



March 8, 2006

Honorable F. James Sensenbrenner, Jr.
Chairman
Honorable John Conyers
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Re: Pending Sex Offender Registry Legislation (HR 4472)

Dear Congresspersons:

As researchers, treatment professionals, law enforcement officials, and child advocates, we have devoted our professional careers to preventing child abuse. The recent tragic events involving adult sex offenders are something about which the public is rightly concerned. We have followed with interest several legislative proposals regarding sexual offenders. We applaud your attention to this important problem. As child abuse researchers and advocates for children, however, we urge that such legislation be amended to make it more effective and cost-efficient in promoting community safety and prevention of sexual violence.

The Sex Offender Registration and Notification Act (H.R. 4472) states that its purpose is to respond to "vicious attacks by violent sexual predators." In fact, by being inclusive of anyone who has been convicted of any sexual offense, it applies to some who are not in fact violent sexual predators and do not pose a substantial risk of re-offense.

Specifically, we offer the following major recommendations for HR 4472, all of which can be supported with scientific data:

1. Delete the requirement of lifetime registration for juvenile offenders, who are very different from adult sex offenders in both their development and their risk for reoffense.
2. Require or at least encourage states to adopt a tiered approach to identifying "high risk" offenders based on empirically-based risk factors, such that aggressive notification and internet disclosure would be reserved for high-risk sex offenders.

Association for the Treatment of Sexual Abusers

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3. Allow a reasoned process for low-risk offenders to be removed from state and federal registries.
4. Adopt a more accurate definition of the term “sexual predator” for the purposes of registration and notification.

Following, you will find more specific recommendations and research supporting them.

1. We respectfully but strongly suggest that the lifetime registration requirement for juvenile sex offenders be eliminated from this proposal.

- The vast majority of these youth remain free of sexual offense recidivism at long-term follow-up. Low sex offense recidivism rates are a consistent finding across over five decades of follow-up research comprising over 30 U.S. follow-up studies (e.g., less than 8% in most treatment follow-up studies).
- As many as 1/3 of sexually abused children will demonstrate some sort of sexual behavior problem, usually transient and minor, in response to their own abuse. In some cases, this behavior may even involve other children or younger children and result in a delinquent adjudication. However, the motivation and manifestation of these sexually inappropriate behaviors are very different from those of adult offenders. And, children with sexual behavior problems generally respond well to treatment interventions. As advocates for sexually abused children, we do not wish to see the added burden of mandatory lifetime public labeling as a “sex offender” adding to the stigma of abused children.
- The United States has a long tradition of separating our handling of juvenile delinquents from our handling of adult criminals. We recognize, and the data support, that most youth who break the law during their childhood or early adolescence can and will mature out of this behavior given appropriate guidance and limits. Consequently, our society believes that individuals should not be stigmatized for life on the basis of their childhood behavior. Including juveniles under H.R. 3132 violates this tradition of American justice and creates a unique class of juvenile delinquents who will be denied fair opportunities for employment, education, and housing, despite research evidence that very few of them will go on to commit new sexual or violent offenses. Juveniles should not be subjected to registration or notification.
- Additionally, we further suggest exemptions for young adults under age 22 who have had a consensual relationship with a minor not more than 4 years younger.

2. States should be required or strongly encouraged to adopt a tiered approach to identifying “high risk” offenders using research-based risk factors, such that aggressive notification and internet disclosure would be reserved for high-risk sex offenders. In fact, many states have decided that because the consequences of notification are so severe, they will only notify the public about offenders who pose a high risk. As well, some states have recognized that over-inclusive notification can actually be harmful to public safety by diluting the ability to identify truly dangerous offenders and by disrupting the stability of low risk offenders in ways that may increase their risk. The careful work that these states have done to differentiate risk levels of sexual offenders can inform a national model of registration and notification.

- There is a perception that the vast majority of sex offenders will repeat their crimes. However, sex offenders comprise a very broad range of offense patterns and re-offense risk. Research studies by the US Dept. of Justice and the Canadian Government have found that sexual offense recidivism rates are much lower than commonly believed. The Bureau of Justice Statistics found that of 9,691 sex offenders released from prison in 1994, 5.3% were rearrested for a new sex crime

within the 3-year follow-up period. Sex offenders were less likely than non-sex offenders to be rearrested for any offense — 43 percent of sex offenders versus 68 percent of non-sex offenders. The Solicitor General's Office of Canada, in a study of 29,000 sex offenders from Canada, the U.S., and England, found, on average, that 14% were rearrested for a new sex crime within 4 years. Some subgroups of sex offenders are more dangerous than others. Studies that have tracked sex offenders over longer follow-up periods have found that pedophiles who molest boys, and rapists of adult women, were most likely to recidivate. Sex offenders with past arrests are more likely to reoffend than first-time offenders. Those who comply with probation and treatment have lower reoffense rates than those who violate the conditions of their release. Sex offenders who target strangers are more dangerous than those with victims inside their own family. Although official recidivism rates may underestimate true offense rates, the most aggressive sex offender registration and notification strategies should be reserved for the sex offenders who pose a high risk to public safety.

- Progress has been made in the science of risk assessment, which allows us to estimate the likelihood that a sex offender will commit a new sex crime in the future. Although we cannot predict with certainty that any particular offender will act in a specific way, we can estimate, with moderate accuracy, whether or not an offender belongs to a high- or low-risk group. Using risk factors that have been empirically correlated with recidivism, qualified practitioners can use scientific risk assessment tools to screen offenders into risk categories. These procedures are similar to the ways in which insurance companies assess risk and assign premiums, and how doctors evaluate a patient's risk for developing a medical illness. Risk assessment allows us to identify the most dangerous sex offenders, and apply the most intensive interventions to those who need the greatest level of supervision, treatment, and restriction.
- It should be noted that there is no evidence that community notification reduces sex offense recidivism or increases community safety. The only study to date found no statistically significant difference in recidivism rates between offenders who were subjected to notification in Washington (19% recidivism) and those who were not (22% recidivism). Sex offenders who were subjected to community notification were, however, arrested more quickly for new sex crimes than those not publicly identified. It was found that 63% of the new sex offenses occurred in the jurisdiction where notification took place, suggesting that notification did not deter offenders or motivate them to venture outside their jurisdictions (where they would be less likely identified) to commit crimes. Based on these findings, community notification appears to have little effect on sex offense recidivism.
- Research suggests that about one-third to one-half of sex offenders subjected to community notification experience dire events such as the loss of a job or home, threats or harassment, or property damage. Physical assault seems to occur in 5-16% of cases. About 19% of sex offenders report that these negative consequences have affected other members their households. It has been suggested that notification may, ironically, interfere with its stated goal of enhancing public safety by exacerbating the stressors (e.g., isolation, disempowerment, shame, depression, substance abuse, lack of social supports) that may trigger some sex offenders to relapse, or to commit other types of crimes. Such dynamic factors have been associated with increased recidivism, and although sex offenders inspire little sympathy from the public, ostracizing them may inadvertently increase their risk.
- Sexual offender policies are based partly on the myth that sex offenders cannot be treated. Early studies, conducted in the 70's and 80's, were unable to detect differences in recidivism rates between sex offenders who had undergone treatment and those who had not. This finding was widely publicized, leading to skepticism about the benefits of treatment, and opening the door to punitive public policies. Actually, although the research is not unequivocal, treatment has been

found to decrease sex offense recidivism. Recent, statistically sophisticated studies with extremely large combined samples have found that contemporary cognitive-behavioral treatment does help to reduce rates of sexual reoffending by as much as 40%. However, treatment does not work equally well for all offenders (like any psychological or mental health treatment -- or medical interventions, for that matter). Treatment failure is associated with higher recidivism rates, and research indicates that sex offenders who *successfully* complete a treatment program reoffend less often than those who do not demonstrate that they "got it."

3. Allow for a reasoned process by which low risk offenders can petition to be removed from state and federal registries.

- There are times that public notification would cause undue harm to the offender's family such that the risks of notification would outweigh the benefits to the community. In particular, incestuous perpetrators have a low risk of re-offense, and their families and/or victims may be reluctant to report sexual abuse if it means loss of breadwinner's job and inadvertent public identification of the family.
- Lifetime registration may not be necessary for all sex offenders and may in fact interfere with the stability of low-risk offenders by limiting their employment and housing opportunities. Sex offenders represent a wide range of offense patterns and future risk. Research has found that community notification of low risk offenders may unnecessarily isolate them and lead to harassment and ostracism, which can inadvertently increase their risk.
- It is recommended that sex offenders should be allowed to petition for release from registration when the sex offender is deemed to pose a low risk to the community AND the offender has successfully completed a sex offender treatment program AND the offender has been living in the community offense-free for at least five years.
- Regarding strict culpability on those who fail to register or update their information, the penalty is so severe—5-10 years—that there should be some consideration for an honest mistake in reporting (especially for low-level/low-risk offenders).

4. We are concerned that the definition of "predator" in HB 4472 is too broad. We need to reserve such inflammatory terminology for the most dangerous and violent sex offenders. Using the label indiscriminately dilutes the public's ability to identify truly high risk offenders and to respond accordingly. If states require an individual to register as a "sexual predator," they should clearly distinguish such offenders as discussed below.

- The definition of "predator" differs from state to state, but is generally reserved for the most dangerous sex offenders. Many states use similar terminology to describe this type of sex offender and the offenses he perpetrates. The term should more accurately reflect the clinical construct to which it refers, describing individuals who have longstanding patterns of sexually deviant behaviors and who meet criteria for paraphilic disorders. In the words of the Kansas Sexually Violent Predator Act, "predatory acts" are those "*acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.*" The state of California states: "*'Predatory' means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.*" In some states, the definition includes criteria involving the use of violence, weapons, or causing injury during the commission of a sex crime, or those offenders who have had multiple victims. Repeat

offenders, and those who have committed abduction of children or adults for sexual purposes may also be considered predators. Such definitions are more consistent with the term “sexually violent predator” as defined in civil commitment proceedings, which require a convicted sex offender to have a mental abnormality predisposing him to a likelihood of future sexually violent crimes.

- The term “sexual predator” should be reserved for sex offenders who have engaged in a long-term pattern of sexually deviant behavior, who are assessed to be at high risk to reoffend, who have assaulted strangers or non-relatives, who have used violence, weapons, or caused injuries to victims, who have had multiple victims and/or arrests, or who have committed abduction, kidnapping, false imprisonment, or sexually motivated murder or attempted murder.
- It is important to remember that although recent media attention has been focused on child abduction, rapists of adult women can also be highly dangerous sexual predators. They often have many victims, and are more likely than child molesters to use violence or weapons to gain compliance from victims. The majority of victims of sexually motivated murders are adult women.
- It is also important to remember that recent high-profile cases do not represent the “typical” sex offender. Sexually motivated abduction and murder are rare events, and such cases should not become the impetus for legislation affecting the heterogeneous group of sexual offenders.
- Electronic monitoring may be a useful tool for repeat offenders who have predatory offense patterns, a history of violence, a history of absconding or probation violations, and/or are considered at high risk for recidivism. Lifetime electronic monitoring, however, is neither necessary nor cost effective to implement with all sex offenders.

We hope that these ideas are useful to you in undertaking this most important task, and wish you the very best in your efforts. We believe our communities’ safety is vitally important and thank you for the opportunity to contribute our recommendations.

Sincerely,

A handwritten signature in black ink that reads "Robin McGinnis". The signature is written in a cursive, flowing style.

Robin McGinnis, M.S.W.
President - ATSA
Alternative Behavior Treatment Centers
Mundelein, IL

About The Association for the Treatment of Sexual Abusers:

The Association for the Treatment of Sexual Abusers is an international, multi-disciplinary professional association dedicated to the research, treatment, and prevention of sexual assault. ATSA's members include the world's leading researchers in the study of sexual violence and also professionals who conduct evaluations and treat sexual offenders, sexually violent predators, and victims. Members work closely with public and private organizations such as prisons, probation departments, child protection agencies, State Attorney's Offices, Public Defender's Offices, the National Council Against Sexual Violence, and state Legislatures in an effort to protect citizens from sexual assault. We advocate for evidence-based practices and policies that are most likely to protect the public from sexual violence, while allowing for the rehabilitation of sexual offenders.

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