding the group of sex offenders and sex offenses for which registration is required;
 - expanding the amount of information offenders must provide to the registry and the amount of offender information made available to the public; and
 - requiring sex offenders to register and maintain current data in each jurisdiction where they attend school, work, and reside;
- extended the standard registration and notification requirements to tribal jurisdictions; and
- authorized the Attorney General to extend reporting requirements to offenders convicted *before* enactment of SORNA.²⁴

SORNA stated that jurisdictions that fail to comply with its requirements risk having their annual JAG funds reduced by 10%. Multiple states, territories, and tribal jurisdictions have “substantially

²² To comply with SORNA, jurisdictions do not have to use the “tier” labels, but rather comply with the requirements of each tier. According to the SMART Office, “SORNA requirements are met as long as sex offenders who satisfy the SORNA criteria for placement in a particular tier are consistently subject to at least the same minimum duration of registration, frequency of in-person appearances for verification, and extent of website disclosure that SORNA requires for that tier.” See SMART Office, *Substantial Implementation FAQs*, http://www.smart.gov/faqs/faq_subimplementation.htm.

²³ Section 115(a) of SORNA requires that sex offenders keep registration current for 15 years for Tier I offenders, 25 years for Tier II offenders, and for life for Tier III offenders.

²⁴ For a list and detailed legal analysis of SORNA requirements, see CRS Report RL33967, *Adam Walsh Child Protection and Safety Act: A Legal Analysis*.

implemented SORNA.²⁵ While several noncompliant states have chosen to lose 10% of their JAG funds, the majority of noncompliant states have applied to have these funds reallocated and used solely for the purpose of implementing SORNA.²⁶

Assistance to States

Sex Offender Registration Violations

As established by SORNA, the United States Marshals Service (USMS or U.S. Marshals) is the primary federal agency responsible for investigating sex offender registration violations. Among other related duties, U.S. Marshals assist state, local, tribal, and territorial governments in the location and apprehension of sex offenders who fail to comply with registration requirements. The USMS leads initiatives to ensure sex offenders' compliance with states' registration requirements. For example, through actions under "Operation Safety Net," U.S. Marshals have worked with state and local law enforcement to verify the addresses of thousands of convicted sex offenders. In 2012, as part of "Operation Safety Net III," U.S. Marshals and state and local partners verified the addresses of 1,300 convicted sex offenders in Pennsylvania and found 13 individuals to be out of compliance. These individuals were tracked down by U.S. marshals and were arrested.²⁷

The USMS also operates the National Sex Offender Targeting Center (the Center), an intelligence and operations center that supports the identification, investigation, location, apprehension, and prosecution of noncompliant, unregistered fugitive sex offenders. The Center works with the Office of Sex Offender Sentencing, Monitoring, Apprehending, and Tracking (SMART) and the National Center for Missing & Exploited Children to support law enforcement agencies in the pursuit of unregistered and noncompliant sex offenders.²⁸

Grants to States

The federal government supports state agencies with sex offender management through grant support. SORNA authorized grants for states—including a grant to assist with the implementation of sex offender registration requirements under the law.²⁹ Also, COPS grantees may use grant funds to ensure sex offender registration and notification compliance.³⁰ The SMART Office administers the SORNA implementation grant as part of the Adam Walsh Implementation grant program. While authorization for appropriations expired in 2009, this program has continued to

²⁵ For a list of jurisdictions that have successfully implemented SORNA, see <http://ojp.gov/smart/sorna.htm>.

²⁶ As provided by SORNA, see 42 U.S.C. §16925(c). For a list of jurisdictions that have applied for reallocation of the JAG funding penalty, see <http://ojp.gov/smart/newsroom.htm>.

²⁷ U.S. Marshals Service, *U.S. Marshals Conduct "Operation Safety Net III"*, news release, July 26, 2012, <http://www.usmarshals.gov/news/chron/2012/072612.htm>.

²⁸ See *U.S. Marshals Service*, fact sheets, 2009, <http://www.usmarshals.gov/duties/factsheets/iod-1209.html>, and National Center for Missing & Exploited Children, *Sex Offender Tracking*, <http://www.missingkids.com/SOTT>.

²⁹ 42 U.S.C. §3797ee. SORNA authorized other grants as well but this report only discusses sex offender registration and notification policy.

