

# Colorado Sex Offender Management Board

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- **WHITE PAPER ON THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006**



**Colorado Department of Public Safety  
Division of Criminal Justice  
Sex Offender Management Unit  
700 Kipling Street, Suite 1000  
Denver, CO 80215  
303-239-4526**

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## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
EXECUTIVE SUMMARY	3
INTRODUCTION	5
SYNOPSIS OF ADAM WALSH ACT REQUIREMENTS	7
Table 1. Tier Classification Under Adam Walsh Act	8
CURRENT SEX OFFENDER MANAGEMENT PRACTICES IN COLORADO	9
NATIONAL INFORMATION ON ADAM WALSH ACT	12
Current State Implementation	12
National Stakeholder Feedback	12
EDUCATIONAL FORUMS AND SURVEYS	14
BENEFITS OF ADAM WALSH ACT	16
CONCERNS OF ADAM WALSH ACT	17
SUMMARY AND RECOMMENDATIONS	19
APPENDIX A	21
Educational Forum Survey	21

## **EXECUTIVE SUMMARY**

### ***Background***

The Colorado Sex Offender Management Board (SOMB) was created by 1992 legislation to standardize the evaluation, treatment, and supervision of sex offenders to curtail sex offender recidivism, and enhance the protection of victims and potential victims. The SOMB is a multi-disciplinary board of experts representing victim advocacy, law enforcement, prosecution, legal supervision, human services, judges/magistrates, treatment, polygraph, education, defense attorneys, and county commissioners. The SOMB developed and published the Adult Standards for sexual offenders in 1996 and the Juvenile Standards in 2002. These documents are well respected as an unbiased resource in addressing key sex offender management policy issues for Colorado.

In response to growing concerns about the inconsistency and lack of interconnectedness between sex offender registries across states, the Adam Walsh Child Protection and Safety Act was signed into law by President Bush in July 2006, establishing a national system for the registration of sex offenders. The Adam Walsh Act (AWA) requires individual state compliance by July 2009 or face a 10% loss of justice assistance grants for their state. The Sex Offender Monitoring, Apprehending, Registering, and Tracking (SMART) office was established to administer implementation of AWA, and determines the level of compliance for each state.

A Multi-Agency Implementation Committee was developed by the state of Colorado to review the fiscal and practical impact on the state should the AWA be ratified. This committee will make compliance recommendations to the Governor and Legislators of the state.

### ***Methods***

To meet the obligation to provide objective information relating to sex offender management policy in Colorado, the SOMB formed a committee to review and assess the effect of implementing the AWA in the state. The SOMB committee's assessment included a review of current published literature, a review of AWA implementation in other states, results of a survey developed to ascertain initial reactions to AWA enactment in Colorado, and a comparison of current SOMB standards with AWA requirements. Over the past several months, the committee presented educational forums to multiple interested entities across the state regarding the AWA requirements, and developed a survey to solicit feedback from attendees on enacting the legislation in Colorado. This document is the culmination of the SOMB committee review, presenting facts, information, and final SOMB-endorsed recommendations relative to ratification of the AWA in Colorado. This white paper is specifically intended as submission to the Multi-Agency Implementation Committee for consideration in its final recommendations to the State of Colorado; however, the document will be made available to any interested parties, but is deemed valid only as of the date of publication.

### ***Results***

More than half of all states in the country have cited significant concerns regarding the implementation of certain aspects of the AWA, including juvenile registration and notification, retroactivity, lack of judicial discretion, and the unfunded mandate. Eight states have passed some level of AWA enactment as of the date of this paper, but none have been deemed "compliant" by the SMART office. In addition, several national stakeholder groups have expressed concerns or made recommendations relative to specific AWA requirements.

Nine educational forums were presented by the SOMB committee to more than 500 people, 285 of which completed a feedback survey. Concerns about implementing the AWA in Colorado were raised by 86% of survey participants and included topics of juvenile registration, retroactivity, length/frequency of registration, the disclosure of specific registration information, and fiscal impact. Over two-thirds believed the AWA would significantly impact their agency, and many voiced concerns that the AWA contradicts current research.

Several sections or requirements under the AWA were identified by the SOMB committee that conflict with either the Standards as set forth by the SOMB or with current best practice as evidenced by published research. These conflicts include (1) “no cure” philosophy for juveniles has no basis of evidence, (2) registration and community notification have no basis of evidence to reduce risk, (3) the tiered system under the AWA is based on offense as opposed to risk assessment, which has no supporting evidence, (4) implementation cost far exceeds the 10% funding reduction threat, (5) multiple AWA issues are currently being litigated and some have been found unconstitutional, (6) SOMB standards for Colorado have been more effective than the AWA provisions, (7) registration of specific employment and school information will inversely affect community and placement options, (8) registration requirements have potential adverse effects on public schools, and (9) registration requirements will likely violate victim confidentiality.

