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Sex Offender Policy Board

Washington's Compliance with SORNA Findings and Recommendations by the Sex Offender Policy Board

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EXECUTIVE SUMMARY

The Washington State Sex Offender Policy Board (SOPB) was created to advise the Governor and the Legislature as necessary on issues relating to sex offender management. RCW 9.94A.8673 authorizes the Governor or a legislative committee to request the SOPB be convened to "undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy".

In October 2015, Governor Jay Inslee submitted a request to the Board which contained several items. This report will address one item specifically, "Offer recommendations as to how the state should proceed in moving further into compliance with SORNA or, if the SOPB determines that it is not in the best interest of the state to adopt a requirement of SORNA, offer an analysis as to why".

The Sex Offender Registration and Notification Act (SORNA) is Title 1 of the Adam Walsh Act (AWA) signed into legislation by President George W. Bush on July 27th, 2006¹. Named after a young boy who was the victim of a tragic abduction and murder, AWA was passed with a hope of protecting the public from sex offenders while also amending several loopholes within previous sex offender legislation. States were given three years to enact all portions of SORNA, and should they not they would risk losing 10% of their Omnibus Crime federal funding².

The main purpose of SORNA was to standardize registration and notification policies and procedures in all 50 states. More specifically, SORNA requires that registerable sex offenders be placed in one of three tiers based solely on the severity of their offense. Tier one consists of those offenders who committed misdemeanors, while tier two houses offenders convicted of less serious felonies. Tier three is reserved for offenders who commit the most severe sexual offenses. In addition, the tier to which an offender is assigned also determines their length of registration. The purpose of the tier system specifically, is to determine which offenders pose the highest risk to the community, and protect the public through community notification and registration³. This is based on the assumption that seriousness of offense is correlated to recidivism. While registration tiering is the main component of SORNA, there are several other pieces states are required to comply with.

Each of the components listed below has its own set of requirements for states to comply with and adhere to. In order to be found in substantial compliance with SORNA, states must demonstrate an overwhelming adherence to the "spirit" of these SORNA items:

- **Offenses to be Included in the Registry:** Outlines what offenses are registerable.
 - **In Compliance with a Slight Deviation**

¹ Freeman, Naomi J. and Sandler, Jeffery C. "The Adam Walsh Act: A False Sense of Security of an Effective Public Policy Initiative?" *Criminal Justice Policy Review* 21, 1 (2010) 31-49

² Adam Walsh Child Protection and Safety Act, H.R. 4472, 109th (2006)

³ Freeman, Naomi J. and Sandler, Jeffery C. "The Adam Walsh Act: A False Sense of Security of an Effective Public Policy Initiative?" *Criminal Justice Policy Review* 21, 1 (2010) 31-49

- **The SOPB recommends reviewing Juvenile registration**
- **Tiering of Offenses:** Details the tiering requirements.
 - **Not in Compliance**
 - **No Action Recommended**
- **Required Registration Information:** Lists information law enforcement must collect when registering an offender.
 - **Not in Compliance**
 - **No Action Recommended**
- **Where Registration is Required:** Provides information on where an offender must register.
 - **In Compliance**
 - **No Action Recommended**
- **Initial Registration Generally:** Details how long an offender has to initially register.
 - **In Compliance**
 - **No Action Recommended**
- **Initial Registration: Retroactive Classes of Offenders:** Provides information on how to recapture offenders after implementing SORNA.
 - **Not In Compliance**
 - **No Action Recommended**
- **Keeping Registration Current:** Outlines requirements for how long an offender has to update their registration information once it changes.
 - **In Compliance with a Slight Deviation**
 - **No Action Recommended**
- **Verification/Address Requirements:** Provides information on how often offenders must make in-person appearances, as well as for how long they are required to register.
 - **Not in Compliance**
 - **No Action Recommended**
- **Registry Website Requirements:** Lists items required to be shown on the public registry website.

- **Not in Compliance**
- **No Action Recommended**
- **Community Notification:** Outlines protocol for community notification procedures.
 - **In Compliance with a Slight Deviation**
 - **No Action Recommended**
- **Failure to Register: State Penalty:** Mandates penalty requirements for Failure to Register.
 - **In Compliance with a Slight Deviation**
 - **No Action Recommended**
- **When a Sex Offender Fails to Appear for Registration:** Protocol for if an offender fails to appear.
 - **In Compliance**
 - **No Action Recommended**
- **When a Jurisdiction has Information that a Sex Offender May Have Absconded:** Protocols for offenders who may have absconded.
 - **In Compliance**
 - **No Action Recommended**
- **Immediate Transfer of Information:** Requirements for transferring and updating registration information between jurisdictions.
 - **In Compliance**
 - **No Action Recommended**

Obtaining compliance with each of SORNA’s components would cost Washington approximately \$10,491,519 per a 2011 estimate⁴. The cost, coupled with mounting evidence that SORNA does not reduce recidivism and may in fact increase risk to the public, have led to the current recommendations. After many hours of research and deliberation the Board has determined that Washington’s current policies are more effective than SORNA at reducing recidivism, thereby increasing the safety of the public. As such, the SOPB is making no recommendations in which the state would be required to come into further compliance with SORNA. The SOPB does recommend that Washington consider SORNA’s policies regarding juvenile sex offender registration, and reconsider the current registration process.

⁴ Ewing, C. P. (2011). *Justice Perverted: Sex Offender Law, Psychology, and Public Policy*. New York: Oxford University Press.

INTRODUCTION

Washington State has long been committed to protecting the safety and wellbeing of the general public from sex offenders. As the first state to implement sex offender notification and registration laws in 1990, with the creation of the Washington State Community Protection Act, and the first state to civilly commit sexually violent predators, Washington has demonstrated an outstanding dedication to improving sex offender practices and policies. As a nationwide leader in sex offender management, Washington has continued to implement new enhancements based on the best, and most recent, research available.

As stated, the goals of the Adam Walsh Act (AWA) are similar to those of the original Community Protection Act of 1990. The AWA aims to provide further public protection by supporting the national implementation of a comprehensive sex offender registration and notification system. Also known as SORNA, the Sex Offender Registration and Notification Act targets potential loopholes in existing policy and strengthens the nationwide network of sex offender registration and notification programs. By strengthening programs in each state, SORNA aims to create a field of “best practices” in sex offender management nationwide. The Washington State Community Protection Act holds the criminal justice system accountable to the public by providing a sentencing system which protects citizens, ensures punishment which is proportionate to the seriousness of the offense and an offender’s criminal history, and reduces the risk of recidivism.

For almost two decades, Washington State has utilized various validated risk assessment tools when determining the risk level classification an offender should receive in the community. Both experts in the field and stakeholders involved in the monitoring and tracking of sex offenders in the community strongly support the state’s decision to use a risk-based assessment, and believe this approach further promotes public safety.

SORNA requires sex offenders to be divided into three separate tiers, determined by their crime of conviction and sentence length. Offenders who fall into the same tier are all subject to the same minimum duration of registration, frequency of in-person verifications, and extent of website disclosure. Washington State is similar in that the duration of registration is offense-based, but frequency of in-person verification and the extent of information disclosure on the public website are determined by an evaluation of the offender’s risk level. Washington is also unique in that in addition to in-person verification procedures, Washington dispatches local law enforcement to an offender’s address to verify residency and additional information. In this regard, Washington is going above and beyond the spirit and intent of this SORNA requirement by enabling law enforcement to see an offender’s living situation and ensure residency. Washington uses evidence-based risk assessments, the offender’s criminal history, and other elements of their conduct in order to determine their level of risk. As such, this leveling system adheres to best practices within the field of sex offender management as numerous studies have found that a risk-based model is an effective predictor of recidivism, and is more effective than a fully offense-based model.

