

**Sex Offender Management Board White Paper on the Research, Implications and  
Recommendations Regarding  
Registration and Notification of Juveniles Who Have Committed Sexual Offenses  
August 2017**

**INTRODUCTION**

The Colorado Sex Offender Management Board (SOMB) was created by 1992 legislation and under current statute the SOMB is charged with developing standards and guidelines for the evaluations, treatment, and supervision of adult sex offenders and juveniles who have committed sexual offenses. The SOMB is a multidisciplinary board of experts in the field representing victim advocacy, law enforcement, prosecution, legal supervision, human services, judges/magistrates, treatment, polygraph, education, defense attorneys, and county commissioners.

In response to growing concerns about the effectiveness and impacts of sex offender registration and notification (SORN) on juveniles<sup>1</sup> who have committed sexual offenses, the Sex Offender Management Board (SOMB) was asked to identify a committee of experts in the field to review current local and national laws, relevant research, and to provide recommendations to address the negative implications for juveniles as a result of SORN. A committee of treatment providers, evaluators, law enforcement, and attorneys was formed to explore the topic and write a White Paper. This White Paper will:

- discuss applicable laws including the Adam Walsh Act and the Sex Offender Registration and Notification Act (SORNA);
- discuss potential benefits of juvenile SORN, including its utility as a law enforcement tool;
- review the research as it pertains to juvenile SORN, including a challenge to the notion that SORN increases community safety and decreases recidivism;
- discuss potential collateral consequences, both intended and unintended, for juveniles, including a reduction in successful community integration and an increase in the risk for suicide following a requirement for SORN; and
- present recommendations for an enhanced SORN system in Colorado.

**LEGAL BACKGROUND**

Sex offender registration is a civil regulatory process requiring those individuals convicted of a sex offense to provide certain information (e.g., address, employment, internet identifiers, etc.) to law enforcement, and update this information on a regular and as-needed basis. Community notification encompasses the providing of certain information regarding registrants to the public

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<sup>1</sup> The term “juvenile” is used throughout this paper and refers to those youth who are eligible to be subject to SORN. In Colorado, all juveniles ages 10-18 who are adjudicated for a specified sex crime may be subject to SORN.

via passive (e.g., sex offender registry public website) or active (e.g., law enforcement proactively provides registrant information to certain members of the public, such as those living in proximity to the registrant). Despite the public perception that SORN is punishment, the legislative mandate was not intended to serve this purpose.

Registration was first used in the 1930s with repeat criminal offenders as well as sex offenders. California became the first state to implement sex offender registration in 1947, while Washington became the first state to implement community notification on sex offenders in 1990.

The federal government has passed a series of SORN laws beginning in 1994. According to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office):<sup>2</sup>

**1994 - Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act** - Enacted as a part of the Omnibus Crime Bill of 1994, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act :

- Established guidelines for states to track adult sex offenders,<sup>3</sup>
- Required states to track adult sex offenders by confirming their place of residence, annually for ten years after their release into the community or quarterly for the rest of their lives if the sex offender was convicted of a violent sex crime.

**1996 - Megan's Law** - During the mid-1990s, every state along with the District of Columbia, passed legislation consistent with Megan's Law. In January of 1996, Congress enacted the federal Megan's Law that:

- Provided for the public dissemination of information from states' sex offender registries,
- Provided that information collected under state registration programs could be disclosed for any purpose permitted under a state law,
- Required state and local law enforcement agencies to release relevant information necessary to protect the public about persons registered under a State registration, program established under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

**2006 - Adam Walsh Child Protection and Safety Act** – Repealed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act, and Megan's Law, and created a new federal SORN law that:

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<sup>2</sup> <https://www.smart.gov/legislation.htm>

<sup>3</sup> The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, and the subsequent Megan's Law amendment, did not include a requirement to register juveniles adjudicated for a sex crime, but set minimum requirements and did not preclude states from registering juveniles.

- Created a new baseline standard for jurisdictions to implement regarding sex offender registration and notification,
- Expanded the definition of “jurisdiction” to include 212 Federally-recognized Indian Tribes, of whom 197 have elected to stand up their own SORN systems,
- Expanded the number of sex offenses that must be captured by registration jurisdictions to include all State, Territory, Tribal, Federal, and UCMJ sex offense convictions, as well as certain foreign convictions,
- Created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) within the Department of Justice, Office of Justice Programs, to administer the standards for SORN, administer the grant programs authorized by the Adam Walsh Act, and coordinate related training and technical assistance,
- Required registration jurisdictions for the first time to register all juveniles over the age of 14 adjudicated for certain sex crimes to be subject to SORN. The SMART Office subsequently modified this requirement twice through supplemental guidelines to first allow states not to publish juvenile registration information on a public website, and then to eliminate the requirement to register juveniles at all contingent on a system to apply SORN to those juveniles who are waived over and convicted in adult criminal court.

## **COLORADO SORN REQUIREMENTS FOR JUVENILE**

Colorado is among the forty (40) states requiring SORN for any juvenile adjudicated for a sexual offense in juvenile court.<sup>4</sup> In Colorado, the duty to register as a sex offender is mandatory for almost all enumerated sex crimes resulting in a juvenile adjudication or deferred adjudication.<sup>5</sup> Colorado also requires registration following an adjudication or deferred adjudication for a nonsexual crime if the crime is determined to have a sexual factual basis.

