



July 31, 2007

Director Laura Rogers
U.S. Dept. of Justice, SMART Office
810 7th Street, NW
Washington, DC 20531
Transmitted via email: GetSMART@usdoj.gov

Re: Comments to the Proposed Guidelines for Sex Offender Registration and Notification and the implementation of the Adam Walsh Act

Dear Director Rogers:

Thank you for the opportunity to submit comments to the Proposed National Guidelines for Sex Offender Registration and Notification, which guide Ohio and other states as they work to implement the Adam Walsh Child Protection and Safety Act of 2006.

As juvenile advocate and child welfare organizations, we strongly support the stated intent of the Adam Walsh Act: protecting children from violent sex offenders. We are gravely concerned, however, that some provisions and interpretations of the Act will ultimately have the opposite effect, and put some of our most vulnerable children at risk.

Specifically, we believe that §111(8) of the Adam Walsh Act—which requires children age 14 and older who are adjudicated delinquent for offenses “comparable to or more severe than aggravated sexual abuse” to be included on the public, online registry of sex offenders—will:

- undermine the history and purpose of the juvenile court system as an individualized intervention that focuses on rehabilitation, while also holding youth accountable in developmentally appropriate ways;
- severely hamper juvenile offenders’ access to treatment and appropriate aftercare, as well as their likelihood of success once engaged in treatment;
- significantly limit the number of adoptive and foster families who are willing to accept these children into their homes, resulting in lengthier commitments to juvenile correctional facilities and extended stays in other institutional settings;
- flood the public registry with persons highly unlikely to commit another sex offense, thereby diluting the effectiveness of the registry and ultimately undermining community safety; and
- put these children, many of whom have themselves been victims of sexual and other abuse, at risk of exploitation by predators who would use the online registry to find victims.

Accordingly, we urge you to adopt guidelines that will allow states to exclude juveniles from the public registry and still be in substantial compliance with the implementation requirements of the Adam Walsh Act.

The emerging field of neurological science tells us that children's brains are physically different from the brains of fully mature adults, and that as a result, they are not only more likely to engage in risk-taking behavior, but also more amenable to treatment. In children and adolescents, the prefrontal cortex is not yet "hardwired" to the rest of brain. It is this part of the brain that plays a critical role in decision making, problem solving, and being able to anticipate the future consequences of today's actions. Until the prefrontal cortex becomes fully connected, children must rely on another part of the brain for decision making: the amygdala, which processes emotional reactions and is the part of the brain known for the "fight or flight" response.

While this period of brain development can lead to children behaving irrationally, making poor decisions, and overreacting to perceived threats, it is also what makes children especially amenable to individualized therapeutic intervention. Treatment provided during this critical stage of development to a child who is sexually inappropriate or abusive will impact the way that child's brain continues to develop; as a result, **juvenile sex offenders are known to be especially amenable to treatment, and thus significantly less likely to reoffend.**

According to the Ohio Association of County Behavioral Health Authorities, research shows that "with treatment, supervision and support, the likelihood of a youth committing subsequent sex offenses is about 4–10 percent."¹ And a compilation of 43 follow-up studies of the re-arrest rates of 7,690 juvenile sex offenders found an average sexual recidivism rate of 7.78 percent,² which is significantly lower than the recidivism rate for adult offenders.

Additionally, the American Psychological Association has noted that because "adolescent sexual offending is different from adult sexual offending in its motivation, nature, extent, and response to intervention," "[r]esearch has consistently shown that **the majority of children and teenagers adjudicated for sex crimes do not become adult offenders.**" The National Center on Sexual Behavior of Youth has conducted an extensive review of the available research on juvenile sex offenders, and has concluded that adolescent sex offenders have fewer numbers of victims than do adult offenders, and engage in less serious and aggressive behavior.

We agree with the National Alliance to End Sexual Violence (NAESV), which states in its position paper on the Adam Walsh Act that, "over-inclusive public notification can actually be harmful to public safety by diluting the ability to identify the most dangerous offenders and by disrupting the stability of low-risk offenders in ways that may increase their risk of re-offense. Therefore, NAESV believes that internet disclosure and community notification should be limited to those offenders who pose the highest risk of re-offense."³

Knowing that the recidivism rate of juvenile sex offenders is 4–10% means that 90–96% of the children included on the public registry will never commit another sex offense. This will fill the public registry with thousands of juvenile sex offenders who will never again commit a sex offense and who pose no threat to public safety. The public registry will become ineffective as a public safety tool, as users will be overwhelmed by thousands upon thousands of profiles of offenders, only a small percentage of whom might someday reoffend.

¹ *Juvenile Sex Offenders*. Behavioral Health: Developing a Better Understanding. Vol. Three, Issue I.

² Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Reoffense Risk*. Child Maltreatment, Vol. 7, No. 4, Sage Publication, November 2002 (291-302).

³ The complete NAESV position paper on the Adam Walsh Act can be found online at http://www.naesv.org/Policypapers/Adam_Walsh_SumMarch07.pdf.

Including children on an internet-based registry also puts those children at risk of being targeted for harassment and abuse. A pedophile could use the online registry to find victims. The registry will provide him with the names, pictures, and home addresses for children as young as 14, as well as the names of the schools they attend, the cars they drive, their license plate numbers, and other identifying information. Many juvenile sex offenders were themselves victims before they committed their offenses, and are vulnerable to further victimization.

Additionally, many juvenile sex offenses are intra-familial. During deliberations in the Ohio General Assembly on legislation to implement the Adam Walsh Act in Ohio, testimony was heard from several parents with a child who sexually offended on a sibling. Those parents testified about the conflicts they face, as parents of both a juvenile sex offender and a victim of sexual abuse. In these situations, the offender and the victim receive much-needed treatment only if their parents are willing to speak up and seek help. Undoubtedly, many parents will be unwilling to ask for help if doing so resigns one child to a lifetime of inclusion on an internet-based registry, with all the restrictions on schooling, employment, and residency it entails, as well as potential threats to that child's safety. As a result, in many instances, neither offender nor victim will receive the treatment they need.

The risk of mandatory, lifetime inclusion on a public registry will also mean that children facing charges for sex offenses will be less likely to plead guilty and more likely to go to trial, thus exposing the victim and others to the trauma of testifying and to other intrusive aspects of the criminal justice system. And children's defense counsel will certainly work to get sex offense charges plead down to non-sex offense charges, such as assault, in order to avoid the severe consequences of lifetime inclusion on the public registry. But a child adjudicated delinquent for assault is unlikely to receive sex offender treatment, resulting in tremendous lost opportunities for treatment and prevention of further harm.

Recognizing the unique qualities and needs of children, the juvenile court system was established to focus on treatment, supervision, and control, rather than solely on punishment. Inclusion on a public registry, though, will significantly limit treatment and aftercare options for juvenile sex offenders. Many group homes, foster homes, and community placements will not accept children with sex offenses in their histories. Children on a public registry with community notification requirements will be nearly impossible to place for or after treatment. As a result, many juvenile sex offenders will be kept in juvenile correctional facilities far beyond the time it takes them to complete treatment. Children will be incarcerated not because they need further treatment or pose a risk to public safety, but only because public policy will prevent them from going anywhere else. This is a dramatic—and we believe ill-advised—shift in the focus of the juvenile court system from treatment to punishment.

Importantly, too, because of the unique mission of the juvenile court system, children are granted only limited due process protections. We believe that mandatory, lifetime inclusion on a public registry is far too severe a sanction to impose on children who are not fully protected by the Constitution. Additionally, limited due process protections make the retroactive application of the Adam Walsh Act especially inappropriate for juveniles. Children who have already gone through the juvenile court system, without full due process protections and perhaps without even being represented by counsel, could never have anticipated that lifetime inclusion on a public registry would someday be a consequence of their juvenile court proceeding.

Subjecting juvenile sex offenders to the same sanctions as adults raises legal and scientific questions about culpability and punishment, and the registration and notification requirements

are inconsistent with the purposes of juvenile court: treatment and rehabilitation. Inclusion on an internet-based public registry will subject juveniles to social ostracism, limit access to educational and work opportunities, make it more difficult for juveniles to be placed with family or friends, and limit residential treatment options. And treating juvenile sex offenders in the same manner as adult sex offenders with respect to reporting, notification, and length of classification, even though juveniles have fewer legal rights and protections than adults, presents legal and Constitutional problems.

Last month, the Ohio General Assembly passed, and Governor Strickland signed into law, Senate Bill 10, which implements the Adam Walsh Act in Ohio. After many hours of testimony and much debate and consideration, the legislature decided to limit the Adam Walsh Act's public registry requirements to only those children who, due to the seriousness of their offenses, are transferred to adult court, and those children who, due to their offenses and their unknown amenability to treatment, are designated "serious youthful offenders," and receive both a juvenile disposition and a suspended adult sentence.

The Ohio General Assembly recognized that juveniles are developmentally immature, especially amenable to treatment, significantly different from adult offenders, vulnerable to abuse and exploitation, and not granted full due process protections. The legislature also recognized that including all juveniles—without consideration of the seriousness of the facts of their crimes, their amenability to treatment, or their likelihood to reoffend—would ultimately have a negative impact on public safety. The Ohio General Assembly decided to place on the public registry only those children whose offenses require them to be tried and treated as adults and who are found to be not amenable to treatment, and importantly, only children who have been provided full Constitutional protections.

The plain language of the Adam Walsh Act requires that all children age 14 and older who are adjudicated delinquent for offenses "comparable to or more severe than aggravated sexual abuse" be included on the public, online registry of sex offenders. But the negative consequences of doing so—fewer intra-familial crimes being reported, fewer offenders and victims receiving treatment, and children on the registry being targeted for abuse and exploitation, to name only a few—would actually put states out of compliance with the stated intent of the Adam Walsh Act: protecting children from violent sex offenders.

Accordingly, we urge you to adopt guidelines that will allow states to exclude juveniles from the public registry and still be in substantial compliance with the implementation requirements of the Adam Walsh Act.

Thank you for your thoughtful consideration of these comments. We will be happy to assist you as you work to revise the Proposed Guidelines for the implementation of the Adam Walsh Act in order to protect **all** children.

Sincerely,

Voices for Ohio's Children
Alliance of Child Caring Service Providers
Alternatives for Youth
Appleseed Community Mental Health Center
Beech Brook
Bellflower Center for Prevention of Child Abuse
Benbow Law Offices

Berea Children's Home
Cleveland Rape Crisis Center
Equal Justice Foundation
Family & Children First
First Amendment Lawyers Association
FIRSTLINK
Juvenile Justice Advocacy Alliance
Juvenile Justice Coalition (Ohio)
Katherine Hunt Federle, Professor of Law
LifeLine Counseling & Forensic Center
Lighthouse Youth Services (Paint Creek)
Lucas County Family and Children First Council
Mental Health Advocacy Coalition
Mental Health Services, Inc.
Mid-Ohio Psychological Services
Montgomery County Public Defender's Office
Murtis Taylor Human Services System
NAMI Ohio
National Youth Advocate Program, Inc.
Office of the Ohio Public Defender
Ohio Alliance for Children's Mental Health
Ohio Association of Child Caring Agencies
Ohio Association of Criminal Defense Lawyers
Ohio Council of Behavioral Healthcare Providers
Ohio Psychological Association
Ohio School Social Work Association
Positive Education Program
Public Children Services Association of Ohio
Recovery Resources
The University of Toledo Department of Criminal Justice
The Village Network
West Side Community House
Your Human Resource Center of Wayne and Holmes Counties

cc: Ohio Congressional delegation
Governor Ted Strickland