



Advocate

OFFICE OF CRIME VICTIMS ADVOCACY
QUARTERLY NEWSLETTER

Serving as a voice within state government for crime victims and their families

The Controversial Implementation and Impacts of the Adam Walsh Act & SORNA

In 1994, following the 1989 abduction of an 11 year old boy in Minnesota, a federal law was passed mandating sex offenders to register with local law enforcement agencies so their current whereabouts are known ("Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, " 1994).

In 1996, President Clinton signed "Megan's Law," which requires states to disseminate information to the public about sex offenders who live in their neighborhoods.

In July 2006, President George Bush signed into law House Resolution 4472, the Adam Walsh Act (AWA or the Act). This article will focus on the stated purpose of the Act which calls for state conformity of sex offender registration, including information that must be collected, duration of registration, classifications of offenders, verification of registry information, access to and sharing of information, and penalties for failure to register as required. This is otherwise referred to as the Sex Offender Registration and Notification (SORNA) section of the Act.

The Act also addresses such topics as internet safety, sex offender immigration

status, safe schools, missing child reporting requirements, and a host of mechanisms of response to the violent crimes experienced by our children. The Act states that failure of a jurisdiction to comply with the federal requirements within three years of the implementation of the Act will result in a 10% reduction in Justice Assistance Grants (JAG) received.

Highlights of the AWA Legislation

AWA legislation establishes a comprehensive national system for the registration of sex offenders. The AWA requires the national registration of certain juveniles, including juveniles who are adjudicated delinquent, ages 14 years old

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or older at the time of the offense. Each state's registry must be public and easily accessible. As with adult sex offenders, juveniles are to be classified into distinct tiers for the purposes of their registration responsibilities. AWA registration requirements apply to "all sex offenders," including those convicted prior to the enactment of the Act. The AWA retroactivity provision makes it "indisputably clear that the Sex Offender Registration and Notification Act (SORNA) applies to all sex offenders including juveniles regardless of when they were convicted."

Classification & Registration

AWA legislation establishes a three tier classification system of sex offenders. The tiers are based on an offender's conviction rather than risk assessment. The AWA requires Tier I offenders to register for 15 years with the potential to deregister after 10 years if they have maintained a "clean record," meaning the offender has not been convicted of any sex offense or felony, has successfully completed any periods of supervision, and has successfully completed appropriate sex offender treatment. There is no deregistration for Tier II offenders, who must register for 25 years. Tier III offenders must register for life. However, juvenile Tier III offenders, who are adjudicated delinquent, have the potential to deregister after 25 years if they have maintained a clean record.

- Tier I – 15 years registration
- Tier II – 25 years registration
- Tier III – life of the offender

Verification

AWA legislation requires all jurisdictions to enact criminal penalties for sex offenders who fail to comply with registration requirements.

States must provide a criminal penalty that includes a maximum term of imprisonment greater than one year for failure of a sex offender to comply with registration requirements.

Offenders required to register must appear in person for address verification and an updated photograph:

- Tier I – Every year
- Tier II – Every six months
- Tier III – Every three months

AWA legislation makes registration as a sex offender a mandatory condition of probation and supervised release. State officials must notify offenders of the registry requirement prior to release from custody or immediately upon sentencing, if not in custody, and ensure registration occurs.

AWA legislation requires sex offender information be available to the public via the Internet. Each jurisdiction is required to make accessible, all information about each sex offender in the registry. The Act establishes strict new standards for registering sex offenders and providing public information about their crimes and whereabouts. It calls on states to publish photos and addresses of sex offenders online and dramatically toughens criminal penalties for those who fail to register, among other provisions. The U.S. Attorney General shall maintain a national database at the FBI for each sex offender.

SMART

AWA legislation created an Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) within the Department of Justice, to administer grant programs and provide technical assistance to states and other entities involved with sex offender registration

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and notification.

AWA legislation must be enacted by July 2009. States have three years, or until July 2009, to implement the requirements for sex offender registries. States that fail to comply will lose 10% of allocated justice assistance grants.

Challenges for States

States throughout the country are struggling to assess and implement the requirements of the Adam Walsh Act. State lawmakers are questioning whether it makes sense to comply with the act by its 2009 deadline, if at all. Several states have revised sex offender laws in an effort to comply with the act. The Justice Department has begun to weigh in on the changes states are implementing, and determining if states have achieved substantial compliance with the intent of the Act. The following is a sample of issues facing states as they attempt to implement the Act.