The following recommendations demonstrate that Washington has continues to use sex offender management practices and policies through the state, which are more effective than those required by SORNA. As such, the Board recommends that the state not seek further compliance with

SORNA; though the Board does ask that Washington consider implementing SORNA's juvenile registration policies in the coming year. SORNA has 14 main items which states must adhere with to be found in substantial compliance; the following recommendations are written based on each individual requirement. After collecting information on Washington's current sex offender policies, reviewing available literature and discussing various policy options, the SOPB submits the attached recommendations regarding Washington's compliance with SORNA.

RECOMMENDATIONS

Offenses that Must Be Included in the Registry

Recommendation: Review Juvenile Registration Requirements

SORNA requires that jurisdictions have specific sex offenses in their registration schemes. SORNA defines a “sex offender” as anyone who has been convicted of a “sex offense”, and all sex offenses should be included in the registry. In addition, all attempts and conspiracies to commit a sex offense, all foreign sex offenses under the laws of Canada, the United Kingdom, Australia and New Zealand, as well as any military sex offenses, should be included in a jurisdiction’s sex offender registry.

Washington requires registration for all sex offenders convicted in the state, as well as for all adult and juvenile sex offenders with out-of-state convictions in which the offender would be required to register in the state the crime was committed. Offenders are also required to register for any federal, foreign military, or tribal conviction of a sex offense. Moreover, Washington requires all juvenile offenders to register regardless of their age. Conversely, SORNA only requires registration for juveniles who are 14 or older at the time of the offense, and the offense is comparable to or more severe than aggravated sexual abuse.

In 2009 the Sex Offender Policy Board (SOPB) made several recommendations related to sex offender registration and community notification for juvenile sex offenders based on their review of the relevant social science research at that time. Some of those recommendations were enacted into law and several were not. The SOPB has continued to identify research which suggests a need for juvenile sex offenders to be treated differently than their adult counterparts. The SOPB’s review of other states’ practices and policies regarding registration and community notification found that most states treat juveniles differently. Currently, Washington state does not separate the two populations for registration and community notification purposes though Washington does allow for certain juvenile offenders to petition for the relief of the duty to register contingent on several criteria.

As outlined in the Sex Offender Policy Boards 2009 full report, the key finding regarding juveniles states, *“Youth who have sexually offended are different from adults who commit sex offenses in part, because of ongoing brain and neurological development. Therefore, sex and kidnapping offender laws regarding juveniles and public policy should reflect their unique amenability to treatment and vulnerability to collateral consequences due to their ongoing development.”* Based on this finding by the SOPB, and the continued discovery of research in support of treating juveniles differently; the SOPB recommends that Washington consider SORNA’s juvenile registration requirements in an effort to determine if they represent a more effective approach to juvenile sex offender management.

As of August 2010, Washington was in compliance with a slight deviation for this requirement, though Senate Bill 5154, which passed in the spring of 2015, filled in several missing pieces. Washington now requires offenders to notify the county sheriff at least 21 days prior to travel, it is not a crime to refuse to provide DNA, tribal convictions now require registration, when an offender moves to a new county they are required to update their registration information within three days, and information on Level I offenders is now made available to parties who seek information on a specific offender. We believe these changes will allow Washington to be found in substantial compliance with this SORNA

requirement.

Tiering of Offenses

Recommendation: No Action

SORNA requires a three-tier system in which an offender's tier is determined solely upon the offense of conviction, with no consideration for risk, aggravating, or mitigating factors. Within each tier, all offenders are subjected to the same duration of registration, frequency of in-person verifications, and amount of information displayed on the public website. In contrast, Washington uses an evidence-based risk assessment to determine how often an offender should submit to in-person verification and to what extent their information should be available on the public registry website. Washington is similar to SORNA when considering these, as the higher the risk to the community the more stringent the requirements. In addition, Washington considers criminal history and offender conduct when making leveling determinations.

Furthermore, Washington bases the duration of registration on the offense, with more serious offense classes required to register for longer periods. This system is similar to SORNA's tiering process. Since Washington considers other factors when determining an offender's level, the final level may differ from the SORNA recommendation. **It is important to note that Washington is currently not in compliance with the SORNA tiering requirement due to the use of the evidence-based risk assessment.** Key stakeholders and those within the field are strongly in favor of continuing to remain out of compliance with this requirement, in order to make the most informed leveling decisions possible.

In recent years, a significant body of research has focused on whether or not SORNA tiering is an effective means of predicting both general and sexual recidivism. Several studies have found evidence in favor of the continued use of an evidence-based risk assessment, such as the STATIC-99R, when leveling offenders. SORNA leveling has been found to have no significant correlation to either sexual or non-sexual rearrest (Freeman & Sandler, 2010). Conversely, other studies have found that the STATIC-99R either significantly or moderately predicts general, serious, and sexual recidivism (Barbaree, Seto, Langton, & Peacock, 2001; Hanson, Helmus, & Thornton, 2010).

Additional studies (Spohn, 2012; Letourneau, Levenson, Bandyopadhyay, Sinha, & Armstrong, 2010 and Freeman & Sandler, 2010) were completed in various states following full implementation of SORNA. These states found that SORNA was not only ineffective in reducing recidivism, but also placed the majority of their offenders in Tier 3. This led to an increase in demand for resources, while diluting the potential effectiveness of the registry and increasing collateral consequences for offenders.

In short, there is consistent support for using risk assessments such as the STATIC-99R when leveling offenders, versus complying with the SORNA requirement. Therefore, the SOPB recommends that Washington remain out of compliance with this item as implementation of the SORNA tiering system would be less effective at protecting public safety than the current process. In addition, this would place thousands of Washington's registered sex offenders in Tier 3, further diluting the effects of the registry.

Registration Requirements by Tier

Tier	SORNA Registration Requirement
I	15 years
II	25 years
III	Lifetime Registration

Washington's Registration Requirements

Length	Offense Severity
10 Years	10 years (Class C/gross misdemeanor, a violation of RCW 9.68A.090 or 9A.44.096, or an attempt, solicitation, or conspiracy to commit a Class C felony, and no prior convictions for a sex or kidnapping offense)
15 Years	15 years (Class B sex offenses and no prior convictions for a sex or kidnapping offense)
Lifetime Registration	Lifetime Registration (Class A felony, or convicted of any prior sex or kidnapping offenses, or a person who has been determined to be a Sexually Violent Predator)

In-Person Verification Requirements by Level/Tier

Level/Tier	SORNA In-Person Verification Requirements	Washington In-Person Verification Requirements
1 or I	Once every 12 months	Once every 12 months
2 or II	Once every 6 months	Once every 6 months
3 or III	Once every 3 months	Once every 3 months

Required Registration Information

Recommendation: No Action

SORNA necessitates that all states collect specific pieces of information from sex offenders when registering with local law enforcement. SORNA requires the collection of driver's license information, full address, name, aliases, internet identifiers, palm prints, passport information, immigration documents, phone numbers, and professional licensing and vehicle information. Washington State collects name and aliases, residential information, date and place of birth, place of employment, crime of conviction, date and location of conviction, social security number, and fingerprints.

Washington has done an excellent job ensuring efficiency and accuracy within sex offender records, and as such collects many of the items required by SORNA. Washington though, does not place an offender's full address on the public registry website (only the one hundred block), nor does Washington collect palm prints and internet identifiers. Collecting internet identifiers such as email address, and chat names have been found to be an unnecessary use of resources. In addition to no favorable evidence, the Sex Offender Policy Board determined previously that the collection of these items would not be in the best interest of the state or enhance public safety as these items are incredibly easy for offender's to change. Thus, the SOPB recommends that no action be taken on this item which would move the state further towards compliance.