### ***Conclusions***

The SOMB supports the concept of an integrated national sex offender registry and enhanced communications between jurisdictions related to the movement and tracking of sex offenders, as identified in the AWA. However, national stakeholder groups, the majority of states, and expert Colorado professionals have voiced significant concerns regarding the adverse impact of the AWA and that current research and best practices are not reflected in many of its requirements. The SOMB believes there are many unintended consequences and extraordinary costs to ratifying the AWA in Colorado.

Based on objective substantiation found by the committee and reviewed by the Board, the SOMB recommends the following:

1. The AWA should not be implemented by the State of Colorado.
2. The State of Colorado should continue participation in the National Sex Offender Registry and should work to enhance inter-jurisdictional communications relative to registrants.
3. The State of Colorado should continue to implement SOMB sex offender management strategies, and support existing SOMB practices to revise standards reflective of current research and best practices.

## INTRODUCTION

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 that 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, the Adam Walsh Child Protection and Safety Act (House Resolution 4472) was signed into law by President George W. Bush. The Adam Walsh Act (AWA) establishes a comprehensive national system for the registration of sex offenders and calls for state conformity of sex offender registration under the Sex Offender Registration and Notification Act (SORNA) section. Individual states must agree to comply with the AWA (or achieve substantial compliance) by July 2009 or be subject to the loss of 10% of allocated justice assistance grants. The AWA also establishes the Sex Offender Monitoring, Apprehending, Registering, and Tracking (SMART) Office to administer implementation of the AWA.

The Final Guidelines and Regulations for the AWA have been published by the United States Attorney General's Office, and have significant potential impact on Colorado's established practices and guidelines relative to adult sex offenders and juveniles who have committed sexual offenses, and the community providing their treatment. A Multi-Agency Implementation Committee has been developed by the State of Colorado to analyze the level of AWA compliance of current Colorado law and make final compliance recommendations to the Governor and Legislators of our state.

The Colorado Sex Offender Management Board (SOMB) was created via state legislation in 1992 as the Sex Offender Treatment Board to develop *Standards and Guidelines for the Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders* (Adult Standards). This Board, renamed the SOMB, first published the Adult Standards for sexual offenders in 1996, and the *Standards and Guidelines for the Evaluation, Assessment, Treatment, and Supervision of Juveniles Who Have Committed Sexual Offenses* (Juvenile Standards) in 2002. The SOMB is a multi-disciplinary board of experts representing victim advocacy, law enforcement, prosecution, legal supervision, human services, judges/magistrates, treatment, polygraph, education, defense attorneys, and county commissioners. The SOMB's legislative mandate is to standardize the evaluation, treatment, and supervision of sex offenders to curtail sex offender recidivism, and enhance the protection of victims and potential victims. Since enactment, the SOMB has been a leader in the State of Colorado in addressing key sex offender management policy issues. As a prominently relevant legislatively created entity, the SOMB has an obligation to present unbiased information, evidence, and guidance to inform final recommendations on the implementation of the AWA. This White Paper, the culmination of an SOMB AWA Committee's research and examination of the AWA, is provided to meet this obligation.

The SOMB has prudently developed this document to summarize three important areas of information relevant to the AWA. First, in an effort to assure a solid understanding of general requirements of the AWA, a synopsis of the AWA requirements is presented. All essential information from the Act is highlighted, including the SORNA section, and guidelines and regulations from the Attorney General's Office. Second, a body of relevant and current information is summarized and reported. This includes current sex offender management

practices in Colorado, incorporating published research and evidence (e.g. best practices) germane to requirements of the AWA; national information relevant to the AWA, including current state implementation of the AWA and national stakeholder comments on the AWA; a description of SOMB AWA educational forums and accompanying survey results. An overview of benefits and concerns of the AWA is presented, followed by a summary with SOMB recommendations relative to implementation of AWA in Colorado. These recommendations are endorsed by the SOMB and are submitted to the Multi-Agency Implementation Committee for consideration in its final recommendations to the State of Colorado.

In addition to the intended recipient (Multi-Agency Implementation Committee) of this document, it may be distributed to all identified stakeholders and the community in general. This is, however, applicable only as of the publication date of this document. The SOMB reserves the right to revise sections of this document, should additional information become available subsequent to this publication.