³⁰ See 42 U.S.C. §3796dd(b)(14). COPS grant funds may be used "to assist a State or Indian tribe in enforcing a law throughout the State or tribal community that requires that a convicted sex offender register his or her address with a State, tribal, or local law enforcement agency and be subject to criminal prosecution for failure to comply."

receive appropriations—including \$20 million in FY2015.³¹ In addition to supporting grants for SORNA implementation, these funds go toward other Adam Walsh Act purposes, including the Dru Sjodin National Sex Offender Public Website.³²

Dru Sjodin National Sex Offender Public Website

In 2005, the National Sex Offender Public Registry was established by the Office of Justice Programs (OJP), and it was renamed by the Adam Walsh Act as the Dru Sjodin National Sex Offender Public Website.³³ This website is administered by the SMART Office and links all public registry sites in the United States to form one national search site that anyone may use to seek information on sex offenders.³⁴

National Sex Offenders Registry

As established under the Lychner Act, the FBI operates a national database to track the whereabouts of each individual who has been convicted of a criminal offense against a victim who is a minor, has been convicted of a sexually violent offense, or is a sexually violent predator. The National Sex Offenders Registry is one of 14 persons files³⁵ under the National Crime Information Center (NCIC) at the FBI. Unlike the Dru Sjodin National Sex Offender Public Website, the FBI's registry is utilized for law enforcement purposes only. The FBI may release relevant information to federal, state, and local law enforcement agencies, and public notification by the FBI is made only when necessary to protect the public.³⁶

Notification of Sex Offenders' International Travel

As mandated by SORNA, the Attorney General³⁷ is responsible for informing relevant jurisdictions about individuals entering the United States who are required to register for sex offenses that are listed in the law.³⁸ SORNA also made it a federal crime for a sex offender to travel abroad and knowingly fail to register or update a registration as required by the law.³⁹ The

³¹ For more information about this grant program, see the FY2015 grant solicitation: <http://www.smart.gov/pdfs/SMARTFY15AWA.pdf>.

³² For a better understanding of how these funds are spent, see Department of Justice, Office of Justice Programs, *Justice Department Announces \$17.6 Million in Awards to Support Sex Offender Registration, Intervention and Treatment*, September 29, 2014, <http://ojp.gov/newsroom/pressreleases/2014/ojppr092914.pdf>.

³³ 42 U.S.C. §16920.

³⁴ For more information, see <http://www.nsopw.gov/>.

³⁵ Persons files include Supervised Release, National Sex Offender Registry, Foreign Fugitive, Immigration Violator, Missing Person, Protection Order, Unidentified Person, U.S. Secret Service Protective, Gang, Known or Appropriately Suspected Terrorist, Wanted Person, Identity Theft, Violent Person, and National Instant Criminal Background Check System (NICS) Denied Transaction. For more information on the FBI's National Crime Information Center, see <http://www.fbi.gov/about-us/cjis/ncic>.

³⁶ The Federal Bureau of Investigation, *Background on the National Sex Offenders Registry*, http://www.fbi.gov/scams-safety/registry/background_nsor.

³⁷ In consultation with the Secretary of State and Secretary of Homeland Security.

³⁸ 42 U.S.C. §16928.

³⁹ 18 U.S.C. §2250.

*Supplemental Guidelines for Sex Offender Registration and Notification*⁴⁰ requires sex offenders to report their international travel 21 days prior to departing the United States.

Current federal efforts to track international whereabouts of registered sex offenders include those of the USMS, International Criminal Police Organization (INTERPOL) Washington-U.S. National Central Bureau (USNCB), and U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS). These agencies use data from state and local jurisdictions and DHS, U.S. Customs and Border Protection (CBP) to identify registered sex offenders departing the United States, and USNCB and ICE notify foreign officials in some instances.⁴¹ The USMS, USNCB, and ICE may also receive notification of registered sex offenders traveling to the United States.

Select Issues for Congress

Congress may decide to address a number of issues currently associated with sex offender registration and notification in the United States. These issues include notification of offenders' international travel, issues with registration of sex offenders in the military, states' noncompliance with requirements of SORNA, and the effectiveness of SORNA.

Issues with Notification of International Travel

As mentioned, the USMS, USNCB, and ICE work together to keep track of registered sex offenders' international travel. A 2013 GAO study points out that "none of these sources provides complete or comprehensive information on registered sex offenders leaving or returning to the United States."⁴² Another issue is that foreign officials do not always keep track of when registered sex offenders return to the United States. According to the GAO study, the FBI is working to address international notification issues by developing a process to automatically inform U.S. Marshals and relevant jurisdictions (where the offender is registered) that the offender is traveling, so long as the offender's information is queried at the port of entry. GAO pointed out, however, that "because ICE has not requested to receive the automated notifications, ICE will not be notified of registered sex offenders who leave the country via a land port of entry whose biographical information is queried."⁴³

⁴⁰ Department of Justice, Office of the Attorney General, "Supplemental Guidelines for Sex Offender Registration and Notification," 76 *Federal Register* 1630-1640, January 11, 2011.

