

KANSAS SEX OFFENDER POLICY BOARD



Established by the
Kansas Criminal Justice Coordinating Council

January 8, 2007 Report

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Acknowledgments

Kansas Sex Offender Policy Board Members

Donald Jordan, Chair

Acting Secretary of Social and Rehabilitation Services
Former Commissioner of Juvenile Justice Authority

Roger Werholtz

Secretary of Department of Corrections

Gary Daniels

Former Secretary of Social and Rehabilitation Services

Larry Welch

Director of the Kansas Bureau of Investigation

Justice Tyler Lockett, Retired

Designee for Chief Justice of the Supreme Court

Scott Jackson, Executive Director

Family Life Center, Inc.

Sandra Barnett, Executive Director

Kansas Coalition Against Sexual and Domestic Violence

The Kansas Sex Offender Policy Board would like to recognize the work of staff that assisted the Board in its work, Joshua Mosier and Haley DaVee who prepared the draft reports and Tiffany Fisher and Juliene Maska. The Board also expresses its appreciation to the many conferees who are experts on the topic and staff from the various state agencies that assisted the Board's work.

EXECUTIVE SUMMARY

The Governor and the 2006 Legislature authorized the creation of the Sex Offender Policy Board (SOPB) under the auspices of the Kansas Criminal Justice Coordinating Council (KCJCC). Senate Bill 506 (2006 Session Law, Chapter 214, Sec. 14) established the SOPB to consult and advise the KCJCC on issues and policies relating to the treatment, sentencing, rehabilitation, reintegration and supervision of sex offenders and to report its findings to the KCJCC, Governor, Attorney General, Chief Justice of the Supreme Court, the Chief Clerk of the House of Representatives and the Secretary of the Senate.

The SOPB members consist of the Secretary of Corrections, Commissioner of Juvenile Justice Authority, Secretary of Social and Rehabilitation Services, Director of the Kansas Bureau of Investigation and the Chief Justice of the Supreme Court or the Chief Justice's designee. The KCJCC appointed the mental health service provider and the representative engaged in the provision of services involving child welfare or crime victims.

The SOPB first report, due the first day of the 2007 Legislative Session, examines four topics, utilization of electronic monitoring, public notification pertaining to sex offenders, management of juvenile sex offenders and restrictions on the residence of released sex offenders. The second report, due the first day of the 2008 Legislative Session will address the topics of treatment and supervision standards for sexual offenders, suitability of lifetime release supervision and safety education and prevention strategies for the public.

The SOPB held its first meeting on August 1, 2006 and has met seven times. The SOPB members reviewed research materials and articles related to the subject matter and heard testimony from those knowledgeable about the subject. A joint meeting was held with the Special Committee on Judiciary regarding the testimony on residency restrictions. Notices of each meeting were published in the Kansas Register.

The recommendations in this report reflect the SOPB members' intention to keep the safety of Kansas citizens at the forefront. The SOPB recognizes that the study of sex offenders is a vast and everchanging topic and that additional time is needed to thoroughly study the many issues in addressing sex offenders. Due to new and emerging research on this topic, the Legislature should continue to address this subject in the future.

The following is the list of the recommendations on the four topic areas studied.

Utilization of Electronic Monitoring for Sex Offenders

- Electronic monitoring, when used alone, will not change behavior and is not enough to provide security for the community. The use of electronic monitoring for post-release supervision of sex offenders is only effective when it is used in conjunction with other tools (e.g. treatment programs, polygraph, case managers, etc).
- The use of electronic monitoring will translate into an increased workload for those responsible for the supervision of sex offenders in the community. Additional resources must be provided to ensure that staff can utilize the technology and use the information yielded from the technology effectively.
- Though the electronic monitoring technology is constantly improving, serious limitations of available technology still exist (e.g. dead spots, limited use in rural areas of Kansas, potential removal, or destruction by offender) and must be considered.
- The technology can provide a false sense of security to the public. The value of electronic monitoring depends on the individuals' propensity to be compliant with the conditions of their release. Placing a sex offender on electronic monitoring will not prevent the sex offender from committing new crimes although it may have an inhibiting effect.
- Electronic monitoring programs should be used selectively on a specific population of sex offenders. Utilizing risk assessments to determine who should be placed on electronic monitoring and adequately screening the population of sex offenders can prevent the overuse of electronic monitoring. By limiting the population placed on electronic monitoring, it will ensure that electronic monitoring is used on those sex offenders who need it the most and pose the greatest risk to the community.
- Given the high cost associated with offenders who lose or destroy their electronic monitoring equipment, a resource should be developed to cover such costs in the event that an offender is unable or unavailable to repay them.
- While the technology of electronic monitoring will continue to improve and the use of electronic monitoring will become more wide spread, it is important to continually have discussions and develop policy in using the technology in the most effective and efficient manner to protect the public.

Public Notification Pertaining to Sex Offenders

- During the next three legislative sessions, the State of Kansas should take steps to ensure fulfillment with the federal timeline for compliance with the Adam Walsh Child Protection and Safety Act of 2006. States can be penalized a 10 percent reduction in the receipt of the Federal Edward Byrne Memorial Justice Assistance Grant funds if they do not comply with the requirements of the Act.
- The success of the sex offender registry and public notification of sex offenders is dependant on successful community and state collaboration. Due to the complex nature of compiling and updating information in the registry, it is important that all interested parties, law enforcement, prosecutors, community corrections, court services and parole officers, etc., work together to keep the information in the registry accurate, relevant and up to date.
- Individuals and organizations working with children should be encouraged to frequently check the registry to be educated on how to use it.
- In order for the public registry to be effective, it should include a community education component. The state should ensure the public is educated about what the information in the registry means, how it can be used effectively and what its limitations are. The state also should ensure the public is aware that illegal actions taken against offenders are punishable by law. Internet registries should display the community education component on a page required to be viewed prior to the listing of sex offenders. The content of educational components must be research based and approved by a competent authority.
- To help the public understand the information provided, the offender registry should distinguish offenses and define what the language of the offense means.
- Making the changes mandated in the Adam Walsh Act will translate into increased workloads for those responsible for the supervision of sex offenders in the community as well as the KBI who maintains the registry. Resources must be provided to ensure the offender registry is kept accurate, offenders who fail to cooperate with the registration process are punished and the public is notified when an offender is released into the community.
- The Board believes there are circumstances that exist for some individuals convicted of certain offenses to have their circumstances reviewed by a court or agency such as the Kansas Parole Board for waiver of some or all registration requirements. However, the terms of the Adam Walsh Act may limit the ability to follow this recommendation. Further study is required to see if such action is feasible, and a final recommendation must necessarily be made at a later date.

Management of Juvenile Sex Offenders

- The thorough assessment and appropriate placement of juvenile sex offenders are vitally important to the success of the offender in treatment and in determining if relapse is likely.
- Assessments should take place at several stages, including pre-trial, pre-sentencing and at discharge.
- A standardized risk-assessment tool should be adopted. Assessments should include family support, behavior history, family history and medication needs.
- Family participation is crucial to effective treatment and family factors are important treatment targets. Every effort should be made to examine ways to remove the barriers for getting families actively involved in the treatment of their youth.
- Appropriate training for juvenile sex offender treatment providers is imperative. Kansas should implement a credentialing process, similar to ATSA standards, to ensure that treatment providers have the proper training to effectively treat juvenile sex offenders.
- Efforts need to be made to ensure that juveniles in the State of Kansas know the laws surrounding sexual offenses. This may prevent a number of youth from engaging in typical adolescent sexual behavior that is criminal (i.e. an 18-year-old male involved with a 15-year-old female).
- Juvenile sexual offenders differ from their adult counterparts in important ways. All treatment and supervision tools implemented should recognize these differences.
- It is important that adolescent sexual offenders face appropriate legal consequences. Adolescents should be adjudicated and held responsible as part of their treatment and restoration process.

Restrictions on Residence of Released Sex Offenders

- Although resident restrictions appear to have strong public support, the Board found no evidence to support its efficacy. It is imperative that policy makers enact laws that will actually make the public safe and not laws giving the public a false sense of security.
- It is recommended that the legislature make permanent the moratorium on residential restrictions. However, the moratorium should not be intended to interfere with a locality's ability to regulate through zoning the location of congregate dwellings for offenders such as group homes.

- Residency restrictions should be determined based on individually identified risk factors.
- The most effective alternative for protecting children is a comprehensive education program. It is recommended that the necessary resources be provided to an agency determined appropriate by the legislature to educate Kansas parents, children and communities regarding effective ways to prevent and respond to sexual abuse. Such an education program should include all victims and potential victims of child sexual abuse.
- In order for an effective model policy to be developed, the issue of sex offender residence restrictions should be referred to the Council of State Governments, the National Governor's Association and similar organizations to prevent states and localities from shifting the population and potential problems of managing sex offenders back and forth among states.

Utilization of Electronic Monitoring of Sex Offenders

KANSAS SEX OFFENDER POLICY BOARD

Report on Utilization of Electronic Monitoring of Sex Offenders

Introduction

The Kansas Sex Offender Policy Board met on August 31, 2006 to discuss the utilization of electronic monitoring. The Board heard input from vendors, court services officers and Department of Corrections regarding electronic monitoring of offender behavior.