By default, a juvenile’s duty to register is for life. There are statutory provisions to seek relief from the duty to register “after the successful completion of and discharge from a juvenile sentence or disposition ... if the person prior to such time has not been subsequently convicted or has a pending prosecution for unlawful sexual behavior....”<sup>6</sup>

Additionally, Colorado requires individuals to register if they were adjudicated in another state or jurisdiction in which they were ever required to register as a sex offender.<sup>7</sup> The duty to

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<sup>4</sup> [http://impactjustice.org/wp-content/uploads/2016/08/50-STATE-BREAKDOWN-CHART\\_July\\_2016.pdf](http://impactjustice.org/wp-content/uploads/2016/08/50-STATE-BREAKDOWN-CHART_July_2016.pdf)

<sup>5</sup> The trial court may exercise its discretion to exempt a child from the mandatory juvenile registration requirement only if the child has not been previously charged with unlawful sexual behavior, the “offense, *as charged in the first petition filed with the court*, is a first offense of either misdemeanor unlawful sexual contact, as described in section 18-3-404, C.R.S., or [misdemeanor] indecent exposure, as described in section 18-7-302, C.R.S.,” and the juvenile meets other statutory criteria. C.R.S. § 16-22-103(5) (emphasis added).

<sup>6</sup> C.R.S. § 16-22-113(1) (e).

<sup>7</sup> C.R.S. § 16-22-103(3).

register based upon an out-of-state adjudication applies in Colorado, even if the person was already relieved of the duty to register by the state of adjudication.<sup>8</sup> In such cases the default duty to register is for life unless and until they reach eligibility to petition for relief from registration.<sup>9</sup> Moreover, even if the person was never required to register in the jurisdiction of adjudication, if s/he would have been required to register if adjudicated of the same offense in Colorado, s/he must commence registration as a sex offender in Colorado during any periods of temporary or permanent residency.<sup>10</sup>

Juveniles who are prosecuted for sexual offenses in adult court in Colorado or another state or jurisdiction are subject to Colorado's adult registration requirements and, if statutorily eligible, may be screened for Colorado's mandatory, lifetime status of "Sexually Violent Predator," which includes increased registration requirements and community notification.<sup>11</sup>

## **REVIEW OF THE RESEARCH**

### ***Potential benefits and limitations of registration and notification policies***

The sex offender registry was originally developed as a tool for law enforcement to assist with criminal investigations through the identification of a pool of suspects (known sex offenders). The belief was that law enforcement would be able to identify potential suspects for sex offenses committed by registrants, or conversely rule out suspects for sex offenses committed by non-registrants. Subsequently, public notification of registrant information was added based upon the belief that providing information about who and where sex offenders are would allow the public to take precautionary steps to avoid contact with them and prevent from being sexually victimized. Therefore, in studying the benefits of SORN for juveniles adjudicated for sexual offenses, these benefits to law enforcement and the public should also be considered, in addition to the perceptions that registration could reduce juvenile sexual recidivism (not one of the original stated purposes of SORN).

There has been no research to date on the impact of SORN for juveniles related to the potential benefits for law enforcement and the public. However, there have been studies that have looked at the general impact of SORN on both law enforcement officials and public attitudes and behaviors, which would presumably include the impact of juvenile SORN. In a study of law enforcement officers, Harris and colleagues (2016) found that there was general support for the

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<sup>8</sup> Id.

<sup>9</sup> Id., *see also* § 16-22-113.

<sup>10</sup> C.R.S. § 16-22-103(3).

<sup>11</sup> C.R.S. §§ 18-3-414.5, 16-13-901 *et seq.*, and 16-22-108.

use of SORN as a criminal investigation tool. On the other hand, law enforcement officers had less confidence in the use of registrant information by the public.<sup>12</sup>

When surveying the public, one multistate study ( $n = 115$  from 15 states) of community members found general familiarity with and support for SORN, along with a belief that SORN prevents offending.<sup>13</sup> State-level surveys of community members regarding SORN in Florida, Nebraska, Washington, and Wisconsin found that the public—

- was aware of and supported SORN,<sup>14</sup>
- thought it was fair,<sup>15</sup>
- believed that it provides safety for their family,<sup>16</sup>
- thought it makes sex offenders follow the law,<sup>17</sup>
- saw the benefits of SORN and learning about sex offenders through SORN,<sup>18</sup>
- accessed the registry (31 percent), but those who did were more likely to be female, to be affluent, and to have children,<sup>19</sup>
- took preventive measures (38 percent) based on SORN information,<sup>20</sup>

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<sup>12</sup> Harris, A.J., Lobanov-Rostovsky, C., & Levenson, J.S. (2016). *Law Enforcement Perspectives on Sex Offender Registration and Notification*. Retrieved from: <https://www.ncjrs.gov/pdffiles1/nij/grants/250181.pdf>

<sup>13</sup> Schiavone, S.K., & Jeglic, E.L. (2009). Public perception of sex offender social policies and the impact on sex offenders. *International Journal of Offender Therapy and Comparative Criminology*, 53(6), 679–695.

<sup>14</sup> Anderson, A.L., & Sample, L.L. (2008). Public awareness and action resulting from sex offender community notification laws. *Criminal Justice Policy Review*, 19(4), 371–396; Lieb, R., & Nunlist, C. (2008). *Community Notification as Viewed by Washington's Citizens: A 10-Year Follow-Up*. Olympia, WA: Washington State Institute for Public Policy. Retrieved from: [www.wsipp.wa.gov/rptfiles/08-03-1101.pdf](http://www.wsipp.wa.gov/rptfiles/08-03-1101.pdf).

