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Via Electronic Submission
<http://www.regulations.gov>

ATTN: Luis C. deBaca, Director
SMART Office. Office of Justice Programs
United States Department of Justice
810 7th St. NW.
Washington, DC 20531

FROM: Researchers with Expertise on Juvenile Sexual Offending

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

Dear SMART Office Director deBaca:

We, the undersigned, have published empirically rigorous research pertaining to juvenile sexual offending, including research on (a) sexual recidivism risk and its assessment; (b) evaluating the effects of juvenile registration and notification policies; (c) the effects of waiving youth to adult court; and (d) the effective treatment of youth who have sexually offended. In brief, and as detailed below, our work demonstrates that sexual offense recidivism among juveniles is quite low (below 3% in recent years). Furthermore, juvenile registration policies fail to improve public safety, have unintended effects on the juvenile justice process, and harm youth and their families. Waiver of youth to adult court is a process fraught with bias and, in new research, has been demonstrated to increase the risk of new convictions for youthful sex offenders. Perhaps most importantly, our work has demonstrated that even seriously delinquent youth respond well to evidence-based interventions.

Given these findings, we recommend that the SMART Office emphasize evidence-based treatment rather than registration and waiver as a way to manage youth who have sexually offended. Specifically we recommend the following revisions to the Proposed Supplemental Guidelines:

1. Remove all requirements for the registration of youth adjudicated delinquent for sex offenses. Further, remove financial penalties for states and other jurisdictions when such penalties are based solely on the exclusion of adjudicated youth from registration requirements.
2. Remove all language that implicitly or explicitly encourages or appears to encourage the waiver of juveniles to adult criminal court.
3. Insert language that supports the provision of evidence-based treatment services to youth adjudicated delinquent of sex offenses and their caregivers.

The evidence supporting these three recommendations is reviewed next.

I. Youth Who Sexually Reoffend are Exceedingly Rare and Impossible to Accurately Identify

Our research has indicated exceedingly low rates of sexual recidivism among youth with a first offense, demonstrated that existing measures fail to accurately capture youth who ultimately do reoffend sexually, and demonstrated that sexual recidivism rates are similar between youth with sexual and nonsexual offenses. Thus, **the fact that a youth has committed one sex offense is not predictive of the likelihood that he or she will commit a second sex offense.**

- A. Caldwell (2010) reviewed 63 data sets examining sexual recidivism among more than 11,000 juvenile sex offenders. The mean 5-year sexual recidivism rate was 7%. In a new meta-analysis, Caldwell (in press) reviewed 106 data sets examining sexual recidivism rates among more than 33,000 juvenile sex offenders. Studies from the past 15 years (i.e., the more contemporaneous studies) reveal a mean 5-year recidivism rate of 2.75%, confirming the decline in sexual abuse rates noted by others (e.g., Finkelhor & Jones, 2004). Specifically, this study documented that the base rate for juvenile sexual offense recidivism has declined by 73% in the past 30 years.
- B. Based on his new meta-analysis Caldwell (in press) has concluded that the current sexual recidivism base rate of 2.75% makes it technically impossible to identify juveniles “more likely than not” to reoffend. To do so requires an assessment tool that could identify a subgroup that is more than 15 times the base rate, and the best any scale has ever achieved is identifying a subgroup that is about 4 times the base rate.
- C. Youth who offend sexually pose similar risks as youth who have committed nonsexual offenses. Caldwell and Dickinson (2009) compared the sexual recidivism risk scores of 106 registered and 66 unregistered youth and found that registered youth scored significantly *lower* on scales that most accurately predicted general recidivism. Caldwell (2007) compared the recidivism patterns of 249 youth adjudicated of sex offenses and 1780 youth adjudicated of nonsex offenses. Across a 5-year follow-up, the nonsex offending youth were equally likely to commit a new sex offense as the sex offending youth. Indeed, 85% of the new sex offenses were committed by the non-sex offending youth.

