

Wednesday, June 8, 2016

Luis C. deBaca, Director  
SMART Office, Office of Justice Programs  
United States Department of Justice  
810 7<sup>th</sup> St. NW.  
Washington, DC 20531

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

Dear SMART Office Director deBaca:

We, the undersigned organizations, represent a diverse and bi-partisan alliance called “Just Kids.” Our national coalition is made up of legal experts, child advocates, juvenile justice policy experts, and victim advocates concerned about the practice of including youth on sex offender registries.

We have reviewed the *Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act* - OAG Docket Number 151 (hereinafter referred to as “Proposed Guidelines”). We commend the SMART Office for addressing the extent to which youth should be included in sex offender registration and notification schemes for purposes of jurisdictions’ substantial implementation of SORNA. However, the Proposed Guidelines ought to go further in granting states flexibility and should recognize the latest and most relevant research. In these comments, we demonstrate that the practice of registering youth is not supported by the best available research, undermines the spirit of the juvenile justice system and does not advance the stated goals of the administration. **As such, we suggest that you move towards implementing a system that both reassures states they will not lose Byrne grant funding if they do not register youth and also discourages state policies that require youth registration.**

There is a great opportunity to make change. The office should seize it.

Our specific comments follow:

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**I. Existing social science and nearly all relevant professional and research bodies disagree with the inclusion of youth in registration and notification policies.**

We favor strong measures to protect children from sexual abuse. This requires effective public policies driven by fact, not fear. The research is conclusive: registering children is harmful and counter to public safety goals. We cannot allow vested interests and emotional advocacy agendas to continue to drown out the best interest of children, families and communities. The research overwhelmingly condemns the practice of subjecting children to sex offender registration and notification restrictions. Consider the conclusions the following entities have issued:

- **The Association for the Treatment of Sexual Abusers (ATSA):**

*“increasingly, research findings show that registration and public notification policies, especially when applied to youth, are not effective and may do more harm than good.”<sup>1</sup>*

- **International Association for the Treatment of Sexual Offenders (IATSO):**

*“Sexual offender registries and community notification, should not be applied to juveniles. Given the developmental needs of youth, their culpability being different from adults, and the labels and stigmas that adults can place on children through unproven avenues such as registration and notification IATSO is extremely skeptical of the long-term utility of such policies and is concerned by their potentially harmful effects on the very communities these policies seek to serve.”<sup>2</sup>*

- **The Sex Offender Management Assessment and Planning Initiative (SOMAPI)**, a project of the SMART Office; and the **Center for Sex Offender Management (CSOM)**, a project of the Office of Justice Programs, the National Institute of Corrections, and the State Justice Institute; are among the expert bodies that caution against the labelling youth for life by placing them on registries.<sup>3</sup> In CSOM’s recommendation against the application of adult laws to youth, it warns:

*“...registration of juveniles has not been found to increase public safety, and it comes with potential unintended consequences, such as social and peer rejection, disruption*

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<sup>1</sup> Association for the Treatment of Sexual Abusers, “Adolescents Who Have Engaged In Sexually Abusive Behavior: Effective Policies And Practices,” October 30, 2012. <http://www.atsa.com/pdfs/Policy/AdolescentsEngagedSexuallyAbusiveBehavior.pdf>

<sup>2</sup> Michael Miner et. al., “Standards of Care for Juvenile Sexual Offenders of the International Association for the Treatment of Sexual Offenders,” *Sexual Offender Treatment*, 1:3 (2006).

<sup>3</sup> See US Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, *Sex Offender Management Assessment and Planning Initiative*, by Kevin Baldwin, Susan Faupel, Tom Laversee, Christopher Lobanov-Rostovsky, Roger Przybylski, Phil Rich, Michael Seto, Dominique A. Simons, and Jane Wiseman, October 2014; US Department of Justice, Office of Justice Programs, Center for Sex Offender Management, *Twenty Strategies for Advancing Sex Offender Management in Your Jurisdiction*, by Madeline M. Carter, December 2008.