<sup>15</sup> Brannon, Y.N., Levenson, J.S., Fortney, T., & Baker, J.N. (2007). Attitudes about community notification: A comparison of sexual offenders and the non-offending public. *Sexual Abuse*, 19, 369–379.

<sup>16</sup> Anderson, A.L., & Sample, L.L. (2008). Public awareness and action resulting from sex offender community notification laws. *Criminal Justice Policy Review*, 19(4), 371–396; Lieb, R., & Nunlist, C. (2008). *Community Notification as Viewed by Washington's Citizens: A 10-Year Follow-Up*. Olympia, WA: Washington State Institute for Public Policy. Retrieved from: [www.wsipp.wa.gov/rptfiles/08-03-1101.pdf](http://www.wsipp.wa.gov/rptfiles/08-03-1101.pdf); Zevitz, R.G., & Farkas, M.A. (2000). *Sex Offender Community Notification: Assessing the Impact in Wisconsin*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

<sup>17</sup> Brannon, Y.N., Levenson, J.S., Fortney, T., & Baker, J.N. (2007). Attitudes about community notification: A comparison of sexual offenders and the non-offending public. *Sexual Abuse*, 19, 369–379; Center for Sex Offender Management (CSOM). (2001). *Community Notification and Education*. Silver Spring, MD: Center for Sex Offender Management. Retrieved from: [www.csom.org/pubs/notedu.pdf](http://www.csom.org/pubs/notedu.pdf); Lieb, R., & Nunlist, C. (2008). *Community Notification as Viewed by Washington's Citizens: A 10-Year Follow-Up*. Olympia, WA: Washington State Institute for Public Policy. Retrieved from: [www.wsipp.wa.gov/rptfiles/08-03-1101.pdf](http://www.wsipp.wa.gov/rptfiles/08-03-1101.pdf); Phillips, D. (1998). *Community Notification as Viewed by Washington's Citizens*. Olympia, WA: Washington State Institute for Public Policy. Retrieved from: [www.wsipp.wa.gov/rptfiles/CnSurvey.pdf](http://www.wsipp.wa.gov/rptfiles/CnSurvey.pdf).

<sup>18</sup> Center for Sex Offender Management (CSOM). (2001). *Community Notification and Education*. Silver Spring, MD: Center for Sex Offender Management. Retrieved from: [www.csom.org/pubs/notedu.pdf](http://www.csom.org/pubs/notedu.pdf); Lieb, R., & Nunlist, C. (2008). *Community Notification as Viewed by Washington's Citizens: A 10-Year Follow-Up*. Olympia, WA: Washington State Institute for Public Policy. Retrieved from: [www.wsipp.wa.gov/rptfiles/08-03-1101.pdf](http://www.wsipp.wa.gov/rptfiles/08-03-1101.pdf); Phillips, D. (1998). *Community Notification as Viewed by Washington's Citizens*. Olympia, WA: Washington State Institute for Public Policy. Retrieved from: [www.wsipp.wa.gov/rptfiles/CnSurvey.pdf](http://www.wsipp.wa.gov/rptfiles/CnSurvey.pdf).

<sup>19</sup> Sample, L.L., Evans, M.K., & Anderson, A.L. (2011). Sex offender community notification laws: Are their effects symbolic or instrumental in nature? *Criminal Justice Policy Review*, 22(1), 27–49.

<sup>20</sup> Anderson, A.L., & Sample, L.L. (2008). Public awareness and action resulting from sex offender community notification laws. *Criminal Justice Policy Review*, 19(4), 371–396.

- reported suspicious behavior of offenders (3 percent),<sup>21</sup> and
- fear of sex offenders was related to support of registration requirements.<sup>22</sup>

When victims/survivors of sexual assault were surveyed, respondents (n=598) reported support for SORN to be applied equally to all sexual offenders regardless of the relationship to the victim and did not believe it impacted reporting by survivors to law enforcement. Survey results provided less support for SORN as a mechanism to enhance public safety or deter future sexual offending, however, and indicated concerns related to SORN providing the community a false sense of security.<sup>23</sup> Professionals serving victims report victims may face life-long struggles and impacts as a result of being sexually assaulted, and a concern expressed by some victims is that when SORN is not implemented, perpetrators of sex crimes have the opportunity to put the crime behind them and potentially “forget” about the harm they caused.<sup>24</sup> Victims often ask if the perpetrator of the sexual offense will have to comply with SORN and endure a lifelong consequence just as they do.

Proponents of juvenile registration have argued that juvenile who commit a sexual offense pose a unique threat to the public and potential victims to sexually reoffend.<sup>25</sup> These advocates claim that collecting and providing public information about the residences of these juvenile will allow law enforcement, citizens, and entities such as schools and potential employers to better surveil and take precautions in how and whether they engage with them. Purportedly, these safeguards will reduce the risk of sexual re-offense.

