Order Code RL32800

Sex Offender Registration and Community Notification Law: Enforcement and Other Issues

Updated March 7, 2006

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Summary

To protect the public, Congress has enacted laws to imprison sex offenders and, once they are released from prison, to more closely monitor their movement in the community. With passage of the Jacob Wetterling Act in 1994, Congress required states to establish a sex offender registration program. Since 1994, Congress has periodically amended the act, by requiring sex offenders to: register with a state law enforcement agency more often and for longer periods; register when moving to a new state; register with the Federal Bureau of Investigation (FBI); provide law enforcement with identification documents, such as a photograph, and fingerprints; and notify institutions of higher education upon enrollment or employment of their status as sex offenders. These amendments also have increased penalties for convicted sex offenders. Congress further amended the act by broadening registration coverage to include sex offenders convicted in federal or military courts. Federal sex offender statutes also allow public access to sex offenders' addresses and require creation of a national database at the FBI for tracking their movements. Most recently, the 108th Congress passed the PROTECT Act (P.L. 108-21) specifically to protect children against sexual abuse, and the 109th Congress added provisions on sex offenders to the Violence Against Women Act reauthorization (P.L. 109-162).

Passage of sex offender registration and notification laws has been and remains controversial. Some essential policy questions about sex offender registration and notification laws concern whether they are effective and enforced. Recent survey findings suggest that some states are poorly enforcing sex offender registration. While Congress has appropriated substantial funding for states to use for costs associated with sex offender registration requirements, a public policy question is whether additional or more targeted funding is needed. In addition, recidivism is often used as a measure of the impact of registration and notification requirements on the behavior of sex offenders. Current research on recidivism faces methodological issues. Finally, a legal scholar argues that these statutes are "bills of attainder," that is, they punish specifically designated persons or groups without a judicial trial, and thus are unconstitutional.

On December 8, 2005, H.R. 4472, the Children's Safety and Violent Crime Reduction Act of 2005 was introduced, with many of the same provisions as an earlier House-passed bill (H.R. 3132), the Children's Safety Act of 2005. Areas of difference between the two bills relate to tiers of sex offenders with different registration and address verification requirements for each tier, mandatory minimum penalties, federal assistance in the location and apprehension of sex offenders who violate registration requirements, identification and location of sex offenders during a major disaster, ownership of a firearm by some sex offenders, and protection of the personal data of children. On September 14, 2005, the House passed H.R. 3132, which, among other provisions, would create a public registry with information on sex offenders; maintain a federal DNA database on violent predators who target children; tighten registration requirements; increase penalties; monitor sex offenders electronically; impose mandatory minimum sentences; and civilly commit certain sexual predators. This report will be updated.

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Recent Developments

On December 8, 2005, Congressman James F. Sensenbrenner introduced H.R. 4472, the Children's Safety and Violent Crime Reduction Act of 2005. The act contains many sex offender provisions that are included in H.R. 3132, which the House had passed on September 14, 2005, and referred to the Senate on September 15, 2005. H.R. 4472 would provide for three tiers of sex offenders with different registration and address verification requirements for each tier. Other differences between provisions of H.R. 4472 and H.R. 3132 include mandatory minimum penalties, federal assistance in the location and apprehension of sex offenders who violate registration requirements, identification and location of sex offenders during a major disaster, prohibition of firearm ownership by some sex offenders, and protection of personal data of children. Also on December 8, 2005, the President signed into law the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162), which contains provisions related to sex offenders. (See **Legislative Proposals and Activities: 109th Congress**, later in this report.)

Introduction

According to the Center for Sex Offender Management, most sexual assaults, whether directed at a child or an adult, are committed by someone known to the victim or the victim's family. Rather than a stranger, often relatives, friends, baby-sitters, or persons in positions of authority over the child are more likely to commit a sexual assault. Although the vast majority of sex offenders are males, females also commit sexual crimes. In response to community outrage over several particularly heinous sex offense crimes, Congress, over the past decade, has passed a number of laws concerning sex offenders, requiring registration with law enforcement agencies and community notification.

Enacted originally in 1994 these laws were designed to protect the public by both imprisoning sex offenders for longer periods and tracking their movements upon release from prison. While there had been some earlier state action on sex offender registration, with the public's increasing concern Congress passed the Violent Crime Control and Law Enforcement Act of 1994 (Crime Act of 1994), which includes Title XVII, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender

Registration Act (Wetterling Act).[1] Congress further amended the Crime Act of 1994 with passage of Megan's Law in May 1996 and the Pam Lychner Sexual Offender Tracking and Identification Act in October 1996. Collectively, these three laws require states to establish registration programs and to strengthen state procedures for monitoring sex offenders. In addition, Congress has passed a number of other amendments to the Wetterling Act that increased the types of crimes for which sex offenders were required to register, increased penalties for sex offenders and allowed states more flexibility in registering and tracking sex offenders.

This report provides a summary of current major provisions of federal sex offender laws, followed by a more detailed analysis of these provisions. It identifies and analyzes five major public policy issues: the constitutionality of state laws requiring sex offender registration; the extent to which registration laws are enforced; the effectiveness of community notification laws; the adequacy of federal funding supporting registration and notification; and the methodology of research on sex offender recidivism. This report also discusses additional legislation pending in the 109th Congress that would further strengthen sex offender provisions.

Summary of Federal Sex Offender Registration Laws

Federal law requires states, to be eligible to receive certain federal funds, to have programs that impose certain penalties on convicted sex offenders, that require state law enforcement and prison officials to perform important functions in registering and tracking released sex offenders, and that allow the public access to personal information on sex offenders in the community. These laws also authorize federal financial assistance to states. Following is an identification of major provisions of federal laws dealing with sex offender registration and community notification:

Registration Requirements for Sex Offenders

- requires a convicted sex offender, including a child pornographer, to register with a designated state law enforcement agency;
- requires a convicted sex offender to notify a state law enforcement agency within 10 days of an address change;
- requires a convicted sex offender to register an out-of-state address change with the state law enforcement agencies of both the old state and the new state within 10 days of establishing residency in the new state;
- requires a convicted sex offender to register a current address with the Federal Bureau of Investigation (FBI);[2]

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[1] P.L. 103-322 (H.R. 3355); 108 Stat. 2038.

[2] Reporting directly to the FBI is required if the sex offender resides in a state without a minimally sufficient sex offender registration program. All 50 states have established such

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- requires a sex offender to notify the state of each college or university where the offender works, carries on a vocation, or is a student of any change in employment or enrollment at the college or university.

Military

- extends registration requirements to sex offenders convicted in a federal or military court.

Law Enforcement Responsibilities

- requires a state prison officer, probation officer, or the court to inform a sex offender who is released from prison, placed on parole, supervised release, or probation of the registration requirements described above;
- requires the state law enforcement agency or court to obtain the name, identifying factors, anticipated future residence, offense history, and documentation of any treatment for mental abnormality or personality disorder of the sex offender and to forward this information to the FBI within three days of its receipt;
- requires a state prison officer or the court to obtain the sex offender's fingerprints and photograph upon release from prison;
- requires the Attorney General to establish a national database at the FBI to track the movements of a person who has been convicted of a criminal offense against a minor, a person who has been convicted of a sexually violent offense, or a person who is a sexual predator;
- requires verification of a sex offender's address at least once a year; and
- requires states to establish and maintain an Internet site for releasing information on sex offenders and to create a process for correcting erroneous information.

Penalties

- provides for the first offense, imprisonment for up to one year for a sex offender who fails to register and, for a second offense, imprisonment for up to 10 years; and
- extends registration requirement to life for a person who has two or more convictions for a criminal offense against a minor or for a sexually violent offense, or who has been determined a sexually violent predator.

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[2] (...continued)
a registration program.

Public Housing

- denies public housing to anyone who is required to register for life as a sex offender.

Public Access to Information

- allows members of communities access to information on sexual offenders in neighborhoods;
- allows the FBI to release relevant information on a registered sex offender to the public; and
- allows public access to an Internet site with information on a sex offender.

Institutions of Higher Education

- requires institutions of higher education to inform the campus community of where to obtain information on registered sex offenders.

Federal Assistance to States

- provides grants to states to offset costs directly related to complying with sex offender registration requirements;
- provides grants to assist each state in developing information and technological systems for criminal justice purposes, such as tracking sex offenders; and
- provides federal assistance to a state or law enforcement agency in enforcing registration of a convicted sex offender and in apprehending and prosecuting one who fails to register.

Detailed Description of Federal Sex Offender Laws

As stated earlier, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994 (Crime Act of 1994), which included Title XVII, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Jacob Wetterling Act).[3] Congress subsequently passed several laws to amend the

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[3] P.L. 103-322 (H.R. 3355); 108 Stat. 2038. In 1990, an 11-year-old boy, Jacob Wetterling, was abducted from his home in St. Joseph, Minnesota, by an armed man wearing a mask; the child was never found, and his abductor was never identified. During the investigation, it was learned that local law enforcement was unaware that sex offenders released from prison lived in halfway houses in St. Joseph. The disappearance of her son caused Patty Wetterling to advocate for missing children. The Governor of Minnesota appointed her to serve on a task force that recommended stronger sex offender registration requirements in

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Crime Act of 1994, including Megan's Law and the Pam Lychner Sexual Offender Tracking and Identification Act. Provisions of these sex offender laws and their evolution are described in detail below.

The Jacob Wetterling Act

Major provisions of the Jacob Wetterling Act of 1994 direct the Attorney General to establish guidelines for state programs that require (1) a person convicted of a crime against a minor or who is convicted of a sexually violent offense to register a current address with a state law enforcement agency for 10 years after release from prison; and (2) a person who is a sexually violent predator to register a current address with a state law enforcement agency until a state board composed of experts in the field of the behavior and treatment of sex offenders determines that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to commit a predatory sexually violent offense.[4]

Further, the act identifies the responsibilities of a state prison official, probation officer, or court when a sexual offender is released from prison. When a convicted sexual offender is released from prison, placed on parole, supervised release, or probation, the person must be informed by a state prison officer, probation officer, or the court of the requirement to register; to notify a state law enforcement agency within 10 days of an address change; and to register an out-of-state address change with the state law enforcement agency of both the old state and the new state within 10 days of establishing residency in the new state, provided the new state has a registration requirement. A prison officer or the court must obtain the name of the sex offender, fingerprints, a photograph, identifying characteristics, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the sex offender. In addition, the act requires a prison officer or court to forward this information to a state law enforcement agency within three days of its receipt. The state law enforcement agency is required to enter the information into the state record system; to notify the local law enforcement agency with jurisdiction where the sex offender expects to live; and to transmit the sex offender's conviction data and fingerprints to the FBI.

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[3] (...continued)
that state.

[4] The Jacob Wetterling Act defines a *sexually violent predator* as a person who has been convicted of aggravated sexual abuse or sexual abuse or engaging in physical contact with someone else with the intention of committing aggravated sexual abuse or sexual abuse. A *sexually violent offense* means any criminal offense that consists of aggravated sexual abuse or sexual abuse or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse. The United States Code defines *aggravated sexual abuse* as causing another person to engage in a sexual act by using force or by threatening the person's life or safety or by rendering the person unconscious through administering drugs, intoxicant, etc. (18 U.S.C. § 2241). *Sexual abuse* is defined as causing another person to engage in a sexual act by threatening or causing the person to be afraid or by engaging in a sexual act with a person who is either incapable of knowing what is occurring or physically incapable of declining to participate in the act (18 U.S.C. § 2242).