## **SYNOPSIS OF ADAM WALSH ACT REQUIREMENTS**

The AWA requires registration for those individuals convicted, adjudicated, or having received a deferred sentence for a sexual offense. Per the AWA, registration shall occur within 3 days following the sentencing of a qualified sex offender to a non-imprisonment sentence (i.e. probation) or of being released from imprisonment sentence. Regarding juveniles, the AWA defines a conviction for purposes of registration and classification to include juvenile adjudications, deferred sentences, diversion, or informal adjustments if the juvenile who has committed a sexual offense and is at least 14 years of age at the time of the offense. In addition, a juvenile subject to AWA must also be placed on the public sex offender internet registry if the registration offense is comparable to or more severe than the federal offense aggravated sexual abuse (i.e., use of force or incapacitation).

Registration requirements include:

- Name
- Social Security Number
- Home addresses including where the sex offender habitually stays, or visits
- Employer name and address
- School name and address
- Vehicle license plate number and description of vehicle owned or operated by the sex offender
- Any other applicable information as required by the Attorney General

Each jurisdiction must include the following information, or a link to the information, for each sex offender in the registry:

- Physical description
- Criminal sex offense conviction, adjudication, or deferred sentence
- Criminal history, including dates of arrests and convictions, and correctional or release status
- Current photograph
- Fingerprints and palm prints
- DNA sample
- Photocopy of a valid driver's license or ID card
- Any other applicable information as required by the Attorney General

The AWA also defines and requires a three-tier classification system (Table 1) for all adult sex offenders and juveniles who have committed sexual offenses. Other AWA requirements are based on this tier system.

**Table 1. Tier Classification Under Adam Walsh Act**

<b>Tier</b>	<b>Offense and Punishment</b>	<b>Registration Frequency and Duration</b>	<b>Possibility of Registration Reduction?</b>
I	1. Any offense not designated as Tier II or Tier III 2. Punishable by <1 year in prison	<ul style="list-style-type: none"> <li>• Annually</li> <li>• 15 years</li> </ul>	From 15 to 10 years*
II	1. At least as severe as the following offenses when committed (or attempt or conspiracy to commit) against a minor: <ul style="list-style-type: none"> <li>• Sex trafficking</li> <li>• Coercion or enticement</li> <li>• Transportation w/intent of criminal sexual activity</li> </ul> 2. Use of minor in sexual performance, solicitation of minor for prostitution, or production or distribution of child pornography 3. Any offense subsequent to Tier I designation 4. Punishable by >1 year in prison	<ul style="list-style-type: none"> <li>• Semi-annual</li> <li>• 25 years</li> </ul>	No reduction possible
III	1. At least as severe as the following offenses or attempt or conspiracy to commit such offense: <ul style="list-style-type: none"> <li>• Sexual abuse or aggravated sexual abuse</li> <li>• Abusive sexual contact against a minor &lt;13 years old (directly or through clothing)</li> </ul> 2. Involves kidnapping of a minor (excludes parents and guardian) 3. Any offense subsequent to Tier II designation 4. Punishable by >1 year in prison	<ul style="list-style-type: none"> <li>• Quarterly</li> <li>• Lifetime</li> </ul>	From life to 25 years* (juveniles only)

\*In order to receive a reduction in the length of registration, the adult sex offender or juvenile who has committed a sexual offense must maintain a "clean record" and successfully complete an approved treatment program.

States are required to have 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. Assistance by federal law enforcement agencies is available to assist jurisdictions in locating and apprehending sex offenders who abscond from the registration requirement.

The AWA requires that states make registry information available on the Internet, in readily accessible form and with certain mandatory exemptions. Each state's website must have search capabilities compatible with the National Sex Offender Public Registry. The Attorney General's Office has developed software that will enable jurisdictions to establish and operate uniform registries and Internet sites. States will have one year to implement the software program after it becomes available. The AWA also requires prompt sharing of information on registered sex offenders among state, local and federal law enforcement agencies and other entities such as child welfare agencies.



## **CURRENT SEX OFFENDER MANAGEMENT PRACTICES IN COLORADO**

The SOMB was tasked with developing Adult and Juvenile Standards. Research clearly indicated that juveniles *should not* be treated like adult sex offenders which uses a “no cure” model, and that instead should support treatment, which identifies individual differences, while identifying risk and supporting the goal of victim and community safety.<sup>1</sup> Today, based on research, best practices, and improved outcomes, the State of Colorado continues to incorporate the use of its published Standards for the evaluation, treatment, and supervision of both adult sexual offenders and juveniles who have committed sexual offenses. These Standards and Guidelines outline the manner in which Colorado provides treatment services, adhere to registration guidelines, and monitor these individuals in the State of Colorado. Both the Juvenile and Adult Standards detail these expectations and requirements as follows:

- 1) Victim Centered Approach – The SOMB was legislatively created to develop and implement methods of intervention for sex offenders which have as a priority the physical and psychological safety of victims and potential victims, and which are appropriate to the needs of the particular offender, so long as there is no reduction in the safety of victims and potential victims. As noted above, the SOMB includes representation from experts in the field of sex abuse and who can represent sex abuse victims and victims’ rights organizations. In keeping with this mandate, the SOMB has identified in the Guiding Principles of the Standards for adult sex offenders:
  - Guiding Principle #3: Community safety is paramount. The highest priority of these Standards and Guidelines is community safety
  - Guiding Principle #7: Victims have a right to safety and self-determination
- 2) Evaluation and Treatment - There are set standards and qualifications for treatment providers, evaluators, and polygraphers. The qualifications sections include what is initially required to become an approved provider, as well as what is required to remain an approved provider within each category. It also differentiates between each category of provider (i.e. evaluator, treatment provider, and polygrapher), and differentiates service provision to adult sex offenders and juveniles who have committed sexual offenses. The SOMB Standards outline expectations for evaluation and pre-sentence investigation, individualized treatment planning and parameters that indicate progress and successful completion of treatment. For juvenile treatment, the Standards specifically address strengths, risks, and deficits, and victim clarification and reunification. In support of national research on juveniles who commit sexual offenses, the Standards also state that traditional psychotherapy is not sufficient for sex offense specific treatment.<sup>2</sup> For adult treatment, there is information that outlines the use of plethysmograph assessments and polygraphs, and issues such as parental risk to their own children and restriction of contact with minors.
- 3) Supervision, Management, and Behavioral Monitoring - In the Adult Standards, it mandates a Community Supervision Team (CST) be convened that consists of, at a minimum, the

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<sup>1</sup> Association for the Treatment of Sexual Abusers (2000) Position on the Effective legal Management of Juvenile Sexual Offenders. Beaverton, OR: Association for the Treatment of Sexual Abusers.

<sup>2</sup> National Adolescent Perpetrator Network (1993). The Revised Report from the National Task Force on Juvenile Sex Offending, *Juvenile and Family Court Journal*, 44(4).

supervising officer, the offender's treatment provider, and the polygraph examiner.<sup>3</sup> Each member of the CST has specific responsibilities in terms of managing and monitoring the offender. It is expected that each team member will communicate with the other to allow for information sharing and team decision making. The team monitors and evaluates the offender's progress in treatment, their compliance with sentencing requirements, and their risk to re-offend and to cause further harm.<sup>4</sup> Research suggests that this Containment Model is a successful intervention for managing recidivistic behavior by adult sex offenders. The Containment Model requires the use of sex history and regular maintenance polygraphs.<sup>5</sup>

In addition, the Colorado Legislature passed the Lifetime Supervision Act in 1999, which requires the sentencing of adult sex offenders with certain crime types to an indeterminate sentence. As a result, adult sex offenders can be managed via a long-term supervision and treatment intervention that has been proven to reduce recidivism.<sup>6</sup>

For juveniles who have committed sexual offenses, the SOMB Standards mandate that a Multi-Disciplinary Team (MDT) be developed in order to assess, monitor, and provide treatment to the juvenile and the juvenile's family. This MDT may consist of the supervising officer, the Department of Human Services caseworker, the treatment provider, the parents or caregivers, school personnel, the guardian ad litem, the polygrapher, a victim representative, and any other clinical professional that is deemed appropriate.<sup>7</sup> This MDT shares information and seeks to make decisions based on a collaborative effort. Each member of the team, as with the Adult Standards, serves a specific function on the team and thus has responsibilities to the team, the juvenile, and the juvenile's family. There are specific training requirements for Probation Officers. These responsibilities and training requirements are outlined in the Juvenile Standards. The Standards also describe Informed Supervision, which is a requirement of all caregivers, parents, and guardians responsible for the supervision of a juvenile who has committed a sexual offense. Colorado law requires notification to schools of the presence of any juvenile who has been charged with a sexual offense and as a result, schools are able to adequately provide safeguards to ensure the safety of all students in the school. Schools also have other responsibilities under the SOMB Juvenile Standards, and are described in the Reference Guide for School Personnel<sup>8</sup>. The overall purpose of the MDT, as with CST for adults, is to have numerous individuals involved in the supervision of juveniles who sexually offend in order to monitor progress in treatment, assess risk to the community, identify the needs of the victim, provide safety planning for community activity, and allow for the possibility of clarification and reunification between the juvenile and the victim where and only when deemed appropriate.