Information was provided regarding the use of electronic monitoring by other states. A number of states continue to implement the technology to track past offenders and their behaviors. In Iowa it is used as an enforcement of curfew, as an intermediate sanction for offenders who violate probation or parole, to monitor alcohol consumption and to monitor offender movement and location. Wyoming uses it for offenders on supervised release, conditional release, parole, or probation with the purpose being to ensure there are no violations of community supervision conditions.

Electronic monitoring (EM) assists in establishing structure and accountability in Colorado, where its use allows offenders to maintain employment, attend treatment and perform community service. Because sexual offenses are often times crimes of opportunity, the goal in Colorado is to limit opportunity by monitoring the offender.

With the ongoing competition for valuable resources, deciding who to place on electronic monitoring is of great importance. The common theme with states that use EM is that they are, or ideally should be, prioritizing offenders and targeting those offenders who are the highest risk to re-offend and who pose the greatest risk to the community. Who fits into this category can be determined by several factors: the risk the offender poses as determined by objective classification instruments, results of sex offender evaluations and sanctions for violations. Other factors to consider when determining whether to place an individual on EM include whether an offender is a repeat offender, is deemed more likely to recidivate, has a history of violence, or resides in a location that affords the offender the opportunity to commit a new offense. Ultimately, it should be determined if having knowledge of the offender's location at any given time is of value.

Types of Electronic Monitoring

There are several forms of the technology that may be utilized to monitor offender behavior. Voice verification (the cheapest form) is typically used for someone progressing in treatment and compliant in their behavior. Radio frequency (RF) monitors arrivals, departures and curfew, offers limited surveillance and can not monitor offenders while they are away from their residence or phone. Each of these create the least amount of workload for supervising

officers and are most appropriate for lower risk offenders to enforce house arrest and curfew.

GPS (Global Positioning System) entails utilizing a constellation of satellites that were opened to commercial use in 1995. A signal is beamed to earth, with a GPS receiver picking up the satellite signal and recording data. The receiver then reports its location using either a cellular signal (Active GPS) or a traditional phone line (Passive GPS). Using GPS results in larger amounts of offender data being reviewed and processed which requires increased staff involvement.

There are two types of GPS units used to monitor offenders. GPS-Passive (costs around \$5-\$10 a day) reports any times/dates of arrival/departure, travel paths, device removal, or tampering and violations of exclusion zones. It transmits data using traditional phone lines, which can be an issue today with the prevalence of homes using cellular phones instead of landline phones. Supervising officers monitoring Passive GPS are required to review the prior day's data on offender movement to identify violations. Its implementation could ultimately result in the need to reduce caseloads for officers who monitor offenders under Passive GPS, bringing in to question its cost-effectiveness.

GPS-active (costs from \$9-\$15 a day) has all of the capabilities of GPS-passive, but offers immediate reporting using a cellular signal. It is the most intensive method for monitoring and supervising and is best suited for the high-risk habitual sex offenders and has the ability to ascertain the whereabouts of offenders while they move. It will track locations and set up inclusion and exclusion zones, thus inhibiting and closely tracking offender movements. Problems associated with active GPS include its reliance on cellular phone signals and satellite connection. While GPS-Passive has a lower per-day cost than GPS-Active, the requirement for increased supervising officer workload could negatively impact any cost savings between the two.

Limitations of Electronic Monitoring

While electronic monitoring has great potential as a tool to supervise and monitor sex offenders in the community, there are a number of limitations that must be considered when examining the ability to use electronic monitoring effectively. These limitations primarily include increasing costs of the equipment and staff resources that electronic monitoring programs demand and the technological limitations of electronic monitoring equipment.

Cost

Electronic monitoring, both in traditional forms and GPS, has a number of costs associated with its use. In addition to the costs of monitoring sex offenders on a day-to-day basis, as discussed earlier in the report, there are a number of costs absorbed by law enforcement agencies flowing from the destruction or loss of electronic monitoring equipment. The destruction and subsequent replacement of expensive equipment can create financial

difficulties for agencies with limited funds. The Board heard about a specific piece of electronic monitoring equipment that has a replacement cost of \$3,000 a unit. The ability of agencies to recoup the cost of damaged or lost equipment from the offender is unlikely.

Additional costs arise from the need for additional staff and equipment to ensure that sex offenders placed on electronic monitoring have adequate supervision. Training for using electronic monitoring, teaching sex offenders about how electronic monitoring will shape their post-release lives, monitoring the flow of information and alerts that come from the technology and hiring additional staff to reduce the size of caseloads are all necessary and extremely expensive components of ensuring that an electronic monitoring program will be successful.

As electronic monitoring continues to grow in popularity as a tool used in sex offender management, supervising officers will see their already large workloads become more labor intensive. It was reported to the Board that, in some cases, the addition of electronic monitoring for community supervision can double or even triple workloads. Though it may require hiring additional staff, it is imperative that caseloads be small enough that personnel can provide adequate supervision to all of the offenders they are required to supervise. Electronic monitoring is most effective when there is an immediate response to violations. Without the necessary staffing resources to respond quickly to the violations of offenders on electronic monitoring, it is impossible to utilize electronic monitoring to its fullest potential. In fact, failing to respond to violating behavior can have a disinhibiting effect on sex offenders and adversely impact public safety.

Technological Limitations of Equipment

Though electronic monitoring technology has advanced over recent years, there are still a number of limitations that are inherent to the technology. These limitations include the ability of the sex offender to remove/destroy equipment, the large amounts of information to be processed by staff, signal blockage and reliance on third-party communication infrastructures for GPS technology.

With all forms of electronic monitoring, there is the possibility that electronic monitoring will be removed or destroyed by the offender. It is impossible to ensure that sex offenders will always have the equipment on their body (in the case of GPS) or in their homes (for more traditional EM). Supervising officers are reliant on the cooperation of the offender to use their electronic monitoring equipment properly.

The amount of information produced from electronic monitoring equipment, especially for active tracking systems, is enormous. Because of the high volume of information produced by electronic monitoring equipment, it is difficult for staff to make sure that they catch all violations. It is very important that the population placed on electronic monitoring is adequately screened to avoid information overload.

GPS technology faces unique limitations. Though GPS can track an individual anywhere on the planet, buildings and car roofs have the capability to block a GPS signal. This prevents GPS from tracking offender movements in some places. In addition, GPS relies upon third-party communication infrastructures (usually cellular). Though the tracking will be stored in the event that a signal is lost, it makes it difficult to track offenders in places that are not around cellular towers. This is of particular concern in rural parts of Kansas, where a cellular signal is sometimes difficult to obtain.

Recommendations

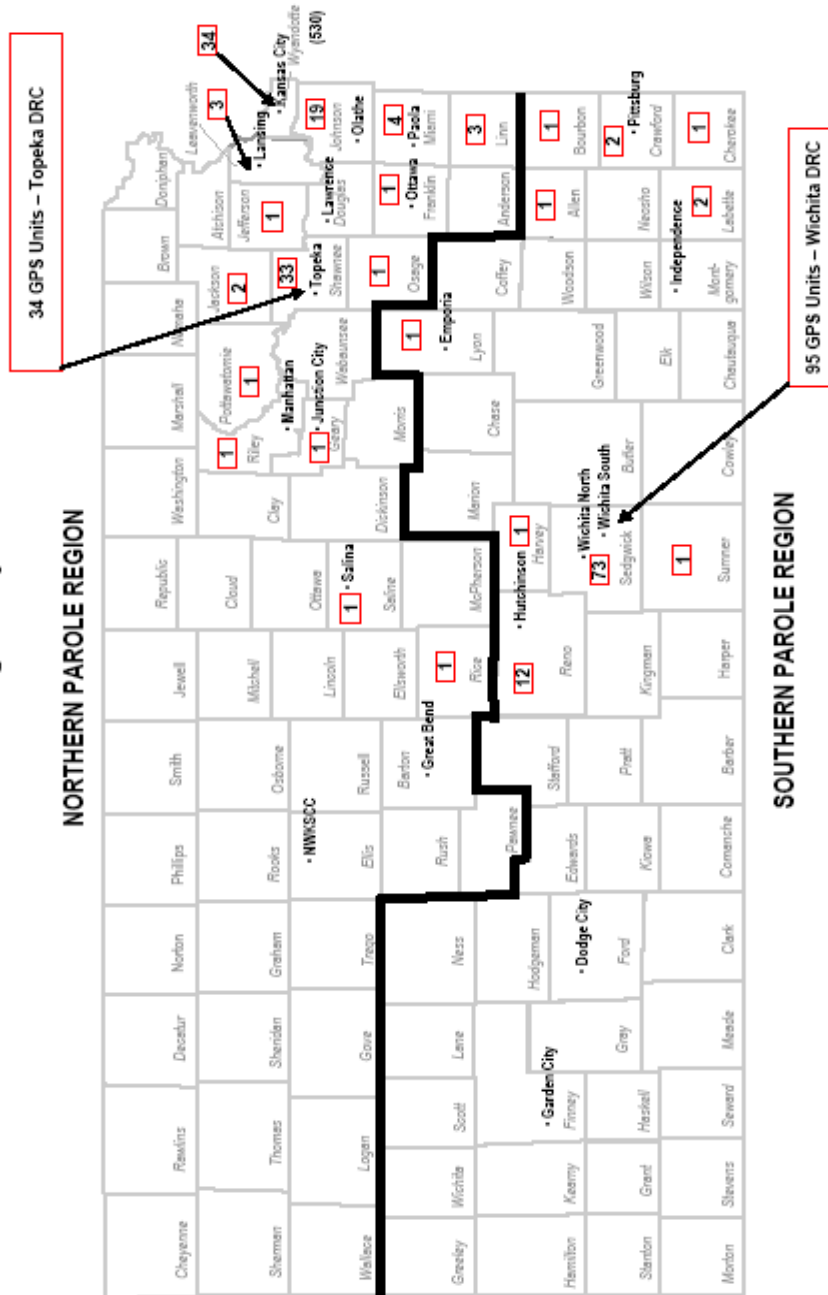
Electronic monitoring in conjunction with other management tools can be useful in tracking and supervising sex offenders. Resources for electronic monitoring should only be considered in combination with other management tools.