Overview of Registration Requirements

SORNA Registration Requirement	Washington's Collection
Criminal History	Collected
Date of Birth	Collected
DNA Sample	Collected
Driver's License or ID Card	Collected
Employment Information	Collected
Fingerprints	Collected
Internet Identifiers	NOT COLLECTED
Name	Collected
Palm Prints	NOT COLLECTED
Passport and Immigration Documents	Collected (if traveling out of country)
Phone Numbers	Collected
Photograph	Collected
Physical Description	Collected
Professional Licensing Information	NOT COLLECTED
Residential Address	Collected (not all information placed on public registry)
School Information	Collected
Social Security Number	Collected
Temporary Lodging Information	Collected
Text of Registration Offense	Collected
Vehicle Information	Collected by some agencies

Location of Registration

Recommendation: No Action (Full Compliance)

SORNA requires that sex offenders register in the jurisdiction of conviction, residence, employment, and school attendance. For example, if an offender resides in one county and works in another, that offender would be required to register in both counties. Washington is in compliance with this requirement, as offenders are required to register with the incarcerating agency prior to release, and again with local law enforcement within three business days of release. Moreover, Washington also requires offenders to register in the jurisdiction where they work, or attend school (those in partial confinement must also register with local law enforcement). Finally, should an offender move to a new county, they are required to re-register within three business days. As Washington is in full compliance with this requirement, no action is necessary.

Initial Registration: General Procedures

Recommendation: No Action (Full Compliance)

SORNA requires that all sex offenders releasing from incarceration and into the community register

with local law enforcement prior to their release. Offenders who were not incarcerated, should register with local law enforcement within three business days of sentencing for the registering offense. Finally, for those convicted of a foreign, federal, or military sex offense, registration should be completed within three business days of arrival to the community, or release.

Washington is in compliance with this requirement as offenders must register with their incarcerating agency prior to release, then again with local law enforcement upon release. For offenders who are in the community, they must complete registration within three business days of sentencing for the registering conviction. Moreover, those with federal, military, or foreign offenses must register within three business days and offenders who are in partial confinement must also register. Washington has been found to be in compliance with this item, and therefore no action is necessary.

Initial Registration: Retroactive Classes of Offenders

Recommendation: No Action

Upon implementation of SORNA there should be a process in place by which jurisdictions can recapture those who are, 1) incarcerated or under supervision either for the predicate sex offense or another crime, 2) already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law, and 3) reentering the jurisdiction's justice system due to another conviction. Those who are recaptured are subject to the regular initial registration procedure. As Washington State has not fully implemented SORNA, it is not possible for the state to reach adherence with this requirement. As such, the SOPB recommends that no action be taken towards reaching compliance for this item.

Keeping Registration Current

Recommendation: No Action

Sex offender registries are only as effective as the accuracy of the information they hold. Therefore, SORNA has strict requirements on the policies which keep this information accurate and up-to-date. SORNA requires offenders to appear in-person immediately following any registration changes in order to update their name, address, employment information, school attendance, or lease termination information. In addition, offenders are required to update all other registration information as soon as possible, while also providing 21 days advance notice of international travel.

Recognizing the importance of accurate and up-to-date information, Washington State uses evidence-based risk assessments when determining how often an offender needs to update their information (should there be no changes before their next scheduled update time). Washington holds the same policies as required by SORNA, though uses an in-person address verification program. Washington allows local law enforcement to complete their in-person verifications at the offender's residence. The Board has determined that no action is needed on this item as completing verification procedures at the offender's place of residence allows law enforcement to confirm their residency, thereby further enhancing public safety.

Verification/Appearance Requirements

Recommendation: No Action

SORNA requires that offenders register for a specific duration of time, as well as make in-person appearances at the registering agency (based on their conviction tier). SORNA allows for two types of offenders to petition for a reduced registration period. Tier I offenders may petition after 10 years, and those Tier III required to register because of a juvenile adjudication may petition after 25 years with a clean record.

In contrast, Washington determines duration of registration based on offense class and allows for those required to register due to an adjudication to apply for “relief of duty to register” after five years if age 15 or older, and after two years for all other juveniles. Please refer to the verification table above for information on how often Level 1, 2, and 3 offenders must participate in in-person verification. The SOPB has determined that no action is needed on this item as research and best practices have shown that current policies are more effective in reducing recidivism than what is required by SORNA.

Registry Website Requirements

Recommendation: No Action

SORNA requires that each jurisdiction maintain a public sex offender registry website that provides the public with access to certain registration information. SORNA requires criminal history, current offense, employer address, name and aliases, photograph, physical description, resident address, school information and vehicle information be collected.

Washington has been found to not be in compliance with this indicator as our state only places an offender’s one hundred block address on the public website. Additionally, while all offenders who are Levels 2 or 3, or Level 1 and out of compliance can be found on Washington’s public registry website, Level 1 offenders who are in compliance do not have their information posted publicly. The Board has determined that no action is needed on this item as providing information on Level 1 offenders on the public site will make it more difficult for citizens to determine offenders who truly pose a threat to them. For more information, please consult the SOPB’s recent recommendation regarding public disclosure.

Community Notification

Recommendation: No Action

SORNA requires that each jurisdiction have a process in place by which to disseminate specific and up to date information to other local jurisdictions. Moreover, certain information should also be made available to the public in an effort to improve public awareness. In general, SORNA requires a jurisdiction to make the appropriate changes to the public registry website within three business days, and send email notices to appropriate parties when an offender commences residence, employment, school attendance, or begins residing in the ZIP code.

Washington determines an offender's level of community notification by considering their risk to sexually reoffend in the community at large. This is done by administering an evidence-based risk assessment and considering other aggravating and mitigating factors. While Washington was found to be in compliance with a slight deviation for this item, the Board is currently looking into the use of the SORNA Exchange Portal and based on their findings may provide further recommendations.

Failure to Register: State Penalty

Recommendation: No Action

SORNA requires that each jurisdiction, other than a federally recognized Indian tribe, provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for the failure to register. Washington is in compliance with a slight deviation as juvenile or adult conviction of failure to register has a mandatory sentence of 12 months community custody for the first conviction, and 36 months for the second and subsequent convictions. The SOPB recommends that no action be taken on this item. Failure to Register (FTR) can be caused by any number of things, and relegating all those convicted of an FTR to serve at least one year will greatly impact the prison system and lead to additional costs for the state without any appreciable increase in safety. In addition, community custody is determined by an offender's risk level, and is not mandatory.

When a Sex Offender Fails to Appear for Registration

Recommendation: No Action (Full Compliance)

SORNA requires that if a sex offender should fail to appear for registration, the jurisdiction which provided the notification that the offender would be registering should be notified immediately. The offender's status in the public registry should also be updated, with this information forwarded to other jurisdictions and then the federal database. Washington is in compliance with this requirement as the jurisdiction an offender is moving from is responsible for the offender until their updated registration process is completed. Moreover, offenders are required to notify both the county they are leaving, and the one they will be registering with, prior to making the change. As Washington should be found to be in compliance, the Board recommends that no further action be taken.

When a Jurisdiction Has Information That a Sex Offender May Have Absconded

Recommendation: No Action (Full Compliance)

SORNA requires that an effort should first be made to verify that the offender has absconded. If the absconded offender cannot be located, the registry information should be updated to reflect that the offender is an absconder, and a warrant for arrest should be sought. U.S. Marshal's Service must also be notified, and the jurisdiction must update the national registry to reflect the offender's status. Additional policies are required to ensure the appropriate follow-up procedures for when information is received that an offender violated the requirement to register in jurisdictions of employment or school attendance. Washington complies with this indicator as the Washington public registry is updated once it has been found that an offender has absconded. Furthermore, the statewide database allows for immediate communication with the U.S. Marshal's Office. Washington should be found to

be in compliance with this item. As such, the Board recommends that no further action be taken.

