

June 3, 2016

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<http://www.regulations.gov>



Luis C. deBaca, Director
SMART Office
810 7th Street, NW
Washington, D.C. 20531

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

Dear Director deBaca:

On behalf of the Association for the Treatment of Sexual Abusers, I am writing to offer comments and feedback related to the proposed Supplemental Guidelines for Juvenile Registration under the Sex Offender Registration and Notification Act, dated April 11, 2016.

When sex offender registration was first mandated through federal legislation in the 1994 Wetterling Act, states were not required to include youth adjudicated as minors on sex offender registries, although some states chose to do so. However, with the passage of the Adam Walsh Act, including the Sex Offender Registration and Notification Act (SORNA), in 2006, sex offender registration and notification (SORN) requirements were extended to include juvenile offenders as young as 14 years of age for lengthy durations up through the registrant's life. As of 2014, 41 states have some type of registration for juveniles adjudicated for sexual crimes and 30 states either permit or require public website posting for those juveniles. Additionally, the vast majority of states require SORN for juveniles transferred to criminal court and convicted as an adult.

While the intent of these laws was to increase public safety, current research results indicate that registration and public notification policies, particularly when applied to children, do not reduce sexual recidivism and may do more harm than good.¹ Specifically, current research findings identified iatrogenic effects of juvenile SORN related to the interruption of pro-social development of youth by disrupting positive peer relationships and activities, interfering with school and work opportunities,

facilitating housing instability or homelessness, and increasing social alienation.ⁱⁱ These factors may in turn lead to an increase rather than decrease in the juvenile's risk for recidivism.

While the above certainly calls into question the continued appropriateness of juvenile SORN as an evidence-based sex offender management strategy and ATSA would like to see such practices curtailed, we recognize that the SMART Office must carry out federal mandates. Therefore, the remainder of these comments pertain specifically to the suggested changes being proposed by the SMART Office to address juvenile SORN.

Per the Supplemental Guidelines for Sex Offender Registration and Notification dated January 11, 2011, SORNA covers juveniles 14 years of age and older who are adjudicated for serious sexual offenses. Although such information is not required to be placed on the public sex offender registry website or be made public, many jurisdictions continue to be concerned about the registry of any kind for such juveniles. The SMART Office has recognized these concerns in its new proposed Supplemental Guidelines for Juvenile Registration under the Sex Offender Registration and Notification Act dated April 11, 2016, which permits jurisdictions to have a discretionary process to register children, including processes that may include prosecution and registration of juveniles who have committed serious offenses as adults.

ATSA would like to offer specific feedback related to the Supplemental Guidelines concerning two main areas: 1) issues related to the waiver of children over to the adult criminal justice system; and 2) issues relates to the consistency of jurisdiction-based registry systems.

The underlying tenant of waiving children to adult court for prosecution and registration purposes is based on the idea that the adult system is more suited to punish and manage children who have committed violent offenses. However, ATSA is concerned about the unintended consequences of such a policy. First, it is noted that the severity of crime type is not a proxy for recidivism risk.ⁱⁱⁱ Research has shown that children waived over to adult court do no better in terms of reducing recidivism than those served by the juvenile court,^{iv} and those convicted as adults may no longer have access to juvenile-relevant treatment services that have been shown to be effective in reducing future criminal behavior. Further, research has shown that prosecutors and judges dissatisfied with juvenile registry laws have implemented work-arounds that have impacted the ability for children to have access to developmentally appropriate and effective services(e.g., pleading a youth to a non-registerable offense).^v Thus, the proposed guidelines may actually incentivize the implementation of practices that will interfere with, rather than enhance, the services that have been shown to increase public safety.

