

Updated Policy Platform

SEX OFFENSE REGISTRATION AND RELATED LAWS: TREATING YOUTH FAIRLY

OCTOBER 2018

Policy Recommendation

NJJN recommends that all youth* and adults who committed sexual offenses as youth be exempt and/or removed from sex offense registries, public notification laws, and residency restriction laws.

Model Policy for Removing Youth from Registries

In order to implement NJJN's policy recommendation, we recommend the following best practices:

- Youth currently on sex offense registries should be removed and no longer subject to public notification requirements or residency restrictions. No additional youth should be placed on registries or subjected to public notification or residency restrictions.
- Any statutory change to remove youth from sex offense registries, public notification requirements, and residency restrictions should be automatically applied retroactively.
- A process should be put in place for individuals to petition to be removed from a registry in cases where they have been inappropriately placed on it in contravention of the above policy and counsel should be appointed to represent these individuals.
- While advocates are fighting to end the placement of youth on registries, the government should ensure that youth who are adjudicated or convicted of sex offenses and their families fully understand the rules and regulations of SORNA for their state. In addition,

* Throughout this policy platform, the term "youth" refers to anyone adjudicated delinquent or convicted of an act which occurred when they were under the age of 18 years old.

research should continue into the impact of registration on youth, families, and communities, including whether youth of color and LBGTQ youth are disproportionately being arrested, detained, committed, and required to register for sex offenses.

Recommendations for Positive Prevention and Intervention

Rather than using scarce funds to place and track youth on sex offense registries, states and the federal government should invest funds in prevention and intervention programs for youth and families. Below are positive steps that NJJN recommends states and the federal government take to help prevent sexual abuse and offending.

- Provide victims of sexual abuse with access to affordable, confidential, and competent clinical care and other supports.
- Support and fund outreach efforts to help parents learn about prevention and identification of sexually inappropriate or dangerous behavior.
- Fund education, outreach, and training for teachers, social workers, youth workers, mental health providers, health care professionals, and the faith-based community so that they can better understand normative adolescent behavior as well as the risks of sexual offending and recognize the signs of sexual abuse of children.
- Support further research on youth who commit sex offenses, identifying behaviors that should not be labeled as sex offenses, and identifying effective interventions. Efforts should be focused on more effective individual treatment to reduce recidivism, rather than elaborate, broad-based controls, such as registries and public notification.

Background

Following several high-profile cases in the 1980s and 1990s, Congress passed the Adam Walsh Act (AWA) in 2006.¹ One of the key provisions of the AWA is the Sex Offender Registration and Notification Act (SORNA).² SORNA standardized registration and community notification practices in order to track adults convicted of sex offenses and publicize their whereabouts. SORNA also required that jurisdictions include certain youth on sex offender registries.³ As of 2018, 38 states place youth on sex offender registries.⁴

Naturally, protecting youth and creating safer communities are of utmost concern to all and require effective public policies. However, research shows that placing youth who have committed sex offenses on registries and subjecting them to public notification and residency restrictions does not in fact keep children and communities safe—it has no public safety benefits and can actually expose the youth and their communities to greater harm.⁵ For these and additional reasons, the Federal Advisory Committee on Juvenile Justice⁶ made the following recommendation in 2016: “Existing federal law should be amended to explicitly exempt juveniles (all persons who were below the age of 18 at the time of their offense) from all sex offender registration, community notification, and residency restriction laws.”⁷

Consequences to Youth

The consequences to youth of being placed on registries—sometimes for life—are profound: youth and their families are often the targets of threats and violence,⁸ and youth are frequently ostracized, prevented from attending school, and are subject to such strict residency requirements that “many [youth] are in effect banished from their neighborhoods.”⁹ Often denied education, housing, and jobs, it can become nearly impossible for these young people to ever live normal, productive lives. A 2018 report found that registered children reported more experiences with violence, more peer relationship problems, and were nearly twice as likely to have experienced sexual assault and were five times as likely to have been approached by an adult for sex in the past year.¹⁰ An additional alarming consequence of youth registration is the increase in suicidal thoughts and behavior. Nearly one-fifth of registered youth interviewed for a 2013 report had attempted suicide and three had committed suicide.¹¹ A 2018 report found that registered youth reported more severe suicidal thoughts and were four times more likely to have attempted suicide in the past 30 days than nonregistered children.¹²