Compliance Issues

As of January 25, 2008, seven states, Delaware (SB60), Florida (SB1604), Mississippi (HB1015), Louisiana (HB970), Nevada (A. Bill 579), Oklahoma and Ohio (SB10) have passed their version of AWA. Of those seven states, three (Louisiana, Nevada and Oklahoma) have submitted compliance packages to the SMART Office. Only Louisiana and Oklahoma have received responses. The SMART Office determined that neither state achieved "substantial compliance" with AWA.

Registration Requirements

A Hawaii Supreme Court decision prevents

the inclusion of juveniles on the sex offender registry. The question ultimately raised is how the people of Hawaii may protect themselves against future offenses by those prone to recidivism without jeopardizing the constitutional rights of those who have already paid the price imposed by law for their crimes. In the view of the Hawaii Supreme Court, the absence of any procedural safeguards in the public notification provision of the sex offender registration and notification legislation renders the statute unconstitutional, void, and unenforceable.

The state of Kansas will exceed the registration requirements of the AWA by having all sex offenses except for Sexual Battery register for life. Sexual Battery will be a 15 year registration requirement.

Massachusetts is concerned with the constitutional issue surrounding the registration requirements of sex offenders. Currently there is a hearing process in place to determine registration requirements. Under the old law, sex offenders convicted or adjudicated for specified crimes were required to present themselves to their local police stations, and provide their home and work addresses as well as personal identification information. This information was then immediately available to the public upon request. Under the new law, sex offenders convicted or adjudicated for specified crimes are required to complete a brief postcard-type form they then mail back to the Sex Offender Registry. Under the new law, no information becomes accessible to the public until the sex offender is availed of his or her right to a full evidentiary hearing, and until subsequent final classification takes place.

The procedure for registration described

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above as the new law is currently on appeal at the Massachusetts Supreme Judicial Court (SJC). The primary issue on appeal is the requirement of registration, i.e., the mailing of basic information, prior to any evidentiary hearing. Should the SJC decision be favorable to the Sex Offender Registry, the mail in registration procedure prior to a hearing will be upheld. Should the SJC decision be unfavorable, it would likely lead to a procedure whereby the offender will be offered an evidentiary hearing prior to the requirement for registration. This hearing will also determine the level of sex offender classification.

New Mexico is currently 80% compliant with AWA. The New Mexico Sex Offender Management Board (SOMB) will consider whether and how to implement the

remaining requirements for compliance. The SOMB plans to introduce legislation in January 2009 regarding compliance. However, the SOMB has not determined if it will pursue further compliance.

Texas introduced and passed a bill in the 2007 legislative session that would have brought the state in partial compliance with the AWA. House Bill 8, the Jessica Lunsford Act, relates to the prosecution, punishment, and supervision of sex offenders. The bill subjects certain repeat sex offenders to the death penalty or to life without parole, creates the offense of continuous sexual abuse of a young child or children, sets a minimum of 25 years imprisonment for aggravated sexual assault if the victim is a child younger than six years of age, and extends the statute of limitations for a felony

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AWA Penalty for Non-Compliance

The following table is an approximate estimation of impact to states who do not reach substantial compliance under the AWA requirements by July, 2009.

State	FY07	FY08	Potential 10% Loss of Byrne
California	\$52.5 million	\$19 million	\$1.9 million
Colorado	\$6.5 million	\$2.4 million	\$240,000
Hawaii	\$2.5 million	\$890,000	\$89,000
Kansas	\$4.4 million	\$1.6 million	\$160,000
Louisiana	\$8 million	\$3 million	\$300,000
Massachusetts	\$9.5 million	\$3.5 million	\$350,000
New Mexico	\$4 million	\$1.5 million	\$150,000
New York	\$26 million	\$9.5 million	\$950,000
Pennsylvania	\$16.4 million	\$6 million	\$600,000
Texas	\$33 million	\$12 million	\$1.2 million
Utah	\$3.5 million	\$1.3 million	\$130,000
Washington	\$8 million	\$3 million	\$300,000

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indictment for certain sex offenses against a child from 10 years past the victim's 18th birthday to 20 years past the victim's 18th birthday

Legal Challenges

The Ohio Supreme Court ruled in favor of retroactive application of original Sex Offender Registry Notification law, saying sex offender classification is remedial, not punitive. Ohio SB10 was amended to greatly limit juveniles who will appear on the Internet Registry. In October 2007, a direct action was filed in Ohio Supreme Court challenging the retroactive application of SB10 because it: violates separation of

powers, ex post facto, due process and double jeopardy. The case was ultimately dismissed. The Ohio Attorney General sent re-classification letters to 35,000 people at a cost of \$500,000. More than 50% of the re-classified sex offenders have filed suit. If Ohio had chosen not to comply with AWA, they would have lost \$260,000 in Byrne Fund Grants.