- Electronic monitoring, when used alone, will not change behavior and is not enough to provide security for the community. The use of electronic monitoring for post-release supervision of sex offenders is only effective when it is used in conjunction with other tools (e.g. treatment programs, polygraph, case managers, etc).
- The use of electronic monitoring will translate into an increased workload for those responsible for the supervision of sex offenders in the community. Additional resources must be provided to ensure that staff can utilize the technology and use the information yielded from the technology effectively.
- Though the electronic monitoring technology is constantly improving, serious limitations of available technology still exist (e.g. dead spots, limited use in rural areas of Kansas, potential removal, or destruction by offender) and must be considered.
- The technology can provide a false sense of security to the public. The value of electronic monitoring depends on the individuals' propensity to be compliant with the conditions of their release. Placing a sex offender on electronic monitoring will not prevent the sex offender from committing new crimes although it may have an inhibiting effect.
- Electronic monitoring programs should be used selectively on a specific population of sex offenders. Utilizing risk assessments to determine who should be placed on electronic monitoring and adequately screening the population of sex offenders can prevent the overuse of electronic monitoring. By limiting the population placed on electronic monitoring, it will ensure that electronic monitoring is used on those sex offenders who need it the most and pose the greatest risk to the community.

- Given the high cost associated with offenders who lose or destroy their electronic monitoring equipment, a resource should be developed to cover such costs in the event that an offender is unable or unavailable to repay them.
- While the technology of electronic monitoring will continue to improve and the use of electronic monitoring will become more wide spread, it is important to continually have discussions and develop policy in using the technology in the most effective and efficient manner to protect the public.

Map of Parole Regions of GPS

State of Kansas GPS Units Assigned by Location



Public Notification of Sex Offenders

KANSAS SEX OFFENDER POLICY BOARD

Report on Public Notification of Sex Offenders

Introduction

The Kansas Sex Offender Policy Board met on September 15, 2006 to discuss the issue of public notification regarding sex offenders. The Board heard input from the Shawnee County Sheriff's Office, Kansas Bureau of Investigation, Assistant District Attorney of Wyandotte County, Wichita Area Sexual Assault Center and a registered offender.

The creation of offender registries and public notification came about due to public concern about convicted sex offenders released from prison. In 1994, Congress passed the Jacob Wetterling (an 11-year-old boy abducted in Minnesota) Crimes Against Children and Sexually Violent Offender Registration Act requiring sex offenders to register with local law enforcement agencies. In 1996, laws were created at both the federal and state level after the 1994 rape and murder of seven-year-old Megan Nicole Kanka by a violent repeat sex offender living across the street from her in New Jersey. Megan's Law required states to create procedures to inform the public on where sex offenders were living in the community.

The primary value of public registries is to allow community members to have information on the location of sex offenders and where they reside. Sex offender registries also have become a useful tool for law enforcement agencies in identifying and tracking convicted sex offenders. By knowing where a sex offender may be found, investigative and apprehension efforts may be less complicated.

It is important to avoid a false sense of security among communities as a result of having a public registry in place. Registries are aimed at *convicted* sex offenders. Lists also can be incomplete if an offender does not register or comply with keeping the information in the registry current. Because a false sense of security can place potential victims at even greater risk, community education addressing the limitations of these measures is a crucial component to the successful utilization of public notification.

Although there is no conclusive evidence or research to support the notion that public notification reduces recidivism, it is another source of information that can be made available to the public in an effort to enhance public safety. It can be a useful tool, but an educational component also should be included.

History of Kansas Law (July 1993-May 2006)

Kansas has been at the forefront of recognizing the problem of managing sex offenders. The Kansas Habitual Sex Offender Registration Act, requiring adult offenders to register, became law on July 1, 1993. This law required adult offenders convicted twice of sexually violent

crimes to register. Access to the registration information was restricted only to law enforcement agencies.

On April 14, 1994, the act was amended and renamed the Kansas Sex Offender Registration Act, which required registration for adult offenders convicted once of a sexually violent crime, any attempt, conspiracy, or solicitation of a sexually violent crime or any crime deemed by the court to be sexually motivated. Access to registration information was now open to the public and available at local sheriffs' departments.

On July 1, 1997, the act was amended and renamed the Kansas Offender Registration Act requiring registration for adult offenders who were convicted of violent crimes, including murder, manslaughter and other crimes if the victim or other party was under the age of 18. Kansas became the first state in the nation to establish a website to view offenders who are required to register.

On July 1, 2002, civilly committed sex predators were required to register. Any registered offender from another state who now resides in Kansas must register. Any non-resident student or worker convicted of an enumerated offense who crosses county lines also must register with the sheriff in each county where they reside, work and attend school.

Adults are required to register for 10 years after incarceration for most first convictions. Lifetime registration is required for second or subsequent convictions, sex predators civilly committed on or after July 1, 2001, or for a first conviction for the crimes of Rape or Aggravated Criminal Sodomy. On July 1, 2002, juvenile offenders adjudicated of sexually violent crimes were required to register for five years, or until 18 years of age, whichever is longer.

Public notification provisions in Kansas are called passive notification meaning one must contact their local sheriff's department or search for the information on the KBI website. Many states have active notification such as notifying neighbors, churches and schools.

The date of the crime determines whether the information is an open record or not. A person is listed on the KBI website if the offense happened on or after April 14, 1994. If the offense occurred prior to that time, the information is restricted to law enforcement only. Juvenile offenders appear on the public registry if the offense occurred on or after July 1, 2002 for a sexually violent offense.

An offender who is incarcerated will be informed of the need and process to register by the Department of Corrections, Juvenile Justice Authority, jail, or state hospital officials upon release from the facility. If the offender receives probation, court services officers generally ensure the offender is registered. The offender must confirm with the sheriff's office within

10 days of entering the county, that the sheriff has received the information. If the offender moves, the offender is required to notify the sheriff's office and the KBI of the new address within 10 days as well as any change in work status. If attending school, the offender must notify the sheriff's office in the county where the school is located.

Sheriffs' departments are an important component of keeping track of offenders, who tend to move frequently. Numerous departments periodically check and verify the information of registered offenders, the cost of which is the burden of the local department. Every 90 days the KBI sends a letter to registered offenders for verification of address that must be returned within 10 days. Failure to respond to the address verification or failure of any duty required under the Act was punishable as a level 10 non-person felony.

Senate Bill 506

Effective June 1, 2006, the bill expanded who is required to register. Any person convicted on or after July 1, 2006 of any person felony where the court makes a finding on the record that a deadly weapon was used in the commission of the felony is required to register. The length of registration was increased to lifetime registration, if the victim is less than 14 years of age for the crimes of Aggravated Trafficking, Aggravated Indecent Liberties, Aggravated Criminal Sodomy, Promoting Prostitution and Sexual Exploitation of a Child. Registration terms for offenders convicted out-of-state has been increased to the same length as the convicting state, or Kansas, whichever is longer.

Offenders now must register in person twice a year with the sheriff's office, allow the Sheriff's Office to take a new photograph of them, update their information and pay a \$20 fee. Registered offenders also are required to get a new driver's license or identification card each year on their birthday indicating they are a registered offender.

Juveniles are mandated to register only if adjudicated on a sexually violent crime that is an off grid or level 1 felony. Since there are no off grid crimes for juveniles, level 1 felony only includes Rape (K.S.A. 21-3205 (a) (1)) or Aggravated Criminal Sodomy (K.S.A. 21-3506). For all other sexually violent crimes, the court may:

- 1) Require registration for five years until 18 years of age;
- 2) Require registration but close the record to the public; or
- 3) Not require registration if substantial and compelling reasons exist.

House Bill 2576

Also known as Jessica's Law, the bill raised the penalty for registration violations to a Level 5 person felony. A new felony violation occurs every 30 days until the offender becomes compliant.

Federal Law

Federal law has long played a role in shaping the direction taken by states in dealing with the release of sex offenders. These laws stemmed from the public reaction to horrific crimes committed against children by sex offenders who had been released from prison. Megan's Law required every state to develop a procedure for notifying the public when a person convicted of violent or sexual crimes is released into their communities. The Jacob Wetterling Act required states to form registries of offenders convicted of sexually violent offenses or offenses against children.

Most recently, the federal government passed the Adam Walsh Child Protection and Safety Act of 2006. (Appendix D) This act requires states to enact a number of changes to their policies concerning the release of sex offenders into the community. Provisions of the federal act must be adopted by July 20, 2009. Kansas must make the following changes to be compliant with the act:

- 1) Offenders only have three business days to register and update their registration, instead of the 10 days currently required by Kansas law. Offenders also are required to report the license tag for any vehicle owned or driven by the offender in addition to the information already required by Kansas statute.
- 2) Define offenders into three tiers based on the severity of the crime. The tiers are as follows:

Tier I: Anyone convicted of a sex offense other than a Tier II or III.

Tier II: Any sex offender other than a Tier III whose criminal penalty exceeds one year imprisonment and the crime is comparable with a number of federal crimes and involves use of a minor in a sexual performance, act of prostitution or production and distribution of child pornography, or after offender has been a Tier I offender.

Tier III: Any sex offender whose criminal penalty exceeds one year and is comparable with federal crimes Aggravated Sexual Abuse or Abusive Sexual Contact against a minor less than age 13 and involves kidnapping of a minor or occurs after the offender becomes a Tier II sex offender.

- 3) Registration time for Tier I is 15 years (good time reduction of five years); Tier II is 25 years; and Tier III is lifetime registration and juveniles obtaining a good time reduction to 25 years.

- 4) Requires offenders to have in-person verification according to Tier level, with Tier I offenders reporting once per year, Tier II offenders reporting twice per year and Tier III offenders reporting three times per year.

- 5) KBI website must be expanded to include all information (as required by the Federal Act) about each sex offender in the registry. In addition, the website must include links to sex offender safety and education resources.

- 6) Active community notification expanded to include:
 - a. U. S. Attorney General for National Offender Registry
 - b. Law enforcement agencies, schools, and public housing agency where the offender resides, works, or attends school.
 - c. Any agency conducting background checks under the National Child Protection Act.
 - d. Social services entities responsible for protecting minors.
 - e. Volunteer organizations where contact with minors or individuals might occur.
 - f. Any organization, company, or individual who requests disclosure.

- 7) U. S. Attorney General informs states when people entering the United States are required to register and those under federal law who are required to register.

The Board heard testimony and cited examples where the offense involves sexual relations between persons which would be consensual and lawful but for the age of the victim. This often occurs in cases referred to as Romeo and Juliet. (Refer to Department of Corrections memorandum, Appendix A) There also may be unanticipated and unintended consequences of public notification. A small but potentially lethal set of perpetrators of domestic violence (who may or may not have been convicted of any crime) are using the offender registry to track and stalk their victims who happen to be registered offenders. (Refer to KCSDV memorandum, Appendix A)

Consideration should be given to these types of circumstances regarding public notification procedures.

The Adam Walsh Act provides states three years to become compliant with the act. States can apply for two year-long extensions if they need more time to come under compliance. One issue that the legislation does not address is who will be responsible for providing the additional public notification required. Each state needs to designate who will receive the information and ensure the public notification. This will result in an increase in workload for whoever is designated. (Refer to KBI memorandum regarding impact on Kansas, Appendix A)

Recommendations

- During the next three legislative sessions, the State of Kansas should take steps to ensure fulfillment with the federal timeline for compliance with the Adam Walsh Child Protection and Safety Act of 2006. States can be penalized a 10 percent reduction in the receipt of the Federal Edward Byrne Memorial Justice Assistance Grant funds if they do not comply with the requirements of the Act.
- The success of the sex offender registry and public notification of sex offenders is dependant on successful community and state collaboration. Due to the complex nature of compiling and updating information in the registry, it is important that all interested parties, law enforcement, prosecutors, community corrections, court services and parole officers, etc., work together to keep the information in the registry accurate, relevant and up to date.
- Individuals and organizations working with children should be encouraged to frequently check the registry to be educated on how to use it.
- In order for the public registry to be effective, it should include a community education component. The state should ensure the public is educated about what the information in the registry means, how it can be used effectively and what its limitations are. The state also should ensure the public is aware that illegal actions taken against offenders are punishable by law. Internet registries should display the community education component on a page required to be viewed prior to the listing of sex offenders. The content of educational components must be research based and approved by a competent authority.
- To help the public understand the information provided, the offender registry should distinguish offenses and define what the language of the offense means.
- Making the changes mandated in the Adam Walsh Act will translate into increased workloads for those responsible for the supervision of sex offenders in the community as well as the KBI who maintains the registry. Resources must be provided to ensure the offender registry is kept accurate, offenders who fail to cooperate with the registration process are punished and the public is notified when an offender is released into the community.
- The Board believes there are circumstances that exist for some individuals convicted of certain offenses to have their circumstances reviewed by a court or agency such as the Kansas Parole Board for waiver of some or all registration requirements. However, the terms of the Adam Walsh Act may limit the ability to follow this recommendation. Further study is required to see if such action is feasible, and a final recommendation must necessarily be made at a later date.

Management of Juvenile Sex Offenders

KANSAS SEX OFFENDER POLICY BOARD

Report on Management of Juvenile Sex Offenders

Introduction

The Kansas Sex Offender Policy Board met October 16, 2006 to discuss management of juvenile sex offenders. The Board heard input from St. Francis Academy, 28th Judicial District Community Corrections, Beloit Juvenile Correctional Facility, Johnson County Court Services and a clinical therapist in private practice.

Juvenile sex offenders have historically been treated the same as adult offenders, which ultimately is not in the best interest of all involved. This blanket approach can be attributed to failing to consider the unique developmental factors that characterize adolescence. Juvenile sex offenders range from being psychosexually disturbed, being predisposed to non-sexual behavior problems to those requiring no intervention because their behaviors fall in the realm of normal adolescent development. The juvenile sex offender is not a smaller or younger adult sex offender and should not be treated as such.

Evidence suggests that juvenile sex offenders tend to be more similar to other (non-sexual) juvenile delinquents than to adult sex offenders. Sexual and non-sexual delinquent youth are much more likely to re-offend by committing non-sexual crimes than sexual crimes. One study found juveniles treated in specialized programs had sexual recidivism rates ranging from seven to 13 percent for follow-up periods of two to five years. Meanwhile non-sexual recidivism was found to be much higher, ranging from 25 to 50 percent.

The single best predictor of *adult* sexual recidivism among adult child molesters, when measured by penile plethysmography, is deviant sexual arousal. However, when comparing juvenile sex offenders to their adult counterparts, research fails to support deviant sexual arousal as either a predictor of recidivism or a reliable differentiating factor between sexually and non-sexually delinquent youth. Furthermore, evidence supports juveniles tending to be less likely to reoffend sexually than adult sexual offenders, thus suggesting that the majority of juvenile sex offenders do not continue as career sex offenders.

A study by Letourneau & Miner (Appendix C—Reference #10) indicated that juvenile sex offenders differ from adult sex offenders. Significant maturational changes during teenage years impact the youth's functioning with aging found to be related to positive changes in psychosocial and psychosexual development. Developmental and family factors were also found to be critical in the development of juvenile sex offenders. High-stress family environments, poor parental supervision and parental rejection were predominant in the profiles of sexually abusive juveniles and appear to play a prominent role in the emergence of

sexually aggressive behavior.

Accurate Assessment

An accurate assessment at pre-trial and discharge, followed by appropriate recommendations for level of care and supervision of the juvenile, is of the utmost importance in managing and treating juvenile sex offenders. Pre-trial assessments look at where the youth is developmentally and determines whether there is a psychiatric issue, what their level of pedophilic tendencies are, if any, and help determine the likelihood of reoffending. As previously stated, juvenile sex offenders range from being psychosexually disturbed and in need of specialized treatment and being predisposed to non-sexual behavior problems, to those whose behavior falls in the realm of normal adolescent development.

What happens once the juvenile offender leaves residential treatment or incarceration should be reviewed early in the process. The level of supervision and support, specific to the needs of each individual, should be based on the likelihood of reoffense and dangerousness, which could be determined in several ways. One such way would be through a culpability assessment, which would measure sexual knowledge, accountability and possible treatment tracks.

Whether they can return to the home or need aftercare therapy must be considered. Determination of whether the offender needs to be separated from the community should be based on dangerousness and whether or not relapse is likely. Juvenile offenders recommended for outpatient care are those who show no traits of psychopathic or pedophilic tendencies and have the ability to carry out a safety plan. Family infrastructure also plays an important role and is taken into consideration, as parents have the ability to limit telephone, Internet access and monitor compliance of an aftercare plan. Ultimately, it is important for the juvenile to be put back into an environment that is conducive to their success. The Board heard one testimonial advocating the use of the Juvenile Sex Offender Assessment Package (JSOAP) as an assessment tool.

Training of Professionals

Specialized training for professionals is a key to the long-term success of treating and managing juvenile sex offenders. Treatment and supervision practices of juvenile sexual offenders should be attentive to the developmental changes occurring during adolescence.

However, too many therapists do not possess the proper knowledge about sexual abuse, particularly as it pertains to juveniles. The Board heard input from several individuals urging the development of a credentialing process for treatment providers of juvenile sex offenders. Suggestions for such a process focused on being a member of the Association for the Treatment of Sexual Abusers (ATSA), and being licensed to practice clinical therapy in Kansas. One suggestion was to model the credentialing process after that used by the

Massachusetts Adolescent Sexual Offender Coalition. Furthermore, effective treatment models used today may change as new methods are developed. The treatment process will continually evolve and should be reexamined frequently.