*in the development of a healthy identity, and other barriers to adjustment and stability.”<sup>4</sup>*

- **The Illinois Juvenile Justice Commission (IJJC)**, which serves as the state’s federally mandated State Advisory Group, recently completed a comprehensive study on effective responses to youth adjudicated of sexual offenses. IJJC recommends eliminating youth registration. The commission’s strongly worded 2014 report cautioned:

*“Treating youth like adults and categorically applying registries and other barriers to stable housing, education, family relationships, and employment does not protect public safety. On the contrary, employing these strategies is much more likely to undermine youth rehabilitation, harm intrafamilial victims of sexual abuse, stigmatize families, and produce poor outcomes for communities.”<sup>5</sup>*

And this is just a sampling. We are not aware of a single peer reviewed study, government agency or professional association that has determined that continued registration of children benefits public safety or protects victims. In fact, evidence indicates the opposite.

***II. Applying lifelong consequences to youth contradicts the best evidence we have on what is best for young people and their communities and undermines the ideals of the juvenile justice system.***

Placing kids on sex offender registries for any amount of time often labels them for life, given the persistence of information on the internet. It halts their chances to become successful, educated, employable adults before they even graduate from high school, or in some cases middle school. No other practice in the juvenile justice system does this.

Teens who are raised on registries are very often denied housing, jobs and education. They are isolated and depressed – one in five will attempt suicide.<sup>6</sup> People placed on the registry as youth are also vulnerable to cycles of incarceration for technical violations like failing to update an address on time if they become homeless, or forgetting to change their employment status if they get a new job.

While children who commit sexually oriented acts can do significant harm, many of them are themselves victims of abuse. The vast majority of survivors of sexual abuse do not go on to harm others, but research indicates that as much as 85 percent of adolescents with sexual

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<sup>4</sup> US Department of Justice, Office of Justice Programs, Center for Sex Offender Management, *Twenty Strategies for Advancing Sex Offender Management in Your Jurisdiction*, by Madeline M. Carter, December 2008.

<sup>5</sup> Illinois Juvenile Justice Commission, “Improving Illinois’ Responses to Sexual Offenses Committed by Youth,” March 2014.

<sup>6</sup> Human Rights Watch, “Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US,” May 2013.

behavior problems have themselves been sexually abused.<sup>7</sup> Out of the sample of youth interviewed for the 2013 Human Rights Watch Report *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, 100 percent were identified by the child welfare system as victims of abuse or neglect in the year before committing the offense that placed them on the registry.<sup>8</sup>

The inclusion of children in sex offender registration and notification schemes is, in many places, an artifact of laws that take the ages of victims but not offenders into account: a 14-year-old who sexually gropes a 13-year-old has almost certainly done something wrong but is not a “pedophile.” In some cases, policymakers who passed laws to include children on registries may have actually believed that youth who commit sexual harm will grow into adults who sexually abuse children or peers, even though most research does not support this finding.<sup>9</sup>

While some of the signatories do believe that lifelong consequences can be appropriate for certain adult crimes, the entire premise of the juvenile justice system is based on temporary consequences and a large degree of confidentiality. The use of sex offender registries for those adjudicated delinquent undermines this premise.

### ***III. Children adjudicated of sexual offenses will grow out of their childhood behavior and have very low re-offense rates.***

Some children who commit sexual acts merit careful professional attention and even legal intervention.<sup>10</sup> A great many children placed on sex offender registries, however, do not commit acts that anyone sees as *bona fide* “adult crimes.” When youth are adjudicated as delinquents, there has been a deliberate decision made *not* to try them as adults. Adolescence is a time of dramatic change and transformation is possible. Youth adjudicated of sex offenses respond well to all sorts of treatment and generally do not reoffend.

The latest empirical findings show that over 95 percent of youth adjudicated of sex offenses will never cause sexual harm again, with or without registration.<sup>11</sup> This is true across offense type.

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<sup>7</sup> See Judith V. Becker, “What We Know About the Characteristics and Treatment of Adolescents Who Have Committed Sexual Offenses,” *Child Maltreatment*, 3:4 (1998); David L. Burton, “Male Adolescents: Sexual Victimization and Subsequent Sexual Abuse,” *Child and Adolescent Social Work Journal*, 20:4, (2001).

<sup>8</sup> Nicole Pittman, Reanalysis of *Raised on the Registry* interviews, Unpublished, 2015. Verified with court documents by Human Rights Watch.