Immediate Transfer of Information

Recommendation: No Action (Full Compliance)

SORNA requires that when an offender registers for the first time or updates their information, this material must be immediately shared with other jurisdictions where the offender is required to register. In addition, updated information should be provided to NCIC/NSOR and the jurisdiction's public sex offender registry website.

Washington was found to be in compliance with SORNA's requirement for the immediate transfer of information as the use of a statewide database allows registration information to be available in real-time to other jurisdictions. Moreover, Washington requires the Washington State Patrol to forward all information in the database to the National Crime Information Center (NCIC), as well as the National Sex Offender Registry (NSOR) as soon as possible. As Washington was previously found to be in compliance with this item, the Board recommends that no action be taken.

CONCLUSION

The SOPB has worked over the last several months in to provide the Governor and Legislature with the most informed recommendations possible. While SORNA is a federal requirement, the Board has reviewed countless articles and studies, overall finding that the required policies are ineffective and in some cases add additional risk to public safety. As such, the SOPB recommends that Washington continue to consider various elements of SORNA, including the registration requirements for juvenile sex offenders. In addition, Washington should continue to seek out and observe practices in other states which have been found to have substantially implemented SORNA.

Moreover, the SOPB has made attempts to receive updated information from other states regarding their compliance efforts from the SMART Office, though at this time this information has not be made available. Without this information the Board has based their recommendations on the best research available. In some cases, states who have substantially implemented SORNA have begun to back track. For example, South Carolina (Letourneau, Levenson, Bandyopadhyay, Sinha, & & Armstrong, 2010), Nebraska (Spohn, 2012), and New York (Freeman & Sandler, 2010) have all seen the release of peer-reviewed publications which analyze the effectiveness of SORNA policies in their state. These studies have similar findings which assert that SORNA is ineffective in reducing recidivism, may increase risk to the public, and leads to additional collateral consequences for registered sex offenders. These states have been found to be in substantial compliance with SORNA, and these articles were released following the SMART Office's compliance decision.

Washington has always led the nation in sex offender management, and has done so by staying apprised of the most relevant and updated research and modifying policies as necessary. **With a goal of reducing the recidivism rates of convicted sex offenders, and continuing to put public safety first, the SOPB finds that further implementation of SORNA is not in the best interest of the state and may in fact lead to an increase in recidivism, an increase in Level 3 offenders, and a reduction in community safety.**

APPENDIX A
(Excerpt from the 2015 SOPB Report)

SEC. 16(a) DISCLOSURE TO THE PUBLIC OF INFORMATION COMPILED AND SUBMITTED FOR THE PURPOSES OF SEX OFFENDER AND KIDNAPPING OFFENDER REGISTRIES THAT IS CURRENTLY HELD BY PUBLIC AGENCIES, INCLUDING THE RELATIONSHIP BETWEEN CHAPTER 42.56 RCW AND RCW 4.24.550

In 1990, when Washington state enacted the Community Protection Act and became the first jurisdiction to authorize the release of sex and kidnapping offender information to the public, it was predicated on the premise that sex and kidnapping offenders had a high likelihood to reoffend and that increased distribution of personal information kept the public safe. It was also believed that widespread distribution of sex and kidnapping offender registration information would create a deterrent effect; offenders who were known by the community would be on notice that people were watching their behavior and would be less likely to reoffend.

However, studies have not shown that community notification has a decreased effect on recidivism and there is little correlation to either general or specific deterrence.² Instead, much of the recent literature indicates that destabilization of the offender may make reintegration more challenging and therefore, possibly increase their likelihood of reoffending.

Discussions within the literature regarding the disclosure of sex and kidnapping offender registration information are ordinarily found in articles related to “community notification”. However, the concept of community notification can often be different than releasing information pursuant to an individualized request. Community notification generally refers to disclosure of information both “passively” and “actively”. Passive notification ordinarily refers to publishing information on the Internet or maintaining lists of offenders for those who request it. Active notification requires an entity, usually law enforcement, to affirmatively notify communities, daycare and schools, among other organizations, about the existence of the offender in their geographic location.³ Active notification can include community meetings, bulletins and/or press releases. Community notification often does not refer specifically to public disclosure in response to public requests. The SOPB did not find literature that was specifically limited to disclosure pursuant to individual requests, therefore, we reviewed articles related to notification or disclosure of sex and kidnapping offender information generally.

Currently, Washington limits their Internet publication of information to eligible, convicted sex offenders who have been assessed as a level II or level III risk, level I registered sex offenders who are out of compliance or lack a fixed address and all registered kidnapping offenders, while other states have variations on the information that they publish via the Internet.

Generally, the disclosure of sex and kidnapping offender registration information to the public is found within the community notification provisions of a state’s adopted Sex Offender Registration and Notification Act Laws (SORNA). Some also refer to the community notification portion of sex

² Drake, E.K., and Aos, S (2009). *Does Sex Offender Registration and Notification Reduce Crime? A Systematic Review of the Research Literature*. Olympia: Washington State Institute for Public Policy, Document No. 09-06 1101.

³ Locke, C., and Chamberlin, B. F. (2007). Safe From Sex Offenders? Legislating Internet Publication of Sex Offender Registries.” *The Urban Lawyer* 39 (2007):1-18.

and kidnapping offender laws as “Megan’s Laws” named after Megan Kanka, a girl in New Jersey who was raped and killed in 1994 by her neighbor, a convicted sex offender. States have various ways of distributing convicted sex and kidnapping offender registration information under the notification provisions. These methods are ordinarily referred to as “community notification” which can include community meetings, flyer distributions, and Internet publication of registrant information. Thus, authors often look at the entire system of registration and notification or “community notification” generally, instead of Internet public disclosure specifically.

Literature Review on Disclosure of Registration Information

A review of current literature on public disclosure of sex and kidnapping registration information reveals evidence that shows widespread disclosure has a negative impact on offenders’ stability in the community. Sex and kidnapping offenders may experience physical assault and injury,⁴ harassment⁵ and even death⁶ as a result of disclosure of information. Widespread public disclosure of sex and kidnapping offender information also triggers consequences such as unemployment and housing challenges, which in turn can result in an enhanced risk of recidivism.⁷ In a study of female sex offenders in two states, every respondent reported at least one negative effect of being identified by the public registry.⁸

Other articles cite that it is not just offenders who are affected by the disclosure of their identities and their personal information. The offenders’ significant others, children, and families are also significantly impacted by disclosure. In an in-depth study of offenders and their experiences with community notification, among other things, the study found that most offenders surveyed either experienced the loss of housing or employment or the ongoing fear of those things.⁹ Offenders expressed that there is a large amount of stress on their families which strains the network of supportive relationships and, in turn, successful re-integration.¹⁰

The stigma of registration and lengthy registration periods are particularly challenging for juveniles.¹¹ Registration and notification burdens are felt for a longer period of time and in ways more onerous

⁴ Turner, Chrisandrea, L. “Convicted Sex Offenders vs. Our Children, Whose Interests Deserve the Greater Protection?” *Ky. LJ* 86 (1997): 477.

⁵ Lasher, Michael P. & Robert J. McGrath. “The impact of community notification on sex offender registration: A qualitative review of the research literature.” *International Journal of Offender Therapy and Comparative Criminology*, 56 no. 1 (2012): 6-28.

⁶ Martin, Jonathan, & O’Hagan, Maureen, “Killings of 2 Bellingham Sex Offenders May Be Vigilante, Policy Say” *Seattle Times*, August 30, 2005. *See also*, Pandell, Lexi, “The Vigilante of Clallam County,” *The Atlantic*, Dec. 4, 2013.

⁷ Periman, Deborah. Revisiting Alaska’s Sex Offender Registration and Public Notification Statute, *Alaska Justice Forum* 25(1-2):2-5. (Spring 2008-Summer 2008).

⁸ Vandiver, Donna M., Kelly Cheeseman Dial, and Robert M. Worley. “A Qualitative Assessment of Registered Female Sex Offenders Judicial Processing Experiences and Perceived Effects of a Public Registry.” *Criminal Justice Review* 33, no. 2 (2008): 177-198.

⁹ Zevitz, Richard G., and M. A. Farkas. “Sex offender community notification: Managing high risk criminals or exacting further vengeance.” *Pogrebin, M eds* (2004): 114-123.

¹⁰ *Id.*

¹¹ Carpenter, Catherine L. “Against Juvenile Sex Offender Registration,” Available at SSRN 2319139 (2013).

for juveniles than their adult counterparts.¹² While studies have found that youth offender brains are still developing and are more amenable to treatment, they can also experience profound damage to their self-esteem and feel isolated as a result of registration and notification.¹³

For both adults and juveniles, evidence suggests that unintended and collateral consequences can have a negative impact on offender behavior and stability. Instability and inability to re-integrate can become a criminogenic factor that contributes to a *higher* risk of recidivism¹⁴ and a potential *decrease* in public safety.

It is clear that the focus of sex and kidnapping offender registration laws is not on the privacy rights of the offender, nor does the SOPB promote that policy should be created based on that premise. The Legislature originally recognized a reduced expectation of privacy¹⁵ in offenders' personal information because of the nature of the crime they committed; however, in light of the significant impact of collateral consequences which heightens the risk of reoffense, recent literature prompts further evaluation of any decision that would allow blanket public disclosure of low-risk offender identity or personal information.

Some articles review whether some constitutional level of privacy should be provided for offenders that are deemed a low risk to reoffend.¹⁶ For example, one author observed that Montana has what is described as a "heightened right to privacy" within their state constitution.¹⁷ The author asserted that the right of individual privacy must not be infringed upon without a showing of compelling interest and a strict scrutiny analysis requires that the law be narrowly tailored to serve the compelling state interest. Arguably, because level I offenders are classified at the lowest risk to reoffend, the decision to disclose their information to the public is not narrowly tailored and therefore is unconstitutional. Even though several articles review whether state SORNA laws violate an offender's privacy rights, courts have repeatedly held that there is no *per se* privacy right in the personal information of a sex offender.¹⁸

The Washington Supreme Court previously looked at the need to limit disclosure of sex offender registration information when determining whether imposing the state's Community Protection Act to a felony sex offense was an ex post facto violation. In *State v. Ward*,¹⁹ the court extensively discussed *limited* public disclosure provisions related to sex offender information. The court was

¹² *Id.* At 771.

¹³ Pittman, Nicole, and Allison Parker. *Raised on the registry: The irreparable harm of placing children on sex offender registries in the US*. 2013. See also Freeman-Longo, Robert E. "Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem." *Sexual violence: Policies, practices, and challenges in the United States and Canada* (2002): 223.

¹⁴ Prescott, J.J. "Do Sex Offenders Make Us Less Safe?" *35 Regulation* 48 (2012-2013).

¹⁵ Laws of 1990, ch. 3 § 116.

¹⁶ Preble, Johnna. "The Shame Game: Montana's Right to Privacy for Level I Sex Offenders," *Mont. L. Rev.* 25 (2014): 297. See also, Kabat, Alan, R. "Scarlet letter sex offender databases and community notification sacrificing personal privacy for a symbol's sake," *Am. Crim. L. Rev.* 35 (1988): 333.

¹⁷ Mont. Const. art. II § 10.

¹⁸ Trinkle, Catherine A. "Federal Standards for Sex Offender Registration: Public Disclosure Confronts the Right to Privacy," *Wm. & Mary L. Rev.* 37 (1995): 299. See also Turner, Chrisandrea L. "Convicted Sex Offenders vs. Our Children, Whose Interests Deserve the Greater Protection?" *Ky L.J.* 86 (1997): 477.

¹⁹ *State v. Ward*, 123 Wn.2d 488, (1994).

asked to review whether retroactively applying the Community Protection Act to felony sex offenses was an ex post facto violation.²⁰ The court concluded that retroactive application of the statute did not violate either the appellants' equal protection or due process rights under the federal and state constitutions.

A review of the court's analysis in this decision indicates that they considered the statutory framework to be one of "limited disclosure".²¹ Their holding concluded:

"We hold, however, that because the Legislature had limited the disclosure of registration to the public, the statutory registration scheme does not impose additional punishment on registrants".

The court did not review the question of disclosing sex offender registration information pursuant to the Public Disclosure Act (PDA) Chapter 42.17 RCW which was in effect at the time. The court is currently considering the question of disclosing sex and kidnapping offender registration information in relation to the current Public Records Act (PRA) Chapter 42.56 RCW and RCW 4.24.550 in *Doe v. Washington State Patrol*. However, it is unlikely that the case's resolution will depend on an examination of the individual offender's rights and will more likely rest on whether the information in RCW 4.24.550 is subject to a general public records analysis.

Aside from the impact of release of information on the offender's ability to reintegrate, there is little question that the public feels safer when they have access to sex and kidnapping offender registration information. The Washington State Institute for Public Policy (WSIPP) performed two studies on public perception; one in 1998²² and a follow-up in 2008.²³ Both studies conducted a random digit-dialing survey to measure the respondent's familiarity with, opinion of, and reaction to the law as well as its purposes and importance. The majority of respondents indicated they felt safer knowing about sex and kidnapping offenders in their community and they indicated that Washington's community notification law was important.²⁴ Fifty-four percent of the respondents thought that community notification makes it easier for citizens to harass, threaten or abuse the released sex or kidnapping offender.²⁵ Seventy-eight percent of the respondents thought that special care should be taken to prevent such harassment and eighty-four percent of respondents thought that notification would make it harder for offenders to rent a house, find a new job, or establish a new life.²⁶

²⁰ *Id.* at 495.

²¹ *Id.* at 499.

²² Phillips, Dretha M. (1998). *Community Notification as Viewed by Washington's Citizens*. Olympia: Washington State Institute for Public Policy, Document No. 98-03-1101.

²³ Lieb, Roxanne and Corey Nunlist (2008). *Community Notification as Viewed by Washington's Citizens: A Ten-Year Follow-Up*. Olympia: Washington State Institute for Public Policy, Document No. 08-03-1101.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

Other articles report similar results, that even if the public does not actively use offender registration information, they feel better when it is available.²⁷ This perception of public safety due to large-scale disclosure has been criticized in recent years. Community notification laws were originally enacted based on the premise that sex offenders have a high recidivism rate and jeopardize general public safety.²⁸ Now, 25 years later, there is some question as to whether blanket disclosure of sex offender information actually perpetuates a false sense of security.²⁹ Acknowledging that most sexual assault is committed by a person known to the victim and given advances in prevention, the body of literature has evolved and indicates that while “stranger danger” is an important theme to educate around, it would be more meaningful to expend education efforts focusing on known persons such as family members, friends and acquaintances.³⁰

A one-size-fits-all approach to disclosure of sex and kidnapping offender information is not only ill-advised but may cause harm. Disclosing less offender information, rather than more information, may seem counter-intuitive to some, but research demonstrates broad information dissemination has real and significant consequences for victims and offenders and can impact community safety.³¹ The SOPB finds that there is an important balance to strike between records availability and an offender’s ability to re-integrate as well as victim considerations and helping ensure a safer public. Thoughtful consideration of reviewing Washington state’s disclosure policy falls in line with many states that are re-examining certain provisions within their sex offender registration and notification laws.³²

See Appendix A for the literature review that was completed for the SOPB on this issue.

Public Information Compiled for Sex and Kidnapping Registry Offenses and the Relationship Between Chapter 42.56 and RCW 4.24.550

The public disclosure of sex and kidnapping registration information in Washington is unique because of how many different governmental agencies handle related information and each agency’s independent obligations to comply with the Public Records Act. There are various forms of sex and

²⁷ Boyle, Douglas J., Laura M. Ragusa-Salerno, Andrea Fleisch Marcus, Marian R. Passannante, and Susan Furrer. "Public knowledge and use of sexual offender internet registries: Results from a random digit dialing telephone survey." *Journal of Interpersonal Violence* (2013): 0886260513511698. See also, McCartan, Kieran. "From a lack of engagement and mistrust to partnership? Public attitudes to the disclosure of sex offender information." *International Journal of Police Science & Management* 15, no. 3 (2013): 219-236.

²⁸ Laws of 1990, ch. 3 § 116, Laws of 1994, ch. 129 §1, Laws of 1997, ch. 113 §1,

²⁹ Amyot, Vanessa. "Sex Offender Registries: Labelling Folk Devils," *Crim. L. Q.* 55 (2009):188. See also Prescott, J.J. "Do Sex Offender Registries Make Us Less Safe?" *Regulation* 35 (2012): 48.

³⁰ Yung, Corey Rayburn. "The Ticking Sex-Offender Bomb" *J. Gender Race & Just.* 15 (2012): 81.

³¹ Logan, Wayne. "Megan’s Law as a Case Study in Political Stasis," *Syracuse L. Rev.* 61 (2011): 371.

³² Mather, Kate and Kim, Victoria. "California eases Jessica’s Law Restrictions on Some Sex Offenders," Los Angeles Times, March 26, 2015. Retrieved at: <http://www.latimes.com/local/crime/la-me-jessica-law-20150327-story.html>, Neyfackh, Leon. *California’s Sane New Approach to Sex Offenders and Why No Other State is Following Its Example*, www.slate.com (April 2, 2015). Retrieved at: http://www.slate.com/articles/news_and_politics/crime/2015/04/california_s_sane_new_approach_to_sex_offenders_and_why_no_one_is_following.html Schwartz, Robert G. "Time to Revisit Sex Offender Registration Laws," *29 Crim. Just.* 43 (2014-2015).

kidnapping offender registration information that reside within multiple agencies. This information is required by different statutes, most notably RCW 9A.44.130, which pertains to registration of sex offenders and kidnapping offenders.

An offender who is required to register pursuant to RCW 9A.44.130 must, in some format, provide to the county sheriff: name, any aliases used, accurate residential address or if lacking a fixed residence, where he or she plans to stay, date and place of birth, place of employment, crime for which he or she has been convicted, date and place of conviction, social security number, photograph, and fingerprints.³³ The registrant must also provide the sheriff with an accurate accounting of where he or she stayed during the week if he or she lacks a fixed residence.³⁴ If a person subject to registration requirements applies to change his or her name pursuant to RCW 4.24.130, he or she must provide the sheriff with a copy of the application.³⁵

The county sheriff is required to send this registration information, photographs, fingerprints, risk level notification, and any change of address to the Washington State Patrol (WSP).³⁶ The WSP is required to maintain a central registry of sex offenders and kidnapping offenders who are required to register pursuant to RCW 9A.44.130.³⁷ WSP acts as a repository for the sex and kidnapping offender registration forms submitted by the county sheriffs for retention and enters the registration data from these “source documents” into the database.³⁸ These documents also include the offender’s current risk level classification; it is unknown whether the WSP maintains any documents in support of the classification decision such as the completed classification tool or records related to discretionary leveling decisions. WSP asserts that the State Patrol Database only includes the offender’s name, residential address, date of birth, crime for which he or she was convicted, date of conviction, and county of registry.³⁹

In addition to this legislative mandate, RCW 4.24.550 requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to, subject to funding, maintain a statewide registered kidnapping and sex offender website that is available to the public.⁴⁰ The website is required to post information regarding eligible, convicted sex offenders who have been assessed as a level II and level III offender, level I registered offenders who are out of compliance or lack a fixed address, and all kidnapping offenders.⁴¹ Although WASPC stresses that they are not generally a state agency subject

³³ RCW 9A.44.130(2)(a).

³⁴ RCW 9A.44.130(5)(b).

³⁵ RCW 9A.44.130(6).

³⁶ RCW 43.43.540(1).

³⁷ RCW 43.43.540(2).

³⁸ Brief of Appellant Washington State Patrol at 1, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

³⁹ Washington State Patrol’s Answer to Amicus Brief at 1-2, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

⁴⁰ RCW 4.24.550(5)(a).

⁴¹ *Id.*

to the PRA, they agree that pursuant to specific legislative mandate, they maintain a defined public database with the information in the database constituting a public record.⁴²

Although law enforcement agencies are primarily responsible for maintaining registration information, many other public agencies are responsible for the initial risk classification and notifications. Other agencies that may maintain sex and kidnapping offender registration information include, but are not limited to, the Department of Social and Health Services, the Juvenile Justice & Rehabilitation Administration, the Department of Corrections, the Special Commitment Center at the Department of Social and Health Services, as well as other agencies that may provide services to offenders that require the use of sex and kidnapping offender information. As governmental entities, these agencies are all subject to the PRA.

In addition to each individual agency's requirement to comply with the PRA, the release of information regarding sex and kidnapping offenders is governed by RCW 4.24.550. It authorizes public agencies to release certain offender information under certain circumstances. The statute does not specifically prohibit disclosure of offender information and in fact asserts that information under the section should *not* be considered confidential except otherwise provided for by law.⁴³ However, it also sets forth narrowly tailored criteria for the release of offender information based on who is releasing it and what information is to be released. Release of information pursuant to RCW 4.24.550 is dependent on the offender's risk level.

It is important to note that the public policy behind the PRA is to allow citizens to maintain control over their government, while the public policy related to release of sex and kidnapping offender information is to further public safety. The actual legal relationship between Chapter 42.56 RCW and RCW 4.24.550 may be decided by the Supreme Court when they issue their decision on *Doe*. Until then, observations can be made by examining these statutes together and looking at how other states treat disclosure of registration information.

The PRA requires a government agency to respond to a request for information within five days. Within that timeframe, an office or agency must either provide the record, an Internet link to the information, or an acknowledgement of the request with a predicted time frame of when the agency can respond or deny the request.⁴⁴ Although RCW 42.56.060 protects agencies, officials, public employees or custodians from a cause of action related to loss or damage based upon the release of a record if they acted in good faith in an attempt to comply with the chapter, the PRA has strict monetary penalties for delay or non-disclosure of records.

By contrast, RCW 4.24.550(7) provides immunity from civil liability to public officials, public employees, a public agency as defined in RCW 4.24.470 or units of local government and its employees as provided in RCW 36.28A.010 unless they act with gross negligence or in bad faith. It also includes a statement of non-liability for failure to release information under the section.

⁴² Brief in Response Washington Association of Sheriffs & Police Chiefs ("WASPC") at 8, John Doe A, et al v. Washington State Patrol et al, No. 90413-8.

⁴³ RCW 4.24.550(9).

⁴⁴ RCW 42.56.520.

The contrast between the approaches of the two statutes becomes apparent when an agency receives a request for sex and kidnapping offender records. If an agency is asked to comply with the disclosure requirements of both Chapter 42.56 RCW and RCW 4.24.550, it is clear that the most prudent route for an agency to take is to liberally disclose records because there is a strict monetary penalty for non-disclosure under the PRA, and immunity of disclosure or non-disclosure of a record is provided for under RCW 4.24.550. There is little incentive to adhere to the guidelines of RCW 4.24.550, as the agency is liable for potentially large financial penalties under Chapter 42.56 RCW if it withholds a document that is considered public.

See Appendix B for full analysis on the relationship between Chapter 42.56 and RCW 4.24.550.

Findings

- **Washington's comprehensive statutory scheme controlling the release of information to the public regarding sex and kidnapping offenders contained in RCW 4.24.550 has worked well since its inception with the passage of the Community Protection Act in 1990.**

The limitations on public disclosure of sex and kidnapping offender registration information contained in RCW 4.24.550 have proven an appropriate balance of the public's right and need to know about higher risk sex and kidnapping offenders in the community with the legitimate needs to protect the privacy of sex and kidnapping offenders, their families and their victims, and to foster reintegration of offenders into the community while protecting community safety.

The Washington State Legislature mandated that the registration records of level I sex and kidnapping offenders - those deemed to be the lowest risk to sexually reoffend in the community - shall only be released to the public under limited circumstances, namely when release of the records is necessary and relevant. The public agency determines which records are exempt from public disclosure by applying RCW 4.24.550, which serves as an "other statute" under the PRA.

RCW 4.24.550 states that an "agency may disclose, upon request, relevant, necessary, and accurate information" about any sex and kidnapping offender, but that the "extent of the public disclosure of relevant and necessary information shall be rationally related to (a) the level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety".

RCW 4.24.550 balances this limitation on the release of information for level I sex and kidnapping offenders in response to public requests with two mandatory disclosures relevant to level I offenders. First, under section 3(a), local law enforcement must share information with other appropriate law enforcement agencies and any public or private schools that the offender attends. Second, under section 5(a), the Washington Association of Sheriffs and Police Chiefs shall create a public website posting all eligible, convicted level II and level III sex offenders, plus all level I sex offenders who are out of compliance with the registration requirements or lack a fixed address and all registered kidnapping offenders.

Sex and kidnapping offender registration information about level I offenders may also be disclosed under two specific provisions of RCW 4.24.550. Law enforcement may release information regarding any offender, including level I offenders, to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found. In addition, in 2015 the Legislature enacted Chapter 261, Laws of 2015 which expanded the information about level I offenders that may be released to include any individual who requests information regarding a specific offender. This provision has only been in effect since July 24, 2015.

- **RCW 4.24.550 should be considered an “other statute” under RCW 42.56.070. Washington’s Public Records Act requires agencies to produce public records upon request “unless the record falls within the specific exemptions of this chapter, or any other statute which exempts or prohibits disclosure of specific information or records”. See RCW 42.56.070.**

RCW 42.56.070 is clear in that it exempts certain records from the PRA that are exempt or prohibited from disclosure by “other statutes”. On its face, RCW 4.24.550 governs the “public disclosure” of information regarding sex and kidnapping offenders upon the request of community members⁴⁵.

The Legislature intended RCW 4.24.550 to limit public disclosure regarding some of the information gathered under RCW 9A.44.130. The legislative history of RCW 4.24.550 supports this reading. The statute was first crafted with public disclosure laws in mind, with the Legislature specifically remarking that RCW 4.24.550 was necessary to correct the “reduced willingness to release information that could be appropriately released under the public disclosure laws”.⁴⁶ Not reading RCW 4.24.550 as an “other statute” would undermine the entire risk-based system Washington has adopted for community notification and registration information release.

- **Release of level I sex and kidnapping offender information would be the equivalent to broad-based community notification which is generally reserved for higher risk sex and kidnapping offenders in our state. This would functionally eliminate our tiered risk level approach to community notification which the Legislature and many other stakeholders have worked diligently over the last 20 plus years to develop, implement and improve.**

The SOPB assumes that, if the Legislature were to allow the widespread dissemination of information obtained regarding sex and kidnapping offenders under RCW 9A.44.130, this would lead to the establishment of an online searchable database and effectively lead to widespread community notification of *all* offenders. The original requestor of this information in the *John Doe v.*

⁴⁵ See RCW 4.24.550(2) (“the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) the level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.”) and RCW 4.24.550(3) (“... local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure”).

⁴⁶ Laws of 1990, Chapter 3, § 116.

Washington State Patrol, et al. case currently pending before the Washington Supreme Court, has demonstrated the intent to post the results of the PRA request on a website available to, and searchable by, the general public. This person has already posted registration records she obtained from Franklin County in 2013 to her public Google+ website.

The creation of a searchable online database would render our risk-based system of community notification and sex offender management effectively replaced by universal community notification. Research tells us this would dilute the effectiveness of community notification and make it much more difficult for the public to identify those individuals who pose an actual increased risk to them and their friends and families.

- **The widespread dissemination of level I offender information would have a deleterious effect on victims who are often known or related to offenders or otherwise connected with offenders. This would particularly impact the level I offenders who have not been subject to community notification or the widespread dissemination of their sex and kidnapping offender registration information.**

If RCW 4.24.550 and RCW 42.56.070 were read to allow the widespread dissemination of level I sex and kidnapping offender registration information that is not currently available to the general public, the potential impact on the victims of those offenses could and likely would be profound. In the past, RCW 4.24.550 has always been read as an “other statute” under the PRA and information regarding offenders set at a level I, and information regarding their victims, has not previously been widely disseminated.

If not conducted carefully, the sudden and widespread dissemination of this information can inadvertently reveal the identity of the victim, particularly in cases where the offender and the victim are in the same family or when information is distributed in the neighborhood where the offender's victim lives. Indeed, there are reports that victims' identities have been disclosed as a result of community notification⁴⁷. The majority of both female and male rape victims knew their perpetrator⁴⁸. It is important to note that sexual crimes that are committed by known persons, such as incest, often result in a level I designation as the risk to the general community is typically considered to be lower. Level I offenders comprise the largest portion of the current registry. The sudden dissemination of this information without the controls now in place through the community notification process would pose a great risk to those victims.

A landmark study about the effect of sexual assault on victims found that the "fear of others knowing" that they had been sexually assaulted ranked top among victim concerns that influenced their decision to report or not report the assault⁴⁹. The consequences of losing privacy and unintended re-victimization through sensitive and personal victim information being more readily

⁴⁷ Center for Sex Offender Management (2001). Community Notification and Education. Silver Spring, MD.

⁴⁸ Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

⁴⁹ Kilpatrick, D.G., Edmunds, C., Seymour, A. (1992). Rape in America: A report to the nation. Charleston, SC: National Victim Center & the Crime Victims Research and Treatment Center, Medical University of South Carolina.

public cannot be ignored. It may have a chilling impact on the willingness of victims to come forward and report victimization out of fear that their information will be made further available to the public, which, in turn, impacts general community safety when crimes go unaddressed.

To prevent the inadvertent disclosure of victim identity, a number of jurisdictions across the country developed protocols to guide criminal justice officials in implementing a notification program. Wisconsin, for example, has notification guidelines that address the danger that a victim's privacy may be violated through notification and "underscore the grave desire that the situation be avoided"⁵⁰. The WASPC Model Policy also addresses these concerns.

If information regarding sex and kidnapping offenders were released wholesale in a way that did not include these protections, the impact on the victims of these crimes could be extremely serious.

- **The social science research reviewed by the SOPB indicates that widespread dissemination of information collected for all sexual offenders often has the unintended consequence of creating obstacles to community reentry that may actually undermine, rather than enhance, public safety.**

Widespread disclosure of information on all sex and kidnapping offenders, regardless of their level of risk to the general public, dilutes the efficacy of notification and undermines public safety and rehabilitation. Offenders and their families face grave mental, emotional, physical, and economic consequences as a result of being "outed" as a registered sex and kidnapping offender.

The harms caused by the widespread dissemination of sex and kidnapping offender registration records go far beyond that caused by public availability of conviction records. At the outset, conviction records (such as court records or records obtained under Chapter 10.97 RCW) do not contain all of the information available in sex and kidnapping offender registration records, such as exact residential addresses, current employers or schools, treatment information and photographs as well as victim information and or victim impact statements as part of the court record.

It should be noted that in recent years Washington has witnessed a double homicide of sex offenders whose locations were determined based upon registry information that then included the full residential address. Washington has since ended the practice of publishing the last two digits of the residential address, but widespread dissemination of this information under the PRA would likely include this sensitive and potentially dangerous information.

- **The widespread dissemination of level I offender information would have even greater collateral consequences for low-risk juvenile offenders and their families. Juvenile sex offenders already have many challenges re-integrating into society and this would be another obstacle. The release of their information would likely negatively impact a variety of known risk factors, which may ultimately increase their risk for participating in future criminal behavior.**

⁵⁰ Zevitz, Richard G. and Mary Ann Farkas (2000). Sex Offender Community Notification: Assessing the Impact in Wisconsin. Washington, D.C.: National Institute of Justice.

Adult and juvenile sex offenders are different. Based on a review of the growing body of literature about collateral consequences of sex offender registration and community notification for juvenile offenders, there is a significant potential for harm to level I juvenile sex offenders if their information is made available to the general public. The impacts, as demonstrated through neurological and social science, have a greater effect on juveniles than the adult population, based on where they are at in their formative developmental years^{51 52}.

Widespread dissemination of information collected on level I juvenile sex offenders, which is the outcome of releasing their information via public disclosure, would have varied and harsh consequences for these youth potentially lasting their lifetime. The anticipated impacts include (but are not limited to):

- Additional barriers to admission in school programs at all levels, thus impacting employability,
- Increased victimization and bullying by both peers and adults leading to social isolation,
- Significant barriers to the development of normal social/peer relationships which may lead them to develop relationships with anti-social peers,
- Additional barriers to employment which may lead to increased homelessness and general delinquency,
- Additional barriers to obtain housing resulting in increased homelessness,
- Lasting social stigma impacting their ability to develop normal peer relationships and be socialized in a pro-social manner,
- Inability to experience normal adolescent development, increasing risk for future delinquent behavior,
- Inability to maintain family relationships or experience normal intimate relationships.

It is of paramount importance to note that youth who have committed sex offenses have extremely low reoffense rates according to both national and in-state data. A meta-analysis demonstrates sexual recidivism rates range from 3 percent to 14 percent⁵³. Additionally, evaluations completed by WSIPP indicated sexual recidivism rates at 10 percent and 9 percent in two separate evaluations with five year follow-ups that included both misdemeanor and felony sexual reoffenses^{54 55}. The recidivism rates for the WSIPP studies include all levels of juvenile sex offenders from the lowest level 1s to the highest risk level 3s. It is reasonable to assume that if the analysis only looked at level I offenders, the rates would be even lower.

⁵¹ Dr. Terry Lee, *Adolescent Brain Development PowerPoint Presentation*, (July 2009).

⁵² *Roper v. Simmons* (03-633), 543 U.S. 551 (2005).

⁵³ Reitzel, L., Carbonell (2006). The Effectiveness of sexual offender treatment for juveniles as measured by recidivism: a meta-analysis, *Sex Abuse* 18:401-421.

⁵⁴ Leib, R. (1998). *Sex offenses in WA state: 1998 Update*. Olympia: Washington State Institute for Public Policy, Document No. 98-08-1101.

⁵⁵ Barnowski, R. (2008). *Assessing the risk of juvenile sex offenders using the intensive parole sex offender domain*. Olympia: Washington State Institute for Public Policy, Document No. 08-05-1101.

It is important to recognize that a significant portion of the level I juvenile offender population with adjudicated sex offense behavior occurred at very young ages, with the highest frequency occurring between the ages of 12-15 years of age⁵⁶. Because of the early age linked to their sexual behavior and the absence of paraphilic interests, treatment interventions are often more successful with juveniles than their adult counterparts⁵⁷.

Recognizing the significance and inherent differences between the juvenile and adult sex offender populations, the SOPB recommended the creation of separate statutes to address these differences both related to juvenile community notification and registration⁵⁸.

- **Widespread dissemination of sex and kidnapping offender registration information would undermine the legal rationale for upholding the constitutionality of sex and kidnapping offender registration and notification adopted by the Washington Supreme Court.**

When the Washington Supreme Court examined whether sex and kidnapping offender registration constituted *ex post facto* punishment, the court found it did not on the very basis that "[t]he Legislature placed significant limits on (1) whether an agency may disclose registrant information, (2) what the agency may disclose, and (3) where it may disclose the information". The court also found disclosure was tied to risk and "the geographic scope of dissemination must rationally relate to the threat posed"⁵⁹. In so holding, this court relied on legislative history which instructed that release be made to public agencies "and under limited circumstances, the general public" which protected sex and kidnapping offenders from a "badge of infamy" through the limited disclosure of registration information. The court added, "We hold, however, that because the Legislature has limited the disclosure of registration information to the public, the statutory registration scheme does not impose additional punishment on registrants"⁶⁰.

The widespread dissemination of sex offenders' information would undermine this rationale, and could lead the court to revisit its holding that the current scheme of sex and kidnapping offender registration and community notification meets the constitutional tests of the Washington constitution.

The Supreme Court noted in *Ward*, "the Legislature has broad discretion to determine what the public interest demands and what measures are necessary to secure and protect that interest" and in the case of sex and kidnapping offender records, determined that "disclosure would serve no legitimate purpose" if not for the careful structure established under RCW 4.24.550.⁶¹ The court holding in *Ward* was clearly written with an awareness of the competing considerations of the PRA, and clearly considered RCW 4.24.550 an "other statute" that was exempt from PRA disclosure. It is

⁵⁶ Annual report to the legislature (2009). Olympia: Washington State Sex Offender Policy Board.

⁵⁷ Hunter, J. A. (2006). Understanding diversity in juvenile sexual offenders: Implications for assessment, treatment, and legal management. In R.E. Longo & D.S. Prescott (eds), *Current perspectives: Working with sexually aggressive youth and youth with sexual behavior problems* (p. 63-78). Holyoke, MA: NEARI Press.

⁵⁸ Annual report to the legislature (2009). Olympia: Washington State Sex Offender Policy Board.

⁵⁹ State v. Ward, 123 Wn.2d 488, 502-04, 869 P.2d 1062 (1994)

⁶⁰ State v. Ward, 123 Wn.2d 488, 502-04, 869 P.2d 1062 (1994)

⁶¹ State v. Ward, 123 Wn.2d at 502. 516

impossible to read the holding in the *Ward* case as anything other than an implicit finding that the provisions of RCW 4.24.550 are an exception to the PRA.

Recommendations

A) RCW 4.24.550 be amended to include the following sentence:

Sex offender and kidnapping offender registration information is exempt from public disclosure under chapter 42.56 RCW.

B) RCW 42.56.240 be amended to include the following sentence:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

Information compiled and submitted for the purposes of sex offender and kidnapping offender registration pursuant to RCW 4.24.550 and 9A.44.130, or the statewide registered kidnapping and sex offender website pursuant to RCW 4.24.550, regardless of whether the information is held by a law enforcement agency, the statewide unified sex offender notification and registration program under RCW 36.28A.040, the central registry of sex offenders and kidnapping offenders under RCW 43.43.540, or another public agency.

APPENDIX B

(SORNA Adherence Chart)