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<sup>3</sup> Colorado Sex Offender Management Board, Standards and Guidelines for the Evaluation, Assessment, Treatment and Behavioral Monitoring of Adult Sexual Offenders, 5.120.

<sup>4</sup> Colorado Sex Offender Management Board, Standards and Guidelines for the Evaluation, Assessment, Treatment and Behavioral Monitoring of Adult Sexual Offenders, 5.600.

<sup>5</sup> Managing Adult Sex Offenders: A Containment Approach (1996). The American Probation and Parole Association.

<sup>6</sup> Evaluation of Colorado's Prison Therapeutic Community for Sex Offenders: A Report of Findings (2003) Colorado Division of Criminal Justice Office of Research and Statistics.

<sup>7</sup> Colorado Sex Offender Management Board, Standards and Guidelines for the Evaluation, Assessment, Treatment and Supervision of Juveniles Who Have Committed Sexual Offenses, 5.100.

<sup>8</sup> Reference Guide for School Personnel Concerning Juveniles Who Have Committed Sexually Abusive and Offending Behavior

- 4) Registration - Registration requirements are currently assessed separately for juveniles and adults. Juvenile registration requires that juveniles who receive a deferred adjudication or adjudication are required to register. This is required for the duration of their probation period, which may last up to two years. After the juvenile has completed treatment and supervision, he or she is eligible to petition the court for discontinuation of the registration requirement. For adult sex offenders, sex offender registration is required as a condition of Probation or Parole under CRS 16-22-103.<sup>9</sup> The length of registration is determined by the class of offense, and the individual has the right to petition the court to discontinue registration based on completion of all treatment and supervision requirements. For Class 1, 2, and 3 Felonies, an adult sex offender is eligible to petition to end registration after 20 years from the date of completion of supervision, whether through the Department of Corrections, Probation, or the Court. Adults convicted of Class 4, 5, or 6 Felonies or a Class 1 Misdemeanor are eligible to petition for discontinuation of registration after 10 years from the date of completion of supervision. There are also specific instances where adults are not allowed to petition for removal from the sex offender registry. These instances include being classified as a sexually violent predator, sexual assault on a child, incest, and aggravated incest among others.<sup>10</sup>
  
- 5) Community Notification - At this time, active community notification is conducted only for those adults considered and determined to be a Sexually Violent Predator (SVP). A SVP is identified through the use of an actuarial risk assessment instrument. The instrument was developed based upon a research sample of adult sex offenders residing in Colorado. The town-hall style notification meetings are held in the community in which the individual resides and are open to the public. In addition, registration information is available to the public via a state internet registry for adult sex offenders convicted of felony sex offenses, sexually violent predators, and failure to register cases. Finally, a list of all registered sex offenders, including misdemeanants and juveniles, is available to the public via their local law enforcement agency, and local law enforcement agencies are allowed to post all adult sex offenders and repeat juveniles who commit sexual offenses on a local internet registry site.

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<sup>9</sup> Colorado Revised Statutes, Article 22, 16-22-103.

<sup>10</sup> Colorado Revised Statutes, Article 22, 16-22-113.

## **NATIONAL INFORMATION ON ADAM WALSH ACT**

### ***Current State Implementation***

Eight states (Delaware, Florida, Louisiana, Mississippi, Nevada, New Hampshire, Ohio, and Utah) have passed state legislation to enact, in whole or part, the provisions of the AWA. As of the publication date of this document, no states have been deemed compliant by the SMART Office. The results of several national surveys note that more than half of all states have significant implementation issues with the AWA, including juvenile registration and notification, retroactivity, lack of judicial discretion, and the fact that it is an unfunded mandate, among other issues.

### ***National Stakeholder Feedback***

Several national stakeholder groups have weighed in on the AWA. The National Conference of State Legislatures (NCSL) Law and Criminal Justice Committee issued a Policy Statement on the AWA. The NCSL noted, while having agreement with the “overall purpose” of the AWA, object to the “one-size-fits all approach” to classification, registration, and sentencing of sex offenders. The NCSL also expressed concern for the unfunded mandate of the AWA. Finally, the NCSL suggested amendment of the AWA to eliminate the retroactive application of the Act; allow states to set their own registration classification and notification system, and failure to registration penalties; and allow states to determine which juveniles to register, among other suggested revisions.<sup>11</sup>

The Federal Advisory Committee on Juvenile Justice 2007 Annual Report included the following recommendations related to the AWA: do not apply the AWA retroactively to juveniles; limit the numbers of juveniles placed on the registry to the most violent offenders; and ensure the AWA is implemented consistent with the Juvenile Justice and Delinquency Prevention Act.<sup>12</sup>