Each day, courts around the country continue to hand down decisions either in support or in opposition to state laws attempting to reach or exceed the requirements of AWA.

Are We Or Aren't We?

Washington's State's Compliance with the Adam Walsh Act

There are many legal, financial, practical, topic, and policy components of the Adam Walsh Act (AWA) and its implementation. This article attempts to highlight a sampling of the major components of the Sex Offender Registration and Notification Act (SORNA) of the Adam Walsh Act and assess Washington's compliance. The assessment is based on the work of King County Deputy Prosecutor Sara McCulloch, whose work on this issue we acknowledge and appreciate.

Registration

Washington certainly has spoken to the process of sex offender registration, and has established conditions and requirements relevant to registration. The RCW 9A.44 and RCW 4.24.550 have been the enactment of Washington's approach to registration and public access to this information. While Washington requires and has a number of the registration elements, there are a

number of additional detailed information points which would need to be collected in order to be in full compliance. Some samples of additional information to be collected includes Internet identifiers and addresses, telephone numbers, travel and immigration documents, vehicle license and description, palm prints, and DNA samples for some sex offenders. For the access required through the web site under SORNA, only about 30% of Washington sex offenders are currently included. Thus, necessitating the inclusion of Level I sex offenders, who make up approximately 70% of Washington sex offenders. The Washington Association of Sheriffs and Police Chiefs (WASPC) web site would also have to be altered to include the full address, employer address, and information regarding some out of state sex offenses.

Washington is not in compliance with SORNA

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in terms of the sex offenders who are required to register. Washington RCW 9A.44 limits registration to certain sex offenses. Those convicted of a sex offense, as defined by the statute, are required to register in accordance with the law in place at the time of conviction. In contrast, SORNA requires registration to apply retroactively and include those sex offenders who are subsequently convicted of non-sex offenses to register.

Another area of difference, or non-compliance, relates to juvenile sex offender registration requirements. Washington is compliant with the inclusion of sex offenders, but not in relief from the registration allowances.

Reporting

Along with classification, come frequency and duration requirements for registration and verification of address and information. There are differences between SORNA and Washington law, leaving us currently non-compliant. To be compliant, Washington would have to lengthen the duration of registration resulting in: Tier I 15 years; Tier II 25 years; and Tier III for the life of the offender. The registration approach in Washington is based on the criminal level of seriousness of the conviction. For Class A felonies with more than one offense, for instance, carries a lifetime requirement to register. Whereas, Class B felonies carry an obligation of 15 years registration. Another contrast, and area of non-compliance, is in the frequency with which sex offenders must report to verify or update their registration. Washington relies on the risk assessment to determine frequency of reporting. Level II and Level III sex offenders must report in-person every 90 days (RCW 9A.44.130) Level I sex offenders are not required to do in-person reporting. Under SORNA, Tier I

offenders would report yearly; Tier II every 6 months; and Tier III every 90 days.

Classification

One of the areas of significant difference between the requirements of SORNA and Washington law is in the area of classification of sex offenders. The essence of this difference is the **method** by which sex offenders are classified. In Washington, sex offenders are leveled (Level I, Level II, Level III), according to a risk assessment process. This process takes into account many factors, both static and dynamic, to determine the risk, or likelihood, of future sexual offense behavior. In contrast, SORNA calls for Tiers I, II, and III and is based on the crime of conviction. Thus, we are not in compliance with classification of sex offenders.

Mark your calendar!



OCVA Conference

March 24 - 28, 2009

Yakima Conference Center
Yakima, WA

*Check out our website at www.ocva.wa.gov
for more details!*

Should We Or Shouldn't We?

This question is being asked and considered across the country, with a diversity of answers and actions reflective of the debate on sex offender management itself. Like everywhere else, Washington must consider, question, discuss, debate and finally conclude and then develop and carry out a sex offender management plan. Washington has had a head start on these questions, as in 1990 our state was the first to develop a comprehensive approach that included sex offender registration, community notification, monitoring, and civil commitment for sexually violent predators. With this wealth of knowledge and experience, as well as the nationally recognized expertise of many individuals and institutions, much dilemma remains.

The first consideration in developing an action plan is to examine the **Requirements** of the Sex Offender Registration and Notification Act (SORNA) portion of the Adam Walsh Act. As noted in a related article in this issue, there are many requirements of SORNA. Generally, these requirements direct specific elements of sex offender registration, access to registry, reporting to law enforcement, and classification of sex offenders. The Adam Walsh Act (AWA) requires states to document and submit a report that indicates the state is in "substantial compliance" by April 2009, with implementation to follow by July 2009.

There is significant pressure associated with the AWA. Certainly, there is political pressure to enact a law named after a kidnapped and slain little boy, as well as the several other components now wrapped into the AWA – and similarly named after other children we failed to protect. It is also an uncomfortable position for any state to defy any federal law – and often significant conse-

quences when doing so. There is also a public perception issue of opposing legislation created to keep individuals and communities safe from sex offenders. The concrete **Consequence** built into AWA, like many other federal statutes is a penalty for non-compliance. Rather than requiring eligibility for certain funds, which are sometimes contingent on compliance with federal statutes and guidelines, AWA takes the penalty to funds approach. Each state receives a grant called Justice Assistance Grant (JAG), based on a population formula and distributed each year. States judged not to be substantially in compliance with AWA will sustain a 10% reduction to their JAG award. Within the last year, the JAG award has been reduced by nearly 60%, decreasing the consequence to states for non-compliance. For Washington, there is approximately \$300,000 at stake.

Many states have been scrambling in their respective legislative sessions to enact or revise laws that would be deemed compliant with the AWA. The laws are designed to address the various areas already named, but include sex offender registration, reporting, classification, and others. There has been mixed results with these efforts to date. Some states are now experiencing **Litigation** challenging the constitutionality or due process of some aspects of the AWA. States with court decisions counter to AWA include Ohio, Montana, Nevada, Indiana, and Hawaii.

For Washington, the **Dilemma** is of a somewhat different nature. One dilemma (there may well be more) is that we think we do sex offender management better than most states. Of course, a natural response by states when looking at federal statute is an assertion that each State does it better than

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the federal approach. But really, Washington does do it better. There have been two nationwide gatherings in the last two years to discuss sex offender management, with additional conference calls, emails, list serves and other documents distributed between participants – all wrestling with what is the best policy and approach in trying to manage sex offenders and protect community safety.

These national gatherings brought together professionals in law enforcement, prosecution, corrections, juvenile rehabilitation, victim services, researchers, and administrators. Each comes with differing experience, expertise, and perspectives. But each is committed to doing the best thing for community and to assure sex offender success, thus reducing the number of sexual assault victims. This group has developed a set of guiding principles upon which they assert legislation, policy, and practice should be built. Those guiding principles are:

- The primary mission of sex offender management is the prevention of future sexual victimization.
- Sex offender management strategies should be based on available research and be continuously evaluated for effectiveness.
- A continuum of sex offender management strategies should be available as no one strategy can effectively manage all sexual offenders.
- The level and intensity of sex offender management strategies should be commensurate with each sexual offender's risk and offense characteristics, not on the charge for which a sexual offender has been convicted.
- Necessary resources must be made available to effectively implement sex offender management strategies but should be used judiciously given the finite nature of such resources.
- Juveniles who commit sexual offenses are

fundamentally different from adult sex offenders and require sex offender management strategies that account for these differences.

- Sex offender management strategies should include rehabilitative resources for sex offenders provided community safety and victim protection are not compromised.

Many in Washington, from a variety of professional perspectives, assert the SORNA portion of AWA does not mirror these guiding principles. The result is a flawed, federal approach to sex offender management.

So, then, what about Washington's **Answer** to "Should we or shouldn't we?" Based on the latest science, research, years of experience, and some of the best minds in the country on the topic, many argue that we really do manage sex offenders better than what is required in SORNA. Washington also has recently added to its resource bank an important and invaluable entity. In the 2008 Legislative Session, the Sex Offender Policy Board (SOPB) was established, placed and funded. Let us turn to this body of experts, with the resources to bring in additional experts and information, to carefully examine the questions before us. The SOPB can give this issue the time, focus, and deliberation, to come to the best conclusion – and do so outside the arena of a pressured and fast-paced legislative session, without the tactics and headlines of the media, and hopefully with a semblance of calm and rational thinking.

	Office of Crime Victims Advocacy	
	Contractor Line Toll Free 866-857-9889	
PO Box 48304 906 Columbia St SW Olympia, WA 98504-8304	Fax: 360.586.7176 E-mail: ocva@cted.wa.gov Web: www.ocva.wa.gov	 CTED Community, Trade and Economic Development

Washington State Victim Assistance Academy

The 2008 Washington State Victim Assistance Academy (SVAA) took place March 24 through 28 at Campbell's Resort in Chelan. 43 crime victim advocates and related professionals participated in the five day long training and were the second class of "SVAA graduates" to complete the course. The class of 2007 included 30 advocates and related professionals.

The Academy provides unique weeklong training for crime victim advocates and related professionals with one to three years of experience. Academy participants engage in experiential learning, hands-on activities and networking in a supportive environment. Activities include hands-on training in crisis intervention, active listening skills, confidentiality, anti-oppression work, interaction with victims and secondary victims, and self-care. In addition, participants are provided an extensive written text covering even more topics to take away as a useful resource.

The SVAA is a project of OCVA, funded by a federal Office for Victims of Crime. This is the third year of the Washington SVAA project, and the final year for which we received federal grant dollars. Funding for continuation of the project will come from other sources, but OCVA intends to continue and even expand the Academy to include an advanced course for more experienced advocates and managers.

The Washington State Victim Assistance Academy was formed in collaboration with the Washington State Crime Victim Compensation Program, Criminal Justice Training Commission, Families and Friends of Violent Crime Victims, Mothers Against Drunk Driving, Washington Association of Prosecuting Attorneys, Washington Coalition Against Do-

mestic Violence, Washington Coalition of Crime Victim Advocates and Washington Coalition of Sexual Assault Programs. Academy faculty included Cody Francis, Daneka Keith, Dawn Larsen, and Cathy Wenderoth, all of whom have years of experience in training advocates throughout Washington State.

An essential element of the Academy is the networking opportunities for a wide variety of advocates from different professions and areas of the state. Attendees forge connections with other advocacy professionals that can enhance their work and provide a basis of support and encouragement for years to come. Attendees from both years included a wide range of advocates from community-based and system-based organizations as well as professionals from mental health, tribal organizations, education, law enforcement, and faith based organizations. This blend of professionals from different fields coming together to discuss how they can work together to increase resources to victims is part of why the State Victim Assistance Academy is such a remarkable experience for attendees.



CONTACT INFORMATION

The Office of Crime Victims Advocacy serves as a voice within state government for the needs of crime victims in Washington State.

BUSINESS LINE: 1-866-857-9889

EMAIL: OCVA@CTED.WA.GOV

WEBSITE: WWW.OCVA.WA.GOV

BEV EMERY
MANAGING DIRECTOR
360.725.2886
BEVE@CTED.WA.GOV

PEARL GIPSON-COLLIER
ASSOCIATE DIRECTOR
360.725.2891
PEARLG@CTED.WA.GOV

GRACE CALL
VICTIMS OF CRIME
PROGRAM MANAGER
360.725.2893
GRACEC@CTED.WA.GOV

STEPHANIE CONDON
SEXUAL ASSAULT
PROGRAM MANAGER
360.725.2889
STEPHANIEC@CTED.WA.GOV

JENNIFER BLAZIAN
VAWA/DVLA PROGRAM
COORDINATOR
360.725.2824
JENNIFERB@CTED.WA.GOV

KATHARINE EGAN
TRAFFICKING COORDINATOR
360.725.2875
KATHARINEE@CTED.WA.GOV

CHRIS FENNO
VAWA/DVLA PROGRAM
COORDINATOR
360.725.2896
CHRISTINEF@CTED.WA.GOV

KHALIA GIBSON
VAWA/DVLA PROGRAM
COORDINATOR
360.725.2868
KHALIAG@CTED.WA.GOV

NICKY GLEASON
PROGRAM COORDINATOR
360.725.2887
NICKYG@CTED.WA.GOV

ANITA GRANBOIS
VAWA/DVLA PROGRAM
COORDINATOR
360.725.2892
ANITAG@CTED.WA.GOV

SUSANNE GUINN
SEXUAL ASSAULT
PROGRAM COORDINATOR
360.725.2894
SUSANNEG@CTED.WA.GOV

CAROLYN HOUSE-HIGGINS
VICTIMS OF CRIME PROGRAM
COORDINATOR
360.725.2869
CAROLYNHI@CTED.WA.GOV

YVONNE KIBLER
SECRETARY ADMINISTRATIVE
360.725.2888
YVONNEK@CTED.WA.GOV

AMY PEARSON
POLICY COORDINATOR
360.725.2890
AMYP@CTED.WA.GOV

STEPHANIE PRATT
SEXUAL ASSAULT
PROGRAM COORDINATOR
360-725-2899
STEPHANIEP@CTED.WA.GOV

AMANDA RAINS
SEXUAL ASSAULT PROGRAM
COORDINATOR
360.725.2873
AMANDAR@CTED.WA.GOV

The OCVAAdvocate is a quarterly publication of this office. Unless otherwise noted, articles were written by OCVA staff. Topic ideas for future issues may be sent to the address below or e-mail ocva@cted.wa.gov.



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Office of Crime Victims Advocacy
P.O. Box 48304
Olympia, Washington 98504-8304

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