<sup>9</sup> Mark Chaffin and Barbara Bonner. “Don’t shoot, we’re your children”: Have we gone too far in our response to adolescent sexual abusers and children with sexual behavior problems?,” *Child Maltreatment*, 3(4), 314-316 (Editor’s Introduction) (1998). Available at [www.csom.org](http://www.csom.org)

<sup>10</sup> See US Department of Justice, Office of Justice Programs, Center for Sex Offender Management, *Twenty Strategies for Advancing Sex Offender Management in Your Jurisdiction*; US Department of Justice, Office of Justice Programs, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, *Sex Offender Management Assessment and Planning Initiative*.

<sup>11</sup> Sharon E. Denniston and Michael F. Caldwell, “Answering the Call to Study the Effects of Juvenile SORN: Lessons from Two Studies,” Presented October 15, 2015 at the ATSA 34th Annual Research and Treatment Conference, Montreal, Quebec, Canada.

Research also suggests that youth adjudicated of sexual offenses categorized as particularly aggressive under SORNA are no more likely than their peers adjudicated of non-sex offenses or of lesser sex offenses to harm sexually again.<sup>12</sup> Youth are most often acting opportunistically and experimentally, and their behavior cannot be treated as intractable character flaws or evidence of any particular pathology.<sup>13</sup>

Given recent research on adolescent development it should come as no surprise that a young person's actions are not a good indicator of how they will behave as adults. Youth are more likely to act impulsively, but they grow out of dangerous or harmful behavior. They are uniquely amenable to intervention and change.<sup>14</sup> The Supreme Court has relied on this research over the last decade to affirm the need to protect youth from the harshest adult consequences in its judgments in *Roper v. Simmons* (2005), *Graham v. Florida* (2010), *Miller v. Alabama* (2012), and most recently *Montgomery v. Alabama* (2016).

Registering children also has costs far in excess of any benefits. A recent cost-benefit analysis found that registering youth adjudicated in juvenile court comes with social and government costs of roughly \$3 billion a year.<sup>15</sup> These funds could be better spent on evidence-based treatment and intervention efforts that actually prevent sexual abuse.

#### ***IV. This current trajectory contradicts the rehabilitative goals of the juvenile justice system and the current administration's policies.***

When President Obama banned solitary confinement for youth in federal prisons, he spoke of the devastating mental health consequences of solitary and the insurmountable barriers it places in a young person's path to reentry:

*"The United States is a nation of second chances, but the experience of solitary confinement too often undercuts that second chance. Those who do make it out often*

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Caldwell has conducted a meta analysis of 91 studies with 29,734 youth adjudicated of sex offenses with data from the 1940s to 2014. The weighted sexual recidivism rate is 4.59%, however 40 of the studies have recidivism rates below 5% while only 3 have rates over 15%.

<sup>12</sup> See Michael F. Caldwell, Mitchell H. Ziemke, and Michael J. Vitacco, "An examination of the sex offender registration and notification act as applied to juveniles: Evaluating the ability to predict sexual recidivism," *Psychology, Public Policy, and Law*, 14:2 (2008): 89-114; Ashley B. Batastini, Elizabeth Hunt, Julie Present-Koller, and David DeMatteo, "Federal standards for community registration of juvenile sex offenders: An evaluation of risk prediction and future implications," *Psychology, Public Policy, and Law*, 17:3 (2011): 451 – 474.

<sup>13</sup> See Franklin E. Zimring, *An American Tragedy: Legal Responses to Adolescent Sexual Offending*, (Chicago: The University of Chicago Press, 2004); Mark Chaffin, "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*, 13:2 (May 2008).

<sup>14</sup> See Laurence Steinberg & Elizabeth S. Scott, "Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty," *American Psychologist*, 58:12 (2003); Laurence Steinberg, "A Social Neuroscience Perspective on Adolescent Risk Taking," *Developmental Review*, 28:1 (2008).

<sup>15</sup> Richard B. Belzer, "The Costs and Benefits of Including Juveniles on Sex Offender Registries," *R-Street Institute Policy Study No. 41* (September 2015).