The National Alliance to End Sexual Violence (NAESV), while not taking a formal position of support or opposition, did express concerns for an over-inclusive public notification that provides information on all sex offenders, to the detriment of focused information on the most dangerous sex offenders; the destabilization of low risk sex offenders which may lead to an increased risk for reoffense; the limiting of internet disclosure and community notification to sex offenders whose disclosure will not implicitly identify the victim, as this may deter future victim reporting; the internet disclosure and community notification on sex offenders should include a community education component to educate the public about sex offenders prior to providing disclosure information; and the mandatory minimum sentencing requirement may lead to decreased prosecution, increased plea bargaining, decreased convictions, and decreased reporting.<sup>13</sup>

Finally, the Association for the Treatment of Sexual Abusers (ATSA), a national organization representing more than 2500 professionals from the treatment, supervision, victim advocacy, prosecution, and law enforcement fields, expressed concern for the negative and unnecessary impact on the short- and long-term rehabilitation of juveniles who commit sexual offenses and adding to the destabilization of adult sex offenders. In a 2007 proposed SORNA Guidelines

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<sup>11</sup> National Conference of State Legislatures Law and Criminal Justice Committee. Adam Walsh Policy. <http://www.ncsl.org/statefed/LAWANDJ.HTM#AdamWalsh>

<sup>12</sup> Federal Advisory Committee on Juvenile Justice (2007) Annual Report. <http://www.facjj.org/annualreports.html>

<sup>13</sup> The National Alliance to End Sexual Violence (2007) Legislative Analysis: The Adam Walsh Child Protection and Safety Act of 2006. [http://www.naevs.org/Polycypapers/Adam\\_Walsh\\_SumMarch07.pdf](http://www.naevs.org/Polycypapers/Adam_Walsh_SumMarch07.pdf)

comment, ATSA noted, “Numerous studies show that the maintenance of employment, housing, and education are key components to reducing re-offense risk. Registration and notification policies must take these into account... Because residence restrictions are tied to registration status in most states, there will likely be an emergent housing crisis for youth on registries who are prevented from living with their families due to proximity to schools, parks, and places where children congregate.”<sup>14</sup>

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<sup>14</sup> Association for the Treatment of Sexual Abusers (2007) Comments of Proposed SORNA Guidelines  
<http://www.atsa.com/pdfs/SORNA.pdf>

## **EDUCATIONAL FORUMS AND SURVEYS**

The SOMB Adam Walsh Act Committee held nine educational forums across the state between May and September of 2008, to provide an overview of the AWA requirements and to seek input from those professionals who would be impacted by implementation of the AWA in Colorado. Participants were asked to complete a survey (see Appendix A) at the conclusion of each forum, soliciting feedback regarding the possible implementation of the AWA in Colorado. Participants had the option to identify themselves or complete the survey anonymously.

Over 500 people attended these educational forums and 285 of these participants completed a survey. Roughly one-third of survey participants worked primarily with adult sex offenders, one-third worked primarily with juveniles who have committed a sexual offense, and 20% worked with both adult sex offenders and juveniles who have committed sexual offenses. Approximately 10% of survey participants worked with victims. The majority of professionals who took the survey were therapists, probation and parole officers, and law enforcement officers. Others who participated include caseworkers, victim advocates, attorneys, polygraph examiners, and agency administrators.

More than two-thirds of the respondents felt that passing the AWA would significantly impact the agency they work for; only 7% felt there would be no significant impact. Many commented that the AWA would have a negative impact on the juveniles who commit sexual offenses their agencies serve; funding, including the manpower to implement the AWA would be a big issue; and the AWA would have a negative impact on the developmentally delayed population as well as the homeless population.

Eighty-six percent (86%) of the respondents have concerns regarding Colorado implementing the AWA. These concerns include:

- Juvenile Registration (78%)
- Length/Frequency of Registration (58%)
- Retroactivity (67%)
- Community Notification (50%)
- Registration Information to be Disclosed (51%)
- Tier System Based on Charge (53%)
- Fiscal Impact (55%)

More than 140 survey participants commented on their concerns regarding Colorado implementing the AWA. The most common concern was the negative impact the AWA would have on juveniles who have committed a sexual offense. Survey respondents were concerned that the AWA would make it difficult for juveniles to remain in the community, and successfully complete treatment and supervision. Others commented that the AWA goes against the research that is currently available; the AWA would push more and more sex offenders underground; the AWA focus on the conviction charge rather than risk level; the cost local agencies would incur to implement and enforce the AWA; the AWA will make it even more difficult for the developmentally delayed population to obtain housing and employment; and there were concerns voiced regarding offenders needing to register in multiple jurisdictions.