II. Juvenile Registration Policies Do Not Improve Public Safety

Our research has examined the impact of juvenile registration policies on several outcomes including recidivism, first-time offending, unintended impacts on juvenile case processing, and iatrogenic collateral consequences to youth. **Every one of these studies points to the failure of juvenile registration policies to improve public safety in any way.**

- A. Juvenile Registration does not Deter Crime
 - i. Letourneau and Armstrong (2008) compared the recidivism rates of 111 matched pairs of youth adjudicated for similar sexual offenses. Across an average 4.3-year follow-up, just 2 of the 222 youth (< 1%) reoffended with a new sex offense. Youth subjected to registration were no less likely to reoffend with any offense including violent offense than nonregistered youth.
 - ii. Letourneau, Bandyopadhyay, Sinha, and Armstrong (2009a) evaluated the impact of registration on the recidivism risk of all male youth adjudicated delinquent for a sex offense in South Carolina between 1990 and 2010. Across an average 9-year follow-up, just 2.5% of youth had a new sex offense adjudication or conviction. Registration status was not associated with new sex or nonsex offense adjudications or convictions. Registration status was associated with higher likelihood of new sex and nonsex offense arrests (but, again, not convictions), suggesting a surveillance effect on the part of adults rather than behavioral differences on the part of youth.

- iii. Caldwell and Dickinson (2009) compared the recidivism rates of 106 registered and 66 unregistered youth. Across an average 4.1-year follow-up, registered youth were charged with new sex crimes at rates similar to unregistered youth.
- iv. Batastini, Hunt, Present-Koller and DeMatteo (2011) examined the SORNA classification system to predict future offending of a sample of 112 youth adjudicated for sex offenses. Across a 2-year follow-up period, re-offense rates were similar for youth who met criteria for registration and youth who did not meet registration criteria.
- v. Shifting focus from recidivism to first-time offenses, Letourneau, Bandyopadhyay, Armstrong, and Sinha (2010) examined the impact of juvenile registration on first time sex crimes. Evaluating trends from 1990 through 2004 and based on data from more than 3,000 sex offense charges, there was no evidence indicating that juvenile registration was associated with declines in juvenile sex crimes. In new research, Letourneau and colleagues have replicated this finding using National Incident-Based Reporting System data from four states (Sandler, Letourneau, Vandiver, Shields, & Chaffin, 2016).

B. Juvenile Registration is Associated with Unintended Impacts on Case Processing

- i. Letourneau and colleagues found that juvenile registration was associated with unintended effects on case processing including increased diversion and dismissal of juvenile sex crime cases (Letourneau, Bandyopadhyay, Sinha, & Armstrong (2009b) and dramatically increased plea bargains from sex to nonsex offenses (Letourneau, Armstrong, Bandyopadhyay, & Sinha, 2013). This pattern was not replicated with other juvenile violent offending, supporting our conclusion that these case processing changes occurred in response to registration policies.

C. Juvenile Registration is Associated with Harm to Children

- i. Harris and colleagues surveyed 265 therapists from across the U.S. who provide treatment services to youth who have sexually offended (Harris, Walfield, Shields, & Letourneau, in press). Therapists overwhelmingly perceived negative consequences associated with juvenile registration requirements across the domains of youth mental health, harassment and unfair treatment, school problems, and living instability.
- ii. In a new study, Letourneau and colleagues have surveyed more than 220 youth ages 12 to 17 who are in treatment for sexually intrusive or abusive behavior. Approximately one-third of these youth have been subjected to sex offender registration requirements. Compared to nonregistered youth, youth currently or previously registered report significantly higher rates of seriously considering and/or attempting suicide and significantly higher rates of being approached by adults for sex (Letourneau, Harris, Shields, Walfield, & Kahn, 2016).