Youth of Color Overrepresented

Data from a 2017 study of youth arrested, detained, and committed to the justice system for sexual offenses by the Illinois Juvenile Justice Commission found that youth of color were “notably” overrepresented at every decision point that they examined.¹³ The data also showed that black youth, on average, were held longer in detention for sex offenses than white youth.¹⁴ While there is no national study examining this issue, there is cause for concern due to the disproportionate number of youth of color in the youth justice system nationally.¹⁵ National data on sex offense registration rates for adults and youth combined shows that in every state except one (Michigan), there is a higher sex offense registration rate for black youth than for white youth with an overall registration rate for black youth of more than twice that of white youth.¹⁶

Discriminatory Treatment of LGBTQ Youth

There is growing concern that LGBTQ youth may be overrepresented on sex offender registries due to both biases by justice system stakeholders and discriminatory laws.¹⁷ Some states still have laws that target LGBTQ youth by criminalizing same sex sexual activity when the same act is not considered criminal for heterosexual youth.¹⁸ More research on this issue is needed to understand why LGBTQ youth are ending up on registries and at what rate in comparison to cisgender youth.

Impact on Disabled Youth

SORNA does not make any distinctions for youth with disabilities, such as those with autism spectrum disorder (ASD). Youth with ASD and other disabilities develop sexual curiosity and hormonal changes, just as all adolescents do, but may face challenges in communication and socialization that can result in exhibiting socially unacceptable behaviors.¹⁹ Punishing these youth with sex offender registration for mistakes they make while still learning how to safely express their sexuality can enhance their difficulty in attending school and getting jobs without providing any public safety benefit. Unfortunately, many judges are wary of treating children with disabilities differently than other youth or adults, instead adopting a “one size fits all” approach for fear of “seeming soft on sex offenders.”²⁰

No Public Safety Benefit

The incidence of sexual reoffending by youth is exceedingly low—it was declining prior to implementation of juvenile registration and notification policies and has continued to decline, though at a slower pace, since implementation.²¹ Researchers reviewing studies from 1943 to 2015 found that 95 percent of youth adjudicated for sexual offenses did not recidivate or commit any further sexual offenses. For youth adjudicated between 2000 to 2015, this rate decreased even further—only 2.75 percent sexually recidivated.²²

Multiple studies on juvenile registration show no evidence that registering youth adjudicated for sex offenses reduces the already very low recidivism rate for such youth, or deters future sexual offenses.²³ Rather, registration and notification policies have been noted to “stigmatize and isolate children with no identifiable public benefits.”²⁴ Due to the isolation, youth may not develop the social relationships and maturities needed to make a healthy transition into adulthood, which may actually place youth at higher risk for future offending.²⁵

Harm to Families and Communities

If a young person is forced to register, the stigma not only impacts them but can lead to the ridicule and harassment of family members and friends as well.²⁶ Instead of reducing sex offenses, the threat of registration may lead fewer families to seek help, thereby potentially increasing sexual harm. Since most child sexual abuse is intra-familial, notification laws and inclusion of youth on registries may lead to an underreporting of sexual abuse and failure to seek out treatment, as family members seek to protect each other from punishment and registration.²⁷

Conclusion

Placing youth on registries clogs databases, squanders valuable law enforcement time and resources, and distracts the law enforcement system from attending to more serious public safety concerns.²⁸ Sex offense registries and public notification needlessly damage the lives of youth and have no known public safety benefits. For these reasons and those detailed above, NJJN recommends that all youth and adults who committed sexual offenses as youth be exempt and/or removed from sex offense registries, public notification laws, and residency restriction laws.

¹ Adam Walsh Child Protection and Safety Act of 2006 (AWA), Pub. L. No. 109-248, 42 U.S.C. §16901 et seq. <https://bit.ly/2R4Bk8k>.

² Title I of the Adam Walsh Child Protection and Safety Act of 2006 (AWA).

³ 42 U.S.C. §16911 (8) (2006); The U.S. Attorney General also issued Supplemental Guidelines in 2016 further explaining which youth should be placed on registries pursuant to SORNA. Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act, 81 Fed. Reg. 147 (Aug. 1, 2016), <https://bit.ly/2NZFj44>.

⁴ Impact Justice, Center on Youth Registration Reform, “Ending the Abusive Practice of Placing Children on Sex Offense Registries,” accessed October 22, 2018, <https://bit.ly/2q98yIw>.

⁵ Letourneau and colleagues reviewed the published studies evaluating the effects of state and federal youth registration policies and found none reported beneficial public safety effects. This includes evaluations of nine state policies – Idaho, Maryland, New Jersey, Oregon, South Carolina, Texas, Utah, Virginia, and Wisconsin, as well as a review of the federal SORNA policy. Elizabeth J. Letourneau, Andrew J. Harris, Ryan T. Shields, Scott M. Walfield, Amanda E. Ruzicka, Cierra Buckman, Geoffrey D. Kahn, and Reshmi Nair, “Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination,” *Psychology, Public Policy & Law*

24:1 (February, 2018): 28-9, <https://bit.ly/2RDnpr4>; More than 20 years of research shows that there is no public safety benefit to registering juveniles. They do not lower an already low recidivism rate and do not have a deterrent effect. E. J. Letourneau, A.J. Harris, R.T. Shields, S. Walfield, and G. Kahn, “Death and Destruction: The Effects of Sex Offender Registration on Youth,” unpublished manuscript (2016); This summary document includes references to several studies on recidivism rates for youth convicted of sex offenses, the harms of registries for youth who have committed sex offenses, and their effectiveness. Public notification laws in particular have been found to actually lead to increased recidivism. “Summary of Research Briefing by Elizabeth J. Letourneau, Ph.D.,” *Family Services Research Center, Medical University of South Carolina* (June 29, 2011); see also, J. J. Prescott, & J. E. Rockoff, “Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?,” *Journal of Law and Economics*, Vol. 54, No. 1 (2011): 31; Association for the Treatment of Sexual Abusers, “Adolescents Who Have Engaged In Sexually Abusive Behavior: Effective Policies And Practices,” October 30, 2012, <http://bit.ly/28T080s>

⁶ The [Federal Advisory Committee on Juvenile Justice \(FACJJ\)](https://www.facjj.org/) is composed of appointed representatives of the nation’s state advisory groups and it advises the President and Congress on matters related to juvenile justice, evaluates the progress and accomplishments of juvenile justice activities and projects, and advises the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Administrator on the work of OJJDP.

⁷ Recommendation from the Research/Dual Status Subcommittee to the Federal Advisory Committee on Juvenile Justice (FACJJ) and adopted by the FACJJ on May 18, 2016, <http://bit.ly/28Po1He>.

⁸ Fifty-two percent of youth experienced violence or threats of violence against them or their families, which they directly attributed to their registration. Nicole Pittman, “Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US” (Human Rights Watch, May 2013), 51, <http://bit.ly/107hYSm>.

⁹ *Ibid.*, 50.

¹⁰ The report is based on a study of 251 boys receiving treatment for inappropriate or harmful sexual behavior – 73 of whom were or had been subject to registration. Letourneau, et al., “Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination,” 24-5.

¹¹ Pittman, “Raised on the Registry,” 51; In a new study, youth currently or previously registered reported significantly higher rates of seriously considering and/or attempting suicide than nonregistered youth. Comments on the Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act, submitted by Researchers with Expertise on Juvenile Sexual Offending (June 7, 2016): 3, <http://bit.ly/290mAE1>.

¹² Letourneau, et al., “Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination,” 23.

¹³ Erica Hughes, Lily Gleicher, Susan Witkin, Vernon S. Smith, & Caitlin Delong, “An Examination of Juveniles Arrested, Detained, and Admitted to Corrections for Sex Offenses in Illinois,” (Chicago, IL: Illinois Criminal Justice Information Authority (ICJIA), 2017): iii, <https://bit.ly/2C7yUBG>.

¹⁴ *Ibid.*

¹⁵ C. Puzanchera and S. Hockenberry, National Disproportionate Minority Contact Databook, online (Developed by the National Center for Juvenile Justice for the Office of Juvenile Justice and Delinquency Prevention, 2018), accessed Sept. 17, 2018, <https://bit.ly/2EdUIFn>.

¹⁶ Also note that in a handful of communities Native Americans faced dramatically higher sex offense registration rates than other groups – in Alaska in particular their rate was 7 times that of whites. In the 15 states reporting data on Hispanics, they were found to have rates of sex offense registration that were higher than whites (but lower than blacks) in only two states – Connecticut and Rhode Island. Trevor Hoppe, “Punishing Sex: Sex Offenders and the Missing Punitive Turn in Sexuality Studies,” *Law and Social Inquiry* 41:3 (Journal of the American Bar Foundation, 2016): 8-11, <https://bit.ly/2O1g1Tt>.

¹⁷ The Liberty Education Forum, “News and Views” – Interview with Nicole Pittman of Impact Justice, accessed September 27, 2018, <https://bit.ly/2CBn8k2>.

¹⁸ *Ibid.*

¹⁹ Jenny Tuzikow, “Responding to Inappropriate Sexual Behaviors Displayed by Adolescents with Autism Spectrum Disorders” (New York State, Office for People with Developmental Disabilities, ASD Advisory Board), accessed October 10, 2018, <https://on.ny.gov/2yvge3L>.

²⁰ Mitchell Sunderland, “The Autistic Children Who Are Labeled as Sex Offenders,” *Broadly*, September 28, 2017, <https://bit.ly/2OezMvA>.

²¹ Letourneau, et al., “Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination,” 29.

²² Caldwell conducted a metaanalysis of 106 data sets in 98 reports that included a total of 33,783 youth from the years 1943 - 2015. The weighted sexual recidivism rate was 4.97 percent over a mean follow-up of 4.92 years; the 33

more recent studies conducted between 2000 and 2015 showed an even lower sexual recidivism rate of 2.75 percent. Michael F. Caldwell, “Quantifying the Decline in Juvenile Sexual Recidivism Rates,” *Psychology, Public Policy, and Law*, 22 (4) (November 2016), <https://bit.ly/2NAfqrt>. A study of registered and non-registered male youth found a sexual offense reconviction rate of less than one percent over four years. E. J. Letourneau, & K. S. Armstrong, “Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders,” *Sexual Abuse: A Journal of Research and Treatment*, 20 (2008): 393-408. Another study of male youth with sex crime convictions found a sexual offense reconviction rate of less than three percent over nine years. E. J. Letourneau, et al., “The Influence of Sex Offender Registration on Juvenile Sexual Recidivism,” *Criminal Justice Policy Review*, 20 (2009): 136-153. Also see J. R. Worling, et al., “20-Year Prospective Follow-Up Study of Specialized Treatment for Adolescents Who Offended Sexually,” *Behavioral Science and the Law* Jan.-Feb. 28(1) (2010): 46-57, finding that fewer than one in ten youth sexually reoffend after completing sex-specific treatment.

²³ Comments on the Proposed Supplemental Guidelines for Juvenile Registration Under the Sex Offender and Registration and Notification Act, submitted by Youth Justice Alliance (June 9, 2016): 5, n. 13, <http://bit.ly/28Qa4sy>, citing Elizabeth J. Letourneau, Dipankar Bandyopadhyay, Debajyoti Sinha, and Kevin S. Armstrong, “The influence of sex offender registration on juvenile sexual recidivism,” *Criminal Justice Policy Review* 20:2 (2009): 136-153; Elizabeth J. Letourneau, Dipankar Bandyopadhyay, Kevin S. Armstrong, and Debajyoti Sinha, “Do sex offender registration and notification requirements deter juvenile sex crimes?” *Criminal Justice & Behavior* 37:5 (2010): 553-569; Michael F. Caldwell and Casey Dickinson, “Sex Offender Registration and Recidivism Risk in Juvenile Sexual Offenders,” *Behavioral Sciences & the Law* 27:6 (Nov/Dec 2009) 941-95.

²⁴ Comments on the Proposed Supplemental Guidelines for Juvenile Registration (Youth Justice Alliance), 5, n. 16, citing 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.”

²⁵ Hughes, et al., “An Examination of Juveniles Arrested, Detained, and Admitted to Corrections for Sex Offenses in Illinois,” 2.

²⁶ *Ibid.*, 11.

²⁷ “Testimony: Detective Bob Shilling,” *House Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security, Sex Offender Registration and Notification Act (SORNA)* (March 10, 2009): 4, <http://bit.ly/28Qkk1N>.

²⁸ Testimony: Detective Bob Shilling, 4.