Recent research into the registration of juveniles who have committed a sexual offense, however, has called into question past assumptions about juvenile who have sexually offended and the ability of SORN systems to affect sexual re-offense. Studies of juveniles who have committed a sexual offense comparing those who have been required to register to those who have not been required to register have shown that those who register have higher rates of nonsexual recidivism.<sup>26</sup> In addition, these studies have shown that registries:

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<sup>21</sup> Lieb, R., & Nunlist, C. (2008). *Community Notification as Viewed by Washington's Citizens: A 10-Year Follow-Up*. Olympia, WA: Washington State Institute for Public Policy. Retrieved from: [www.wsipp.wa.gov/rptfiles/08-03-1101.pdf](http://www.wsipp.wa.gov/rptfiles/08-03-1101.pdf).

<sup>22</sup> Kernsmith, P. D., Craun, S. W., & Foster, J. (2009). Public attitudes toward sexual offenders and sex offender registration. *Journal of child sexual abuse*, 18(3), 290-301.

<sup>23</sup> Craun, S.W., & Simmons, C.A. (2012). Taking a Seat at the Table: Sexual Assault Survivors' Views of Sex Offender Registries. *Victims and Offenders*, 7, 312-326.

<sup>24</sup> Sex Offender Management Board Victim Advocacy Committee Meeting. (2017). *June 8, 2017 Meeting Minutes*.

<sup>25</sup> Chaffin, M. (2008). Our minds are made up – don't confuse us with the facts: Commentary on policies concerning children with sexual behavior problems and juvenile sex offenders. *Child Maltreatment*, 110-121; Letourneau, E., & Miner, M. (2005). Juvenile sex offenders: A case against the legal and clinical status quo. *Sexual Abuse: A Journal of Research and Treatment*, 292-312.

<sup>26</sup> Bastastini, A., Hunt, E., & Damatteo, D. (2011). Federal standards for community registration of juvenile sex offenders: An evaluation of risk prediction and future implications. *Psychology, Public Policy & Law*, 451-474; Caldwell, M., Ziemke, M., & Vitacco, M. (2008). An examination of the sex offender registration and notification act as applied to juveniles: Evaluating the ability to predict sexual recidivism. *Psychology, Public Policy & Law*,

- fail to identify those individuals at a higher risk to sexually reoffend,
- fail to predict sexual recidivism,
- fail to reduce sexual recidivism, and
- subject registered juveniles to higher rates of arrest for sexual offenses but do not result in new sexual adjudications.<sup>27</sup>

Moreover, the specter of SORN has heavily influenced plea bargaining practices with many juveniles pleading to lesser charges to avoid SORN and, in some cases, becoming ineligible for government-funded treatment as a result.<sup>28</sup> Harsh SORN policies have also been correlated with a dramatic decrease in the odds that a prosecutor would move forward in the prosecution of sexual offense charges.<sup>29</sup>

Finally, after conducting a cost-benefit analysis, one scholar found SORN did not yield net benefits and recommended reforms to include removal of juvenile registrants, increased opportunities for prosecutorial discretion, and better risk assessment.<sup>30</sup>

### ***Recidivism***

The public may consider juvenile SORN a community safety measure to protect from sexual re-offense. Researchers have conceded, however, that there is no statistically significant difference in sexual reoffense rates between juveniles who have committed sexual offenses and juveniles who commit other types of offenses.<sup>31</sup> During a five-year follow-up period, studies examining

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89-114; Letourneau, E., & Armstrong, K. (2008). Recidivism rates for registered and nonregistered juvenile sexual offenders. *Sexual Abuse: A Journal of Research and Treatment*, 393-408; Letourneau, E., Bandyopadhyay, D., Sinha, D., & Armstrong, K. (2009). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 136-153.

<sup>27</sup> Bastastini, A., Hunt, E., & Damatteo, D. (2011). Federal standards for community registration of juvenile sex offenders: An evaluation of risk prediction and future implications. *Psychology, Public Policy & Law*, 451-474; Caldwell, M., Ziemke, M., & Vitacco, M. (2008). An examination of the sex offender registration and notification act as applied to juveniles: Evaluating the ability to predict sexual recidivism. *Psychology, Public Policy & Law*, 89-114; Letourneau, E., & Armstrong, K. (2008). Recidivism rates for registered and nonregistered juvenile sexual offenders. *Sexual Abuse: A Journal of Research and Treatment*, 393-408 (comparing juvenile who had committed a sexual offense between those required to registered and those not required to register and finding no statistically significant differences in sexual recidivism but 85% higher odds of general recidivism in the registered juvenile); Letourneau, E., Bandyopadhyay, D., Sinha, D., & Armstrong, K. (2009). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 136-153.

<sup>28</sup> Calley, N. (2008). Juvenile sex offenders and sex offender legislation: Unintended consequences. *Federal Probation*, 37-41; Letourneau, E., Armstrong, K., Bandyopadhyay, D., & Sinha, D. (2012). Sex offender registration and notification policy increases juvenile plea bargains. *Sexual Abuse: A Journal of Research and Treatment*, 189-207.

<sup>29</sup> Letourneau, E., Bandyopadhyay, D., Sinha, D., & Armstrong, K. (2009). Effects of sex offender registration policies on juvenile justice decision making. *Sexual Abuse: A Journal of Research and Treatment*, 149-165.

<sup>30</sup> Levenson, J., Grady, M., & Leibowitz, G. (2016). Grand challenges: Social justice and the need for evidence-based sex offender registry reform. *Journal of Sociology & Social Welfare*, 3-38 (citing Belzer, R. (2015). *The costs and benefits of subjecting juveniles to sex-offender registration and notification* (R Street Policy Study 41). Retrieved from <http://www.rstreet.org/wp-content/uploads/2015/09/RSTREET41.pdf>).

<sup>31</sup> Caldwell, M. (2007). Sexual offense adjudication and sexual recidivism among juvenile offenders. *Sex abuse*, 107-113; Caldwell, M., Ziemke, M., & Vitacco, M. (2008). An examination of the sex offender registration and

the recidivism rates of juveniles who commit sexual offenses have generally reported sexual recidivism rates ranging from 2.7% to 13%, with general criminal recidivism rates ranging up to 43%<sup>32</sup> Consequently, research does not support public policy which seeks to identify and register juveniles who commit sexual offenses based on the incorrect assumption that they have a higher likelihood to commit a new sexual offense than other delinquent juveniles. While risk assessment tools are available for use with juvenile populations,<sup>33</sup> currently there are no empirically valid risk assessment tools which are able to accurately determine the risk of recidivism for juveniles who commit sexual offenses in the long term. Risk assessments for juveniles who commit sexual offenses may be beneficial, however, in determining short-term risk.<sup>34</sup>

### ***SORN Impact on the Juvenile***

Some policymakers perceive juveniles who commit sexual offenses as a threat to community safety. The application of SORN policy to juveniles implies that juveniles who are registered are at a higher risk than their peer group to commit a new sexual offense. Research from a survey of juvenile treatment providers suggests, however, that SORN may inadvertently increase risk by isolating juveniles from their peer social networks, and disrupting their education and potential employment.<sup>35</sup> Further, this study indicates that juveniles under SORN requirements are likely to experience harassment, physical violence, difficulty in school, and trouble maintaining stable housing as their pro-social development is disordered.<sup>36</sup> Juveniles who are required to register as sex offenders face stigmatization, isolation, and depression. Many consider suicide, and some succeed. Registered children have a 400% higher odds of having *attempted* suicide in the past

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notification act as applied to juveniles: Evaluating the ability to predict sexual recidivism. *Psychology, Public Policy & Law*, 89-114.

<sup>32</sup> Alexander, M.A. (1999) Sexual offenders treatment efficacy revisited. *Sexual Abuse: A Journal of Research and Treatment*, 11(2), 101–116; Caldwell, M. (2010). Study characteristics and recidivism base rates in juvenile sex offender recidivism. *International Journal of Offender Therapy and Comparative Criminology*, 197-212; Caldwell, M. (2016). Quantifying the decline in juvenile sexual recidivism rates. *Psychology, Public Policy & Law*, 1-13; Reitzel, L.R., & Carbonell, J.L. (2006). The effectiveness of sexual offender treatment for juveniles as measured by recidivism: A meta-analysis. *Sexual Abuse: A Journal of Research and Treatment*, 18, 401–421.

<sup>33</sup> Caldwell, M., Ziemke, M., & Vitacco, M. (2008). An examination of the sex offender registration and notification act as applied to juveniles: Evaluating the ability to predict sexual recidivism. *Psychology, Public Policy & Law*, 89-114.

<sup>34</sup> Fanniff, A.M., & Letourneau, E.J. (2012). Another piece of the puzzle: Psychometric properties of the J-SOAP-II. *Sexual Abuse: A Journal of Research and Treatment*, 24(4), 378–408; Vitacco, M.J., Caldwell, M., Ryba, N.L., Malesky, A., & Kurus, S.J. (2009). Assessing risk in adolescent sexual offenders: Recommendations for clinical practice. *Behavioral Sciences and the Law*, 27, 929–940; Worling, J.R., Bookalam, D., & Litteljohn, A. (2012). Prospective validity of the Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR). *Journal of Sexual Abuse: A Journal of Research and Treatment*, 24(3), 203–223.

<sup>35</sup> Harris, A., Walfield, S., Shields, R. & Letourneau, E. (2016). Collateral consequences of juvenile sex offender registration and notification: Results from a survey of treatment providers. *Sexual Abuse: A Journal of Research and Treatment*, 770-790.

<sup>36</sup> Harris, A., Walfield, S., Shields, R. & Letourneau, E. (2016). Collateral consequences of juvenile sex offender registration and notification: Results from a survey of treatment providers. *Sexual Abuse: A Journal of Research and Treatment*, 770-790.

30 days compared to nonregistered children who had committed comparable sex offenses.<sup>37</sup> Juvenile treatment providers indicated that negative impacts were reported for 85% of registered juveniles with approximately 20% having attempted suicide.<sup>38</sup>

SORN policy for juveniles is driven by misperceptions and inconsistencies regarding this population. Juveniles who have committed a sexual offense are part of a diverse population, with risks and needs that are not fixed, but rather are dynamic and changing based upon the juvenile's development and shifts in his/her circumstances.

According to professionals working with juveniles who commit sexual offenses who have concerns regarding subjecting this population to SORN, this policy may label them for life and impede their chances to become successful, educated, employable adults. Juveniles who are subject to SORN may be denied housing, jobs and education. They may also be vulnerable to cycles of incarceration for failing to update their addresses on time with local police if they become homeless, or forgetting to change their employment status if they obtain a new job.<sup>39</sup> Additionally, registries not only potentially harm registrants but also their families, their communities, and in some cases even their victims. Because child-on-child sexual harm often occurs within the family, placing a juvenile in a SORN system often also tears apart a victim's family and creates a risk that a victim's status as a victim will be revealed against his/her wishes.<sup>40</sup>

The application of these policies to juveniles likely works to disrupt prosocial development, through negative impacts on peer networks, school, and employment opportunities.<sup>41</sup> Indeed, Chaffin (2008; p. 113) argued that subjecting juveniles to SORN “creates both direct stigmatization and can set in motion a series of cascading policy effects resulting in social exclusion and marginalization.”<sup>42</sup>

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<sup>37</sup> Letourneau, E.J., Harris, A.J. & Shields, R.T., *Impact of Sex Crime Policies on Juvenile and their Families*. 2016 ATSA Conference Poster.

<sup>38</sup> Levenson, J., Grady, M., & Leibowitz, G. (2016). Grand challenges: Social justice and the need for evidence-based sex offender registry reform. *Journal of Sociology & Social Welfare*, 3-38 (citing Harris, A. J., Walfield, S. M., Shields, R. T., & Letourneau, E. J. (2015). Collateral consequences of juvenile sex offender registration and notification results from a survey of treatment providers. *Sexual Abuse: A Journal of Research and Treatment*).

<sup>39</sup> Human Rights Watch. (2013). *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*. Retrieved from: [https://www.hrw.org/sites/default/files/reports/us0513\\_ForUpload\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf); National Juvenile Justice Network and Others (2016). Comments on the Proposed Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration And Notification Act. Retrieved from: <http://www.njjn.org/uploads/digital-library/Youth%20Justice%20Experts%20Response%20to%20SORNA%20Supplemental%20Guidelines.pdf>

<sup>40</sup> Garfinkle, E. (2003). Coming of age in America: The misapplication of sex-offender registration and community-notification laws to juveniles. *California Law Review*, 163-208.

<sup>41</sup> Association for the Treatment of Sexual Abusers. (2012). *Adolescents Who Have Engaged in Sexually Abusive Behavior: Effective Policies and Practices*. Retrieved from: <http://www.atsa.com/adolescents-engaged-in-sexually-abusive-behavior>

<sup>42</sup> Chaffin, M. (2008). Our Minds Are Made Up—Don't Confuse Us With the Facts: Commentary on Policies Concerning Children With Sexual Behavior Problems and Juvenile Sex Offenders. *Child Maltreatment*, 110-121.

There are misperceptions that if a juvenile attends school, everyone in that school must be informed of the registered juvenile. This includes teachers and parents of all students. Some schools have advised visiting schools of registration when the juvenile attends sporting events, club functions or school dances. Other examples include notifying an employer about registration which may cause the juvenile to potentially lose their job and impact protective factors. A group representing professionals working with juveniles who commit sexual offenses (2016; pp. 1-2) noted, “Current research findings identified iatrogenic effects of juvenile SORN related to the interruption of pro-social development of juveniles by disrupting positive peer relationships and activities, interfering with school and work opportunities, facilitating housing instability and homelessness, and increasing social alienation. These factors may in turn lead to an increase rather than a decrease in the juvenile’s risk for recidivism.”<sup>43</sup>

While traveling out of state, juveniles may be required to check in with law enforcement or register altogether in the visiting state. If parents are divorced and share joint custody, the juvenile is required to register in two counties. If a juvenile moves to Colorado from another state after being adjudicated for a sex offense; they are ultimately required to register as a sex offender and cannot de-register unless granted relief through a civil court proceeding.

A subsequent sexual conviction or adjudication renders Colorado juveniles ineligible to petition off the registry and the juvenile becomes a mandatory lifetime sex offender registrant.<sup>44</sup> Indigent juveniles are not eligible for appointment of counsel in petitions for relief from the registration requirement. Discontinuation of registration hearings have been deemed “civil” proceedings notwithstanding the continued standing of criminal prosecutors and crime victims to participate and be heard in deregistration matters. Juveniles seeking relief from registration requirements must either hire a private attorney or represent themselves in these hearings. In situations involving out-of-state adjudications, the juvenile must pay for and file a civil lawsuit in order to petition for relief from the Colorado sex offender registry. Since 2011, Colorado courts have been required to automatically set a date to review the propriety of continuing the sex offender registration requirement for juvenile at the time of discharge from the juvenile sentence.<sup>45</sup> Individuals who completed their adjudication prior to the 2011 law, however, must initiate the process entirely themselves.

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<sup>43</sup> Association for the Treatment of Sexual Abusers. (2016). *Comments on The Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act*. Retrieved from: [http://www.atsa.com/pdfs/Policy/2016.06.03\\_ATSA\\_SORNA\\_Supplemental\\_Guidelines\\_Letter.pdf](http://www.atsa.com/pdfs/Policy/2016.06.03_ATSA_SORNA_Supplemental_Guidelines_Letter.pdf)

<sup>44</sup> Among other consequences, lifetime registration renders a person ineligible for federal housing assistance. See 42 U.S.C. § 13663.

<sup>45</sup> C.R.S. § 16-22-113.

Although registered adjudicated juvenile cannot be listed on the public website of the Colorado Bureau of Investigation,<sup>46</sup> local law enforcement agencies must release, upon request, information regarding any registrants – including juveniles -- to any person residing within the local law enforcement agency's jurisdiction.<sup>47</sup> Law enforcement has discretion as to whether to release information to individuals who reside outside of the jurisdiction.<sup>48</sup> In addition, a local law enforcement agency may post information on the law enforcement agency's website concerning certain adults and any juvenile with multiple adjudications for unlawful sexual behavior or crimes of violence, or a juvenile who was “adjudicated for an offense that would have been a felony if committed by an adult and has failed to register.”<sup>49</sup> Only those individuals deemed “sexually violent predators” based upon convictions in adult court are subject to mandatory public community notification meetings.<sup>50</sup>

Although juveniles in Colorado are not placed on the sex offender internet registration site with the Colorado Bureau of Investigation, juvenile SORN information is being placed on private websites which adds to labeling and stigmatization along with requirements that they may have to pay high fees to have their information removed from these sites.

If a juvenile fails to comply with Colorado’s registration requirements, s/he is subject to prosecution for the crime of failure to register (FTR).<sup>51</sup> If the juvenile fails to register before turning age 18, s/he is subject to prosecution for FTR within the juvenile justice system. Adjudication for FTR requires a mandatory period of detention, and, in some cases, a mandatory period of at least one (1) year of out-of-home placement.<sup>52</sup> If a person fails to register after age 18, s/he is subject to prosecution for FTR in adult court. If the duty to register was triggered by a juvenile adjudication for a sexual offense that would have been a felony if committed by an adult, the crime of FTR is an adult felony offense, punishable by a possible prison/parole sentence or probation. If the triggering sexual offense was a misdemeanor, the crime of FTR is an “extraordinary risk” misdemeanor and subject to punishment with up to two (2) years in a county jail or probation.<sup>53</sup> In any event, a conviction for FTR often requires the court to order a psychosexual evaluation to determine whether to order sexual offense-specific treatment as part of the sentence.<sup>54</sup> If ordered by the court, the individual who has failed to register is required to pay for such evaluation and treatment, subject to his/her ability to pay.<sup>55</sup>

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<sup>46</sup> C.R.S. § 16-22-111.

<sup>47</sup> C.R.S. § 16-22-112(1).

<sup>48</sup> C.R.S. § 16-22-112(3).

<sup>49</sup> C.R.S. § 16-22-112(2).

<sup>50</sup> C.R.S. § 16-22-108.

<sup>51</sup> C.R.S. § 18-3-412.5.

<sup>52</sup> C.R.S. § 18-3-412.5(4).

<sup>53</sup> C.R.S. § 18-3-412.5.

<sup>54</sup> See C.R.S. §§ 16-11-102, 16-11.7-102, 16-11.7-104, and 16-11.7-105.

<sup>55</sup> See C.R.S. §§ 16-11.7-104 and 16-11.7-105.

Juvenile providers' negative perceptions of juvenile registration and notification requirements are robust across a variety of contexts that might otherwise be expected to influence perceptions of juvenile sex crime policy. Treatment providers, irrespective of their background or the makeup of their client base, identify significant and harmful consequences of these policies.<sup>56</sup> These results join a growing chorus of voices that critique the application of adult criminal justice practices to juveniles in general<sup>57</sup> and those specifically concerned with the practice of subjecting juveniles to SORN.<sup>58</sup>

## **CONCLUSION**

The topic of SORN is often an emotion-laden one with concerns expressed on both sides of the issue. It is important to note that the issue arises as the result of a crime being committed and an individual being victimized. Whether in support or opposition to juvenile SORN, it is clear that professionals on both sides see the gravity of the issue and the impacts to juveniles, the community, and to victims. The aim of this paper has been to frame the issues and provide relevant information needed to make an informed decision with an end goal of an enhanced system for all. Based on the information reviewed, a committee of experts representing various disciplines of the juvenile justice system contends that modifications to the current system should be considered.

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<sup>56</sup> Harris, A. J., Walfield, S. M., Shields, R. T., & Letourneau, E. J. (2016). Collateral consequences of juvenile sex offender registration and notification: Results from a survey of treatment providers. *Sexual Abuse, 28*(8), 770-790.

<sup>57</sup> Cohen, A. O., & Casey, B. J. (2014). Rewiring juvenile justice: The intersection of developmental neuroscience and legal policy. *Trends in Cognitive Science, 18*, 63-65; Kupchik, A. (2006). *Judging juveniles: Prosecuting adolescents in adult and juvenile courts*. New York, NY: New York University Press; Myers, D. L. (2005). *Boys among men: Trying and sentencing juveniles as adults*. Westport, CT: Praeger.

<sup>58</sup> Association for the Treatment of Sexual Abusers. (2012). *Adolescents Who Have Engaged in Sexually Abusive Behavior: Effective Policies and Practices*. Retrieved from: <http://www.atsa.com/adolescents-engaged-in-sexually-abusive-behavior>; Chaffin, M. (2008). Our Minds Are Made Up—Don't Confuse Us With the Facts: Commentary on Policies Concerning Children With Sexual Behavior Problems and Juvenile Sex Offenders. *Child Maltreatment, 110-121*; DiCataldo, F. C. (2009). *The perversion of youth: Controversies in the assessment and treatment of juvenile sex offenders*. New York, NY: New York University Press; Geer, P. (2008). Justice served? The high cost of juvenile sex offender registration. *Developments in Mental Health Law, 27*, 33-52; Harris, A. J., Walfield, S. M., Shields, R. T., & Letourneau, E. J. (2016). Collateral consequences of juvenile sex offender registration and notification: Results from a survey of treatment providers. *Sexual Abuse, 28*(8), 770-790; Human Rights Watch. (2013). *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*. Retrieved from: [https://www.hrw.org/sites/default/files/reports/us0513\\_ForUpload\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf); Markman, J. S. (2007). Community notification and the perils of mandatory juvenile sex offender registration: The dangers faced by children and their families. *Seton Hall Legislative Journal, 32*, 261-283; Miner, M., Borduin, C., Prescott, D., Bovensmann, H., Schepker, R., Du Bois, R., & Pfafflin, F. (2006). Standards of care for juvenile sex offenders of the International Association for the Treatment of Sex Offenders. *Sexual Offender Treatment, 1*, 1-6; Parker, S. C. (2014). Branded for life: The unconstitutionality of mandatory and lifetime juvenile sex offender registration and notification. *Virginia Journal of Social Policy & the Law, 21*, 167-205; Zimring, F. E. (2004). *An American travesty: Legal responses to adolescent sexual offending*. Chicago, IL: The University of Chicago Press.