On the initial registration anniversary of a person who is required to register for 10 years, a state law enforcement agency must mail a nonforwardable verification form to the last reported address of the person. Within 10 days of receipt of the verification form, the person must return it to the state law enforcement agency. A person who must register as a sex offender until a state board determines that he or she is unlikely to commit a predatory sexually violent offense must verify his or her address every 90 days either after the date of release from prison or the commencement of parole. This person also has 10 days to return the address verification form to the state law enforcement agency. A sex offender who is required to register and fails to do so or to keep the registration current is subject to state criminal penalties.

As originally enacted in 1994, the law provided that information on sex offenders that was collected by states was made available only to law enforcement agencies and government agencies conducting confidential background checks. While the designated state law enforcement agency and any local law enforcement agency authorized by the state agency to protect the public could release relevant information concerning a specific sex offender, it could not identify the sex offender's victim. This provision was later amended by Megan's Law (see below).

The act required a state to implement a sex offender registration program within three years of the law's enactment in 1994, with a possible extension of two years. Any state that did not comply would become ineligible to receive 10% of its share of Byrne formula grant funds that normally would be available to it.[5] Instead, these funds would be redirected to states that complied with provisions of the law.

Megan's Law

In May 1996, Congress enacted Megan's Law (P.L. 104-145), which amended the Jacob Wetterling Act by eliminating the requirement that data collected under state sex offender registration programs be confidential and by mandating the release of information that is necessary to protect the public from registered offenders.[6] As a result of Megan's Law, now residents of communities can be informed of sex offenders' whereabouts, for example, by visiting a local police station or a state Internet site.

The Pam Lychner Act

Since provisions of the Jacob Wetterling Act and Megan's Law applied only within states, President Clinton believed that a national sex offender registration system would improve investigations of sex crimes and would enable state law

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[5] Byrne formula grants provide federal funding to states to assist local law enforcement in combating crime and improving public safety.

[6] Seven-year-old Megan Kanka of Hamilton Township, New Jersey, was raped and murdered by a neighbor who previously had been imprisoned for two sex offenses against children. Community residents were unaware that a child sex offender resided in the area. Consequently, Megan's parents successfully lobbied for state and federal notification laws.

enforcement agencies to communicate better with each other in tracking sex offenders who cross state lines. Consequently, in June 1996, he directed the Attorney General to create a national registration system based on data acquired under provisions of the Jacob Wetterling Act.[7]

In October 1996, Congress passed the Pam Lychner[8] Sexual Offender Tracking and Identification Act (Lychner Act)[9] to amend the Violent Crime Control and Law Enforcement Act of 1994. While the Jacob Wetterling Act required a *state law enforcement agency* to forward the fingerprints and a photograph of a sex offender to the FBI, the Lychner Act requires a *sex offender* residing in a state without a minimally sufficient sexual offender registration program[10] to register a current address with the FBI, as well as provide the FBI with his or her fingerprints and a current photograph.[11]

Major provisions of the act require the Attorney General to establish a national database at the FBI to track the movements of a person: who has been convicted of a criminal offense against a minor; who has been convicted of a sexually violent offense; or who is a sexually violent predator. In addition, the act requires the FBI to verify the registered address of a sex offender residing in a state without a minimally sufficient sexual offender registration program. Sex offenders who fail to comply with registration requirements can be fined up to $100,000 and imprisoned for up to one year for the first offense. If a second offense occurs, the sex offender can be fined up to $100,000 and imprisoned for up to 10 years. The act modifies provisions relating to the length of registration required of a sex offender by extending registration to life for a person who has two or more convictions for a criminal offense against a minor or for a sexually violent offense or who has been determined a sexually violent predator. To protect the public, the FBI can release relevant information concerning a registered sex offender, but cannot identify the victim of a sex offender.

Legislation Enacted in the 105th Congress

The 105th Congress amended the Jacob Wetterling Act as part of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies

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[7] William J. Clinton, "Memorandum on the Development of a National Sexual Offender Registration System," *Presidential Papers of the Administration of William J. Clinton*, June 25, 1996, p. 979.

[8] Pam Lychner was assaulted in Houston, Texas by a man with prior sex offense convictions who had been released early from prison on two other occasions. According to reports of that time, the timely appearance of her husband prevented her attacker from sexually assaulting and perhaps killing her.

[9] P.L. 104-236 (S. 1675), 110 Stat. 3093.

[10] The act defines a minimally sufficient sex offender program as a state sex offender program that (1) requires the registration of a sex offender; (2) participates in the national database of sex offenders; (3) provides for at least an annual verification of address; and (4) requires a released sex offender to register for at least 10 years.

[11] All states now have sexual offender registration programs.

Appropriations Act for FY1998 to allow states greater flexibility in implementing their sex offender registration programs.[12] Enacted in 1997, these amendments provide for a court, after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies, to determine whether a person is a sexually violent predator. The Attorney General can waive this requirement upon determining that the state has established alternative procedures or legal standards for designating a person as a sexually violent predator. The Attorney General can also approve alternative measures of comparable or greater effectiveness in protecting the public from especially dangerous or recidivist sex offenders.

The Wetterling amendments of 1997 modified the duties of responsible officials upon release, parole, supervised release, or probation of a sex offender. Under such circumstances, these officials are now directed to follow state law concerning, for instance, reporting of a sex offender's address. Registration procedures were revised to ensure that states promptly: provide registration information to a law enforcement agency with jurisdiction where the person is expected to reside and that the information is entered into the appropriate state records or data system; transmit conviction data and fingerprints for sex offenders who are required to register with the FBI; verify at least once a year the addresses of sex offenders who are required to register; update address information and forward it to a law enforcement agency in the jurisdiction where the person will reside and record it in the appropriate state records or data system; and establish procedures to accept registration information from persons who were convicted in another state, convicted of a federal offense, or sentenced by a court martial, as well as from nonresident offenders who have crossed a state line to work or attend school.

Other provisions of the 1997 Wetterling amendments extended registration requirements to sex offenders convicted in federal or military courts, requiring them to register in accordance with the laws of the states where they reside. Federal and military authorities must notify these sex offenders of their obligation to register. The Wetterling amendments also contain provisions expressing the sense of Congress that each state enact legislation making it a crime to stalk an individual, especially a child, without requiring that the individual be physically harmed or abducted before a stalker is restrained or punished.[13]

In 1998, Congress passed the Protection of Children from Sexual Predators Act[14] which amended the Crime Act of 1994 to establish in the Bureau of Justice Assistance in the Department of Justice the Sex Offender Management Assistance Program (SOMA). The purpose of SOMA is to provide grants to eligible states to offset costs directly related to complying with the sex offender registration requirements. To become eligible for SOMA grants, the governor of a state must: apply each year to the Director of SOMA; and submit information showing that the state is in compliance with sex offender registration requirements and has penalties

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[12] P.L. 105-119; 111 Stat. 2461

[13] P.L. 105-119; 111 Stat. 2464-2465.

[14] P.L. 105-314; 112 Stat. 2985.

comparable to or greater than federal penalties for sexually violent offenses. (Additional information on SOMA is provided later in this report.)

Congress passed the FY1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act[15] in 1998, which further amended the Jacob Wetterling Act. Among other provisions, the amendment set the penalty for a person who is: (1) convicted as a sex offender in military court and is released from prison; (2) who is on probation and fails to register in the state where the person resides, is employed, carries on a vocation, or is a student; and (3) who fails to notify the FBI of a change in address. For the first offense, the person can be imprisoned a maximum of one year; for a second and subsequent offense, the person can be imprisoned a maximum of 10 years. Congress also passed legislation in 1998 requiring a public housing agency to conduct criminal history background checks on applicants for federally assisted housing and to deny anyone admission who is required to register for life under a state sex offender registration program.[16]

Under provisions of the Crime Identification Technology Act of 1998, the Department of Justice (DOJ), through a grant process, can assist each state in developing information and identification technologies and systems. DOJ's Office of Justice Programs can award a grant to a state for various purposes, including promoting the compatibility and integration of national, state, and local systems for criminal justice purposes, such as cross-state identification of sexual offenders.[17] (Additional information on these funds is provided later in this report.)

Legislation Enacted in the 106th Congress

Two laws enacted during the 106th Congress addressed aspects of sex offender registration in the District of Columbia and on campuses of institutions of higher education. The FY2000 District of Columbia Appropriations Act permits the D.C. Court Services and Offender Supervision Agency to carry out sex offender registration in the District.[18] The Campus Sex Crimes Prevention Act, enacted as part of the Victims of Trafficking and Violence Protection Act of 2000, requires a person registered as a sex offender to also notify the state of each institution of higher education that the person is employed, is carrying on a vocation, or is a student at that institution. Further, the sex offender must inform the state of any change in enrollment or employment at that institution of higher education. Institutions must advise the campus community of where to obtain information on registered sex

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[15] P.L. 105-277; 112 Stat. 2681-2683.

[16] P.L. 105-276; 112 Stat. 2641.

[17] P.L. 105-251; 112 Stat. 1871.

[18] P.L. 106-113; 113 Stat. 1530. This provision was originally approved as a floor amendment (H.Amdt. 353 [Istook]) to the FY2000 District of Columbia Appropriations bill (H.R. 2587). Ultimately, it was enacted as Division A of the FY2000 Consolidated Appropriations Act.

offenders — for example, a local law enforcement agency with jurisdiction for the campus or a computer network address.[19]

Legislation Enacted in the 108th Congress

The Prosecuting Remedies and Tools Against the Exploitation of Children Today Act of 2003 (or the PROTECT Act, P.L. 108-21), passed on April 20, 2003, was designed to prevent the abduction and sexual exploitation of children. This law, among other provisions, increases penalties for sexually abusing a minor; provides a maximum life term of supervised release for sex offenders convicted of sexually exploiting a minor; and provides for assisting a state or local law enforcement agency in enforcing registration of a convicted sex offender and apprehending and prosecuting one who fails to register.[20] In addition, the act provides for each state to establish and maintain, within three years, an Internet site for the release of information on a sex offender and to create a process for correcting allegedly erroneous information on the Internet site. The Attorney General can extend for an additional two years the time frame for completing this requirement. The act requires child pornographers to register in the national sex offender registry, and authorizes such sums as are necessary for assistance to states in enforcing sex offender registration requirements.

Another provision of the law with potential to impact the identification of sex offenders involves the use of DNA. The act provides that within a five-year statute of limitations, federal prosecutors can issue an indictment identifying an unknown defendant by a DNA profile. If the indictment is issued within this time frame, the statute of limitations is nullified until the perpetrator is identified at a later date through the DNA profile. Since sex offenders often repeat their crime, it is anticipated that if law enforcement tests DNA taken from the scene of every sexual assault crime, it will be just a matter of time before the perpetrator of the crime is matched with the DNA.

Legislative Proposals and Activities: 109th Congress

Major Differences Between H.R. 4472 and H.R. 3132

On December 8, 2005, H.R. 4472, the Children's Safety and Violent Crime Reduction Act of 2005, was introduced (Sensenbrenner). This act contains many of the same sex offender provisions that are included in H.R. 3132 (which is discussed

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[19] P.L. 106-386; 114 Stat 1537.

