

Testimony Re: SB188 and SB189
March 16, 2011

Members of the House Judiciary Committee,

As a 17 year Juvenile Advocate, I speak to you today on behalf of over 3,650 juveniles - that's approximately the number of juvenile offenders on Michigan's Sex Offender Registry.¹ That number represents approximately 17% of all juveniles required to register nation-wide² - yet Michigan only accounts for 3% of the nations population.³

The good news is, long-term research and empirical evidence about juvenile sexual offending and reoffense DO NOT support the labeling of juveniles as sex offender the way Michigan does. In fact, 35 states either do not include juveniles on their sex offender registry, or give judges complete authority to exclude any juvenile from registration.⁴ It's not surprising then, in 2008, the Council of State Governments passed a *Resolution in Opposition of the Sex Offender Registration and Notification Act (SORNA) As It Applies to Juvenile Offenders* (see Resolution attached; SORNA is the title in the Adam Walsh Act that SB188 and SB189 seeks to implement).

I applaud the changes being made to Michigan's registry in SB188 and 189 regarding juveniles. This is a step in the direction that supports what numerous research studies have shown us, what experts on sexual behavior have told us, and better supports and respects the rehabilitative mission of our juvenile justice system. However, there's more work that needs to be done to this legislation. Of greatest concern:

- 1. Over-inclusion of Juvenile Tier 3 Offenses (SB188, Section 2(W))** - As written, SB188 exceeds the requirements in the Adam Walsh Act/SORNA Guidelines for juveniles required to register under SORNA to achieve compliance. Given the research, empirical evidence, the resolution from the NSG, and the SORNA requirement for compliance, a number of juvenile offenses should be removed from the list of Tier 3 offenses in SB188. The list found in the bill is the list required for ADULT offenders, and should NOT be the same list used for Juvenile offenses. **The federal SORNA Guidelines only requires registration for adjudicated juveniles 14 - 17 years of age at offense that committed penetration by use of force, threat of serious violence, rendering unconscious, or involuntarily drugging; age of the victim is NOT a factor in juvenile offenses, nor are "familiar" offenses in which the victim is a member of the same household, or related by affinity to the 4th degree as long as force, threat of serious violence, rendering unconscious or drugging has not occurred.** (See USDQJ Fact Sheet attached with definition of *Juveniles Required to Register Under SORNA* and the email attached from the USDQJ SMART Office - the office which determines if implementation has been achieved). An example of how this section should read is found on the attached list of recommendations. These changes would meet the requirements for compliance.
- 2. Definition of Conviction (SB188, Section 2(B))** - Individuals that already petitioned the court and were relieved of their duty to register should not be included in the definition for "conviction" - including those from another state (SB188 Section 2(B)(iii) and (iv)). The bill already excludes HYTA recipients that were removed from the registry by the court. Similar language needs to be in SB188 to exclude adjudicated juveniles that were removed from the registry by the court, under the current law in effect today. This is a technical and legal issue that needs to be corrected.

3. **Petitioning Concerns (SB 189, Section 8c(4))** - The following should be struck: "A petition shall not be filed under this section if a previous petition was filed under this section and was denied by the court after a hearing." There are legal and substantive issues with this.
- a. Language needs to assure that Individuals that petitioned under the existing law and were denied using a very different set of criteria should not be denied the ability to petition under this law. This would be a violation of an individual's constitutional right to equal protection.
 - b. Under the new law, adjudicated juveniles should be given the opportunity to petition again after 3 years. Juveniles may have had a petition denied because their offense was not that long ago, and the judge may be unable to make a decision as to whether a person is "a continuing threat to the public". As children mature, their risk to offend decreases significantly, and more history is available to make an appropriate decision. I can easily see someone petition as soon as this law goes into effect because they don't want to be labeled a Tier 3 offender – yet in close timeframe to their offense, the petition may be denied – and not because they've reoffended.
 - c. Individuals that had a prior petition denied (under the old or new law) should still be able to petition after 10 or 25 years if they are a Tier 1 or Tier 3 offender, respectively. Ironically, individuals who did not even fit the criteria to petition under Section 8c(15) that never got to petition, are allowed to petition after 10 or 25 years – but those who were allowed and denied because they didn't meet the requirements could not, as this bill is currently written.