## **RECOMMENDATIONS**

The recommendations made are intended to promote an improved system that will aid in the reduction of risk for juveniles, aid in the enhancement of protective factors, and maintain the oversight sought by supporters of juvenile registration. The committee makes the following recommendations:

- 1) Make juvenile registry a law enforcement only tool that is non-public (do not include juveniles on the lists provided by law enforcement)
  - a. Juveniles should not be on local law enforcement or CBI website
  - b. There should be parameters in place for how schools obtain and share registration information<sup>59</sup>
- 2) For those who are eligible, a hearing for discontinuation from the registry will automatically be set at the time of successful completion from supervision. All notifications including those required by the Victim Rights Amendment must be made with time allowed for responses prior to vacating the hearing. This hearing can be vacated if there are no objections.
- 3) Change the threshold for release from registration - instead of “more likely than not,” release from registry should be contingent on being found to be low risk to commit a sex offense as evidenced by clinical indicators<sup>60</sup>.
- 4) Improve sentencing procedures to increase the information provided and expand judicial discretion concerning registration
  - a. Develop criteria that an evaluator can use to make a recommendation for no registration.
  - b. Do not require registration under age 14
  - c. Expand the list of crimes that allow for a judge to waive registration. Expand court discretion not to require registration for:
    - i. all juvenile sex crimes / factual basis
    - ii. all juveniles except those whose offense of adjudication meets the Adam Walsh Act elemental requirements (a few versions of felonies in CO) – *i.e.*, court has discretion *except* where the crime “involved an attempt, conspiracy, or commission of a crime by a juvenile who was fourteen years of age or older on the date of the offense and the crime involved (a) sexual penetration, as defined in section 18-3-401(6), or sexual intrusion, as defined in section 18-3-401(5); and (b) commission of the sexual act with another was by force, by a threat of serious violence, by rendering the victim unconscious, or by

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<sup>59</sup> § 22-33-106.5, C.R.S. - Requires mandatory notification by the courts to school districts upon adjudication or conviction of offenders below the age of 18 for "unlawful sexual behavior" as defined by § 16-22-102(9), C.R.S.

<sup>60</sup> Clinical indicators can be anything that provides information about a client’s overall clinical presentation, which may include but is not limited to interviews, quality of treatment participation, polygraph examination results, scores on dynamic risk assessments, psychological evaluation, behavioral observation, and collateral reports.

involuntarily drugging the victim.” (all juvenile misdemeanor sex crimes / factual basis)

- iii. the current juvenile misdemeanor sex crimes where court has discretion but strike the “first petition” and/or “first offense” language in 16-22-103(5)(a)(III)(“as charged in the first petition filed with the court, is a first offense of either..”)
- 5) Eliminate mandatory lifetime registration (ineligible to ever petition) provisions for juveniles in 16-22-113(3) (c) based upon 2 adjudications [in *People v. Atencio*, 219 P.3d 1080 (Colo. Ct. App. 2009), COA said for adults that 2 convictions w/i same case triggers this provision; there is no case law interpreting this provision for juveniles].
    - a. Eliminate mandatory lifetime registration in 16-22-103(4) as well: “[A] person [who has received a juvenile adjudication / deferred] may petition the court for an order to discontinue the duty to register.... only if the person has not *subsequently* received a disposition for, been adjudicated a juvenile delinquent for, or been otherwise convicted of any offense involving unlawful sexual behavior.” (emphasis added).
    - b. Because of brain development and *Roper/Miller/Graham/Montgomery*, lifetime registration should be eliminated for juvenile prosecuted in adult court too and subject to the other provisions of 16-22-113(3).
  - 6) Eliminate requirement (with potential impact on college students) that juveniles who have already been relieved of the duty to register (or never required to register) in another jurisdiction must resume/commence registration in Colorado and then file a new civil lawsuit to discontinue registration in Colorado (16-22-103(3)
  - 7) Consider allowing a juvenile access to court-appointed counsel for relief from registration. If prosecution and victims are involved in the petition for relief from registration and this petition is considered a “critical stage,” juveniles should have access to court-appointed counsel as it is also a “critical stage” for Sixth Amendment purposes.
  - 8) Modify the Failure to Register statute, 18-3-412.5, so that FTR based upon adjudication for a felony sex crime is no longer a felony after age 18 or subject to mandatory confinement when charged as an adjudication. *Redirect cost savings from imprisonment to prevention and victim services.*