[20] For more details, see CRS Report RL31917, *The PROTECT (Amber Alert) Act and the Sentencing Guidelines*, by Charles Doyle; or CRS Report RS21522, *A Sketch of the PROTECT (Amber Alert) Act and the Sentencing Guidelines*, by Charles Doyle.

below); however, there are several differences.[21] H.R. 4472 would establish three tiers of sex offenders with varying registration and address verification requirements which H.R. 3132 does not contain. Following are definitions of the three tiers of sex offenders that H.R. 4472 would: (1) Tier I is a sex offender whose offense is punishable by one year or less; (2) Tier II is a sex offender whose offense is punishable by imprisonment for more than one year (but who is not a Tier III sex offender) or whose offense occurs after the offender becomes a Tier I sex offender; and (3) a Tier III sex offender is one whose offense: (a) is punishable by more than one year and involves a crime of violence[22] except a crime consisting of any abusive sexual contact; (b) is an offense involving a victim who is under the age of 13; and (c) is an offense that occurs after the offender becomes a Tier II sex offender.

H.R. 4472 would provide new registration requirements for the three tiers of sex offenders. A Tier I sex offender would have to register for 20 years; a Tier II sex offender must register for 30 years; and a Tier III sex offender would have to register for life. Also, a sex offender would have to appear in person, present a current photograph and verify registry information every 12 months for a Tier I offender; every 6 months for a Tier II offender; and every 3 months for a Tier III offender. Under the address verification program of H.R. 4472, a Tier I sex offender would be required to verify residence annually, a Tier II sex offender would be required to verify residence semi-annually; and a Tier III sex offender would be required to verify residence quarterly. H.R. 3132 would require a sex offender to keep the registration current for the life of the sex offender, if the offense is a specified offense against a minor, a serious sex offense, or a second misdemeanor sex offense against a minor; and for a period of 20 years in any other case. For verification of registry information, H.R. 3132 would require a sex offender to appear in person at least once every six months and verify the information in each registry in which that offender is required to be registered.

H.R. 4472 and H.R. 3132 differ in some of the mandatory minimum penalties that would be established for some sex crimes. For a conviction for abusive sexual contact with children, H.R. 4472 would provide a penalty of any terms of years or for life, while H.R. 3132 would provide a fine and imprisonment for not less than 10 years and not more than 25 years. For sexual exploitation of children, H.R. 4472 would not amend the existing penalty of 15 years nor more than 30 years for a first offense; H.R. 3132, however, would provide a mandatory minimum penalty of 25 years or life.

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[21] For a discussion of provisions of H.R. 4472 that do not relate to sex offenders, see CRS Report RL33259, *Federal Habeas Corpus Relief: Background, Legislation, and Issues*, by Lisa Seghetti; and CRS Report RL32824, *Federal Crime Control: Background, Legislation, and Issues*, by Lisa Seghetti.

[22] Title 18, Section 16 of the U.S. Code defines a crime of violence as (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

H.R. 4472 would not provide mandatory minimum penalties for activities relating to material involving the sexual exploitation of children, while H.R. 3132 would provide mandatory minimum penalties for this crime. H.R. 4472 would not amend 18 U.S.C. 2252(A)(b) on activities relating to material constituting or containing child pornography, while H.R. 3132 would increase mandatory minimum penalties for such crimes. While H.R. 3132 would amend 18 U.S.C. 2260(c) to increase mandatory minimum sentences for the production of sexually explicit depictions of children, H.R. 4472 does not contain such provisions.

H.R. 3132 would amend 18 U.S.C. 2241 to provide a mandatory minimum penalty of 25 years or life for aggravated sexual abuse of a foster child; for this crime H.R. 4472 would provide a penalty of 30 years imprisonment or life. H.R. 3132 would amend 18 U.S.C. 2242 relating to sexual abuse by providing a mandatory minimum penalty of 15 years and a maximum of 40 years; H.R. 4472 would provide a minimum penalty of 10 years and a maximum penalty of 30 years.

H.R. 3132 would amend 18 U.S.C. 2244(a) relating to abusive sexual contact by providing mandatory minimum penalties of 5 years and no more than 30 years for the crime; for sexual abuse of a minor, the penalty would be 4 years and no more than 20 years; and for sexual abuse of a ward, the penalty would be 2 years and no more than 10 years. On the other hand, H.R. 4472 would provide a maximum penalty of 10 years for abusive sexual contact; 15 years for sexual abuse of a minor; and 10 years for sexual abuse of a ward.

H.R. 3132 would amend 18 U.S.C. 1591(b) relating to sex trafficking of children under the age of 14 to provide a mandatory minimum sentence of 20 years, while H.R. 4472 would provide a minimum sentence of 10 years. For sex trafficking children ages 14 to 18, H.R. 3132 would provide a minimum penalty of 10 years imprisonment, while H.R. 4472 would provide a minimum penalty of 5 years.

In addition, H.R. 3132 would require the Attorney General to use U.S. Marshals in locating and apprehending sex offenders who violate registration requirements, and while H.R. 4472 would require the Attorney General to provide such assistance, it does not mention using U.S. Marshals. H.R. 3132 would provide assistance in the identification and location of sex offenders who were relocated as a result of Hurricane Katrina; H.R. 4472 would broaden coverage to include assistance of this type in any major disaster. H.R. 3132 would amend 18 U.S.C. Chapter 88 by adding a new provision that would fine and/or imprison anyone who knowingly misappropriates the personally identifiable information of a person who is under age 18. H.R. 4472 does not contain provisions on protecting the personal data of children. H.R. 4472 would not ban a person convicted of a misdemeanor sex offense against a minor from having a firearm, as Title VI of H.R. 3132 would provide.

H.R. 3132

On September 15, 2005, the House passed an amended H.R. 3132, the Children's Safety Act, by a vote of 371 to 52. The bill was originally introduced by Representative Sensenbrenner, and was amended and approved by the House Judiciary Committee on July 27, 2005 (H.Rept. 109-218, Parts 1 and 2). The House-passed H.R. 3132 is intended to provide for a comprehensive national approach to

the recent abductions and murders of children by sex offenders. The bill contains many provisions that also are in other legislative proposals introduced in the 109th Congress.

H.R. 3132 includes provisions that would call for new registration procedures for sex offenders as well as for the Department of Justice, states and local law enforcement personnel. H.R. 3132 as passed by the House would require establishment of a Children's Safety Office in the Department of Justice to administer the sex offender registration program and would provide increased training for federal, state, and local law enforcement officers, prosecutors, probation and parole officers. The bill would provide grants for law enforcement agencies to use in combating sexual abuse of children. Federal review of habeas corpus cases would be restricted under provisions of H.R. 3132. The bill would provide mandatory minimum sentences for sex offenders who commit criminal acts against children. It would provide for a very detailed federal and state civil commitment process for sex offenders who are deemed dangerous sexual predators. Treatment for sex offenders in prison would be required prior to their release. The bill contains provisions that target sex offenders who use the Internet for soliciting and exploiting children. Studies and reports on activities undertaken as a result of provisions included in the House-passed bill also would be required.

Among other provisions, the House-passed H.R. 3132 would: require sex offenders to register more often and for longer periods of time; expand the definition of a sex offender to include a juvenile sex offender; require the collection of hate crime data on juveniles; provide the public with access to more information on sex offenders; create new penalties, as well as increase existing penalties for sex crimes, especially against children, and for failure to register; eliminate any statute of limitations on criminal prosecutions of certain crimes against children; require DNA to be used to identify and prosecute sex offenders; require the Attorney General to award grants for training and employing personnel to eliminate the DNA backlog; require background checks, including finger-print checks, before approving placement of a child with foster or adoptive parents; require state and local jurisdictions to more closely monitor sex offenders; provide bonus payments to states that implement electronic monitoring; and require the Attorney General to assist in identifying and locating sex offenders who have been relocated as a result of Hurricane Katrina by providing technical assistance to jurisdictions.

The Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162)

The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) (P.L. 109-162, H.R. 3402) was enacted on December 8, 2005. Section 108 of the act amends Section 40152 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13941), which provides training in the areas of case management, supervision, and relapse prevention to assist probation and other personnel who work with released sex offenders. VAWA 2005 authorizes $3 million to be appropriated for each of fiscal years 2007 through 2011 for this section. Section 905 of the act provides for the Attorney General to contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop

and maintain a national tribal sex offender registry and a tribal protection order registry. The act authorizes $1 million to be appropriated for each of fiscal years 2007 through 2011 to carry out Section 905. Funds would remain available until expended.

VAWA 2005 also contains sex offender provisions that authorize the Attorney General, through the Director of the Office on Violence Against Women, to award grants to encourage cross-training and collaboration among courts, domestic violence and sexual assault service providers, youth organizations and service providers, violence prevention programs and law enforcement agencies. To be eligible for a grant under this section (Section 41202, Access to Justice for Youth), an applicant must establish a collaborative team that includes a victim service provider with experience in working on domestic violence, dating violence, sexual assault, or stalking, and the effect of these types of abuse on young people, as well as a court. Among other entities that may be included on the team are batterer intervention programs and sex offender treatment programs staffed by people with specialized knowledge and experience working with youth offenders. VAWA 2005 authorizes $5 million to be appropriated in each of fiscal years 2007 through 2011 for this section.

Selected Additional Bills Introduced

Many other proposals relating to sex offenders have been introduced in the 109th Congress (and some have been incorporated into H.R. 3132 and H.R. 4472). Among other provisions, these bills would

- require states to more closely monitor registered sex offenders;
- offer grants to state for monitoring registered sex offenders;
- require sex offenders to register more often and in person;
- expand the definition of a sex offender to include a juvenile sex offender;
- deny public housing access to registered sex offenders;
- require DNA to be used to identify and prosecute sex offenders;
- create a DNA database solely on violent child predators;
- require more descriptive information on a sex offender, including the nature of the crime committed;
- deny a federal loan to a student who may be civilly committed after completing a prison term for a sex crime;
- provide for civil commitment for certain sexual predators;
- require a person convicted in a foreign court to register as a sex offender;
- reduce the time frame within which a sex offender must report a change of address;
- require background checks before approving placement of a child with foster or adoptive parents;
- create new penalties, including mandatory-minimum penalties, as well as increase existing penalties for sex crimes, especially against children; and
- create new mandatory-minimum penalties for failing to register.

Following are summaries of selected bills: **H.R. 81 (Frelinghuysen)** would amend the Federal Education Right to Privacy Act by requiring an institution of higher education to disclose to an alleged victim of any crime of violence the final results of disciplinary proceedings conducted by the institution against the alleged perpetrator of the crime.

H.R. 95 (Gillmor) and S. 792 (Dorgan) would create a public registry containing information on a person convicted of a criminal offense (including a sexual one) against a minor, or on a person required to register as a sex offender. The registry would include the person's name and aliases, date of birth, address, physical description, and current photograph. It would also include the date and nature of the crime committed, the date the person was released from prison or placed on supervised release, parole, or probation, as well as any other information the Attorney General deems appropriate. The bill would require a state with civil commitment proceedings to notify the state attorney general of the impending release of a person who is a sexually violent predator or who has been determined to be at high risk for recommitting a sexually violent crime against a minor. The state attorney general would then decide whether to institute a civil commitment proceeding. In addition, H.R. 95 would require each state to monitor, for at least one year, a sexually violent predator who has been unconditionally released from prison and who has not been civilly committed. Each state would have up to three years to implement provisions of the bill.

