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ONE CHILD AT A TIME

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July 31, 2007

**VIA ELECTRONIC AND FIRST-CLASS MAIL**

Laura L. Rogers, Director  
SMART Office—Office of Justice Programs  
U.S. Department of Justice  
810 7<sup>th</sup> Street NW  
Washington, D.C. 20531

**Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)**

Dear Ms. Rogers:

The Coalition for Juvenile Justice (CJJ) is a representative national nonprofit organization based in Washington, D.C. Created in 1984, CJJ comprises Governor-appointed State Advisory Groups (SAGs) charged to fulfill the mandates as well as the spirit of the federal Juvenile Justice and Delinquency Prevention Act. Working together with allied individuals and organizations, SAGs seek to improve the circumstances of vulnerable and troubled children, youth and families involved with the courts, and to build safe communities. Today, more than 1,500 CJJ members span the U.S. states and territories, providing a forum for sharing best practices, innovations, policy recommendations and peer support.

As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), the Coalition for Juvenile Justice takes this opportunity to express our strong opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current Proposed Guidelines.

In doing so, we incorporate by reference the complete Comments we submitted to David Karp on April 30, 2007, voicing our Opposition to Interim Rule RIN 1.105--AB22, OAG Docket No. 117.

**Application of the Guidelines to Youth is Contrary to the Research, Including Research Sponsored by the U.S. Department of Justice**

The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth.

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over

shorter periods of time and have less aggressive sexual behavior.<sup>i</sup> In addition, the recidivism rate among juvenile sex offenders is substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even though the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.<sup>ii</sup>

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

### **Application of the Guidelines to Youth Will Interfere with Effective Treatment and Rehabilitation**

SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will also have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate treatment, parents may be inclined to hide their child's problem and not seek help when they learn that their child may be required to register for life as a sex offender.

In addition, public registration and community notification requirements can complicate the rehabilitation and treatment of these youth. Youth required to register have been known to be harassed at school, forcing them to drop out.<sup>iii</sup> The stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess,<sup>iv</sup> destroying the social networks necessary for rehabilitation.<sup>v</sup>

### **Application of the Guidelines to Youth Will Put Youth at Risk of Exploitation**

SORNA as applied to youth is not in accord with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children," in that it will expose these youth to adult offenders who have not sought or benefited from treatment.

Just as members of the public will be able to access the registry via the Internet and identify offenders in any and every community, adults who are inclined to exploit and abuse children and youth will be able to access the registry via the Internet and identify adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

### **The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles**

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.<sup>vi</sup>

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, Arizona, Iowa, Montana, Ohio, Oklahoma, Oregon, Texas and Wisconsin all currently allow for some judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

### **The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System**

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or

maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide will be registered in one or both of the parents' names.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

States that create and maintain juvenile registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

## **Conclusion**

The Coalition for Juvenile Justice supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Nancy Gannon Hornberger  
Executive Director

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<sup>i</sup> National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report*; available at <http://www.ojjdp.ncjrs.org/>.

<sup>ii</sup> Zimring, F.E. (2004). *An American Tragedy*. University of Chicago Press.

<sup>iii</sup> Freeman-Longo, R.E. (2000). Pg. 9. *Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem*. American Probation and Parole Association. <http://www.appa-net.org/revisitingmegan.pdf>.

<sup>iv</sup> Garfinkle, E., Comment, 2003. *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles*. 91 California Law Review 163.

<sup>v</sup> Ibid.

<sup>vi</sup> This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.