Of the participants completing the survey, recommendations regarding the ratification of the AWA in Colorado were as follows:

- 27.0% recommend Colorado pass parts of the AWA and/or seek substantial compliance
- 24.9% recommend Colorado not pass the AWA
- 20.4% recommend joining with other states in seeking change in federal legislation
- 7.3% recommend Colorado pass the full AWA
- 5.3% recommend both changing federal legislation and pass parts of the AWA
- 5.6% recommend changing federal legislation and not pass the AWA
- 9.5% did not answer the question

## **BENEFITS OF ADAM WALSH ACT**

The SOMB recognizes potential benefits to implementing the AWA in Colorado:

- The National Sex Offender Registry would be expanded. The AWA will integrate the information in state sex offender registry systems and ensure that law enforcement has access to the same information across the United States, helping prevent sex offenders from evading detection by moving from state to state.
- It will make it more difficult for sex offenders to reach children on the Internet. The AWA authorizes new regional Internet Crimes Against Children Taskforces that will provide funding and training to help state and local law enforcement combat crimes involving the sexual exploitation of minors on the Internet.
- A new national child abuse registry will be developed, requiring investigators to do background checks of adoptive and foster parents prior to approving child custody. By giving child protective service professionals in all 50 states access to this critical information, this act will improve their ability to investigate child abuse cases and help ensure that vulnerable children are not put into situations of abuse or neglect. It should be noted that Colorado has already passed legislation to implement this provision of the AWA (Senate Bill 07-226).



## **CONCERNS OF ADAM WALSH ACT**

The SOMB has effective adult and juvenile standards, which are reviewed and updated as more research becomes available. Below are some identified issues with The AWA which conflict with much of what we know about offenders:

- Juveniles who have committed sexual offenses comprise as much as 1/3 of all sexual abusers. Juveniles are distinctly different from, and should not receive the same interventions as adults. Juveniles have a low recidivism rate and are very amenable to treatment. Extended registration time and places of registration may exceed a juvenile's completion of treatment and probation/court involvement. This would eliminate the current judicial discretion to release a juvenile from registration following completion of treatment and legal supervision, and could potentially inhibit normative development.
- Research demonstrates that adolescent brain development is now extended into the early twenties. This research suggests the importance of identifying the unique characteristics of each juvenile who has committed a sexual offense, and adult sex offender, and individualize an approach based upon the unique considerations and typology of offender. This research further indicates that juveniles who commit sexual offenses may have brain development issues in need of intervention and this is also suggestive of an increased capacity to change.
- Research regarding registration for adult sex offenders and juveniles who have committed sexual offenses, and community notification for adult sex offenders have not been demonstrated to reduce risk.
- The tiered system is based on the offense of conviction and not an actuarial risk assessment for re-offending. Sex offenders do not fit into a standard profile. Charge of conviction, while perhaps containing elements relevant to risk, does not in and of itself accurately predict risk.
- Cost of implementation far exceeds the annual federal funding states receive and the amount of the Byrne grant fund 10% penalty for non-compliance, which based on Fiscal Year 2008 funding would be about \$240,000. The Multi-Agency Implementation Committee has been working on a cost-benefit analysis of implementation of the AWA and is estimating that the cost of implementation to one individual mid-size law enforcement agency may be comparable to the \$240,000 annual penalty.
- Many of these issues are currently being litigated. Some have been found unconstitutional. Issues include separation of powers, ex-post facto, due process, double jeopardy and the right to an evidentiary hearing prior to registration. The Retroactivity provision applies to all sex offenders including juveniles regardless of when they were convicted.
- Colorado has existing Standards which have been addressing public safety. There are existing provisions to allow for prosecution and sanction of serious juvenile offenders as

adults. Colorado currently has a model for intervention with adult sex offenders and juveniles who commit sexual offenses that is more effective than the provisions of the AWA.

- Registering of school and place of employment information, in addition to residence, may have adverse impact on community integration, placement options for children under social service/court jurisdiction, and increased zoning difficulties and efforts to build continuum of care for youth (foster homes, group homes, and residential treatment centers). In addition, requiring separate registration in different jurisdictions for residence, school, and employment places a significant financial burden on registrants given that many jurisdictions charge a fee for registration.
- Potential adverse impacts on public schools, their role and budgetary issues. For example, loss of confidentiality, required supervision for registrants, and potential conflicts between registrants and other students may be issues.
- If juveniles who commit sexual offenses have to register school information, will victims be able to be identified if “incest” is listed on charge/registration – huge impact for victim confidentiality.