Lastly, non-public registration for juveniles should not be minimized. These individuals are still required to abide by many laws related to the registry. They are required to follow school safety zone laws, are restricted by laws regarding jobs, and when traveling may be put on a public registry in a state that only requires adult offenders to register, because they do not have a non-public registry. In addition, with the new requirements, they not only will have to register quarterly for life, they will have to register anytime they come home from college for winter, spring, and summer breaks both in the city where they attend school and where their family lives if away more than 7 days. This can easily amount to 16 times in one year – not to mention every time their address, employer, vehicle, internet identifier, etc., changes. The burden on both the registrant and law enforcement for registration tasks will be much greater. This is yet another reason why we should not exceed the requirements for juveniles required to register per SORNA.

I urge you to make changes to SB188 and SB189 found on the attached list of recommendations.

Thank you for your time and consideration.



1 Michigan State Police, Feb. 2010.

2 There are estimated to be 21,500 juveniles on registries nationwide. 3% of all registrations are estimated to be juveniles (Letourneau, 2010). Registry Count = 716,750; (Registered Sex Offenders In the United States, National Center for Missing and Exploited Children. 14 June 2010). http://www.missingkids.com/en_US/documents/sex-offender-map.pdf.

3 U.S. Census Bureau, July 2009, (Michigan Population – 9,969,727, US Population – 307,006,550)

4 How Do the 50 States Handle Sex Offender Registration? (See Chart attached)

Recommended Changes to SB188 and SB189 (S4)

1. **Over-inclusion of Juvenile Tier 3 Offenses (SB188, Section 2(W))** – As written, SB188 exceeds the requirements in the Adam Walsh Act/SORNA Guidelines for juveniles required to register under SORNA to achieve compliance. Given the research, empirical evidence, the resolution from the NSG, and the SORNA requirement for compliance, a number of juvenile offenses should be removed from the list of Tier 3 offenses in SB188. The list found in the bill is the list required for ADULT offenders, and should NOT be the same list used for juvenile offenses. The federal SORNA Guidelines only requires registration for adjudicated juveniles 14 – 17 years of age at offense that committed penetration by use of force, threat of serious violence, rendering unconscious, or involuntarily drugging; age of the victim is NOT a factor in juvenile offenses, nor are “familiar” offenses in which the victim is a member of the same household, or related by affinity to the 4th degree as long as force, threat of serious violence, rendering unconscious or drugging has not occurred. (See USDOJ Fact Sheet attached with definition of *Juveniles Required to Register Under SORNA* and the email attached from the USDOJ SMART Office – the office which determines if implementation has been achieved). An example of how this section should read follows. These changes would meet the requirements for compliance.
 - a. “Sexual contact” offenses, “sexual penetration” offenses that are “age only” or “familial” that lack force, threat of serious violence, rendering unconscious or drugging, and Gross Indecency offenses should be removed from the list of Tier 3 offenses requiring registration for juveniles. Gross Indecency under current law is not even a registerable offense for juveniles, and does not include force. Subsection (W)(viii) should be added as follows:

“Subsection (W) does not apply to an offender having a juvenile disposition or adjudication for a violation of Michigan penal code, 1931 PA 328, MCL 750.520b(1)(a), 750.520b(1)(b)(i), 750.520b(1)(b)(ii), 750.520c, 750.520d(1)(a), 750.520g(2), and 750.338”
 - b. The Council of State Governments’ resolution opposing registration for juveniles was issued even given this narrow definition for juveniles registration defined in the guidelines. This further supports why Michigan should NOT exceed the guideline requirements. Fundamentally, juveniles should not be rotely/statutorily labeled as sex offenders.
 - c. Alternatively, if concerns still exist about these offenses, I urge that SB188 and 189 still remove these offenses from the list of juvenile Tier 3 offenses but allow existing juvenile registrants the ability to petition the court to determine if can be relieved of their duty to register. In new cases SB188 and SB189 could allow a judge to include individuals with these specific offenses if they are a threat to the public.
 - d. Please see the list of Practical Examples of Issues with SB188 and SB189 as Currently Written.
2. **Definition of Conviction (SB188, Section 2(B))** - Individuals that already petitioned the court and were relieved of their duty to register should not be included in the definition for “conviction” – including those from another state (SB188 Section 2(B)(iii) and (iv)). The bill already excludes HYTA recipients that were removed from the registry by the court. Similar language needs to be in SB188 to exclude adjudicated juvenile that were removed from the registry by the court, even under the current law in effect today. This is a technical and legal issue that needs to be corrected.
3. **Petitioning Concerns (SB 189, Section 8c(4))** - The following should be struck: “A petition shall not be filed under this section if a previous petition was filed under this section and was denied by the court after a hearing.” There are legal and substantive issues with this. The suggestions below meet

compliance requirements, as these individuals do not fit the definition for juveniles required to register under SORNA.

- a. Individuals that petitioned under the existing law and were denied using a very different set of criteria should not be denied the ability to petition under this law. To prevent a petition under the new law would be a violation of an individual's constitutional right to equal protection.
- b. Under the new law, adjudicated juveniles should be given the opportunity to petition again after 3 years. Juveniles may have had a petition denied because their offense was not that long ago, and the judge may be unable to make a decision as to whether a person is "a continuing threat to the public". As children mature, their risk to offend decreases significantly, and more history is available to make an appropriate decision. I can easily see someone petition as soon as this law goes into effect because they don't want to be labeled a Tier 3 offender – yet in close timeframe to their offense, the petition may be denied – and not because they've reoffended.
- c. Individuals that petitioned the court and were denied must register as Tier 1, 2, or 3 offenders. These individuals should NOT be denied an opportunity to petition at 10 years or 25 years if they are a Tier 1 or Tier 3 offender. Ironically, individuals who did not even fit the criteria to petition under Section 8c(15) that never got to petition, are allowed to petition after 10 or 25 years – but those who were allowed and denied could not as this bill is currently written.

In addition,

4. **Inappropriate Definition of Custodial Authority** - The definition of "Custodial Authority" is highly inappropriate for juvenile offenders (SB188 Section 2(C)). This should pertain only to adult offenders, and doing so does not present an issue with compliance.
5. **Offenses Punishable by 1 Year or Less** - The Adam Walsh Act (Section 42 USC 16911, Subsection 3) only requires Tier 2 and Tier 3 registration for offenses punishable by more than 1 year. If Michigan chooses to register individuals whose offense was punishable by 1 year or less, these should be labeled as Tier 1 offenders – not Tier 2. This still meets compliance requirements.
6. **Individuals With No Criminal Record** - Individuals who no longer have an offense on their record (HYTA, set-aside, or pardoned) should not be required to register. Florida and South Dakota have been approved already as having implemented SORNA, and they do not require registration for these types of individuals (Section 2(B)).
7. **Exclude Employer/Volunteer Information from Internet Website** - The public website should not include the name or address of an employer (SB189, p, 10, Section 8(2)(D)). SB189 treats volunteer work as employment, and as written, the address information will be posted on the Internet website. If a registrant has difficulty getting or holding a job, then the need for government assistance increases greatly. Florida and South Dakota do not include this information on their Internet website, and they have achieved substantial implementation.
8. **Provide Letter of Removal** - When an individual is removed from the registry under SB189, Section 8(9), the Department should provide the individual with a letter indicating that they do not have a duty to register any longer.
9. **Provide Appeal Process** - There should be an appeal process where by an existing registrant that is labeled according to this new law can challenge the Tier label determined by the State Police.

How Do the 50 States Handle Juvenile Sex Offender Registration?