III. Waiver Policies Do Not Improve Public Safety

The guiding logic underlying juvenile waiver or transfer to adult criminal court is that, for youth who commit serious acts of violence, the adult system is better equipped to administer punishment than the more lenient juvenile court. However, as we summarize in a new study, **evaluations of juvenile transfers suggest that these policies are ineffective in reducing juvenile offending and these policies are subject to bias, with Black and other minority youth more likely to be waived to criminal court than White youth** (Rinehart, Armstrong, Shields, & Letourneau, in press).

- A. In our new study we provide the first formal evaluation of a waiver policy as applied to youth who have sexually offended. Specifically we compared 83 youths charged with a sex offense and adjudicated in criminal court with a matched sample of 83 youths charged with a sex offense and adjudicated in family court. There were no differences in rates of new arrests, just rates of new

convictions. Youth convicted in criminal court were 4.9 times more likely to be convicted of a new violent offense than youth adjudicated delinquent in family court. This pattern of findings suggests that, for youth convicted of sex offenses, the effect of transfer is not on youth behavior (which should be reflected in lower arrest rates if prosecution in criminal court has an ameliorative effect) but rather on the reaction to youth by adults. That is, youth with adult sex crime convictions may be viewed as more dangerous than youth with juvenile sex crime convictions and thus subjected to harsher consequences for equivalent behavior.

- B. Our study also revealed that a greater portion of youth waived to adult criminal court for sexual offenses were Black.

IV. Evidence-based Treatments Do Improve Public Safety

Our research has demonstrated the effectiveness of treatment for youth who have sexually offended (Borduin, Henggeler, Blaske, & Stein, 1990; Borduin, Schaeffer, & Heiblum 2009; Letourneau et al., 2009; Letourneau et al., 2013). However, as observed by Dopp, Borduin, and Brown (2015), in light of recent estimates that only 5 percent youth who have committed serious offenses of any kind receive an evidence-based treatment, **there is a strong need to ensure that more youth who commit sexual offenses are treated with empirically supported interventions.**

- A. In recent reviews of the treatment evidence base (Dopp et al., 2015; Dopp, Borduin, Rothman, & Letourneau, 2016) we evaluated the published juvenile sex offense-specific treatment outcome studies. Results indicated that Multisystemic Therapy for Problem Sexual Behavior (MST-PSB) is an effective treatment for these youth. In several randomized controlled trials, MST-PSB has been associated with significant reductions in sexual recidivism rates, nonsexual recidivism rates, and sexual risk behaviors; associated with other positive outcomes (e.g., reduced substance use, improved parenting); and associated with significant reductions in rates of jail, incarceration, and other costly out-of-home placement (e.g., residential treatment).
- B. We (Caldwell, 2011; Caldwell, 2013; Caldwell, McCormick, & Umstead, 2007; Caldwell, McCormick, Wolfe, 2012; Caldwell, Skeem, Salekin, & Van Rybroek, 2006; Caldwell, & Van Rybroek, 2005; Caldwell, Vitacco, & Van Rybroek, 2006) have also demonstrated that even adolescents with psychopathic features and a history of violence respond to evidence-based treatment with significant reductions in general and violent offending in both institutional and community settings. Specifically, studies have shown that appropriate treatment of juveniles with psychopathic features can reduce their risk of violent recidivism by half as compared to a matched but untreated group. And while this research was not specific to juvenile sexual offending, approximately one-third of the young offenders studied had committed sexual offenses.

V. Conclusions

There are few areas of U.S. policy where the evidence of failure is clearer or where there is stronger consensus regarding what we should be doing differently. Juvenile registration is a failed policy that must end (Letourneau & Caldwell, 2013; Letourneau & Miner, 2005). Rather than improving public safety, registration, akin to youth imprisonment, “communicates constantly and in a variety of ways that [registered] youth are dangerous, feared, worthless and have no real future” (McCarthy, 2015).

Holding children appropriately accountable for harmful behavior and providing them with evidence-based treatment can reduce their likelihood for future offending. Subjecting them to registration cannot.

Respectfully,

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Disclaimer

The opinions expressed herein are those of the signatories and do not necessarily reflect the views of the institutions where the signatories are employed.

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