Provisions of **H.R. 132 (Keller)** would amend the Higher Education Act of 1965 to deny a federal loan to a student who is subject to being civilly committed upon completing a prison term for a sexual offense.

H.R. 244 (Jackson-Lee) would require the Attorney General to establish and maintain a DNA database solely for collecting DNA information on violent predators against children. The bill would authorize $500,000 for establishing the database. Further, the bill would provide incentive grants to states that have at least one program designed to decrease the recidivism rate of violent predators against children. H.R. 244 would require the maximum sentence under law to be imposed on a violent predator who is convicted of a crime against children.

H.R. 972 (Smith, C.H.) would amend the Violent Crime Control and Law Enforcement Act of 1994 to require individuals convicted in a foreign court of a sexually violent offense or of a criminal offense against a child to register as a sex offender. Within a year after enactment of this legislation, the bill would require the Attorney General to issue revised guidelines to implement this provision. H.R. 972 would require a state to implement this provision no later than two years from the date on which the Attorney General issues revised guidelines.

H.R. 1355 (Poe) would amend provisions of the Jacob Wetterling Act that define a criminal offense against a minor. Accordingly, it would include every offense — whether federal, state, local, tribal, foreign, or otherwise — that involves certain crimes against a minor. The bill would add the production or distribution of child pornography, any attempt or conspiracy to commit a criminal offense against a child, and any wrongful conduct so designated by the Attorney General to the list of actions that are defined as a criminal offense against a minor. It defines a "child

predator" as a person who is convicted of a criminal sexual offense against a minor who is age 13 or younger. H.R. 1355 would limit to no more than 10 days the time frame within which a state could require a child predator to report a change of address. At the time the child predator registers, he or she would also be required to provide the same information to schools and public housing in the child predator's community, as well as to at least two media outlets covering the community. The measure would require an appropriate law enforcement agency to supervise and verify that the child predator is in compliance with these registration and notification provisions. H.R. 1355 would make failure to comply with these provisions a federal offense, with a penalty of two years' imprisonment or a fine.

H.R. 1355 would also amend provisions of the Wetterling Act by requiring the FBI to disclose to the public, on a free-access Internet site, all information it collects on child predators. The Internet site must include a feature that would allow the public to specify an address and must provide registration information on all child predators within a radius of that address, in addition to other searching and sorting capabilities. Information on the Internet site concerning a child predator must clearly indicate that the person is a child predator and must include the statutory definition of "child predator."

Current law requires states to verify a sex offender's address annually. **H.R. 1505 (Brown-Waite)** would amend the Wetterling Act by requiring states to include a verification process under which a state would mail a nonforwardable verification form to the last known address of a person who is required to register. The form must be returned by the addressee within 10 days of receipt. The date on which a state mails the form is to be determined "through a process that includes an element of randomness," but the mailing must occur at least twice each calendar year. Failure to return the form within the required period subjects the sex offender to the same punishment as for failure to register. If a person who is required to register is released from prison, or placed on parole, supervised release, or probation, a state prison officer, the court, or another responsible officer or official must inform the probation officer or the agency responsible for supervising the released person of his or her registration requirement.

Upon release from prison, persons who have been convicted at least twice for failing to register or for keeping their registration current at all times must wear a location-transmitting device for at least five years. If the person is a sexually violent predator, however, the period for wearing the device is at least 10 years. H.R. 1505 would require a state to frequently monitor the information transmitted by the device. The bill would require the Attorney General to prescribe guidelines on how a state is to comply with transmitting device provisions.

States would have 12 months to comply with provisions concerning the semi-annual mailing and notification of probation officers, and 18 months to comply with provisions on location-transmitting devices for offenders who repeatedly fail to register. A state that fails to implement these provisions would lose 10% of funds otherwise available under Section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3765). Funds that are not allocated because a state failed to implement applicable provisions of this bill would be reallocated to states in compliance.

Among other provisions, **H.R. 1999 (Miller, G.G.)** and **S. 771 (Allard)** would allow a public housing agency both to deny assistance and to terminate assistance to a family based on the actions of a family member, or any guest or other person under the family's control, if the public housing agency determines that the family member or other person either engages in or has engaged in acts that require a sex offender to register for life.

H.R. 2388 (Green) would provide mandatory minimum penalties for sex crimes that result in the death of an individual under the age of 18. It would limit federal judicial jurisdiction to consider habeas corpus claims that a state court has ruled on for crimes involving the death of an individual under the age of 18.

The identical bills **H.R. 2423 (Foley)** and **S. 1086 (Hatch)** would fully integrate provisions of Megan's Law and the Pam Lychner Act into the Jacob Wetterling Act. The bills would tighten state sex offender registration requirements. Among other provisions, the bills would: require a sex offender to register and/or update the sex offender registry *in person* twice a year (every three months for a sexually violent predator); increase penalties for failure to register as a sex offender; require a sex offender to provide tax information; require a sex offender to provide a social security number to state registries, although the social security number would not be released on state sex offender notification websites; deport an immigrant who fails to register as a sex offender; require the Attorney General to collect sex offender information from each state or tribal government every three months and release that information to the public; require the Attorney General to review ways for law enforcement to improve the process for notifying residents when a sex offender moves into a community; create a federally maintained DNA sex offender database; give a state or tribal government a maximum of three years to implement provisions of this act; offer a 10% bonus of a state or tribal government's funds for the preceding year for the Sex Offender Management Assistance (SOMA) program if provisions of this act are implemented within one year of enactment of this act and a bonus payment of 5% if provisions are implemented within two years; reduce by 5% a state or tribal government's share of the next fiscal year SOMA program funds for failure to implement provisions of this act within three years of its enactment; and authorize to be appropriated such sums as may be necessary for FY2006 through FY2009 to carry out provisions of this act.

H.R. 2648 (Fossella) would amend title XIX of the Social Security Act to require Medicaid drug utilization review programs to deny coverage of erectile dysfunction drugs for individuals registered or required to be registered as sex offenders. The measure would require a state to submit a report to the Secretary of Health and Human Services on steps the state has taken to enforce provisions of this bill.

H.R. 2659 (Boswell) would authorize the Attorney General to make grants to states for them to improve their sex offender registries and tracking systems. The bill defines a state to include the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and any other territory or possession of the United States. H.R. 2659 would limit to 2% the amount that the Attorney General could use in coordinating these activities. For grants, the

bill would authorize to be appropriated $300 million dollars for FY2006, and such sums as may be necessary for each fiscal year thereafter.

H.R. 2796 (Green) would amend the DNA Analysis Backlog Elimination Act of 2000 to provide for the Attorney General rather than the Director of the Bureau of Prisons to collect DNA samples from individuals who are arrested or detained under the authority of the United States. The bill would also allow the Attorney General to delegate this function within the Department of Justice and to authorize and direct any other federal agency that arrests or detains or supervises persons facing charges to carry out any function and exercise any power of the Attorney General on the collection of DNA samples. The bill would remove the statute of limitations in sexual abuse cases.

H.R. 2797 (Green) would amend the Violent Crime Control and Law Enforcement Act of 1994 to require a juvenile convicted of a sexually violent offense or who is a sexually violent predator to register as a sex offender.

H.R. 2942 (Graves) would provide mandatory minimum penalties for aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, and abusive sexual contact. It would provide a mandatory life imprisonment sentence for repeat offenders who are convicted of sexual abuse. The bill would amend 18 U.S.C. Chapter 109A to provide that a term of imprisonment imposed for sexual abuse must not run concurrently with any other term of imprisonment imposed under this chapter.

H.R. 2318 (Green) and **S. 956 (Grassley)** would increase mandatory minimum penalties for the following sexual offenses against children: aggravated sexual abuse, abusive sexual contact, sexual abuse of children resulting in death, sexual exploitation of children, activities relating to material involving the sexual exploitation of children, activities relating to material constitution or containing child pornography, misleading domain names to direct children to harmful material on the Internet, production of sexually explicit depictions of children, and child prostitution.

H.R. 2318 would amend 18 U.S.C. 3559(e)(2)(A), relating to mandatory life imprisonment for repeated sex offenses against children, by adding additional offenses to the definitions of this subsection. Specifically, H.R. 2318 would add section 2423(b) relating to travel with intent to engage in illicit sexual conduct, and section 2425 relating to use of interstate facilities to transmit information about a minor.

S. 956 would amend 18 U.S.C. 3559(d), which relates to sentencing for violent crimes against children, to provide mandatory minimum terms of imprisonment for a crime of violence: that results in the death of a person under the age of 15 (the penalty would be death or life in prison); for a kidnapping, sexual assault, or maiming, (or an attempt or conspiracy to commit one of these crimes) or results in serious bodily injury (the penalty would be 30 years to life in prison); that results in bodily injury to a person under the age of 12 years (the penalty would be 15 years to life in prison), for using a dangerous weapon during and in relation to the crime of violence (the penalty would be 10 years to life in prison); and in any other case (the penalty would be two years to life in prison).

H.R. 2814 (McNulty) and S. 1126 (Schumer) would prohibit federal funds under certain programs from being used for drugs prescribed in treating a convicted sex offender for sexual or erectile dysfunction. The federal programs identified would be: the Medicaid program, Medicare program, federal employees health benefits program, Defense Health program, the program of medical care furnished by the Secretary of Veterans Affairs, health related programs administered by the Indian Health Service, health related programs funded under the Public Health Service Act, and any other federal health program.

H.R. 2876 (Green) and S. 1197 (Biden), among other provisions, would authorize the Attorney General to contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain a national tribal sex offender registry. These bills would authorize to be appropriated $1 million for each FY2006-FY2010 to carry out this provision. In addition, **S. 1197** would provide for the Attorney General, through the Director of the Office on Violence Against Women, to award grants to encourage cross training and collaboration among courts, domestic violence and sexual assault service providers, youth organizations and service providers, violence prevention programs and law enforcement agencies. These sex offender provisions are included in P.L. 109-162, the Violence Against Women and Department of Justice Reauthorization Act of 2005 (H.R. 3402), which was enacted on December 8, 2005 (discussed earlier in this report).

S. 792 (Dorgan) would require the Attorney General to place information on the Internet, contained in the National Sex Offender Registry, that would allow the public to determine whether a registered sex offender is currently living within a specified radius of the Internet user. Information about a sex offender that would be in the National Sex Offender Registry includes the: name and known aliases of the person; birth date; current address and any subsequent changes of that address; physical description and current photograph; nature and date of commission of the criminal offense; date of release from prison, or when placed on parole, supervised release, or probation; as well as any other information the Attorney General considers appropriate. S. 792 would require a state with a civil commitment proceeding to notify the state attorney general of the impending release of a sexually violent predator or of a person deemed to be at high-risk for recommitting either a sexually violent offense or a criminal offense against a child. The bill would require a state to monitor for at least one year a sex offender who has been unconditionally released from prison and who has not been civilly committed as a high risk sex offender. Each state would have a maximum of three years from the date of enactment of this act to implement its provisions.

S. 980 (Nelson) would assist state and local governments with costs associated with monitoring sex offenders. The bill would authorize the Attorney General to provide grants and contracts to state and local governments for implementing programs to outfit sex offenders with electronic monitoring units and for hiring law enforcement staff to carry out such programs. Each state or local government seeking assistance would have to submit an application to the Attorney General. A state or local government with an eligible program would receive a proportional share of funding based both on the total number of eligible states and each state's population of sex offenders to be monitored with global positioning systems. The

bill would authorize to be appropriated $10 million for FY2006 and $20 million for FY2007. In addition, S. 980 would require the Attorney General to report to Congress by April 1, 2007 on the effectiveness and value of this act and to recommend appropriate funding levels to assist state and local governments in electronically monitoring sex offenders.

Among other provisions, **S. 1220 (Dodd)** would amend the Crime Control Act of 1990 to ensure that no law enforcement agency in a state establishes or maintains a policy of removing a missing person entry from the state law enforcement system or the National Crime Information Center computer network solely because of the age of a person. It also would require that information on a missing child be entered within two hours of receipt (rather than immediately as the law presently requires) into the state law enforcement system or the National Crime Information Center computer network and be made available to the Missing Children Information Clearinghouse within the state or other designated agency. The bill would amend the Violent Crime Control and Law Enforcement Act of 1994 to require a state to inform a sex offender of registration requirements and to obtain the following information on a sex offender: the name, current address, anticipated future residence, employer name and address, license plate number and other identifying information about each vehicle owned by the sex offender, as well as student enrollment information. The measure would require that a state sex offender registration program obtain fingerprints, a photograph and a DNA sample, unless they were obtained within the previous three months. S. 1220 would require that registration information be obtained from an incarcerated sex offender before the person is released from prison. State registration procedures must provide for verification of registry information at least once every 90 days. The sex offender would also have to report a change of name, current address, anticipated future residence, employer name and address, and vehicle information to the local law enforcement agency that has jurisdiction where the person will reside within two business days after the change occurs.

The bill would require local law enforcement to obtain a photograph for all registered sex offenders at the initial registration of the person and at least once a year thereafter throughout the term of registration. At the time of initial registration, the bill would require that a sex offender obtain a driver's license in the state of the person's residence. The bill would make failure to comply with sex offender registration and verification requirements a felony. Under bill provisions, there would be no statute of limitations and failure to register each item of changed registry information would be treated as a separate offense.

Congressional Hearings

On June 9, 2005, the Subcommittee on Crime, Terrorism and Homeland Security of the House Judiciary Committee held two hearings on legislative proposals to protect the public, including children, from sex offenders. The first hearing specifically addressed provisions of a number of bills, including the following: H.R. 95, H.R. 244, H.R. 764, H.R. 1355, H.R. 1505, and H.R. 2423, which were designed to address provisions in current law that were viewed as weak. Witnesses included Representatives Mark Foley, Ginny Brown-Waite, Earl Pomeroy, and Ted Poe who

testified about specific provisions of bills they introduced. Generally, provisions of these bills would tighten registration requirements, the address verification process, and notification obligations for sex offenders; improve tracking of sex offenders, including electronic monitoring; make information collected on sex offenders more uniform; collect DNA information on violent offenders who prey on children, redefine a criminal offense against a minor, increase federal penalties for failure to comply with registration requirements; require the FBI to disclose to the public information on child predators on an Internet site; and require convicted juvenile sex offenders to register.

At the second hearing, "Protecting Our Nation's Children From Sexual Predators and Violent Criminals: What Needs To Be Done?," witnesses offered their views on how to protect children from sex offenders. Amie Zyla, a victim of a juvenile sex offender, endorsed requiring convicted juvenile sex offenders to register as such. Ernie Allen, the Director of the National Center for Missing and Exploited Children, cited statistics on the continuing vulnerability of children to sexual assault and the lack of uniformity in state community notification programs. He advocates requiring all convicted sex offenders to register and making state community notification of sex offenders more uniform.

Tracy Henke, DOJ Deputy Attorney General, gave details of DOJ's plan for a National Sex Offender Public Registry (NSOPR) Internet site. Hanke identified several advantages to NSOPR. She testified that NSOPR, by using Internet technologies and DOJ's Global Justice eXtensible Markup Language (XML), would find and display information from a state's existing online public sex offender registry. A person seeking information on registered offenders could search either by name, zip code, or geographical area. Rather than requiring citizens to conduct a search for sex offenders state by state, she stated that NSOPR would create a single focal point for the public to access sex offender information. According to her, another advantage of NSOPR is its cost. She stated that the estimated federal cost to design and place NSOPR online is $1 million compared to creating a national database which would cost at least $10 million. The NSOPR would not interfere with state law on releasing offender information, since the states and territories would retain control over state data. In addition, Henke stated that DOJ intends to work with states to ensure that they have the necessary information technology capabilities to implement this improved technology.[23] (See the next page for more information.)

Another witness, Professor Fred S. Berlin of the Johns Hopkins University School of Medicine, questioned the overall approach of legislative proposals involving sexual offenders. Berlin observes that much of the legislation is based on the assumptions that with passage of the bills communities will be safe, that the recidivism rate of sex offenders is inordinately high, that more harsh punishments will solve the problem of sexual offenders, and that once a sex offender, always an offender. He concludes all of these are false assumptions. He identified two issues

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[23] Tracy A. Henke, Deputy Associate Attorney General, Department of Justice, Testimony before the Subcommittee on Crime, Terrorism and Homeland Security of the House Judiciary Committee, June 9, 2005.

as primary concerns of his: the effectiveness of community notification and harsher penalties to protect the public from sexual offenders.

While respecting the idea that community safety must be considered first and the necessity of registering information on sex offenders for access by law enforcement, Professor Berlin expressed concerns about the impact of community notification. Because registered sex offenders identity can be accessed through the Internet, it often is a form of community notification. When this form of community notification occurs, it can have unintended devastating effects for both the victim and the sex offender. In a majority of cases involving sexual offenses against children, the perpetrator is a family member, a close friend, or an acquaintance, who, in many instances, is known by the victim and his or her family. When sexual assault involves incest, publication of the perpetrator's name may also reveal the identity of the victim. Publication of the sexual offender's name in cases involving incest may make victims as well as their families reluctant to report the incident. According to Professor Berlin, the only assessment of the effectiveness of community notification programs was conducted in the state of Washington, which did not find a reduction in recidivism as a consequence of notification programs. He concluded his testimony by stating that pedophilia and some other sexual disorders are both a criminal justice matter and a public health problem and should be recognized legislatively as such.

On June 7, 2005, the House Subcommittee on Crime, Terrorism and Homeland Security held another hearing on H.R. 2138, the "Prevention and Deterrence of Violence Against Children's Act" and H.R. 2188, the "Protection Against Children's Act. The state attorney general of Florida, a public defender from Montana, and the parent of a murdered sex offense victim testified at the hearing.

National Registry of Sex Offenders Proposal

On July 20, 2005, Attorney General Alberto Gonzales announced the launching of a National Sex Offender Public Registry website that allows the public one-stop access to the latest information on the identity and location of known sex offenders. At present, registries for the District of Columbia and all states are on the website, with the exceptions of Oregon and South Dakota.

Because of recent high-profile crimes committed by sex offenders and complaints from victims' rights groups as well as some lawmakers that dangerous sex offenders were not being monitored, on May 24, 2005, Attorney General Gonzales announced plans for a new national registry of sex offenders that would enable the public to view, via Internet, all existing state databases of sex offenders in a single web search. At that time, DOJ expected to have sex offender data for 20 states online within 60 days and data for the remaining states by the fall. Reportedly, some criminal defense attorneys criticized databases for creating a climate of retribution against sex offenders who have already paid their debt to society. Citing privacy concerns, civil liberties groups also expressed reservations about these nationwide databases. DOJ responded that the new website would only be tapping

into databases maintained by the states and that the data would continue to be controlled by them.[24]

Policy Issues

Congress has passed laws with provisions to protect the public from sex offenders by confining them and, once they are released, monitoring their movements. Current issues related to these laws include their constitutionality, the extent to which they are enforced, their effectiveness, the adequacy or targeting of federal funding to support registration and notification, and the extent to which they reflect available research on sex offender recidivism. These issues are discussed below.

Constitutional Challenges

Legal challenges to the constitutionality of two state sex offender registration and notification laws have been appealed to the U.S. Supreme Court, but have been rejected. In *Connecticut Department of Public Safety* v. *Doe*,[25] complainants charged that the state law requiring a convicted sex offender to register was unconstitutional because it provided for public dissemination of a sex offender's personal information without determining whether the sex offender was currently a danger to society and, in so doing, denied the sex offender procedural due process. The Court unanimously rejected this challenge. In writing for the Court, Chief Justice Rehnquist held that because the Connecticut statute requiring sex offenders to register was based on the fact of the previous conviction of a sex offender and not on his current dangerousness, a convicted sex offender has no procedural due process right to demonstrate that he is not currently dangerous. The dangerousness of the offender, according to the Court, was immaterial to the Connecticut sex offender registration law.[26]

Alaska's sex offender registration law requires a person convicted as a sex offender to register with the state regardless of when the conviction occurred. The community notification provisions of the law allow some personal information, including a photograph, of the sex offender to be posted on the Internet. In *Smith* v. *Doe*, complainants argued that because of the retroactive provisions of the law, it

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[24] [http://www.watchingjustice.org]; [http://www.usdoj.gov/ag/speeches/2005/052005agremarksnpr.htm]; Dan Eggen, "Justice Department Plans Registry of Sex Offenders; website to Consolidate States' Efforts," *The Washington Post*, May 21, 2005, p. A. 10.

[25] 538 U.S. 1 (2003).

[26] Note, "Making Outcasts Out of Outlaws: The Unconstitutionality of Sex Offender Registration and Criminal Alien Detention," *Harvard Law Review*, vol. 117, no. 8 (June 2004), pp. 2733-2734. (Hereafter cited as "Making Outcasts Out of Outlaws"). For another discussion of the legal implications of this case, see CRS Report RS21334, *Sex Offender Registration Acts: Supreme Court Review of the Connecticut and Alaska Statutes in* Connecticut Dept. of Public Safety v. Doe *and* Smith v. Doe, by Charles Doyle.

violated the ex post facto clause of the U.S. Constitution. Writing for the Court, Justice Kennedy held the ex post facto clause of the Constitution inapplicable because the statute's purpose was to protect public safety by regulating rather than punishing a sex offender. Therefore, he continued, the state effort requiring a sex offender to register was regulatory not punitive.[27]

Despite these Supreme Court rulings in support of laws requiring sex offender registration and community notification, some legal analysts believe these laws are still vulnerable to constitutional challenge. Among other arguments made on these issues, a legal scholar writes that these laws violate provisions of the Constitution that prohibit legislatures from passing bills of attainder; that is, statutes that "inflict punishment on specifically designated persons or groups without judicial trial."[28] Recognizing that in other contexts the U.S. Supreme Court has held that sex offender registration and criminal alien detention do not constitute "punishment," the author writes that Megan's Laws "are unconstitutional bills of attainder because they sanction specified groups based on legislative assessments of culpability, which is the essence of 'punishment' in light of the separation of powers concerns underlying the Bill of Attainder Clause."[29]

Enforcement of Registration Requirements

A major concern of supporters of sex offender registration is whether sex offenders are actually registering in states. An investigation in 2003 by the Associated Press suggested that California could not account for 33,000 sex offenders. A subsequent survey, conducted by Parents for Megan's Law in 2003, which has not been published but has been reported in the press, also suggested that thousands of convicted offenders had failed to register with states as legally required. Others, while registering, had provided false addresses or changed addresses without updating registration information. According to the Parents for Megan's Law survey, on average, states could not account for 24% of sex offenders who were supposed to be in their sex offender registries. In addition, 23 states missed between 10% and 50% of their sex offenders, while 17 states could not determine how many offenders were unregistered.[30]

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[27] 538 U.S. 84 (2003).