Juveniles on the Public Registry

The Board heard testimony that juveniles are easily stigmatized and that the public registry should be used carefully for this population. Public safety can be compromised by making it more difficult for juvenile sex offenders to benefit from treatment. The provision in SB 506, passed by the 2006 Legislature, allows judges' discretion in requiring registration or limiting the extent of public notification as an appropriate response to these concerns. However, the Adam Walsh Child Protection and Safety Act of 2006 passed by Congress and signed by the President in July 2006 will override these provisions.

Impact of Family Involvement

Family support and involvement are crucial to treating and managing juvenile sex offenders. The ultimate goal is to limit the likelihood of relapse and family support allows for following through on all plans of the youth's treatment program. Family factors also are critical in the development of sexually abusive youth and are important targets for treatment. Furthermore, family members have the ability to monitor the activities of the youth, such as Internet usage and possible contact with children. Many families have the ability to enforce appropriate boundaries and make a positive impact on the treatment process when involved.

Recommendations

- The thorough assessment and appropriate placement of juvenile sex offenders are vitally important to the success of the offender in treatment and in determining if relapse is likely.
- Assessments should take place at several stages, including pre-trial, pre-sentencing and at discharge.
- A standardized risk-assessment tool should be adopted. Assessments should include family support, behavior history, family history and medication needs.
- Family participation is crucial to effective treatment and family factors are important treatment targets. Every effort should be made to examine ways to remove the barriers for getting families actively involved in the treatment of their youth.
- Appropriate training for juvenile sex offender treatment providers is imperative. Kansas should implement a credentialing process, similar to ATSA standards, to ensure that treatment providers have the proper training to effectively treat juvenile sex offenders.

- Efforts need to be made to ensure that juveniles in the State of Kansas know the laws surrounding sexual offenses. This may prevent a number of youth from engaging in typical adolescent sexual behavior that is criminal (i.e. an 18-year-old male involved with a 15-year-old female).
- Juvenile sexual offenders differ from their adult counterparts in important ways. All treatment and supervision tools implemented should recognize these differences.
- It is important that adolescent sexual offenders face appropriate legal consequences. Adolescents should be adjudicated and held responsible as part of their treatment and restoration process.

Residence Restrictions for Sex Offenders

KANSAS SEX OFFENDER POLICY BOARD

Report on Residence Restrictions for Sex Offenders

Introduction

The Kansas Sex Offender Policy Board met with the Special Committee on Judiciary on November 15, 2006 to discuss the issue of residence restrictions for sex offenders. The Board heard testimony on the subject from two Kansas community representatives as well as five researchers and subject matter experts from across the country.

In its analysis of this topic, the Board chose to focus on available research and the experiences of other states. While available research on this topic is limited, that which is available is consistent.

Information presented to Sex Offender Policy Board members included research studies from Arkansas, Colorado, Minnesota and Florida, as well as statements and position papers to the Iowa legislature from the Iowa County Attorneys Association and the Iowa Coalition Against Sexual Abuse. The Board also received a variety of news items collected starting in January of 2006 which discussed the experiences of other states that have dealt with the issue of residence restrictions.

Sex offender residence restrictions, or buffer zones, typically mandate a legally determined barrier around places where children congregate, such as parks, playgrounds and schools. These barriers have been known to range from 500 to 2,500 feet and exclude sex offenders from living within these areas. Proponents of residence restrictions often argue that the further away sex offenders are from potential victims, the less likely they are to re-offend against those victims.

Testimony provided indicated that residency restrictions are extremely popular with the general public, thus making policy makers' decision on this issue a difficult one. In 2004, 14 states had residence restrictions, commonly from 500-1,000 feet. In 2006, a total of 21 states had residence restrictions. In addition, hundreds of local jurisdictions have passed zoning laws, restricting sex offenders from living near 2,500 feet (about ½ mile).

The appeal of residence restrictions is to protect public safety, and more specifically, the safety of children. The fundamental issues to consider are whether residence restrictions for sex offenders have been proven to protect public safety, whether the theory behind residence restrictions is consistent with research and best practices in the fields of corrections and law enforcement, the viability of enforcing the restrictions, and whether the resources utilized for such an effort would be best directed toward alternative measures that would protect a larger

segment of the population and/or one that is at a higher risk of victimization.

Research on Public Safety and Limitations

Residency restrictions are extremely popular and have received overwhelming public and political support. It is important to acknowledge that the public believes they are safer with residency restrictions, when in fact, they are not. Of the research studies available to the Sex Offender Policy Board on the issue of residence restrictions for sex offenders, none found a positive correlation between residence restrictions and preventing re-offending behavior.

One presenter noted during his presentation to legislators and the Board that governments cannot control the location of potential targets (day cares, schools, and parks) and there is no evidence that attempts to limit where sex offenders live have been successful. Meanwhile, a second presenter emphasized that research shows no correlation between residency restrictions and reducing sex offenses against children or improving the safety of children. A third conferee noted there is no evidence that proximity to schools increases recidivism, or, conversely, that housing restrictions reduces re-offending or increases community safety.

Dr. Jill Levenson provided the Board with an overview of the research on whether offender proximity to schools/child care centers, increased recidivism. Levenson referred to a 2004 study of 130 Colorado sex offenders on probation who were tracked for 15 months. Though 15 (12 percent) of the offenders were rearrested for new sex crimes, they were all “hands off” offenses, such as peeping, voyeurism, or indecent exposure. The 15 recidivists were scattered randomly throughout the study area and appeared to live no closer than non-recidivists to schools or child care centers. The study concluded that residence restrictions are unlikely to deter sex offenders from committing new sex crimes, further stating that such policies should not be considered viable strategies for protecting communities.

In a 2003 study, 329 sex offenders considered at highest risk to re-offend were tracked for three to six years. (Appendix C—Reference #14) Of the 13 cases of sexual re-offending (four percent of the study group), none of the offenses occurred in or near schools. While two of the offenses did take place near parks, those areas were several miles from the offenders’ homes and were arrived at by car. Researchers concluded that sex offenders’ residential proximity to schools or parks was not a factor in recidivism, nor did it enhance public safety. The study added that blanket policies restricting where sex offenders are allowed to live are unlikely to benefit community safety.

Another concern presented included the issue of available housing for sex offenders. A 2003 report to the Minnesota legislature observed that residency restrictions “would likely force level three sex offenders to move to more rural areas that would not contain nearby schools and parks but would pose other problems, such as a high concentration of offenders with no ties to the community; isolation; lack of work, education and treatment options; and an

increase in the distance traveled by agents who supervise offenders.”

This was supported by Levenson’s presentation, citing her 2005 report to the Florida legislature. In it she stated “such laws aggravate the scarcity of housing options for sex offenders, forcing them out of metropolitan areas and farther away from the social support, employment opportunities and social services that are known to aid offenders in successful community re-entry.”

The Association for the Treatment of Sexual Abusers (ATSA) is well-recognized for its progress in the field of treating sex offenders. ATSA was “founded to foster research, facilitate information exchange, further professional education and provide for the advancement of professional standards and practices in the field of sex offender evaluation and treatment.”

One of the presenters shared an ATSA position paper entitled *Facts About Adult Sex Offenders*. In it, ATSA makes recommendations for the effective treatment of sex offenders.* Those recommendations include:

1. *Lifestyle circumstances can affect the chances of new offenses. Stable housing and employment, healthy social and leisure activities, a vigilant and pro-social support system and ongoing treatment are all important to ensure success.*
2. *Despite its effectiveness, treatment is only one component of an effective strategy to protect the community from sex offenders. Monitoring and support by community corrections agents, other professionals, the offender's social support system and the entire community play a crucial role.*

The above ATSA precepts are broadly accepted by professionals who manage, supervise and treat sex offenders, and offer insight into a crucial drawback to the imposition of residence restrictions.

Enforcement of Residence Restrictions

The State of Iowa implemented a 2,000-foot residence restriction, prompting the Iowa County Attorneys Association to issue a statement in January 2006. In it, the Association specifically concluded that Iowa’s residence restriction policy was, “contrary to well-established principles of treatment and rehabilitation of sex offenders” and that its goals are “severely impaired by the residency restriction, compromising the safety of children by obstructing the use of the best known corrections practice.”

*This and other ATSA position papers can be found on its website at <http://www.atsa.com>

Furthermore, the Iowa County Attorneys Association voiced concern with the observations of law enforcement that residency restrictions are causing offenders in Iowa to become homeless, to change residences without notifying authorities of their new locations, to register false addresses or to simply disappear.

Information presented by the Iowa Coalition Against Sexual Assault also addressed concern with residency restrictions' impact on homelessness and its impact on public safety. They stated Iowa sex offenders are absconding in large numbers for the first time, interfering with probation and parole supervisors' ability to effectively monitor and treat offenders who are living under bridges, in parking lots, in tents at parks, or at interstate truck stops.

Information from law enforcement has provided similar statements. The Iowa residence restriction law causes more sex offenders to be deceptive and lie about their whereabouts, making tracking them much more difficult. The result of this is damage to the reliability of the sex offender registry, along with a decrease in public safety.

Testimony from Pamela Dettmann with the Des Moines County Attorney's Office voiced concern about ever-changing mapping due to the opening of new schools or day cares and the closing of existing schools or day cares, the ability to verify and enforce the statute on individuals no longer required to be on sex offender supervision and the enactment of local ordinances which create issues of banishment and exodus to other communities.