*have trouble holding down jobs, reuniting with family and becoming productive members of society.”<sup>16</sup>*

We need to bring the same sort of thinking to registration of youth. Registration, like solitary confinement, alienates and isolates. Youth on registries have alarming rates of suicide and depression. They are ostracized. They are required to register long after they serve sentences in juvenile prison and undergo treatment, and often can never shake the “sex offender” label. These young people deserve a second chance, too. Attorney General Lynch’s words on second chances ring true here:

*“In order to truly make our communities safer, we must make sure that people who have served their time are able to fully and productively engage in our society — whether through education or employment or some other constructive means.”<sup>17</sup>*

Youth on registries face insurmountable barriers to living, working and going to school. These barriers do not make us safer and deny youth the right to grow up to be more than their worst moments. *The SMART Office should consider following the administration’s trajectory on youth justice and should hold hearings to consider an alternative means to allow full compliance with SORNA.*

## **V. Recommendations**

**Option 1. Assure jurisdictions that removing youth adjudicated delinquent in the juvenile justice system from registration schemes is discretionary and will not result in a loss of Byrne Funding.** Ultimately, we need a legislative fix to fully remove youth from registries. We, the undersigned, hope that the SMART office and the Department of Justice will support such congressional action. In the meantime, we urge you to consider a system that both (1) clearly assures jurisdictions that they will not lose Byrne grant funding if they do not register youth, and (2) discourages state policies that require youth registration. This stronger approach would better align with the spirit of SORNA, the Department of Justice’s initiatives, and what we know is best for youth, families and communities.

**Rationale.** Registering children contradicts the administration’s vision for children who come in contact with the juvenile justice system. It is counter to OJJDP’s mission to:

*“improve the juvenile justice system so that it that protects public safety, holds justice-involved youth appropriately accountable, and provides treatment and rehabilitative services tailored to the needs of juveniles and their families.”<sup>18</sup>*

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<sup>16</sup> Barack Obama, “Why we must rethink solitary confinement,” *The Washington Post*, January 25, 2016.

<sup>17</sup> Loretta Lynch, “Second Chances Vital to Justice Reform,” *The Huffington Post*, July 30, 2015.

By design, juvenile courts are supposed to rehabilitate, rather than punish. While they have simpler procedures and accord fewer rights to defendants, the supposed trade-off is that sanctions are far less severe. Most people can't be held for juvenile offenses beyond the age of 21 and juvenile records are almost always eligible to be sealed (the process is sometimes automatic). By contrast, sex-offender registration inflicts sanctions so severe and excessive that they disparately and permanently brand children who are not likely to ever commit further sexual harm.

**If Option #1 is not immediately available,  
we believe the SMART Office should move to Option #2.**

**Option 2. Hold a full public hearing on these Proposed Supplemental Guidelines before finalizing.** A public hearing would give the Department of Justice and the SMART Office an opportunity to review the evidence about placing youth on registries, explore the least restrictive and best solutions relating to the public safety goals of SORNA, and evaluate potential costs and unintended consequences of updating the approach to substantial compliance in this way.

**Rationale.** The proposal to permit a discretionary or limited registration system for youth falls short in two major ways: (1) **contrary to research**: the encouragement of discretionary practices without regard to evidence is problematic and at odds with the preponderance of scientific research concluding that registration and notification should not be applied to youth at all<sup>19</sup>; and (2) **lack of clarity**: the vaguely worded Proposed Guidelines are not responsive to state policy makers' expressed need for more clarity on SORNA. Such policymakers have long struggled to find a balance between SORNA implementation and employing the most effective strategies to protect their own citizens. State officials we have spoken with support either the full elimination of all federal inducements to register youth as sex offenders or an explicit clarification from the SMART Office that ensures that the exclusion of youth from their registration schemes will not be a barrier to coming into compliance with SORNA.

### **Conclusion**

**Youth registration should end.** There is simply no empirical evidence that registering children adjudicated in juvenile courts has any public safety value, and it comes at an enormous cost to youth, families, victims and communities. Governments allocate tremendous resources to

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<sup>18</sup> Office of Juvenile Justice and Delinquency Prevention, "Vision and Mission," <http://www.ojjdp.gov/about/missionstatement.html>

<sup>19</sup> Michael Miner et al. Standards of Care for Juvenile Sexual Offenders of the International Association for the Treatment of Sexual Offenders. *Sexual Offender Treatment*, Volume 1 (2006), Issue 3.

tracking low-to-no risk children, taking away what otherwise could go to rehabilitative and victims' services. The SMART Office has the opportunity to change this practice. It should. And it must.

Sincerely,

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