[28] "Making Outcasts Out of Outlaws," p. 2744.

[29] Ibid., pp. 2744-2745; 2747-2752. Nevertheless, federal and state courts have rather consistently rejected bill of attainder challenges to state sex offender registration statutes, e.g., *Cutshall* v. *Sundquist*, 193 F.3d 466, 477 (6th Cir. 1999); *Creekmore* v. *Attorney General*, 341 F.Supp.2d 648, 663 (E.D. Tex. 2004); *Roe* v. *Farwell*, 999 F.Supp. 174, 193 (D. Mass. 1998); *Hyatt* v. *Commonwealth*, 72 S.W.3d 566, 580 (Ky. S. Ct. 2002); and *Patterson* v. *State*, 985 P.2d 1007, 1018 (Alaska Ct. App. 1999).

[30] Jennifer Coleman, "Lawmakers Review Audit of Megan's Law Registry," *Associated Press State and Local Wire*, Sept. 23, 2003; Kim Curtis, "Survey: States Have Lost Track of Thousands of Sex Offenders," *Associated Press State and Local Wire*, Feb. 6, 2003; see [http://www.parentsformeganslaw.com].

Effectiveness of state sex offender registration programs do not appear to vary with the size of the sex offender population. Florida, a populous state, identified two reasons for its relatively low rate of noncompliance, 4.7% of 27,689 offenders. One is that each year the state's Department of Law Enforcement mails letters to sex offenders and closely monitors letters that are returned. Certain state agencies have entire units whose purpose is to follow-up on offenders who fail to respond. The state employs 11 full-time staff to track offenders who do not register. Another reason for Florida's low rate of noncompliance is the state's use of technology, which helps keep track of unregistered offenders. For example, Florida requires a sex offender to carry a state identification card. Several Florida agencies, including those that issue drivers' licenses and state identification cards, have direct electronic access to the sex offender database, and by cross-checking can monitor offenders.[31] According to the Attorney General of North Dakota, a state with a smaller population of sex offenders required to register, 32 of 1,006 convicted offenders had failed to register. North Dakota's compliance rate was 97%. The North Dakota Attorney General attributed the state's high compliance rate to law enforcement's placing a high priority on enforcing the sex offender registration laws.[32] Following is a sampling of noncompliance rates of selected states as reported by the Parents for Megan's Law survey: New York, 10% of 18,000 sex offenders were reportedly unregistered; California, 44% of 76,350 offenders; Ohio, 3.3% of 9,086 offenders; Oklahoma, 50% of 4,711;[33] Tennessee, 50% of 6,300 offenders;[34] Florida, 4.7% of 27,689 offenders; Massachusetts, 44% of 18,000 offenders; and Illinois, 14% of 17,087 offenders.

Both the survey by Parents for Megan's Law and state audits of sex offender registries revealed that serious and high-risk sex offenders failed to register and that state databases contained errors, inconsistencies, and outdated information. In California, address information had not been updated for at least a year and, in some cases, updates had not occurred for at least five years.[35] Explanations given for the poor enforcement of sex offender registration by law enforcement agencies vary. Other than monitoring sex offenders, state and local law enforcement agencies may also be responsible for tracking domestic violence orders, missing persons, outstanding arrest warrants, DNA information, and more. Spokesmen for many state and local law enforcement agencies argue that they lack the manpower and resources to adequately monitor sex offenders because of budgetary crises. Some at the state

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[31] Ibid.

[32] "Sex Offender Registry Failure Cited in State," *Daily Oklahoman*, Feb. 7, 2003.

[33] Reportedly, this percentage is disputed, but an Oklahoman spokesman could not cite a number for the state because no study of the compliance rate had been done.

[34] This percentage is disputed; the Tennessee Bureau of Investigation reports a noncompliance figure of 37% of 5,812 offenders.

[35] California State Auditor, Bureau of State Audits, *Summary of Report 2003-105*, Aug. 2003, p. 2, at [http://www.bsa.ca.gov/reports/summary.php?id=407].

level attribute much of the inaccurate data in the registry to their reliance on local law enforcement personnel/agencies that provide the information.[36]

There are several explanations given for the failure of sex offenders to register. One view is that requirements to register every three months, which apply to certain sex offenders, place a large burden on individuals who may have difficulty organizing their lives. Another view is that some sex offenders are ignorant of the registration requirement and believe that they have to register only once. Some state that offenders are simply irresponsible and do not take the need to register seriously. Finally, it is argued that sex offenders fail to register because they just don't want to be tracked.[37]

Effectiveness of Community Notification Programs

Sex offender registration and community notification programs were created primarily to protect the public. Few studies, however, have been conducted to evaluate the effectiveness of these programs. Only two states, Washington and Wisconsin, have conducted evaluations of their community notification programs, and neither study is particularly recent.

Washington. In 1998, the Washington State Institute for Public Policy released its findings of a telephone survey conducted in the state over a four-week period in 1997.[38] Results of the survey revealed that

- 80% of respondents were aware of the state's community notification law prior to the telephone interview;
- About a one-third of the residents knew that released sex offenders were residing in their communities;
- About three-fourths of respondents attributed their increased knowledge about sex offenses and how sex offenders operate to community notification;
- Over 60% of residents believed that the behavior of sex offenders improved more with community notification than without it;
- Three-fourths of respondents thought that as a result of community notification, convicted sex offenders would have difficulty establishing new lives in terms of finding a job, obtaining housing, making friends, etc., but less than half of the respondents believed

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[36] Ibid., p. 2. Chad Kinsella, "Court OKs Sex Offender Registries: Recent U.S. Supreme Court Rulings Find State Sex Offender Registries Constitutional, but Implementation Poses Problems," *State Government News*, vol. 46, no. 5 (May 1, 2003), p. 7; "Police Can't Find 1,313 Michigan Sex Offenders," *Associated Press State and Local Wire*, Jan. 13, 2004, p. 2.

[37] Anna Uhls, "Some Sex Offenders Off the Grid," *Colorado Daily via U-Wire*, University Wire, June 29, 2004.

[38] Dretha M. Phillips, *Community Notification as Viewed by Washington's Citizens* (Olympia: Washington State Institute for Public Policy, 1998), pp. 2-4, [http://www.wsipp.wa.gov/rptfiles/CnSurvey.pdf].

that offenders "should be given every opportunity for a new start as law-abiding citizens"; and
- Eight out of 10 respondents felt the community notification law was very important.

In another paper, published in 1995 by the Washington State Institute for Public Policy, the costs of implementing the state's community notification law were addressed.[39] Researchers found that the size of a community's population (urban or rural), and policy decisions at the local level influenced the cost of implementing community notification. If a community had a small population and few sex offenders who were required to register, notification was handled informally, usually through the county sheriff, resulting in lower costs. Further, in an area with a large population and many registered sex offenders, the costs would increase because of the time and manpower required to track offenders after notification and to investigate an offender's conduct and charges of harassment of an offender by some community members.

In addition, policy decisions influence costs associated with community notification. If a law enforcement agency, as an information repository, relies on sex offender information supplied by state agencies (such as the state patrol, department of corrections, etc.) and reviews only those offenders who have been drawn to the agency's attention, such as through a special bulletin, costs can be modest. By using the standard manner of issuing releases, for example, through schools or press releases, it saves postage costs and officers' time. The study found that where public officials make community notification a high priority and officers are assigned responsibility for monitoring convicted sex offenders, costs are higher. To take these steps may require an increase in payroll expenses and an investment in equipment and/or software.[40]

Wisconsin. Generally, there are three types of notification laws. They require law enforcement agencies to inform residents of sex offenders moving into neighborhoods; enable the public to gain access to relevant data on sex offenders; and require convicted child molesters to identify themselves as sex offenders. Wisconsin's community notification statute, however, requires officials only to inform residents about the release and reintegration of sex offenders in their communities.

In 2000, a study assessing the impact of the sex offender community notification law in Wisconsin was published, which examined the effect of this law on residents, law enforcement resources, parole and probation officer resources, and offenders. In 1998, 704 persons attending 22 community notification meetings (held from January 1998 through mid-September 1998) throughout Wisconsin were surveyed to determine the impact of community notification on residents. Although results of

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[39] Carol Poole and Roxanne Lieb, *Community Notification in Washington State: Decision Making and Costs* (Olympia: Washington State Institute for Public Policy, 1995), pp. 13-14, [http://www.wsipp.wa.gov/rptfiles/cprtcost.pdf].

[40] Ibid.

the study revealed that, generally, community notification was used to improve community protection, 18% of the residents attending notification meetings thought the purpose was to discuss removing or preventing an offender from residing in the neighborhood. While 71% of respondents felt they were better informed, 35% left the meetings with less anxiety about sex offenders in their communities than before; 38% were more concerned; and 27% left the meeting with the same level of concern.[41]

Local and county law enforcement agencies were surveyed to identify agencies' policies and practices in implementing community notification law. Of 312 questionnaires sent to local and county law enforcement agencies, 188 were returned. Wisconsin's law enforcement guidelines for sex offender registration and notification recommend a collaborative approach among law enforcement, corrections, and other agencies in executing the notification process. Survey data revealed that 86% of law enforcement agencies were familiar with the state's guidelines and 66% reported that their policies and procedures reflected those guidelines.

Many law enforcement agencies considered community notification to be an unfunded mandate because of the additional work and costs associated with implementing it. More than 66% of law enforcement agencies responding to the survey were concerned about the increase in labor expenditures resulting from implementing community notification. Agencies found the law's registration requirements beneficial because of an increase in information-sharing, but reported that community notification was less beneficial, with less than 41% believing that it improved the management and containment of sex offender behavior due to greater visibility. Based on responses to the survey, the following recommendations were made. Local and county law enforcement agencies were to consider: continuing the collaborative information-sharing and problem-solving approach; developing written policies and training protocols that address the announcement of meetings, distributing pertinent information about sex offenders such as their release locations, answering questions, and handling negative or hostile reactions to the release of a specific offender; and seeking federal or state funding for training and overtime expenses associated with sex offender registration and community notification.[42]

Probation and parole agents of sex offenders throughout Wisconsin were also surveyed for their assessment of the impact of community notification. Survey findings showed that agents and supervisors who were responsible for implementing community notification were knowledgeable and trained on policies. The survey revealed that the caseload for agents in urban areas was much greater than in rural ones. The average caseload for agents surveyed was 25 active cases, but nine agents had 40 or more sex offenders to supervise, and six of the nine had 50 or more. Twenty-nine percent of agents had 30 offenders to supervise and 37% had an average of 21 to 30 offenders; 12% supervised 11-20 offenders, and 22% had 10 or fewer

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[41] Richard G. Zevitz and Mary Ann Farkas, *Sex Offender Community Notification: Assessing the Impact in Wisconsin*, National Institute of Justice, U.S. Department of Justice, Office of Justice Programs, Dec. 2000, pp. 1-4.