Alternative Measures

Testimony to the Special Committee on Judiciary and the Board referenced Bureau of Justice Statistics research that found the, "vast majority (80 to 90 percent) of sex crimes against children are committed by a relative or acquaintance who has a prior relationship or access to the child." This research finding is accepted by all of the experts who testified, as well as victims' advocates, law enforcement officials and treatment providers nationwide.

The Iowa Coalition Against Sexual Assault, referenced a 2006 study where only 10.8 percent of female, and 15.7 percent of male adults sexually victimized before the age of 12 reported being sexually violated by a stranger, stated, "the sad reality is that most of the time children know, and often have trusted, the person who sexually abuses them."

Of the long-held theory of teaching children to stay away from strangers as a means to protect them from victimization, the Center for Missing and Exploited Children notes on its website, "The National Center for Missing & Exploited Children (NCMEC) has never supported the 'stranger-danger' message, especially because experience has shown that most children are actually taken by someone they know or are familiar with."

Given the fact that the vast majority of children are sexually victimized by people who are

known to them and have relationships to their families, residence restrictions do not address the major source of child sexual victimization. As a result, it is the Board's belief that broadly applied residency restrictions should not be considered and their usage should be defined strictly on an individualized basis.

The question then becomes how best to protect *all* children from victimization. On this, experts from every field are abundantly clear. The most viable alternative for protecting children is a wholesale comprehensive education program for children, their families and the community.

In its January 2006 statement on the issue, the Iowa County Attorneys Association supported the replacement of residence restrictions with more viable alternatives, such as educational programs for young children aimed at keeping them safe from *all* offenders. Both the Jacob Wetterling Foundation and the Center for Missing and Exploited Children underscore the need for widespread, comprehensive, community and family education, especially prior to the occurrence of a tragic event. The Jacob Wetterling Foundation has staff available to provide such training and the Center for Missing and Exploited Children provides a framework, guidance and support for communities to develop their own such training.

The theory of community education is consistent with Dr. Jeffery Walker's presentation. He stated in his 2001 study, that while the enforcement of residency restrictions is difficult, "what the police can do, however, is make as many people in the neighborhood (especially those who are the guardians of potential victims or may be potential victims themselves) aware of the presence of a potentially motivated offender."

This education program could be broadly applied through public education that would be intended to reach all victims and potential victims of child sexual abuse rather than just a select few. Such an education program could be augmented by community involvement in the already existing system of sex offender management, supervision and treatment. It is recommended that necessary resources be provided to an agency determined appropriate by the legislature to educate Kansas parents, children, and communities regarding effective ways to prevent the sexual abuse of children and to respond to it when it occurs.

In addition to community education, the Colorado Sex Offender Management Board has developed "Community Supervision Teams" for the management, supervision and treatment of sex offenders on probation, parole and community corrections programs. Though the protocols for the teams include many of the fundamentals of current Kansas sex offender supervision, they also formalize the element of multidisciplinary involvement in the supervision process.

Each Colorado community supervision team is charged with making many of the pivotal

decisions about the ongoing management and supervision of sex offenders. The teams consist of the supervising officer, the treatment provider, and a polygrapher. In the true spirit of community involvement, this team could be expanded in non-confidential settings to include, for instance, a member of local law enforcement and perhaps a volunteer from a local neighborhood watch organization. Similar groups, known as Community Accountability Panels, currently are being used in the supervision of other Kansas offenders.

Conclusion

A wealth of information is available to indicate that sex offender residence restrictions have not reduced the risk of re-offending behavior. In fact, research supports the likelihood that these types of restrictions often cause alienation, destabilization and isolation that lead to re-offending behavior.

Research and best practices in the field of corrections, law enforcement, sex offender treatment and more particularly, victims' advocacy groups, equally discount residence restrictions as a useful means to manage, supervise and treat sex offenders.

With regard to enforcement, the overwhelming experience of states such as Iowa that have been vocal enough to share their experiences in attempting to enforce residence restrictions underscores the theory that normally compliant offenders will take desperate measures to either comply with or circumvent residence restrictions. This increases the time law enforcement must spend on locating offenders, decreases the time they are able to spend on protecting the majority of potential child sexual abuse victims and subverts the usefulness of offender registries.

For these reasons, sex offender residence restrictions have no demonstrated efficacy as a means of protecting public safety.

Recommendations

- Although resident restrictions appear to have strong public support, the Board found no evidence to support its efficacy. It is imperative that policy makers enact laws that will actually make the public safe and not laws giving the public a false sense of security.
- It is recommended that the legislature make permanent the moratorium on residential restrictions. However, the moratorium should not be intended to interfere with a locality's ability to regulate through zoning the location of congregate dwellings for offenders such as group homes.
- Residency restrictions should be determined based on individually identified risk factors.

- The most effective alternative for protecting children is a comprehensive education program. It is recommended that the necessary resources be provided to an agency determined appropriate by the legislature to educate Kansas parents, children and communities regarding effective ways to prevent and respond to sexual abuse. Such an education program should include all victims and potential victims of child sexual abuse.
- In order for an effective model policy to be developed, the issue of sex offender residence restrictions should be referred to the Council of State Governments, the National Governor's Association and similar organizations to prevent states and localities from shifting the population and potential problems of managing sex offenders back and forth among states.

APPENDIX

Appendix A – Memorandums

Appendix B – List of Presenters

Appendix C – List of Reference Materials

Appendix D – Adam Walsh Act and Senate Bill 506

Appendix A

Memorandums



KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Memorandum

Date: December 8, 2006

To: Roger Werholtz
Secretary of Corrections

From: Tim Madden
Sr. Counsel to the Secretary

Re: Offender Registration
Romeo and Juliet
Other Registration Offenses

You have sought my opinion regarding sex offender registration requirements pursuant to Kansas and federal law. Specifically, you inquire about two offenses. First, situations where the offense involves sexual relations between persons which would be consensual and lawful but for the age of the victim. Second, misdemeanor adultery committed with a person over the age of 16 but under the age of 18. I also take this opportunity to note the registration requirements of several crimes in which the consent of the parties is irrelevant.

Note that the age of consent to engage in sexual activities in Kansas is 16. Indecent Liberties with a child, K.S.A. 21-3503.

Romeo and Juliet Provision

The “Romeo and Juliet” provision is codified at K.S.A. 21-3522, Unlawful Voluntary Sexual Relations. This provision lessens the punishment for sexual activities with a person between the ages of 14 and 16 by a person less than 19 years of age and not more than 4 years older than the child. Application of the “Romeo and Juliet” provision requires the offender to be both under the age of 19 and less than four years older than the child.

K.S.A. 21-3522 provides:

“(a) Unlawful voluntary sexual relations is engaging in voluntary: (1) Sexual intercourse; (2) sodomy; or (3) lewd fondling or touching with a child who is 14 years of age but less than 16 years of age and the offender is less than 19 years of age and less than four years of age older than the child and the child and the offender are the only parties involved and are members of the opposite sex.”¹

¹ The limitation of the “Romeo and Juliet” provision of K.S.A. 22-4912 to heterosexual conduct was found to be unconstitutional. State v. Limon, 280 Kan. 275; 122 P.3d 22 (Kan. 2005).

- (b) (1) Unlawful voluntary sexual relations as provided in subsection (a)(1) is a severity level 8, person felony.
- (2) Unlawful voluntary sexual relations as provided in subsection (a)(2) is a severity level 9, person felony.
- (3) Unlawful voluntary sexual relations as provided in subsection (a)(3) is a severity level 10, person felony.

Registration Requirement

Kansas

While, voluntary sexual relations with a person between the ages of 14 and 16 by a person less than age 19 and not more than four years older than the child is a prohibited criminal act, that crime is not specifically listed as a “per se” sex crime in K.S.A. 22-4902, in contrast to crimes such as rape, indecent liberties ect.. Therefore, any registration that would be required would have to be pursuant to a judicial finding that the act was “sexually motivated”. K.S.A. 22-4909(c)(14). [L. 2006 ch. 214 §4]. If such a finding is made, the offender is required to register under Kansas law. Note that since Unlawful Voluntary Sexual Relations is not specifically listed in the Kansas Registration Act, the registration obligation for “Romeo and Juliet” situations is dependant upon a request by the prosecutor for the court to find that the crime was sexually motivated. I cannot imagine a situation where a court could in good conscious could find that the act was not sexually motivated. Therefore, registration is not dependent upon a consideration by a court of the risk posed by the offender. The registration obligation is therefore controlled by the prosecutor.

In contrast to a conviction for Voluntary Sexual Relations (K.S.A. 21-3522) for which registration is required only if there is a specific judicial finding that the crime was sexually motivated, there are several misdemeanor crimes which if committed with a person under the age of 18 but over the age of 16 with that person’s consent, registration is automatically required upon conviction. Those crimes are Adultery, Patronizing a Prostitute, and Lewd and Lascivious Behavior which are defined infra. These offenses are specifically identified as crimes for which registration is required in K.S.A. 22-4902.

Federal Law (Adam Walsh Child Protection and Safety Act of 2006) [109 P.L. 248]

The Adam Walsh Act defines “minor” as a person under the age of 18. Sec. 111 (14). That Act excludes from its definitions of offenses for which registration is required those offenses involving consensual sexual conduct if the victim was at least 13 years old and the offender was not more than 4 years older than the victim. Sec. 111(5)(C).