⁴¹ According to GAO, USNCB and ICE have notified foreign officials of sex offenders only in *some* instances. USNCB notifies its INTERPOL counterparts while ICE, through the "Angel Watch" program, notifies its foreign law enforcement counterparts. See U.S. Government Accountability Office, *Registered Sex Offenders: Sharing More Information Will Enable Federal Agencies to Improve Notifications of Sex Offenders' International Travel*, GAO-13-200, February 14, 2013, p. 24, <http://www.gao.gov/products/GAO-13-200> (hereinafter, *Registered Sex Offenders: Sharing More Information Will Enable Federal Agencies to Improve Notifications of Sex Offenders' International Travel*).

⁴² *Registered Sex Offenders: Sharing More Information Will Enable Federal Agencies to Improve Notifications of Sex Offenders' International Travel*, "What GAO Found."

⁴³ *Ibid.* See p. I of full report, <http://www.gao.gov/assets/660/652194.pdf>. In addition to these efforts, the International Tracking of Sex Offenders Working Group was established to develop the Registered Sex Offender International Tracking System, to be housed at the National Sex Offender Targeting Center. This system would track registered sex offenders as they depart and enter the United States.

Congress may move to address this issue through additional oversight of these federal agencies or through legislative means. Of note, in January 2015 the House passed the International Megan’s Law to Prevent Demand for Child Sex Trafficking (H.R. 515); if enacted, this bill would address some of the issues cited above. Among other things, it would direct the Secretary of Homeland Security to establish “the Angel Watch Center” within ICE to receive and transmit information on travel by child-sex offenders and establish a system to maintain and archive all relevant information, including decisions not to transmit notification abroad and responses of destination countries to notifications. These actions would be seemingly duplicative of what is underway at DOJ and DHS;⁴⁴ however, as GAO notes in its 2013 report, the three agencies currently involved in notification of foreign travel do not consistently share information with each other, and as a result “USNCB and ICE were not able to notify their foreign counterparts about a large number of registered sex offenders traveling internationally from August to September 2012, and some of the notifications were not as comprehensive as possible.”⁴⁵

Issues with Registration of Sex Offenders in the Military

Military sex offense convictions trigger registration requirements as well;⁴⁶ however, there is not a separate registry for federal and military sex offenders. Individuals convicted of military sex offenses must register in the jurisdictions where they reside, work, and/or attend school following their release from incarceration or within three days of sentencing if they are not incarcerated. Under federal law,⁴⁷ federal and military correctional authorities are required to notify relevant jurisdictions of the release of these offenders into their communities.⁴⁸ A recent media investigation that involved the review of over 1,300 military sex offenders’ cases revealed that 242 failed to register.⁴⁹ In some cases, it appears the military did not notify jurisdictions about offenders being released into their communities.

Congress may choose to address this issue through additional oversight over the Department of Defense (DOD) or through legislative means. One option may be to create a separate registry for military offenders. Of note, a bill has been introduced in the 114th Congress (H.R. 956) that would require DOD to create and maintain a sex offender registry for members of the military.

States’ Noncompliance with SORNA

As mentioned, the majority of states have not complied with requirements of SORNA. Some states have officially stated their reasons for not complying; these include, but are not limited to,

⁴⁴ As mentioned, current federal efforts to track international whereabouts of registered sex offenders include those of the USMS, INTERPOL’s Washington-U.S. National Central Bureau, and ICE. These agencies use data from state and local jurisdictions and CBP to identify registered sex offenders departing the United States, and USNCB and ICE notify foreign officials in some instances. The USMS, USNCB, and ICE may also receive notification of registered sex offenders traveling to the United States.

⁴⁵ Ibid. See p. 23 of full report, <http://www.gao.gov/assets/660/652194.pdf>.

⁴⁶ See 42 U.S.C. §16911(5)(A)(iv).

⁴⁷ See 18 U.S.C. §4042(c) and section 141(h)(i), P.L. 109-248, 10 U.S.C. §951 note.

⁴⁸ See U.S. Department of Justice, Office of the Attorney General, “The National Guidelines for Sex Offender Registration and Notification,” 73 *Federal Register* 38064, July 2, 2008.