[42] Ibid., pp. 5-6.

offenders. Some of the heavier caseloads involved low-risk sex offender cases (nonviolent offense, no prior felony, etc.) that did not require the same intensive supervision that high-risk offenders did; nevertheless, community notification had considerably increased the workloads of probation and parole units in the state.[43]

Problems identified by agents and unit supervisors that are associated with handling sex offender cases, include finding housing for offenders and increased paperwork associated with supervising high risk sex offenders. An example of these increased time demands is agents' participation in community notification meetings. Forty-six percent of respondents reported that as part of their job they attended at least one and in some cases more than six such meetings, served as presenters at the meetings, and assisted local and county law enforcement in planning and organizing a notification meeting. It was estimated that this involvement with community notification required about 40 hours of agent time per meeting.[44]

Finally, high-risk sex offenders were surveyed to determine how the community notification process affected them. Of the 30 sex offenders interviewed, all but one stated that the process adversely affected them. Seventy-seven percent told of being humiliated daily, ostracized by neighbors and lifetime friends, and harassed or threatened by neighbors or strangers. Although only one was the victim of vigilante action, all were concerned for their own safety. Two-thirds of survey participants mentioned the negative impact of the notification process on their family members, including parents, siblings, and children. Five of the respondents who lived in the same communities as their victims expressed concern for how notification and renewed public attention might affect their victims. While only a few of the interviewed sex offenders thought the notification would prevent reoffending by making their actions more visible to the public, a majority suggested that the pressure they felt from the public and the media would "drive many sex offenders back to prison."[45]

Federal Funding in Support of Registration and Notification Requirements

Federal laws directly or indirectly relating to sex offender registration have provided substantial funding over time to support a collaborative effort of federal, state, and local law enforcement both in combating crime and in sharing information across jurisdictional and state lines. The following review of the purposes and funding of a few selected programs provides a glimpse of federal assistance to state and local government in battling crime, in general, and in supporting sex offender registration and community notification, in particular.

Two general sources of grants to assist law enforcement in reducing crime and improving public safety have been the Local Law Enforcement Block Grant program

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[43] Ibid., p. 7

[44] Ibid., p. 8

[45] Ibid., pp. 9-10.

and the Byrne formula grants, which were consolidated in FY2005 into the Edward Byrne Memorial Justice Assistance Grant program, with funding of $634 million. Purpose areas under these two grant programs for which funds can be used include sex offender registration; overtime pay to law enforcement personnel and support personnel; obtaining equipment, technology and other material related to basic law enforcement functions; technology improvement programs; and corrections and treatment programs.

Some direct sources of grants to assist law enforcement in addressing sex offender issues include the Training Program to Assist Probation and Parole Officers (Sex Offender Management Assistance Program), the Crime Identification Technology Act (CITA), and the National Criminal History Improvement Program (NCHIP). CITA, administered by DOJ's Office of Justice Programs, is the umbrella for every criminal justice technological and communications need. On the other hand, NCHIP, administered by DOJ's Bureau of Justice Statistics, provides funding primarily for records. (For further discussion of federal crime-prevention funding, see CRS Report RL32824, *Federal Crime Control: Background, Legislation, and Issues*, by Lisa M. Seghetti, coordinator.)

Training Program to Assist Probation and Parole Officers or Sex Offender Management Assistance Program. The Sex Offender Management Assistance (SOMA) program provides assistance to states and local jurisdictions in managing sex offenders under community supervision. SOMA also addresses problems that parole and probation officers face in supervising the transition of sex offenders back into the community. SOMA goals include encouraging jurisdictions to focus on juvenile and adult sex offenders under community supervision and ensuring that new initiatives of communities result in a locally tailored collaborative and comprehensive approach to managing sex offenders; helping jurisdictions to expand their existing sex offender management strategies; documenting community practices, challenges, and successes in planning approaches to sex offender management; and collecting and evaluating information on existing practices and their outcomes. Enacted funding, after rescissions, for this program for FY2000 through FY2005 was $29 million. In FY2005 alone, $4.36 million, after rescissions, was provided.[46]

Crime Identification Technology Act of 1998. As described earlier, the Crime Identification Technology Act (CITA) of 1998 (P.L. 105-251) was enacted to assist states in establishing or upgrading criminal history record systems and to improve the ability of law enforcement agencies to share information across local jurisdictions and state lines. One of the 17 specific areas for which grant funds can be used is enhancing sex offender identification, tracking, and registration systems. Another area is improving the capability of the criminal justice system to provide, in a timely manner, accurate and complete criminal record information to state agencies, organizations, and programs that assess risk and other activities related to protecting

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[46] These figures were taken from the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Committee Conference Reports for each fiscal year and the Department of Justice Budget Justifications, Office of Justice Programs, FY2005.

children, including protecting them from sexual abuse and placing them in foster care. Also, grant funds can be used for improving criminal justice information systems to allow state and local participation in the FBI's National Instant Check System and establishing an integrated criminal justice system that allows law enforcement agencies, courts, prosecutors, and corrections agencies access to the same information. For FY2000 through FY2005 total funding appropriated for CITA was $468.7 million. In FY2005 alone, $28.1 million was appropriated.[47]

National Criminal History Improvement Program. The National Criminal History Improvement Program[48] is a discretionary grant program that was initiated in 1995 as part of a federal effort to ensure that law enforcement has access to accurate records and to protect public safety and national security. NCHIP provides direct funding to states for improving the quality, timeliness and accessibility of criminal history records including records of protective orders involving domestic violence and stalking, and development and enhancement of state sex offender registries. Funding allows acquisition of advanced equipment, conversion of manual records to an electronic/automated format, and development of software. For compatibility, NCHIP requires all record enhancements resulting from program funds to conform to FBI standards for Interstate Identification Index participation. NCHIP also provides technical assistance directly to states to help them upgrade criminal records and improve interface with the FBI's national systems, including the National Sex Offender Registry (NSOR). Beginning with FY2000, NCHIP has been funded under the Crime Identification Technology Act of 1998 (P.L.105-251). For FY2000-FY2005, NCHIP appropriations were $226.9 million. In FY2005 alone, NCHIP received $24.7 million. According to the Bureau of Justice Statistics, funding for NCHIP has enabled all of the states, the District of Columbia, and the territories of Guam, Puerto Rico, and the Virgin Islands to provide almost 330,000 records to the FBI's National Sex Offender Registry.[49]

Recidivism Rates

"Recidivism" is broadly defined as the commission of a subsequent offense. A major factor that influenced passage of sex offender registration and community notification laws is the perception that the recidivism rate for sex offenders is extremely high. Results of studies of sex offender recidivism vary greatly and actually contribute to the confusion surrounding the actual rate of sex offender recidivism. In a 2001 report that examined available research, the Center for Sex Offender Management (CSOM) identified several reasons for the contradictory findings of studies of sex offender recidivism, such as how recidivism is defined, the

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[47] Ibid.

[48] This grant program implements provisions of the Brady Handgun Violence Prevention Act (P.L. 103-159), the National Child Protection Act of 1993 (P.L. 103-209), and the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 104-145), as amended, that relate to establishing, maintaining, or using criminal history records and criminal record systems.

[49] Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *National Criminal History Improvement Program FY2004 Program Announcement*, and the Department of Justice Justifications, Office of Justice Programs, FY2005, Mar. 2004, p. 3.

sample of sex offenders and behaviors included in each study, and the length of the time period studied.[50]

According to CSOM, the definition of recidivism can be measured by determining whether there is a new arrest, a new conviction, or a new commitment to a correctional institution. While each of these criteria is a valid measure of recidivism, each measures something different, leading to varied outcomes. For instance, when recidivism is measured using new arrests or charges as the criteria, the recidivism rate will be higher because more individuals are arrested than are convicted. When a subsequent conviction is the criterion for measuring recidivism, the rate of recidivism is lower. When the criterion for determining recidivism is a return to prison, it must be determined whether the return to prison was because of the commission of a new offense or a technical violation of parole (such as consuming liquor or being alone with a minor child). Otherwise, a technical violation could alter the recidivism rate because it could include as recidivists individuals who may not have committed a subsequent criminal offense.[51]

Many studies rely on official criminal justice system data to measure recidivism, which presents problems because crimes of sexual assault are greatly underreported. Also, researchers must determine the specific behaviors that qualify sex offenders as recidivists. For example, will the commission of any crime be sufficient to qualify as a recidivating offense or will only sex offenses be considered? If a sex offense qualifies as a recidivating offense, then researchers must decide whether to include felonies and misdemeanors. Answers to these kinds of questions affect the level of recidivism reported in each study.[52]

CSOM Studies. CSOM reports that while the vast majority of sex offenders are males, they are a heterogeneous group. They include persons who have engaged in sex with children and family members, as well as those who have sexually assaulted strangers and have committed a wide range of inappropriate and criminal sexual behaviors. To reduce confusing results of sex offender recidivism, CSOM states that studies should recognize this heterogeneity and examine specific types of sex offenders.[53]

The period in which a study monitors a group of sex offenders can also affect the reported recidivism rate. Although, to ensure statistical integrity, all individuals in a study should have the same length of time in a community and, consequently, the same opportunity to commit subsequent offenses, often that is not the case. In actuality, some individuals in a 10-year follow-up study may have been in the community for eight or nine years, while others were out of prison for only two

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[50] Department of Justice, Office of Justice Programs, *Recidivism of Sex Offenders*, Center for Sex Offender Management, May, 2001, pp. 2-3. (Hereafter cited as CSOM, *Recidivism of Sex Offenders*.)

[51] Ibid.

[52] Ibid., pp. 3-4.

[53] Ibid., p. 8.

years. To correct this problem, CSOM suggests that survival analysis should be used, which is a methodology that considers the amount of time each subject has been in the community, rather than a simple percentage. Many researchers believe that an ideal follow-up period for recidivism studies is five years or more.[54]

From a public policy perspective, recidivism remains a valuable measure of how various interventions with criminal offenders are performing.[55] The noted caveats regarding studies of sex offender recidivism notwithstanding, several notable efforts have been made to provide a synthesis of studies of sex offender recidivism. One of the techniques used to summarize the findings of multiple studies is meta-analysis.[56] Using a meta-analysis approach has some advantages, in that it can reveal the relative importance of a number of factors affecting recidivism across studies. Also, the consistent appearance of certain offender and offense characteristics across different studies allows an estimate of how strongly they relate to recidivism.

In a 1998 study (Hanson and Bussiere) that used the meta-analysis technique, offender and offense characteristics were grouped by demographics, criminal lifestyle, sexual criminal history, sexual deviancy, and some clinical characteristics.[57] The study found a consistent relationship between sexual offending and being young and single. Sex offenders were likely to recidivate if they had a prior sex offense, had male victims, victimized strangers (rather than family members), started sex offending as juveniles and/or had engaged in diverse sex crimes.

A meta-analysis of 61 research studies found specific patterns of reoffending across victim types and offender characteristics. The average sex offense recidivism rate (based on rearrest or reconviction criteria) was 18.9% for rapists and 12.7% for child molesters over a four- to five-year period. For the same period, the recidivism rate for nonsexual violent offenses was 22.1% for rapists and 9.9% for child molesters, while the recidivism rate for any reoffense for rapists was 46.2% and 36.9% for child molesters. Overall, this analysis revealed that the factors with the strongest relationship to sexual offense recidivism were: sexual interest in children, deviant sexual preferences, and sexual interest in boys. The study found that having general psychological problems was unrelated to sexual offense recidivism but having a personality disorder was related. Another finding was that failure to complete treatment was a moderate predictor of sexual offense recidivism. The study also found that being sexually abused as a child was unrelated to sexual offense

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[54] Ibid., p. 4.