Federal law is less stringent than Kansas law relative to registration requirements regarding “Romeo and Juliet” sexual conduct. Federal law does not require registration if the victim is between the ages of 13 and 14 and the offender is not older than the range of 17 and 18 (depending on the exact age of the victim). In contrast, sexual conduct with a person under the age of 14 by an adult triggers a registration obligation under Kansas law. Additionally, pursuant to federal law, an offender convicted of voluntary sexual conduct with a person under the age of 16 may be older than 19 with the exact age limitation for the offender dependant on the exact age of the 15 plus year old victim. In contrast, under Kansas law the “Romeo and Juliet” provision does not apply to an offender over the age of 19 regardless of how close the victim is to celebrating his or her 16th birthday.

Leeway Granted by the Federal Law

The federal Act requires registration of persons who commit a crime involving a sexual act or sexual contact with another or which is a criminal offense specified against a minor. Sec. 111 (5)(A)(i) and (ii). Pursuant to Sec 118 (c) a jurisdiction may exempt from disclosure any information about a tier I sex offender convicted of an offense other than a specified offense against a minor. Pursuant to this section, it is my opinion that Kansas could repeal its registration requirement for persons who commit adultery wherein one of the parties is between the ages of 16 and 18 and exercise its option to not report those offenders pursuant to the federal Act. However, it is my opinion that in regard to crimes that prohibit sexual activities with persons based upon the victim's age, the registration requirement relative to "Romeo and Juliet" situations may not be any less stringent than provided by the federal Act. Currently, Kansas law is more stringent on who is required to register relative to "Romeo and Juliet" situations.

In regard to the federal registration requirements relative to Lewd and Lascivious Behavior subsections (a)(1) and (b)(1), otherwise lawful sexual acts committed in public or with the reasonable anticipation that such acts are being viewed by others; or such behavior committed in the presents of persons 16 years of age or older, registration may be excluded by federal law.

In regard to patronizing a prostitute over the age of 16 but under the age of 18, it is my opinion that federal law requires registration of those offenders. Sec. 111 (7)(E) specifically defines solicitation to practice prostitution as an "specified offense against a minor".

Definitions of Specific Kansas Crimes Requiring Registration under Kansas Law.

Adultery

Adultery as defined by K.S.A. 21-3507, when one of the parties is under the age of 18 is listed under Kansas law as requiring registration. K.S.A. 22-4902(a)(5)(A) as amended by L.2006 ch. 214 §6)

Adultery is defined as:

- “(1) Adultery is engaging in sexual intercourse or sodomy with a person who is not married to the offender if:
- (a) The offender is married; or
 - (b) The offender is not married and knows that the other person involved in the act is married.
- (2) Adultery is a class C misdemeanor. “

Thus, upon conviction, both parties to the adultery would be required to register as sex offenders if one of them was under the age of 18 even though both were over the age of consent.

Patronizing a Prostitute

Patronizing a prostitute when one of the parties is under the age of 18 is listed under Kansas law as requiring registration. K.S.A. 22-4902(a)(5)(D) as amended by L.2006 ch. 214 §6)

Patronizing a prostitute, K.S.A. 21-3515, is defined as:

- “(1) Patronizing a prostitute is either:
- (a) Knowingly entering or remaining in a house of prostitution with intent to engage in sexual intercourse, sodomy or any unlawful sexual act with a prostitute; or
 - (b) knowingly hiring a prostitute to engage in sexual intercourse, sodomy or any unlawful sexual act.
- (2) Patronizing a prostitute is a class C misdemeanor.”

Lewd and Lascivious Behavior

Lewd and lascivious behavior when one of the parties is under the age of 18 is listed under Kansas law as requiring registration. K.S.A. 22-4902(a)(5)(E) as amended by L.2006 ch. 214 §6)

Lewd and lascivious behavior, K.S.A. 21-3508., is defined as:

“ (a) Lewd and lascivious behavior is:

(1) Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or

(2) publicly exposing a sex organ or exposing a sex organ in the presence of a person who is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

(b) (1) Lewd and lascivious behavior if committed in the presence of a person 16 or more years of age is a class B nonperson misdemeanor.

(2) Lewd and lascivious behavior if committed in the presence of a person under 16 years of age is a severity level 9, person felony. “

Kansas Coalition Against Sexual and Domestic Violence Memorandum

TO: Sandy Barnett, Executive Director
FROM: Joyce Grover, Legal Director
DATE: December 19, 2006
RE: Offender Registration Act: Impact on Victim/Offenders

As you know, part of the purpose of the Kansas Offender Registration Act, K.S.A. 22-4901 *et seq.*, is to keep the public informed of the names and residential addresses of those required to register after being convicted of certain crimes. Some of the crimes requiring registration are sex crimes or sexually motivated crimes, some are not. The recently passed federal Child Protection and Safety Act of 2006, a.k.a. Adam Walsh Act, will by 2009 require Kansas to make certain enhancements to its offender registry thereby including additional information available to the public.

While most citizens who access the Kansas offender registry are legitimately seeking information about offenders who may live or work in their neighborhoods, there is an underside to the registry that has been unexpected and has recently come to light. A small but potentially lethal set of perpetrators of domestic violence (who may or may not be convicted of any crime) are using the registry to track and stalk their victims who happen to be registered offenders. KCSDV has received information from more than one advocacy program (not a large number of programs by any means) indicating that the Kansas offender registry has become the perfect tool for this brand of perpetrator. For the victim/registered offender there is no recourse. The victim/registered offender, under threat of felony criminal prosecution for failing to register, must register and thereby must provide the abuser with a residential and work address. The amount of information available to the public will only increase as the Adam Walsh Act is implemented across the country.

Even those who advocate for victims of sexual assault and domestic violence could not have imagined that some of the offenders being required to register would now become part of a subset of victims who can be easily hunted down and stalked by their perpetrator with the help of state and national offender registries. The U.S. Department of Justice, Bureau of Justice Statistics indicates that the risk of serious injury or murder increases exponentially when domestic violence perpetrators stalk their victims. A registered offender/victim does not deserve to become a sitting duck for this dangerous and possibly lethal perpetrator of domestic violence.

Although KCSDV could request the Sex Offender Policy Board to consider recommending a modification to the Kansas Offender Registration Act in order to protect this small subset of victims, Kansas will still have to implement the provisions of the Adam Walsh Act. This Act does not appear to have any room for this kind of exception. Nonetheless, because of the potentially lethal nature of this kind of stalking and domestic violence, it is important to continue to raise this issue for discussion and consideration as the Adam Walsh Act is being implemented over the coming years. While this is an unusual situation, it is serious one deserving of consideration.

Kansas Bureau of Investigation

Memorandum

To: Larry Welch, Director
From: Kyle Smith, Deputy Director
Date: December 7, 2006

Re: Federally Mandated changes to Kansas Offender Registration Act

The Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, among numerous other provisions, requires state sex offender registration programs to adopt certain standardized provisions **by July 20, 2009**. This memorandum reviews those changes needed to bring the Kansas offender registration act into compliance.

The Kansas offender registration act, K.S.A. 22-4901 *et seq.*, was one of the first such programs in the country and is still a very good model of such legislation. As such, the changes needed to come into compliance are fortunately few. The changes do reflect both lessons learned from later efforts by other states and the increased national concern with registered offenders. The Adam Walsh act requires certain changes by July of 2009 leaving us 3 legislative sessions to adopt the federal mandates. States may be stricter but must at least meet these standards. It should be noted that the threatened consequence for failure to comply is potential loss of Edward R. Byrne and other justice grant funds.

KBI General Counsel Jane Nohr has advised me that the federal government is currently reviewing the Adam Walsh Act and recommendations on compliance should be released later this month. There are a number of provisions in the federal legislation that need clarifying. Foremost, in my view, is how the notification requirements under section 6 (*infra*) can be implemented – this can be very expensive if they do not allow us to use a ‘sign up’ approach on the Internet. I’ve attached a newspaper article from Utah reflecting that that state is considering Adam Walsh compliance legislation and estimating their costs between \$1.5 and \$2 million dollars.

Parts of the act we can incorporate this next session, and I have put those provisions in a bold font. However, I would strongly urge the Sex Offender Policy Board and the legislature to be patient until the final recommendations are announced before considering full implementation. In addition to the pending regulatory recommendations, as states find problems in trying to implement the law, the statute may well be changed and we need to avoid assuming unnecessary costs and other unforeseen difficulties.

Please advise if you have further questions.

Changes:

1. **Offenders may have only 3 business days to register and update registration. Current law allows them 10 days to do both. Offenders must report basically the same information currently in our statute, but the new law would add information on license tags for any vehicle owned or driven by the offender.**
2. The new law requires classes of offenders be broken into three 'tiers'. Generally the tier is based upon the severity of the crime and the age of the victim. Tier 1 is the least serious with Tier 3 being the most serious. The Adam Walsh act uses Federal statutes to draw these distinctions and there will be some effort needed to compare the elements of these Federal offenses to our Kansas counterparts.

The issue of dealing with consensual teenage relationships is handled by defining consensual sexual conduct as not a sex offense if victim was an adult or if the victim was at least 13 years old and offender was not more than 4 years older than victim. This will be a slight variation from our current 'Romeo and Juliet' statutory language.

Juvenile Adjudications – Juveniles 14 years or older at the time of the crime and the crime is comparable with federal crime of Aggravated sexual abuse (Rape). Kansas can maintain the broader coverage under current law or we could follow this approach.

3. One application of the 3 Tier approach is to apply different lengths of registration for each Tier level. Currently first offenders register for 10 years while repeat and those cases involving child victims under 14 are required to register for life.
 - Tier I - 15 years, with a good time reduction of 5 years.
 - Tier II - 25 years
 - Tier III- Lifetime, but juveniles only can obtain a 'good time' reduction to 25 years.
4. The other major change arising from the 3 Tier approach deals with how often the offenders have to appear in person and update their registration.
 - Tier I - Once per year
 - Tier II - Twice per year
 - Tier III- Three times per year**Kansas law now requires all offenders to appear twice a year at their local sheriff's office. Since the law allows states to be more restrictive and it might be easiest to just require all offenders to report locally three times a year. This would also allow us to drop the expensive and problematic sending of registered letters every 90 days.**

5. KBI website must be expanded to include “all” offender registry information about each sex offender. This would require some programming expense.

There are some exemptions required such as mandatory exemptions protecting the identity of a victim of a sex offense, the social security number of an offender, any reference to arrests of sex offender not resulting in a conviction and any other exceptions authorized by the United States Attorney General.

States may exempt information about a Tier I sex offender such as the name of an employer of the sex offender, the name of the educational institution where the offender is a student or any other exceptions provided by the Attorney General.

Our website will have to include links to sex offender safety and education resources, but that can be done immediately.

6. Community notification appears to be the most problematic area of change. The new law will require “immediate” notification of both new registrants and all updates to:

- a. The United States Attorney General, for inclusion in the National Sex Offender Registry.
- b. Law enforcement agencies, schools and public housing agency where offender resides, works or attends school.
- c. Any agency conducting background checks under National Child Protection Act.
- d. Social services entities responsible for protecting minors, such as Social and Rehabilitation Services and the Department of Health and Environment.
- e. Volunteer organizations where contact with minors or vulnerable individuals might occur.

Any organization, company or individual who requests disclosure.

Sections e and f will involve significant cost and effort depending on how ‘immediate notification’ is interpreted. Hopefully providing a website where volunteer and other organizations can sign up to receive e-mails on new registrants and updates will be sufficient. If ‘notification’ puts a burden on local sheriffs or the KBI to identify and locate all such volunteer organizations and notify by letter every time there is a change, the costs (and liability) could be staggering.

7. The United States Attorney General will inform the states when persons entering the U.S. and those under federal law who will be required to register. System changes will be needed to accept these additional registrants.

Legislature moves ahead sex offender bills

ALAN CHOATE - Daily Herald
Thursday, November 16, 2006

Lawmakers considered several sex-offender related matters Wednesday and positioned two bills -- one strengthening identification requirements, another dealing with Internet solicitation -- for further advancement in the Legislature.

Members of the Law Enforcement and Criminal Justice interim committee also learned that it will cost between \$1.5 million and \$2 million to comply with requirements of the Adam Walsh Child Protection and Safety Act, a piece of federal legislation approved earlier this year.

"As we go through the legislative process, what I'm pleading for is to keep that in mind," said state Rep. Paul Ray, R-Clearfield. "This is going to have to be funded."

Legislation implementing the act's provision wasn't ready Wednesday. Its provisions include making Utah's sex offender registry a three-tier system, based on the seriousness of the offense. Those required to register will do so for terms ranging from 10 years to life, and some juvenile offenders will have to continue to be registered even after they turn 18.

There will also be more money available to maintain the registry, which has been lacking resources, Ray said.

"We're finally going to fund the sex offender registry," he said.

The Adam Walsh act is aimed at integrating state sex offender registries, increasing penalties for crimes against children and combating the use of the Internet by offenders to reach children. It also calls for a national child abuse registry. The act is named for a child who was abducted and killed in Florida.

Ray also sponsored the two measures forwarded by committee members. The bills had been discussed before but were held pending cost estimates.

One bill would make enticing a minor via the Internet to commit a sexual act a second-degree felony; repeat offenses would be a first-degree felony. Penalties for the crime now vary from a class-C misdemeanor to a second-degree felony. It's expected to cost the state about \$275,000 a year in additional incarceration costs.

The other measure expands on legislation passed in the last legislative session that requires registered sex offenders to renew their driver's licenses in person annually.

Some offenders just dropped their licenses to avoid the requirement, Ray said. His bill would require all registered offenders to have at least a state ID card, and it too must be renewed annually.

Since identification cards are paid for by the individual, no additional cost is expected from this bill. It costs \$20 to renew a driver's license.

This story appeared in The Daily Herald on page A9.

Kansas Bureau of Investigation

Memorandum

1993 Session Laws

Effective July 1, 1993 thru April 14, 19994

History of Offender Registration & Public Notification

- 7/1/1993 The Kansas Habitual Sex Offender Registration Act becomes effective and only applies to adult offenders twice convicted of sexually violent crimes. Access to registration information is only available to law enforcement agencies. There is no public notification or access.
- 4/14/1994 Act amended and renamed the Kansas Sex Offender Registration Act, which applies only to adult offenders convicted once of sexual violent crimes. Registration information is now made open and available to the public through inspection at the sheriff's departments.
- 7/1/1996 Act amended to allow the court to order registration for adults or juveniles as part of a probation order or diversion agreement. The Act also significantly expanded the information required to be provided by the offender on our KBI form.
- 4/24/1997 KBI establishes an Internet website providing offender information to the public online. The Kansas website is the second state site established in the U.S.
- 7/1/1997 Act amended to include violent crimes (murder & manslaughter) and other crimes against children and renamed the Kansas Offender Registration Act. Also, significantly expands duties to be followed by offenders and relief from registration procedures. Open record provisions remain the same except victim identity is protected from release.
- 7/1/1999 Act amended to require lifetime registration for aggravated offenses, to include Rape & Aggravated Criminal Sodomy. Penalty for violation of the Act is increased to a level 10, nonperson felony. Court could order relief of registration for "Romeo & Juliet" crime, known as Unlawful Voluntary Sexual Relations.
- 7/1/2000 Act amends discretionary registration for juveniles to include order by court in a juvenile sentencing order.
- 7/1/2001 Act amended to comply with federal law to include non-resident workers or students, offenders convicted out of state and sexually violent predators. Relief of registration procedures are removed and not available to offenders. Open records provisions expands to records at the KBI and on our website in addition to records at the sheriff's departments.

- 7/1/2002 Act amended to require registration for juveniles adjudicated of sexually violent crimes. The length of registration is 5 years or until 18 years of age, whichever occurs later.
- 1/8/2003 Kansas Offender Registry adds mapping functionality to our website. Offender addresses are located on a map of a targeted area.
- 7/1/2003 Act amended to comply with federal law relating to campus notifications for offenders working at or attending colleges.
- 7/1/2005 Act amended public notification provisions to include prominent display of offenders who are sex offenders on KBI and sheriff's websites. Also requires the state BOE and KDHE to notify schools and day cares of offenders living near schools and day care locations.
- 7/20/2005 Kansas begins participating in the National Sex Offender Program Registry (NSOPR). All Kansas sex offenders included in the Kansas Offender Registry are searchable on the national website.
- 6/1/2006 Act amended public notification provisions to allow court discretion to order registration closed for juveniles adjudicated of certain sexually violent offenses so registration information is only available to law enforcement.
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Appendix B

List of Presenters

List of Presenters

Electronic Monitoring

Bruce Thacher and Staff, Behavioral Interventions, Inc.,
John Wells, Alternatives Program, Wichita, Kansas
Chris Rieger, Kansas Department of Corrections
Lisa Fleming, Johnson County Court Services Officer
Phill Greer, Electronic Monitoring Coordinator for Johnson County Dept. of Corrections
Kerri Platt, Sedgwick County Criminal Justice Alternatives Coordinator
Joshua Mosier and Haley DaVee, Staff for the Board

Public Notification

Donald Burns, Shawnee County Undersheriff
Jane Nohr, KBI Assistant Attorney General
Sheryl Lidtke, Assistant District Attorney for Wyandotte County
Kathy Williams, Executive Director for Wichita Area Sexual Assault Center
Brad Totman, Mulberry, Kansas

Management of Juvenile Offenders

Cheryl Rathbun, LSCSW, St. Francis Academy, Salina, Kansas
Katrina Pollet, Superintendent at Beloit Juvenile Correctional Facility
Annie Grevas, Director of the 28th Judicial District Community Corrections, Saline County
Amber Mazzaferro, Johnson County Court Services Officer
Michael Boniello, Clinical Therapist in Private Practice, Prairie Village, Kansas

Residency Restrictions

Dr. Jill Levenson, Lynn University (Florida)
Dr. Jeffery Walker, University of Arkansas at Little Rock
Pamela Dettmann, Des Moines County (Iowa) Attorney's Office
Mary Richards, Iowa Coalition Against Sexual Assault
Christopher Lobanov-Rostovsky, Colorado Department of Public Safety/Division of Criminal
Justice
Representative Nile Dillmore
Melissa Alley, Wichita, Kansas
Doug Vance, Kansas Recreation and Parks Association

Appendix C

List of Reference Materials

Reference Materials

Electronic Monitoring

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Appendix D

Adam Walsh Act and Senate Bill 506

Federal Adam Walsh Act

Kansas Senate Bill 506