⁴⁹ “Under the Radar: A Scripps Washington Bureau Investigation,” *Scripps*, 2014, <http://www.scripps.com/undertheradar>.

the projected cost to implement SORNA, disagreement with the SORNA requirement to register juveniles, and a belief that the state's registration and notification system is better than the SORNA design. As mentioned, several states have opted to forego 10% of their JAG funds due to unwillingness to comply with SORNA. For example, Texas cited a host of reasons for declining to comply with the law, including "SORNA's oversimplified registration and publication requirements, which apply based solely on the particular criminal offense, fail to accommodate for Texas's more appropriately tailored future risk assessments," and an estimation that "implementation of all SORNA's requirements would cost Texas more than 30 times the amount of the federal funds that the federal government has threatened to withhold from Texas if it fails to comply."⁵⁰

Texas, New York, and other states object to SORNA's requirement to register juveniles as sex offenders *absent* of a judge's exercise of discretion to do so.⁵¹ The State of New York's Division of Criminal Justice Services stated that "New York has a long standing public policy of treating juvenile offenders differently from adult offenders so that juveniles have the best opportunity of rehabilitation and re-integration. The federal requirement that juveniles be placed on the Sex Offender Registry under SORNA is in direct conflict with that public policy."⁵² Of note, while Texas has chosen to forego a percentage of its JAG funds, New York and multiple other noncompliant states have *not* lost a percentage of their JAG funds and instead apply each year for reallocation of the funding penalty "to work solely towards furthering SORNA implementation activities and efforts."⁵³

Effectiveness of SORNA

In considering states' noncompliance and objections to SORNA, Congress may consider the utility of standardizing registration and notification across the states and the effectiveness of SORNA policy. Some researchers have questioned whether the SORNA classification scheme is the best option for states. One four-state study⁵⁴ of sex offenders indicated that SORNA's tier classification "is likely to result in a system that is less effective in protecting the public than the classification systems currently implemented in the states studied" and encouraged broader inclusion of "evidence-based models of sex offender risk assessment and management."⁵⁵ Another study points out that enactment of SORNA "would not only cost states more money than they would lose if they were not to enact it, but also that such enactment would unlikely increase public safety."⁵⁶ GAO identified mixed results: it found that jurisdictions reported both positive

⁵⁰ The State of Texas, Office of the Governor, *Letter to Linda M. Baldwin, Director, SMART Office*, August 17, 2011.

⁵¹ SORNA provisions require registration for juveniles who are 14 years old and older who are adjudicated delinquent for "offenses equivalent to rape or attempted rape, but not for those adjudicated delinquent for lesser sexual assaults or non-violent sexual conduct." See U.S. Department of Justice, Office of the Attorney General, "The National Guidelines for Sex Offender Registration and Notification," *73 Federal Register* 38030, July 2, 2008.

⁵² State of New York, Division of Criminal Justice Services, *Letter to Linda Baldwin, Director, SMART Office*, August 23, 2011.

⁵³ SMART Office, Newsroom, *Reallocation of Byrne JAG Funding*, <http://ojp.gov/smart/newsroom.htm>.

⁵⁴ The states included in the study were Minnesota, New Jersey, Florida, and South Carolina.

⁵⁵ Kristen M. Zgoba, Michael Miner, and Raymond Knight, A Multi-State Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act, Research Report Submitted to the National Institute of Justice, November 2012, p. 1, <https://www.ncjrs.gov/pdffiles1/nij/grants/240099.pdf>.

⁵⁶ Naomi J. Freeman and Jeffrey C. Sandler, "The Adam Walsh Act: A False Sense of Security or an Effective Public Policy Initiative," *Criminal Justice Policy Review*, vol. 21, no. 1 (March 2010).

and negative effects of SORNA implementation. Some stakeholders reported enhanced information sharing on registered sex offenders, while others reported that implementation increased workloads and caused difficulties for offenders in their reintegration to the community. GAO also noted that no study has evaluated the effect of SORNA implementation on public safety.⁵⁷

Congress may address these issues through changes to SORNA. For example, Congress may opt to remove the penalty for noncompliance with SORNA, leave it as is, or increase the penalty for noncompliance. Alternatively, Congress may decide that standardization of registration and notification systems among the states is not necessary to public safety. In making this decision, lawmakers may wish to require a scientific evaluation of how SORNA implementation has impacted public safety.

Congress may address any of the issues cited in this report through reauthorization of the Adam Walsh Act. Authorization for appropriations under this act expired in 2009. Should Congress wish to reauthorize certain programs under the Adam Walsh Act and/or amend it (and SORNA), it may elect to do so through reauthorizing the act or via other legislative means.

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⁵⁷ U.S. Government Accountability Office, SEX OFFENDER REGISTRATION AND NOTIFICATION ACT: Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects, GAO-13-211, February 2013, <http://www.gao.gov/assets/660/652032.pdf>.

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