## **SUMMARY AND RECOMMENDATIONS**

The SOMB has prepared this document to provide information on the implementation of the AWA to the Multi-Agency Implementation Committee in Colorado. This document consists of a summary of the AWA, current sex offender management practices in Colorado as prescribed by the SOMB, state by state implementation of the AWA, national stakeholder group feedback, survey results of the SOMB AWA educational forums, and benefits and concerns related to the AWA.

The SOMB supports the concept of an integrated national sex offender registry and enhanced communication between jurisdictions related to the movement and tracking of sex offenders, as identified in the AWA. However, current research and best practices appear to contra-indicate many components of the AWA. In addition, many national stakeholder groups, other states, and professionals in the State of Colorado have voiced significant concerns regarding the adverse impact of the AWA. John Walsh himself, in whose son's memory the AWA was named, has identified the goal of the Act as seeking a comprehensive and integrated National Sex Offender Registry, and has acknowledged concerns for some of the adjunct components of the AWA (i.e. juvenile applicability).

The Colorado SOMB shares these concerns about the unintended consequences and potential costs, both fiscal and otherwise, of the AWA. Chief among these is the application of the AWA to juveniles, retroactivity, the loss of judicial discretion, distinguishing between registrants based upon charge rather than risk, broad-based rather than targeted community notification, the negative impact on offender rehabilitation, and the unfunded mandate to the state and local jurisdictions.

Based on the foregoing, the SOMB recommends the following:

- The State of Colorado should continue to implement and support sex offender management strategies that serve the purpose of victim protection and community safety.
- The State of Colorado should not pass the AWA as currently written. Colorado is currently connected to the National Sex Offender Registry and should participate in the efforts to enhance inter-jurisdictional communication related to registrants. This can be accomplished outside of any legislative initiative.
- The State of Colorado should work with the SMART Office to identify collaborative solutions to AWA implementation concerns.
- The State of Colorado should continue to use a risk-based assessment classification system for the level of notification required for individual sex offenders.
- The State of Colorado should continue to update its sex offender management strategies, as prescribed by the SOMB, to reflect current research, best practices, and enhanced outcomes.

- The State of Colorado should continue to seek fiscal resources to support sex offender management including registration and notification responsibilities of local law enforcement.

## APPENDIX A

### Adam Walsh Act Educational Forum Feedback Survey\* Colorado Sex Offender Management Board

The Adam Walsh Act was signed into law by President George Bush on July 27, 2006. The law mandates that states make significant modifications to their sex offender registration and notification system from the existing laws based on the Wetterling Act and Megan's Law, and requires states to be connected to the National Sex Offender Registry.

The Colorado Sex Offender Management Board (SOMB) has formed a committee to study implementation of the federal Adam Walsh Act for Colorado. As part of this process, the committee is offering educational forums on the topic and is seeking input from those who will be impacted by implementation of this law in Colorado. We would appreciate any feedback you wish to provide, and you can choose to do so anonymously if you prefer. Please contact the staff of the SOMB at [somb@cdps.state.co.us](mailto:somb@cdps.state.co.us) or (303) 239-4526 for more information or to schedule an educational forum.

- 1) Please rate your level of familiarity with the Adam Walsh Act.

0 – Not Familiar at All      1 – Moderately Familiar      2 – Very Familiar

Comments:

- 2) How impacted will you and/or your agency be by the Adam Walsh Act if it is implemented?

0 – No Significant Impact      1 – Moderate Impact      2 – Significant Impact

Comments:

- 3) Do you have concerns about Colorado implementing the Adam Walsh Act?

Yes  
No

Comments:

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\* Please continue Survey on Back

- 4) Are there specific aspects of the Adam Walsh Act about which you are concerned?  
Please check all that apply.

Juvenile Registration  
Length/Frequency of Registration  
Retroactivity  
Community Notification  
Registration Information to Be Disclosed  
Tier System Based on Charge  
Fiscal Impact  
Other:  
None

Comments:

- 5) What would you recommend Colorado do in response to the Adam Walsh Act?

Pass the Full Act  
Join with Other States in Seeking Change in Federal Legislation  
Pass Parts of the Act/Seek Substantial Compliance  
Do Not Pass the Act

Comments:

- 6) What is your role in the sex offender management field?

Law Enforcement  
Therapist  
Supervising Officer  
Prosecutor  
Judge  
Attorney  
Victim Advocate  
Caseworker  
Private Citizen  
Other:

- 7) If you are a professional working in the sex offender management field, which population do you work with **primarily**?

Adults  
Juveniles  
Both Adults and Juveniles Equally  
Victims

- 8) Optional – Please provide your contact information?

Name:  
Phone:  
Email: