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# Memo

To: Rhode Island House Finance Committee

From: Katherine Godin, Esq., *on behalf of the Rhode Island ACLU*

Date: June 16, 2014

Re: Constitutional concerns with RI H 7425 (Adam Walsh Act bill)

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The following is a short summary of the constitutional concerns and fatal flaws with 2014 H 7425 (proposing the implementation of the Adam Walsh Act, hereafter the "AWA").

In summary, Megan's Law was enacted in 1996 to warn/inform citizens about the risk sex offenders pose to the community. We currently have a system of registering sex offenders with authorities, and also providing community notification of sex offenders in the area, classified by the individual offender's likelihood of re-offending and degree of dangerousness in the community.

The AWA sadly takes affirmative steps to undermine the effectiveness of sex offender registration and community notification. Most importantly, the AWA makes it less likely to accurately predict sex offense recidivism, and would be quite costly to implement (compared to what the State would save in Federal funding by enacting the legislation), in addition to the glaring constitutional violations inherent in the proposed Act.

## The Adam Walsh Act is *not* an effective and accurate way to predict sex offender recidivism

It is important to note that as of November 2012, only sixteen states and three U.S. territories had substantially implemented the AWA. See United States Government Accountability Office, Sex Offender Registration and Notification Act: Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects 18 (February 2013), available at: http://www.gao.gov/assets/660/652032.pdf.

New York and Texas (two states with a far more substantial financial interest in Byrne Grant money) have submitted letters to the SMART Office, explaining their rationales for why they have rejected the implementation of AWA in their states. See copies of the letters attached to this memo. They are both insightful as to the rigidness and ineffectiveness of AWA.

**1. The *only* factor considered in classifying an offender is what crime he or she has been convicted of**

First of all, the AWA would eradicate the current classification and registration system for sex offenders and would replace the system with a classification process in which sex offenders are classified based *solely* by the offense he or she is convicted of. Under the AWA, factors such as age, mental health issues, psychological profiles (such as pedophilia) and participation in sex offender treatment, which have all been suggested to have an affect on an offender's risk of recidivism, will be irrelevant to an offender's classification level. Therefore, a sex offender will have little to *no* incentive to participate in sex offender treatment.

Under our current system, sex offenders also undergo several risk assessment tests, including the Static-99, Static-2002 and Stable-2007 for adults, and the J-SOAP for juveniles. In fact, according to SMART Office employee Scott Matson, at least nineteen states use risk assessments (as we currently do) to classify offenders. Such tests are seen as validated tools to determine the likelihood a particular sex offender is to re-offend in the future based on his or her past. Such tools would be disregarded under the AWA, and would serve no function in determining an offender's classification level.

Two years ago, several knowledgeable researchers in the field published an article entitled 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 (2012), available at https://www.ncjrs.gov/pdffiles1/nij/grants/240099.pdf. The study looked at states that had implemented the Adam Walsh Act, and found that its offense-based classification system is "unrelated to sexual recidivism, except in Florida, where it was **inversely associated with recidivism**." Id. at 1 (emphasis added).

More significantly, the authors noted that "[t]he findings indicate that the current AWA classification scheme 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." Id. (emphasis added). On that point, the study found that Tier 2 SOs under the AWA actually had higher rates of recidivism and/or presented a greater risk to the community than Tier 3 SOs. Id. at 3.

**2. More stringent registration requirements under the AWA are unnecessary, counter-productive and will not accurately predict recidivism rates**

Second of all, the AWA would eliminate the 10 year, once per year registration requirement for most sex offenders and would replace it with the following registration requirements: (1) Tier I – 15 years, once ever year; (2) Tier II – 25 years, once every 6 months; and (3) Tier III – life, once every 3 months.

These excessively stringent registration requirements may very well lead sex offenders to re-offend because there will be little to no incentive to rehabilitate. See Tewksbury, Richard & Lees, Matthews, Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences, 26 Sociological Spectrum 309-334 (2006) (Stringent sex offender laws have been found to actually create an incentive *not* to conform because of the social stigma and collateral consequences of being labeled a sex offender).

As it is, recidivism rates for sex offenders are *far* lower than recidivism rates for non-sex offenders. According to the most recent recidivism rates collected by the U.S. Dept. of Justice, 43% of sex offenders in state prisons were re-arrested within three years of release from incarceration (compared to 69.5% of non-sex offenders). As for re-convictions, sex offenders had a 24.8% recidivism rate, whereas non-sex offenders came in at 48.9%. See U.S. Dept. of Justice, Bureau of Justice Statistics, "Prisoner Recidivism," available at http://bjs.ojp.usdoj.gov/index.cfm?ty=datool&surl=-/recidivism/index.cfm; Matthew R. Durose, Patrick A. Langan, Erica L. Schmitt, Recidivism of Sex Offenders Released from Prison in 1994, BJS No. NCJ 198281 (Nov. 2003). Some researchers have found that recidivism rates are higher for registered sex offenders than for unregistered sex offenders. See Prescott, JJ & Jonah Rockoff, Do Sex Offender Registration and Notification Laws Affect Criminal Behavior? (2008), available at http://www.law.virginia.edu/pdf/olin/0708/prescott.pdf. Others have found no statistically significant difference between the recidivism rates for registered sex offenders and unregistered sex offenders. See Adkins, G., D. Huff, and P. Stageberg, The Iowa Sex Offender Registry and Recidivism (2000); Schram, Donna and Cheryl D. Milloy, Community Notification: A Study of Offender Characteristics and Recidivism (1995).

More importantly, 95-96% of sex offenders arrested have no prior sex offense convictions. Therefore, there is no effective way to predict who will commit a sex offense. See Sandler, Jeffrey et al., Does a Watched Pot Boil?: A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law 14 Psychol. Pub. Pol'y & L. 284, 297 (2008); Prescott & Rockoff (2008), *supra*. Despite the fact that various jurisdictions throughout the U.S. have had some kind of registration and/or notification system in place for at least fifteen years, there was just a news article released yesterday in Wisconsin noting that 93% of felony sex offense cases charged in one county involved first-time offenders. See Karen Madden, "Analysis: Most sex offense charges involved first-time offenses," *Wisconsin Rapids Tribune* (April 28,

2012), available at:
http://www.wisconsinrapidstribune.com/apps/pbcs.dll/article?AID=2012204280579,

In fact, this community notification system distorts the fact that most sex crimes are not committed by some scary man lurking in the bushes. Instead, **97%** of child sex abuse victims up to 5 years old knew the offender prior to the offense. For those victims 6-11 years old, 95% knew the offender previously. For those 12-17 years old, the statistic is 90%. In general, for sexual assault victims under 18 years of age, 93% knew their offender before the incident. Howard N. Snyder, Ph.D., Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics 10 (July 2000), National Center for Juvenile Justice, NCJ 182990. The same study found that over 72% of adult victims knew their offender prior to the incident. Id. Parents would do better to teach their children about "good touch-bad touch" and make their children feel more comfortable to report abuse to their parents.

Instead of more accurately informing the public of the risk each sex offender poses to the community, the AWA will unnecessarily alarm (and scare) citizens for no reason. Inextricably, statutory rape (i.e., third-degree sexual assault) is listed as a Tier III offense, meaning that the offender will be required to register every three months for the rest of his or her life. Under the AWA, an 19 ½-year old who has sex with his 15-year old girlfriend will be branded a sex offender for the rest of his life, and will be seen as posing the same threat to the community as someone who commits rape or first-degree child molestation.

Strangely, under this bill, someone convicted of possession of child pornography under federal law would be a Tier I, while those convicted of the same offense under state law would be a Tier II. Stranger still, those who have been convicted of kidnapping or murdering a minor (without any sexual element to the offense) will have a lifetime registration requirement as a Tier III sex offender.

The State has identified a **significant** number of Level 2 offenders under the current system who would be re-classified as Tier III offenders under the AWA. They would be re-classified as the highest risk of offenders for no other reason than the crime they have been convicted of, and after they have been assessed by the Sex Offender Board of Review and/or the Superior Court as posing a moderate risk to the community.

### 3. The AWA will cause unnecessary and damaging harm to sex offenders

Sadly, stricter registration and notification requirements will also create significant harm to those labeled as sex offenders. More stringent registration requirements (including longer registration periods) will lead to even more difficulty finding employment, housing and stable social connections, and will make it more likely that sex offenders will be harassed and/or assaulted. See State v. Krieger, 163 Wis.2d 241, 257-58 (1991) (A survey of the Wisconsin prison system revealed that sex offenders were at a greater risk for various forms of physical, sexual and psychological abuse than inmates not convicted of sex offenses); see also 42 U.S.C. §§ 15601-02 (the Prison Rape

Elimination Law); 103 DOC 519.01-11 (the Dept. of Corrections' Sexually Abusive Behavior Prevention and Intervention Policy); Farmer v. Brennan, 511 U.S. 825, 833 (1994) ("Being violently assaulted in prison is simply not part of the penalty that criminal offenders [should] pay for offenses against society"); No Escape: Male Rape in U.S. Prisons, Human Rights Watch, p. 59 (April 2001) (prisoners convicted of sexual offenses against minors are more likely to be targeted for sexual assault in prison than other offenders); see also Doe v. Attorney General, 426 Mass. 136, 144 (1997) (noting the possible harm of public dissemination to the offender's earning capacity); Tweksbury (2006), *supra* (discussing the social stigma and collateral consequences endured by registered sex offenders).

## The Adam Walsh Act is unconstitutional on several grounds

### 1. It would violate separation of powers by vacating judicial decisions regarding classification levels and replacing them with legislatively-mandated classification levels

In 2010, the Supreme Court of Ohio[1] ruled that the AWA violated the separation of powers doctrine. In the decision, the Court found that the executive branch was unconstitutionally allowed to open final judgments of the Superior Court in order to re-classify sex offenders. State v. Bodyke, 933 N.E.2d 753 (Ohio 2010). The same problem will occur in this state. Under the proposed AWA, the executive branch will be allowed to vacate judgments from the Superior Court and re-classify those sex offenders. Such tampering with final orders of the court is unconstitutional and violates separation of powers.

### 2. It violates procedural due process

In 2009, the Rhode Island Supreme Court considered the current registration and community notification system in State v. Germane, 971 A.2d 555, 578 (2009). In the Germane decision, our Supreme Court found that sex offenders have a protected liberty interest in being classified, and noted in dicta that denying sex offenders the opportunity to challenge their classification levels would deprive them of procedural due process. Id. at 580.

While the State often makes the argument that cites a portion of the Germane decision suggesting that an offense-based system would not violate procedural due process, the question remains whether the same would be true as applied to those already classified under our current system and re-classified under the AWA. While the Attorney General's Office has suggested in years past that it would be amenable to a version of

[1] It should be noted that Ohio was the first state to implement the AWA, and has at this point severely limited its effectiveness due to several court decisions finding it unconstitutional. See In re C.P., 967 N.E.2d 729 (Ohio 2012) (finding the lifelong, automatic registration and notification requirements on juvenile offenders violated their constitutional rights to due process and against cruel and unusual punishment); State v. Williams, 952 N.E.2d 1180 (Ohio 2012) (finding the AWA amendments violated the state constitutional prohibition against retroactive statutes).

the AWA that does not apply retroactively, 2014 H 7425 does not appear to contain such a provision, ***not even for juvenile offenders*** (although this version of the AWA would limit which juveniles would have to register).

### 3. It may violate substantive due process and constitute an *ex post facto* law

While courts have been hesitant to find a substantive liberty or privacy interest in not being subjected to sex offender registration and notification requirements, and has not yet found the requirements to constitute an *ex post facto* law, given the U.S. Supreme Court's recent decision of Padilla v. Kentucky, in which the Court found that a criminal defendant has a constitutional right to be advised of the immigration consequences of a conviction, courts may find that the AWA requirements are so invasive, stringent and unnecessary that they violate an offender's substantive due process rights and constitute an *ex post facto* punishment.

Last year, courts in both Oklahoma and Maryland found that a retroactive application of the registration system violated their respective state constitution's prohibition against *ex post facto* laws. See Doe v. Dept. of Public Safety and Correctional Services, 62 A.3d 123 (Md. 2013); Starkey v. Oklahoma Dept. of Corrections, 305 P.3d 1004 (Ok. 2013); see also State v. Letalien, 985 A.2d 4 (Me. 2009) (finding that retroactively applying a newer version of SORNA in Maine violated its state's *ex post facto* prohibition).

### 4. Part of the AWA is overbroad

The AWA is supposed to warn citizens of the risks *sex offenders* pose. Yet in the proposed bill, kidnapping (with no sexual element), as well as "failure to file factual statement about an alien individual," involuntary servitude and murder of a juvenile are listed as sex offenses triggering registration. With no way of differentiating between a sex-related kidnapping and a non-sex related kidnapping (as the current system theoretically does), the inclusion of these non-sex offenses constitutes an unconstitutionally broad portion of the AWA.

## The Adam Walsh Act is being introduced to prevent the loss of Federal grant money, yet will be far more costly to implement

This bill has been introduced to prevent a loss of 10% of Federal Byrne Grant money, which under recent estimations will equate to approximately $100,000-$200,000 per year. See Justice Policy Institute, "What will it cost states to comply with the Sex Offender Registration and Notification Act?," available at http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JJ.pdf, a copy of which is attached to this memo.

Yet the cost for RI to implement the AWA has been estimated at $1,715,760 for the first year. Id. Under its provisions, the executive branch will have to look at *every single person* current under a criminal sentence in Rhode Island (whether that be a suspended

sentence, probation, parole, home confinement or incarceration) to determine if he or she qualifies as a sex offender required to register (even if the triggering offense was from 30 or 40 years ago), in addition to all those already registering as sex offenders.

The state will have to spend money on:

- Potential new employees (trained to enforce/maintain this legislation)
- Software (installing and maintaining the electronic database)
- Additional prison space (for all those charged with failing to register)
- Court and administrative costs (with litigating the constitutionality of the legislation, as well as litigating failure to register cases)
- Department of Public Safety costs (monitoring sex offenders and verifying their information)
    - Longer and more frequent periods of registration (instead of once a year for 10 years for most offenders under the current system, DPS employees will have to re-register offenders every 3, 6 or 12 months for 15, 25 years or life, depending on the offender's new tier; most Level 2s under the current system will be re-classified as Tier IIIs under AWA, requiring lifetime registration)
    - Police officers/employees of the "Department" (i.e., Department of Public Safety or "designee") will have to track down those sex offenders who fail to update their information or fail to register
    - If a sex offender fails to update their registration, the "Department" must notify the RI State Police, any other law enforcement agency that is "appropriate," and if necessary, the U.S. Marshal's Service and/or Interpol
    - The Dept. must not only collect DNA samples, but also ID all schools he "will" be attending, where he'll receive temporary lodging, whenever he'll be gone from his residence for a week or longer
    - Unless the sex offender's appearance has not changed "significantly," the dept. must take new photos of all offenders every three months to a year (depending on the tier the offender is assigned to)
- Legislative costs (fixing all of the problems with the legislation)

While the State often cites the aid of federal funds to combat some of these costs, there is a significant question pending as to what the true costs of implementing this bill would be.

This Committee should take note that after the bill's chief sponsor testified before this very committee last April, PolitiFact.com rated Representative Palumbo's claims of the costs involved with the current registration and notification system as "**false**." A copy of that article is attached to this memo. Similarly, Special Assistant Attorney General Joee Lindbeck's financial claims were found to be "**half-true.**" A copy of that article is also attached hereto.

In summary, the AWA is not only costly and unconstitutional, but it is damaging and unnecessary for all parties involved. I, on behalf of the Rhode Island ACLU, urge the House Finance Committee to recognize these fatal flaws and to not allow this damaging piece of legislation to be passed into law.

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August 23, 2011

Linda Baldwin
Director
U.S. Department of Justice
Office of Justice Programs, SMART Office
810 7th Street, NW
Washington, DC 20531

Re: New York State

Dear Ms. Baldwin;

I am in receipt of your letter dated July 28, 2001 to Governor Cuomo indicating your preliminary findings that New York State has not substantially implemented the Sex Offender Registration and Notification Act (SORNA). Please accept this letter as notification that New York does not disagree with your findings. While New York looks forward to continuing to work together with the Department of Justice in the future, we are convinced that the statutory scheme set out by our legislature is in the best interests of New York State and the best way to protect our citizens. While we are concerned about the loss of federal financial support, especially in this fiscal environment, the issues set out below when combined with the projected cost of SORNA requirements resulted in our decision. New York will continue to cooperate with the federal authorities and all other states in the effort to protect all victims against sexual predators by preventing the attacks against child and adult victims and bringing sexual predators to justice.

New York believes that our present laws and risk assessment method provide our citizens with effective protection against sexual predators. Initially enacted in 1996, New York law implements a risk assessment that considers the offender's background, prior criminal history, the manner in which the crime was committed and whether there was a plea bargain to a lesser included offense, the age of the victim and the offender's mental health history. This comprehensive look gives us an accurate prediction of the risk an offender poses to the community. After examining the proposed federal approach which focuses on the crime of

conviction, we are concerned that the federal approach may both over- and understate threat in a way that is not consistent with our public safety goals.

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. While New York law provides that the most dangerous juvenile offenders may be prosecuted in adult courts and, if convicted, they would be placed on the Sex Offender Registry, our laws and public policy also acknowledge that other than those most dangerous offenders, children who commit crimes should avoid the ramifications of adult convictions.

Finally, the fiscal impact of implementation is significant with no improvement of public safety. As unfortunate as the loss of the funds will be to important programs in New York, the costs would be far greater than the loss. The in person reporting requirements for all Tiers would impose significant costs on law enforcement without a foreseeable public safety justification. The likelihood of required separate reporting facilities for juvenile offenders would also place an undue burden on local law enforcement. In addition, there are significant costs of technical construction a new registry and the likelihood of litigation to defend the implementation of the Act.

New York will continue its commitment to ensuring that our citizens are protected from sexual predators by the enforcement of all of our laws and the continued cooperation with your office. If you have any questions, please contact me at your earliest convenience.

Very truly yours,

Risa S. Sugarman
Deputy Commissioner
Director, Office of Sex Offender Management

Via Regular Mail and email to Linda.Baldwin@usdoj.gov

OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

August 17, 2011

Linda M. Baldwin
Director
SMART Office
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U.S. Department of Justice
810 7th Street, NW, 6th Floor
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Dear Ms. Baldwin:

Thank you for your July 28 letter inquiring about the implementation of the federal Sex Offender Registration and Notification Act (SORNA) in Texas. Although we in Texas certainly appreciate and agree with the stated goals of SORNA, the adoption of this "one-size-fits-all" federal legislation in Texas would in fact undermine the accomplishment of those objectives in Texas, just as it would in most other states.

As you may be aware, the bipartisan Texas Senate Committee on Criminal Justice (Committee) carefully considered the question of compliance with SORNA over the past two years. After extensive review, including the receipt of public testimony during several "well attended and informative" hearings, the Committee firmly recommended that the Texas Legislature should not implement SORNA in Texas. As the Committee explained in its Interim Report to the 82nd Legislature (*see* http://www.senate.state.tx.us/75r/Senate/commit/c590/c590.htm), implementation of SORNA would be both unnecessary and counter-productive in Texas because:

- Texas already has a comprehensive array of statutes to punish, supervise, and protect the public from sex offenders, including those that require registration and publication, community supervision, child safety zones, future risk assessments, and civil commitment for certain high-risk offenders. Indeed, Texas's sex offender laws are undeniably among the most stringent in the nation.

- 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.

- By tying specific requirements, such as re-verification, DNA testing, and duration of registration, to offense "tiers," SORNA imposes expensive and burdensome requirements without regard to whether those requirements are necessary or appropriate in a particular case.

- By imposing such requirements in cases in which they are unnecessary, SORNA would create backlogs and strains on local law enforcement agencies that, as a practical matter, would effectively undermine the objectives that SORNA is intended to meet.

- In dealing with juvenile sex offenders, Texas law more appropriately provides for judges to determine whether registration would be beneficial to the community and the juvenile offender in a particular case.

- By imposing oversimplified blanket registration requirements, SORNA would make it more difficult for Texas to focus on and address the most dangerous sex offenders, who pose the greatest public threat. Moreover, SORNA does so while merely assuming that the requirements are necessary in all cases, while failing to account for the negative impacts that unnecessary registration has on both juvenile offenders and the children of low-risk adult offenders.

- Implementation of all of 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.

For these reasons, Texas's sex offender laws are more effective in protecting Texans than SORNA's requirements would be. In short, while Texas shares the federal government's objectives, the oversimplified means by which SORNA seeks to meet those objectives, while costing Texans significantly more, would provide them with far less than Texas law already provides. While SORNA's approach might be appropriate for some states, it is not right for Texas.

In fact, we are advised that, to date, only 14 states have substantially implemented SORNA as the federal government has demanded. We would encourage you to consider that fact, as well as the information detailed in the Texas Senate Committee's report, as you evaluate the reality that there is a better way to achieve the goals that we share. We would look forward to discussing those alternatives with you.

Sincerely,

Jeffrey S. Boyd
General Counsel and Acting Chief of Staff

Justice Policy INSTITUTE

# What will it cost states to comply with the Sex Offender Registration and Notification Act?

The Sex Offender Registration and Notification Act (SORNA)[1], which mandates a national registry of people convicted of sex offenses and expands the type of offenses for which a person must register, applies to both adults and children. By July 2009, all states must comply with SORNA or risk losing 10 percent of the state's allocated Byrne Grant money, which states generally use to enforce drug laws and support law enforcement.

In the last two years, some states have extensively analyzed the financial costs of complying with SORNA. These states have found that implementing SORNA in their state is far more costly than the penalties for not being in compliance. JPI's analysis finds that in all 50 states, the first-year costs of implementing SORNA outweigh the cost of losing 10 percent of the state's Byrne Grant. Most of the resources available to states would be devoted to the administrative maintenance of the registry and notification, rather than targeting known serious offenders. Registries and notification have not been proven to protect communities from sexual offenses, and may even distract from more effective approaches.

Given the enormous fiscal costs of implementing SORNA, coupled with the lack of evidence that registries and notification make communities safer, states should think carefully before committing to comply with SORNA.

**Ohio determined that the cost of implementing new software to create a registry would approach a half million dollars in the first year.[2] The total estimated cost for complying with SORNA exceeds the Byrne funds Ohio would lose if it did not comply.**

- Installing and implementing software alone would cost $475,000 in the first year. The software would then cost $85,000 annually thereafter for maintenance.
- Certification of treatment programs based on new standards and providing a description of a person on the registry to the state's Bureau of Criminal Identification and Investigation would cost another $100,000 annually.
- Ohio also lists other factors that would increase the cost of implementing SORNA, including salaries and benefits for new personnel, new court and administration costs, and costs to counties and municipalities. These costs are in addition to the $475,000 needed for software, but have not yet been quantified by the state.
- If Ohio chose not to implement SORNA, the state would lose approximately $622,000 annually from its Byrne funds. However, the total estimated cost of software, certification of treatment programs, salaries, and benefits for new personnel would exceed the lost Byrne funds.

**Virginia determined that the first year of compliance with the registry aspect of SORNA would cost more than $12 million.[3]**

- The first year of implementing SORNA would cost the Commonwealth of Virginia $12,497,000.
- The yearly annual cost of SORNA would be $8,887,000. Adjusted with a 3.5 percent yearly inflation rate,[4] Virginia would be paying more than $10 million by 2014.
- If Virginia chose to comply with SORNA, the state would spend $12,097,000 more than it would if it chose not to implement SORNA and forfeit 10 percent of its yearly Byrne grant, a loss totaling approximately $400,000.[5]

**As evidenced by these summaries, states can expect to incur significant costs as they attempt to comply with SORNA. States should consider all possible areas in which increased expenditures will occur.**

- New personnel
- Software, including installation and maintenance
- Additional jail and prison space
- Court and administrative costs
- Law enforcement costs
- Legislative costs related to adopting, and crafting state law

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[1] SORNA is Title 1 of the Adam Walsh Act.
[2] Ohio Legislative Service Commission Fiscal Note & Local Impact Statement (Columbus, OH: Ohio Legislative Service Commission, 2007) http://www.lsc.state.oh.us
[3] Virginia Department of Planning and Budget *2008 Fiscal Impact Statement* (Richmond, VA: Department of Planning and Budget, 2008).
[4] Oregon State University, "Yearly Inflation or Deflation Rate (CPI-U) 1915 -2005, in Percent." April 24, 2008. http://oregonstate.edu/cla/polisci/faculty-research/sahr/pc1915ff.htm
[5] Office of Justice Programs, "JAG State Allocations," April 23, 2008. http://www.ojp.usdoj.gov/BJA/grant/07JAGstateallocations.pdf

**In every state, the first-year cost of implementing the Sex Offender Registration and Notification Act outweighs the cost of losing 10 percent of the state's Byrne money.[6]**

| | SORNA Implementation Estimate for 2009 | Byrne Money Received in 2006[7] | 10 Percent of Byrne Money |
|---|---|---|---|
| ALABAMA | $7,506,185 | $3,178,628 | $317,863 |
| ALASKA | $1,108,573 | $565,971 | $56,597 |
| ARIZONA | $10,281,201 | $3,653,881 | $365,388 |
| ARKANSAS | $4,597,925 | $2,180,442 | $218,044 |
| CALIFORNIA | $59,287,816 | $21,876,819 | $2,187,682 |
| COLORADO | $7,885,178 | $2,725,489 | $272,549 |
| CONNECTICUT | $5,680,602 | $2,189,001 | $218,900 |
| DELAWARE | $1,402,612 | $1,248,534 | $124,853 |
| DISTRICT OF COLUMBIA | $954,186 | $1,804,991 | $180,499 |
| FLORIDA | $29,602,768 | $12,402,693 | $1,240,269 |
| GEORGIA | $15,481,193 | $5,594,288 | $559,429 |
| HAWAII | $2,081,603 | $933,732 | $93,373 |
| IDAHO | $2,431,969 | $1,170,003 | $117,000 |
| ILLINOIS | $20,846,306 | $8,501,000 | $850,100 |
| INDIANA | $10,291,799 | $3,696,033 | $369,603 |
| IOWA | $4,846,488 | $1,881,623 | $188,162 |
| KANSAS | $4,502,553 | $2,035,999 | $203,600 |
| KENTUCKY | $6,879,497 | $2,702,451 | $270,245 |
| LOUISIANA | $6,963,401 | $3,514,704 | $351,470 |
| MAINE | $2,136,456 | $1,172,583 | $117,258 |
| MARYLAND | $9,112,724 | $4,320,568 | $432,057 |
| MASSACHUSETTS | $10,461,238 | $4,353,201 | $435,320 |
| MICHIGAN | $16,336,082 | $6,793,169 | $679,317 |
| MINNESOTA | $8,430,328 | $3,061,831 | $306,183 |
| MISSISSIPPI | $4,734,150 | $2,065,269 | $206,527 |
| MISSOURI | $9,534,548 | $4,182,382 | $418,238 |
| MONTANA | $1,553,611 | $1,076,424 | $107,642 |
| NEBRASKA | $2,878,281 | $1,288,957 | $128,896 |
| NEVADA | $4,160,944 | $1,808,095 | $180,810 |
| NEW HAMPSHIRE | $2,134,219 | $1,192,435 | $119,244 |
| NEW JERSEY | $14,088,206 | $5,160,709 | $516,071 |
| NEW MEXICO | $3,195,121 | $1,879,901 | $187,990 |
| NEW YORK | $31,300,125 | $11,279,841 | $1,127,984 |
| NORTH | $14,696,622 | $5,460,983 | $546,098 |
| NORTH DAKOTA | $1,037,592 | $554,556 | $55,456 |
| OHIO | $18,598,869 | $6,223,825 | $622,383 |
| OKLAHOMA | $5,867,138 | $2,790,472 | $279,047 |
| OREGON | $6,078,218 | $2,251,312 | $225,131 |
| PENNSYLVANIA | $20,165,479 | $7,640,322 | $764,032 |
| RHODE ISLAND | $1,715,760 | $967,292 | $96,729 |
| SOUTH CAROLINA | $7,149,123 | $3,610,292 | $361,029 |
| SOUTH DAKOTA | $1,291,426 | $513,858 | $51,386 |
| TENNESSEE | $9,985,946 | $4,817,782 | $481,778 |
| TEXAS | $38,771,924 | $14,045,713 | $1,404,571 |
| UTAH | $4,290,617 | $1,557,034 | $155,703 |
| VERMONT | $1,007,649 | $630,419 | $63,042 |
| VIRGINIA | $12,508,695 | $3,943,036 | $394,304 |
| WASHINGTON | $10,491,519 | $3,538,816 | $353,882 |
| WEST VIRGINIA | $2,939,046 | $1,679,108 | $167,911 |
| WISCONSIN | $9,085,630 | $2,982,833 | $298,283 |
| WYOMING | $848,009 | $584,036 | $58,404 |

[6] These numbers are calculated by using the Virginia Department of Planning and Budget total ($12,508,694) divided by the predicted number of people in Virginia in 2009 (U.S. Census 2007 multiplied by predicted 1 percent yearly growth). The cost per person ($1.59) was then multiplied by the predicted number of people in all states in 2009. Virginia conducted the most comprehensive analysis of the potential cost of implementing SORNA that was also available to the public.

[7] The U.S. House of Representatives estimates that 2009 federal allocations for Byrne grants will return to 2006 levels, which total approximately $200 million.

## The Truth-O-Meter Says:

# "Two years ago Providence alone spent $50,000 a year notifying the school department" about residents in the state's sex offender registry.

Joee Lindbeck on Thursday, April 11th, 2013 in a House Finance Committee hearing

## Assistant Attorney General Joee Lindbeck says Providence spent $50,000 in one year notifying schools about sex offenders living in the vicinity

Rhode Island state law and state Parole Board guidelines say residents in the community must be notified if a Level 2 or Level 3 (moderate or high-risk) sex offender is living in their neighborhood. Notifications are also supposed to be sent to schools, police departments, daycare centers and community organizations that might have contact with the offender.




The costs associated with that requirement were raised at an April 11 hearing before the House Finance Committee. At issue was House bill 5557, submitted at the request of the attorney general's office, which would revise the state's sex offender registry system to comply with federal guidelines.

Under the bill, responsibility for notifying residents, schools, community organizations and businesses such as daycare centers about sex offenders living in the vicinity would shift from city and town police departments to the Rhode Island Department of Public Safety, which includes the state police.

During the hearing, two witnesses made interesting comments about how the proposal would cut notification costs for cities and towns.

One was Rep. Peter Palumbo, D-Cranston, whose statement is being fact-checked separately.

The other -- and the subject of this item -- was Joee (pronounced Joey) Lindbeck, a special assistant attorney general who heads the office's Legislation and Policy Unit.

"Two years ago Providence alone spent $50,000 a year notifying the School Department" about sex offenders. "This act would allow for e-mail notification alone," she said.

That seemed like a lot of money, so we decided to check that portion of her statement.

Because the data came from a report from the attorney general's office, we made that our first stop. That office sent us a 2012 PowerPoint presentation that included cost estimates from several communities. There was quite a range.

We've ranked the communities by the number of current Level 2 and Level 3 offenders (listed in parentheses) because a community that tends to have more offenders is going to have to spend more. It's important to note that the number of offenders may have been different when these cost estimates were developed and that some may have ended up back in the Adult Correctional Institutions on a new charge or violating probation after they registered.

| | Per notification | Per year |
|---|---|---|
| Providence (163) | | $50,000 |
| Cranston (124) | | $9,137 |
| Pawtucket (39) | | $3,261 |
| Woonsocket (38) | $1,500 | |
| West Warwick (16) | | $22,784 |
| Central Falls (16) | $123 | |
| Warwick (15) | $1,365 | |
| Coventry (11) | | $5,657 |
| Cumberland (5) | $4,000 | |



## About this statement:

**Published:** Sunday, May 12th, 2013 at 12:02 a.m.

**Subjects:** Children, Crime, Criminal Justice

**Sources:**

RIcapTV.discovervideo.com, "House Committee on Finance - Rise - 4-11-13," April 11, 2013

RILIN.state.RI.US, "Chapter 11-37.1, Sexual Offender Registration and Community Notification," and "2013 -- H555; An Act Relation to Criminal Offenses - Sexual Offender Registration and Community Notification," accessed April 12, 2013

ParoleBoard.RI.gov, "Parole Board & Sex Offender Community Notification Unit," accessed April 12, 2013, and "Sexual Offender Community Notification Guidelines," accessed April 26, 2013

PowerPoint presentation, "Rhode Island Implementation of the Adam Walsh Act," April 10, 2012, accessed April 16, 2013

Memo, "Notification costs," to Joee Lindbeck (special assistant attorney general) from John Pagliarini (former senior executive adviser in Providence) via Steven Pare (Providence public safety commissioner) and Hugh Clements (Providence police chief), dated Feb. 15, 2012, accessed April 17, 2013

Interviews and e-mails, Amy Kempe, spokeswoman, Attorney General Peter Kilmartin, April 16, 17 and 26, 2013

Interview, Joee Lindbeck, special assistant attorney general, April 26, 2013

Interview and e-mails, David Ortiz, spokesman, Mayor Angel Taveras, April 29, 2013

Interviews, voicemail and e-mail, Philip Hartnett, detective sergeant, special victims unit, Providence Police Department, May 1, 7 and 9, 2013

Interviews, Christina O'Reilly, director of communications, Providence Public School Department, May 10, 2013

**Written by:** C. Eugene Emery Jr.
**Researched by:** C. Eugene Emery Jr.
**Edited by:** Tim Murphy

| | | |
|---|---|---|
| Newport (4) | | $2,000 |
| West Greenwich (4) | | $2,000 |
| Johnston (3) | | $11,000 |
| Hopkinton (3) | | $2,550 |
| Smithfield (2) | | "Minimal" |
| Middletown (1) | | $1,000 |
| Richmond (0) | | $1,000 |

When we asked about the source of the Providence number, the attorney general's office produced a memo from Police Chief Hugh Clements reporting the cost was "approximately $50,000 [that year] for the registry and notifications. [Detective Teddy Michael] indicated that the bulk of the cost is related to the notifications to the schools." Providence currently has 39 schools.

So the $50,000 was not just for school notifications, although most of it was.

David Ortiz, spokesman for Mayor Angel Taveras, said the total was $65,000 in 2009, $36,000 in 2010 and $55,000 in 2011.

How much of that was spent on school notifications?

Ortiz referred us to the Police Department, where Detective Sgt. Philip Hartnett, recently put in charge of Providence police's special victims unit, said firm numbers are not available. He said Detective Michael estimated that the schools took up roughly 60 percent to 65 percent of the money.

The costs were high, Hartnett said, because in 2011, the department has routinely sent notices to individual homes of students, although it was not required.

"There are 26,000 students in Providence and it had to be something like that two years ago," he said. "I was amazed by that myself, but it was out of an abundance of caution. The law actually says to notify the schools. They took the step to notify the parents of all the students."

Christina O'Reilly, spokeswoman for the Providence School Department, said when it gets a notice from police, it generates labels for all the students attending each school located within a half mile of a Level 2 offender or within one mile of a Level 3 offender. The labels go to the Police Department, which sends out the mailings, 45 of which have gone out since September. Bus drivers and principals are also notified by the School Department.

Hartnett said there are efforts underway to streamline the system. "Now we are trying to set up an automated telephone system so that a call would go out to each student when we notify the school."

The department was also trying to come up with posters, but with so many sex offenders to track in Providence, the posters quickly became outdated, he said.

As Lindbeck told us, "The real problem is, they move so much and you have to redo this every time they move."

**Our ruling**

Special Assistant Attorney General Joee Lindbeck testified that "two years ago Providence alone spent $50,000 a year notifying the School Department" about residents in the state's sex offender registry.

She was correctly quoting a memo regarding the approximate dollar amount but incorrectly attributed all of the spending on notifications to the School Department.

On the one hand, everyone we spoke with said the biggest chunk of money went for school notifications. On the other, it's clear from the people with whom we spoke that a significant chunk of that money went to notifying other entities as well.

We rate her statement Half True.

*(If you have a claim you'd like PolitiFact Rhode Island to check, e-mail us at politifact@providencejournal.com. And follow us on Twitter: @politifactri.)*

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## The Truth-O-Meter Says:

# In Cranston, it costs $5,000 to $6,000 to send out community notifications on just one Level 3 sex offender.

Peter Palumbo on Thursday, April 11th, 2013 in a House Finance Committee hearing

## R.I. State Rep. Peter Palumbo says it costs $5,000 to $6,000 to warn Cranston neighbors that a Level 3 sex offender lives in their area




Rhode Island state law requires officials to notify neighbors when dangerous sex offenders move into their community. Under a bill proposed by the attorney general's office, the responsibility for making those notifications would move from cities and towns to the state.

During an April 11 hearing on the proposal, House bill 5557, there was discussion of the current cost. (We've written about one such statement by Special Assistant Attorney General Joee Lindbeck in a separate item.)

Rep. Peter Palumbo, D-Cranston, the bill's chief sponsor, said the change would save money for municipal government because their notification costs would disappear.

"I know [in] the city of Cranston it's somewhere between $5,000 and $6,000, I believe, per Level 3 registered offender," he said. "That's what it's costing now to notify the people in the neighborhoods if we have a Level 3 sex offender in there." Level 3 offenders are regarded as most likely to get into trouble again.

The state's website listing sex offenders shows 52 Level 3 offenders registered in Cranston. If Palumbo's claim were true, the city must be spending a lot of money on notifications.

(That doesn't mean authorities had to make 52 notifications. Police only have to warn residents, schools, community organizations and other groups when an offender moves into the area.)

When we checked Palumbo's figures with the attorney general's office, it listed Cranston as having spent just $9,137 for 2011. That would be barely enough for two Level 3 notifications if his numbers were correct.

So we went to Cranston Police Chief Marco Palombo to try to reconcile the numbers. The chief sent us a detailed accounting.

In 2011, the department sent out notifications for seven Level 2 and four Level 3 sex offenders at a total cost of $7,203. (The chief said the $9,137 figure included registration costs.)

Based on the accounting, that averages out to $655 per offender. The costs were similar whether the offender was designated Level 2 or Level 3.

So when Representative Palumbo said that it cost between $5,000 and $6,000 to notify people that a registered Level 3 sex offender has moved into a Cranston neighborhood, his estimate was about eight times too high.

We rate the claim False.

*(If you have a claim you'd like PolitiFact Rhode Island to check, e-mail us at politifact@providencejournal.com. And follow us on Twitter: @politifactri.)*



## About this statement:

**Published:** Sunday, May 12th, 2013 at 12:01 a.m.

**Subjects:** Children, Crime, Criminal Justice

**Sources:**

RIcapTV.discovervideo.com, "House Committee on Finance - Rise - 4-11-13," April 11, 2013.

RILIN.state.RI.US, "2013 -- H555; An Act Relation to Criminal Offenses - Sexual Offender Registration and Community Notification," accessed April 12, 2013

ParoleBoard.RI.gov, "Parole Board & Sex Offender Community Notification Unit," accessed April 12, 2013

Interview, Peter Palumbo, state representative, April 29, 2013

Interviews and e-mail, Marco Palombo, chief, Cranston Police Department, April 26 and 29, and May 3, 2013

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