[55] Ibid., p. 11.

[56] Meta-analysis relies upon a quantitative approach to synthesizing research results from similar studies. This technique involves more than just a simple grouping together of disparate studies to obtain average effects. Rather, it entails a statistically sophisticated approach to estimating the combined effects of various studies that meet certain methodological criteria; CSOM, *Recidivism of Sex Offenders*, p. 11.

[57] R. Hanson and M. Bussiere, "Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies," *Journal of Consulting and Clinical Psychology* 66 (1998), pp. 348-364.

recidivism. Knowledge of these historical or static factors helps to predict the relative likelihood of reoffending.[58]

Studies that take into account changes over time (dynamic factors) can inform about the most useful types of interventions in lowering the risk of recidivism. Another five-year study conducted in 1998 (Hanson and Harris) focused on dynamic factors.[59] This study collected data on over 400 sex offenders under community supervision, of whom about half were recidivists who had committed a new sexual offense during the five-year follow-up period. The study revealed a number of significant differences in dynamic factors between recidivists and non-recidivists. For instance, employment status and drug habit of a sex offender were found to play a role in recidivism. Recidivists were more likely to be unemployed (especially rapists) and to have substance abuse problems. Non-recidivists were likely to have positive social influences but tended to have intimacy problems. Attitudinal differences between recidivists and non-recidivists also were identified. The recidivists in the study who had committed subsequent sex offenses tended to be less remorseful or concerned about the victim. They were less likely to acknowledge that they were likely to reoffend and were less likely to avoid high-risk situations. In this study, recidivists were more likely to report engaging in deviant sexual activities. Compared to non-recidivists, the lifestyle of recidivists tended to be more chaotic and antisocial.[60]

Bureau of Justice Statistics Study. The Bureau of Justice Statistics (BJS) conducted a study involving 9,691 male sex offenders among 272,111 prisoners released from prisons in 15 states in 1994. For three years after their release, the sex offenders were tracked. BJS published a report documenting the recidivism rate of these sex offenders as determined by rates of rearrest, reconviction, and reimprisonment during the three-year followup period (see **Table 1**). The report provides recidivism rates for four overlapping categories — 3,115 released rapists; 6,576 released sexual assaulters; 4,295 released child molesters;[61] and 443 released statutory rapists. Following are the highlights of the survey findings by category.[62]

Rearrest for a New Sex Crime.

- Within three years of release from prison in 1994, 5.3% of the sex offenders were rearrested for a sex crime compared to 1.3% of non-sex offenders.

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[58] CSOM, *Recidivism of Sex Offenders*, pp. 11-12.

[59] R. Hanson and A. Harris, *Dynamic Predictors of Sexual Recidivism* (Ottawa: Solicitor General of Canada, 1998)

[60] CSOM, *Recidivism of Sex Offenders*, pp. 12-13.

[61] Sixty percent of the children molested by these individuals were age 13 or younger.

[62] Patrick A. Langan et al., U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, 2003), pp. 1-2.

- Of sex crimes committed by sex offenders within three years of release from prison, 40% of the sex crimes were allegedly committed within the first 12 months.
- The oldest sex offenders (age 45 or older) had the lowest rate of rearrest for a sex crime (3.3%).
- The more prior arrests sex offenders had for different crimes, the greater likelihood of their being rearrested for another sex crime after release from prison. Released sex offenders who had only been arrested once (for the sex crime for which they were imprisoned) had the lowest rearrest rate for a sex crime, about 3%; those with two or three prior arrests, 6%; seven to 10 prior arrests, 7%; and 11 to 15 prior arrests, 8%.
- No clear association was shown between the lengths of prison terms served by sex offenders and their recidivism rate.

Rearrest for a Sex Crime Against a Child.

- The released child molesters were more likely to be rearrested for child molestation compared to the entire group of sex offenders and to the non-sex offenders released from prison. Within the first three years of release from prison in 1994, 3.3% of released child molesters were rearrested for child molestation. The rate of rearrest for a sex crime against a child for all sex offenders (a category that also includes child molesters) was 2.2%, while the rate for all non-sex offenders was less than half of 1%.
- Released child molesters with more than one prior arrest for child molestation were more likely to be rearrested for the same crime (7.3%) than those with only one such prior arrest (2.4%).

Rearrest for Any Type of Crime.

- Compared to non-sex offenders who were released from prison, the overall rearrest rate for sex offenders was lower. When rearrests for *all types of crimes* were counted, 43% of the sex offenders who were released were rearrested, while the rearrest rate of the non-sex offenders who were released was higher at 68%.

Reconviction for a New Sex Crime.

- Of released sex offenders, 3.5% were reconvicted for a sex crime within the three-year follow-up period of the study.

Reconviction for Any Type of Crime.

- Of released sex offenders, 24% were reconvicted for a new offense; the new offense included all types of crimes.

Returned to Prison for Any Reason.

- Within the three-year follow-up period of the study, 38.6% of the released sex offenders returned to prison either because they were sentenced again for a new crime or because of a technical violation of their parole (failing a drug test or missing an appointment with their parole officer).

Table 1. Recidivism Rate of Sex Offenders Released from Prison in 1994, by Recidivism Measure and Type of Sex Offender
(percentages)

Recidivism measure	All sex offenders	Rapists	Sexual assaulters
Within three years following release:			
Rearrested for any type of crime	43.0	46.0	41.5
Reconvicted for any type of crime[a]	24.0	27.3	22.4
Returned to prison with a new sentence for any type of crime[b]	11.2	12.6	10.5
Returned to prison with or without a new sentence[c]	38.6	43.6	36.1
Total released	9,691	3,115	6,576

Source: Patrick A. Langan et al., U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, November 2003), table 7, p. 13.

Note: The 9,691 sex offenders were released in 15 states.

a. Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.
b. "New prison sentence" includes new sentences to state or federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percent returned to prison with a new sentence.
c. "With or without a new sentence" includes prisoners with new sentences to state or federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released in six states (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of percent returned to prison with or without a new sentence. New York state custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 38.6%. When California is excluded, the return-to-prison rate falls to 27.9%.

Conclusions

Since 1994, Congress has passed laws to protect the public from sex offenders. Among other provisions, these laws require states to register and monitor sex

offenders, allow public access to relevant information on sex offenders, establish a national database system for tracking the movements of a sex offender, and increase penalties for sex offenders. In passing the PROTECT Act in 2003, Congress sought to further protect children from sexual abuse. The act increases penalties for persons who sexually abuse or exploit a child and requires child pornographers to register in the national sex offender registry. The act provides another means for the public to locate information on sex offenders by requiring states to establish an Internet site. To support sex offender registration, Congress again included provisions in the act authorizing additional funding. Policy issues surrounding these laws, however, concern their enforcement and effectiveness. With these concerns in mind, Congress may want to review aspects of registration and notification laws, the recidivism rate of sex offenders, state procedures for tracking sex offenders, and the adequacy of federal funding in support of state registration enforcement.

Registering and tracking sex offenders is an expensive undertaking. Since 1994, Congress has appropriated billions of federal dollars in support of a collaborative approach to fighting crime, including sexual offenses, that involves federal, state, and local law enforcement. Establishment of an effective sex offender registration program that provides access for all levels of law enforcement has been an important objective. Federal financial support has included funds for technical assistance, and hiring and training of both law enforcement personnel and support staff. There are also federal grants to support research on the impact of sex offender registration and community notification in the states.

While there are few studies on the effectiveness of community notification programs, Washington and Wisconsin are two states that have conducted assessments of their programs. A 1997 Washington telephone survey revealed that the vast majority of respondents felt the community notification program was very important. Yet, when asked if they were aware of whether released sex offenders resided in their communities, only about a third answered yes. This suggests that while respondents stated that it was important to have access to information on sex offenders, they appeared to feel that actually accessing the information was of less importance.

Despite federal funding to support states in registering and monitoring sex offenders and implementing community notification programs, states often cite budgetary concerns as a primary reason for lax enforcement of sex offender registration laws. The study in the state of Washington identified two factors that influenced the costs of implementing community notification programs — the size of the population and local priorities. In an area with a large population that included many registered sex offenders, costs would rise because of the time required for tracking offenders. In a community with small populations, however, notification was less formal and could be handled by the county sheriff, resulting in lower costs to implement the program. Costs would also rise where public officials made community notification a high priority and required law enforcement officers to monitor sex offenders. This was because of an increase in expenses for payroll and equipment. On the other hand, costs were reduced where law enforcement reviewed only those offenders brought to their attention, such as by a special bulletin.

The Wisconsin study on the effect of community notification laws found a considerable increase in the caseload of probation and parole agents who monitor sex offenders. This was especially true for officers in urban areas and those monitoring high-profile Special Bulletin Notification cases that require intensive supervision. Surveyed probation and parole agents revealed that more community support in terms of housing, employment, and treatment was needed for sex offenders to successfully transition from confinement to freedom. They reported spending an inordinate amount of time locating housing for sex offenders. In evaluating approaches to improve state monitoring of sex offenders, Congress might consider the extent to which resources are available to hire and train probation and parole agents to supervise sex offenders, particularly in urban areas, and to address the housing needs of released sex offenders.

The Wisconsin study also found that of local law enforcement agencies surveyed, 86% were familiar with state community notification guidelines, but only 66% reported that their policies and procedures reflected those guidelines. Further, states with poorly enforced sex offender registration blamed local law enforcement personnel/agencies for providing incomplete data. If this study's finding holds true in other states, and in light of the charges of state officials concerning local law enforcement, to improve enforcement of sex offender registration and community notification laws Congress might consider closer examination of the role of local law enforcement in the community notification process.

Few published studies have assessed the impact of sex offender registration. One reason is because, ideally, five years should elapse before sex offenders are surveyed. Sufficient time has now elapsed since passage of the 1994 Wetterling Act to study the issue. Congress might want to examine the extent to which support is provided for research that evaluates the impact of sex offender registration and community notification on sex offender recidivism.

Although the follow-up studies of sex offender recidivism that were reported by CSOM and the BJS were for five and three years, respectively, there were some notable findings. Both the BJS study and the CSOM report found that prior arrest was a likely factor in the rearrest rate of sex offenders. Released sex offenders who had only been arrested for one sex crime had the lowest rearrest rate for a subsequent sex crime, suggesting that focusing rehabilitation efforts on this population of sex offenders might be effective in deterring them from recidivating. At the very least, this finding suggests that they might be treated differently from sex offenders with more than one prior arrest. The CSOM report stressed that while sex offenders are often referred to as a "type," in fact, sex offenders are a heterogeneous group with a wide variety of behaviors and offender backgrounds. Some factors identified as tending to influence the rate of sex offender recidivism include marital status, age, age at start of sex offending, sexual interest in children, and sexual interest in boys. In the BJS study, child molesters comprised a sizeable portion of the sex offenders (44%). In trying to reduce sex offender recidivism, Congress might want to consider ways in which to target those at greatest risk of reoffending. Dynamic factors related to sexual offense recidivism include employment status, substance addiction, and denial of high risk to reoffend. To reduce sex offense recidivism, Congress also

might want to consider the extent to which services are available to address employment and drug addiction-treatment needs among the sex offender population.

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