<p>States that DO NOT place juveniles on the Sex Offender Registry</p> <p>*11 of these states give judges discretion to INCLUDE a juvenile if they feel circumstances warrant it</p>	<p>27</p>	<p>Alaska Alabama* Arizona* Arkansas* California* Colorado* Connecticut Georgia Hawaii</p> <p>Indiana* Kentucky Maine Maryland* Nebraska Nevada* New Hampshire New Mexico New York</p> <p>North Carolina* Oklahoma* Pennsylvania Tennessee Utah Vermont Virginia* West Virginia Wyoming</p>
<p>States giving judges discretion to EXCLUDE a juvenile from registration</p>	<p>8</p>	<p>Iowa Massachusetts Montana</p> <p>North Dakota South Carolina Texas</p> <p>Oregon (Felony offenses only; all can petition at 2-6 yrs post-judication of court; court has discretion to "defer" any registration) Wisconsin</p>
<p>States that have minimum age requirements AND limit offenses</p> <p>** Approved as Complaint with SORNA</p>	<p>4</p>	<p>Louisiana (14) Mississippi (14) - also allows petition for removal</p> <p>Ohio** (14) - also gives judicial discretion and allows petition for removal at 3 yrs. In most cases; Ohio is compliant with the Adam Walsh Act</p> <p>South Dakota** (15) - may petition after 10 yrs</p>
<p>States that limit offenses that require juveniles to registry</p> <p>** Approved as Complaint with SORNA</p>	<p>3</p>	<p>Florida** (Subset of actual list; judge must make findings in case to be registerable) Kansas (Sexually violent predators; these only register until age 18 or until 5 yrs post adjudication) Missouri (Felony offenses only; these register until age 21, except if > 14 and Aggravated Sexual Assault)</p>
<p>States that have minimum age requirements</p> <p>States placing all juveniles adjudicated of a sexual offense on the registry:</p> <p>(for virtually the same offenses requiring registration for an adult offender)</p> <p>** Approved as Complaint with SORNA</p>	<p>1</p>	<p>Idaho (age 14) - 14 to 18 years olds register until age 21 only; non-public registration</p>
	<p>7</p>	<p>Illinois - 10-year non-public registration; all can petition for removal (at 2 or 5 yrs post) Minnesota - 10-year non-public registration Rhode Island - 10-year non-public registration Washington - 10, 15, or lifetime public/non-public registration; all are eligible to petition for removal at 2 yrs. post supervision</p> <p>The 3 most punitive states (considers who's included, whether public or non-public registration, duration of registration, and who can petition for removal):</p> <p>Michigan - Public and non-public registration for 25 yrs or life; very limited group of juveniles can petition for removal Delaware** - Public registration for 15, 25, or lifetime; all can petition at 10 yrs or 25 yrs. New Jersey - Public and non-public registration for life; all those < 14 yrs old at offense can petition for removal at age 18; all others can petition after 15 years</p>

**THE COUNCIL OF STATE GOVERNMENTS
RESOLUTION IN OPPOSITION OF THE SEX OFFENDER REGISTRATION AND
NOTIFICATION ACT AS IT APPLIES TO JUVENILE OFFENDERS**

WHEREAS, the Sex Offender Registration and Notification Act (SORNA) requires that juvenile/sex offenders age 14 years and older be included on both state and national public sex offender registries;

WHEREAS, under SORNA, sex offender registries may publish the addresses of a juvenile offender's home, school or work, a photograph and description of the juvenile, and license plate number;

WHEREAS, these provisions of SORNA contradicts the rehabilitative intent and confidentiality that has been inherent in the juvenile justice system;

WHEREAS, SORNA ignores important developmental differences between juveniles and adults, namely that juvenile sex offenders are at a much lower risk to reoffend than adult sex offenders;

WHEREAS, SORNA further ignores evidence that a youth's brain is still developing until their early twenties, meaning juveniles are not fixed in their sexual offending behavior and may respond well to treatment;

WHEREAS, juveniles have fewer numbers of victims than adult offenders, and on average, engage in less serious and less aggressive behaviors;

WHEREAS, juvenile sex offenders do not pose the same public safety threat as adult sex offenders;

BE IT THEREFORE RESOLVED, that The Council of State Governments strongly opposes SORNA's application to juvenile sex offenders and urges Congress to revise the law to more accurately address the needs of juvenile offenders.

Adopted this 6th day of December, 2008 at the CSG 75th Anniversary Celebration and Annual Meeting in Omaha, Nebraska.



Governor M. Jodi Rell
2008 CSG President



Rep. Kim Koppelman
2008 CSG Chair

Subj: RE: Urgent SORNA Juvenile Question
Date: 2/8/2011 9:26:25 AM Eastern Standard Time
From: Scott Matson@usdoj.gov
To: Mscenter3@aol.com

Hi Sharon,
 My responses are below each question...

It is my understanding that per the SORNA Final Guidelines - Juveniles Offenders Required to Register Under SORNA, a state is NOT required to register the following juvenile offenders in order to achieve substantial compliance. Correct? A juvenile offender 14-17 years of age at the time of the offense that engages in:

Michigan definition for CSC 2 & 4

1. "Sexual contact" (intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts), even where a victim was under 13 years of age. This type of contact is not defined as aggravated sexual abuse per SORNA Guidelines, correct?

That is correct. A juvenile adjudicated delinquent for this type of offense would not be required to register under SORNA.

Michigan definition for CSC 1 & 3

2. In the absence of force or threat of serious violence, by rendering unconscious or involuntarily drugging the victim, "Sexual penetration" (sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required), even where the person is under 13 years of age, or the offender is a member of the same household as the victim, or related to the victim by blood or affinity to the fourth degree. This type of contact does not include the aggravating circumstances defined as aggravated sexual abuse per SORNA Guidelines, correct?

Yes, that is correct. The strict interpretation of SORNA is as follows: it suffices for substantial implementation if a jurisdiction applies SORNA's requirements to juveniles at least 14 years old at the time of the offense who are adjudicated delinquent for committing (or attempting or conspiring to commit) offenses under laws that cover:

- engaging in a sexual act with another by force or the threat of serious violence, or
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim;

"Sexual act" for this purpose should be understood to include any degree of genital or anal penetration, and any oral-genital or oral-anal contact.

I will try to give you a call later today about the international travel issue.

Scott

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Juvenile Offenders Required to Register Under SORNA: A Fact Sheet

Section 111 of the Adam Walsh Act, codified at 42 U.S.C. §16911, governs the applicability of SORNA's sex offender registration requirements to juvenile offenders who are adjudicated delinquent of a sex offense. 42 U.S.C. §16911(8) provides that:

The term "convicted" or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code [18 USC § 2241]), or was an attempt or conspiracy to commit such an offense.

14-17 years old at offense

Generally speaking, 18 USC §2241 prohibits:

- (a) knowingly caus[ing] another person to engage in a sexual act--
 - (1) by using force against that other person; or
 - (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping, [or
- (b) engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim; or
- (c) engaging in a sexual act with a person under the age of 12]

Under the Final Guidelines, the definition of "sexual act" that jurisdictions are minimally required to use to determine whether a criminal offense is "comparable to" 18 U.S.C. §2241 is as follows:

- engaging in a sexual act with another by force or the threat of serious violence (*see* 18 U.S.C. 2241(a)); or
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim (*see* 18 U.S.C. 2241(b)).

"Sexual act" for this purpose should be understood to include any degree of genital or anal penetration, and any oral-genital or oral-anal contact.

To meet the minimum standards of substantial compliance under the Final Guidelines, jurisdictions are not required to register juveniles adjudicated delinquent of a SORNA sex offense simply because it involves a sexual act with a person under 12 (18 USC § 2241(c)), without more.

Specific Elements of offense required

Penetration

Age of victim is not a consideration unless the above conditions occur

By definition, an adjudication of delinquency for an offense 'comparable to' 18 U.S.C. §2241 will result in a tier III registration classification. 42 U.S.C. §16911(4). The Final Guidelines make clear the criteria to be used in determining whether an offense for which a juvenile has been adjudicated delinquent qualifies for a tier III registration:

[J]urisdictions generally may premise the determination on the elements of the offense, and are not required to look to underlying conduct that is not reflected in the offense of conviction.