ATSA wishes to emphasize that, increasingly, research findings show that registration and public notification especially as applied to children, are not effective. We recommend that if the registration of children is to continue in any fashion, that it be reserved for those children who are at the highest

possible risk for future sexual reoffending including continued risk as an adult. The dilemma is that it is difficult to identify those highest risk juveniles as juvenile risk assessment instruments lack sufficient validation and are not able to accurately predict recidivism beyond age 18. Therefore, an assessment that includes considerations and characteristics correlated with risk in delinquent populations, such as the use of a weapon, multiple victims and/or general criminality, is essential, but will identify those youths at highest risk for general criminality and not those at highest risk for future sexual offending.

It is also important to keep in mind that research indicates that, once detected, the majority of youth who have engaged in sexually abusive behavior do not continue to engage in these behaviors.^{vi} Sexual recidivism estimates for adjudicated youth who engaged in sexually abusive behavior have been reported in scores of studies conducted over decades of research with the majority of these studies resulting in low rates of sexual recidivism. A study completed in 2010 reviewed 63 data sets looking at the sexual recidivism rates for 11,219 youth who had sexually offended and estimated a sexual recidivism rate of approximately 7% across a 5-year follow-up period.^{vii} Even across a twenty-year prospective follow-up study, sexual recidivism rates remain low. In a more recent review of 106 datasets of more than 33,000 juvenile sex offenders, the more contemporaneous studies (those in the last 15 years) indicate a 5-year mean recidivism rate of 2.75%^{viii}, which brings into question the notion that juveniles continue to present significant risk for sexual recidivism in adulthood.^{ix} It is also important to recognize that, if these youth reoffend, they are far more likely to do so with a nonsexual offense than with a sexual offense.

The second main area on which ATSA would like to comment is the issue of consistency of the jurisdiction-based registry systems and processes. While the updated guidelines provide greater flexibility for implementation of juvenile SORN, there is limited guidance offered to assist jurisdictions in implementing changes to their juvenile SORN practices. This, in turn, introduced the likelihood of resulting in greater inconsistency rather than enhanced consistency across jurisdictions, resulting in more confusion and compliance difficulties on the part of registrants, registry personnel and the public. Encouraging specific strategies for improving juvenile SORN within the updated guidelines would enhance consistency and provide additional guidance to states wanting to alter their current juvenile SORN practices. Additionally, clearly articulating that adherence to the new guidelines is not contingent upon a specific, minimum number of juvenile registrants, or expansion of the waiver and resulting juvenile SORN system, is also recommended in order to ensure that the SORN for youth is utilized in a judicious and thoughtful manner.

As noted previously, ATSA supports giving jurisdictions greater discretion as to whether to register children adjudicated for sexual crimes and would like to thank the SMART Office for their continued efforts in developing a more responsive and nuanced policy. It is our hope that the above suggestions may assist in further refinement of juvenile SORN, help promote greater consistency across all jurisdictions, and facilitate more effective policies for youth who commit sexually abusive behavior.

Recommendations

1. Develop quality, developmentally appropriate assessment that take into account the youth's clinical, family and environmental situation to formulate effective, individualized treatment and management plans for youth.
2. Remove requirements for broad based youth registration and notification.
3. Include language that supports the use of evidence based treatment and management strategies for youth.
4. Remove language that promotes the waiver of youth to adult courts.

Respectfully Submitted,

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ⁱ Barnoski, 2008; Bastini et al., 2011; Caldwell, 2007; Caldwell & Dickinson, 2009; Caldwell et al., 2008; Letourneau et al., 2008; Letourneau et al., 2009; Letourneau et al., 2010; Zimring et al., 2007

ⁱⁱ Comartin et al., 2009; Denniston, 2016; Harris et al., 2015; Stevenson et al., 2013

ⁱⁱⁱ Bortner et al., 2000; Myers, 2005

^{iv} Rinehart et al., in press

^v Calley, 2008; Letouneau et al., 2009b

^{vi} Caldwell, 2010; Harris & Hanson, 2004; Reitzel & Carbonell, 2006

^{vii} Caldwell, 2010

^{viii} Caldwell, in press

^{ix} Worling, Littlejohn, & Bookalam, 2010