From Wetterling to Walsh: The Growth of Federalization in Sex Offender Policy

In 2006, President Bush signed into law the Adam Walsh Child Protection and Safety Act.1 The passage of this bill greatly expanded the role of the federal government in sex offender policy relative to its predecessor, the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act. The Wetterling Act was passed in 1994 as one provision in the Violent Crime Control and Law Enforcement Act.2 This law, which was the beginning of the federalization of sex offender policy,3 required states to create and maintain sex offender registration and notification programs.

This Article examines the newly enacted Adam Walsh Act (‘AWA’), distilling “lessons learned” from the Wetterling Act; analyzes the empirical impact of sex offender registration and notification; and explores potential unintended consequences of the AWA. Part I provides an overview of the major provisions of the AWA. Part II includes a discussion of the increasing federalization of sex offender policy and its potential effects.

I. Overview

On July 27, 2006, when President Bush signed the AWA into law, he greatly expanded the scope, scale, and requirements of sex offender registration programs. The law also provided for increased mandatory sentences for federal sex offenders, civil commitment of sex offenders, criminal information record checks, and child pornography investigative and prosecutorial resources; the creation of a national child abuse registry; and grant funding for implementation.

The focus of this Article is on the law’s provisions dealing with sex offender registration and notification. The following parts of the AWA are discussed below:

- Title I—Sex Offender Registration and Notification Act
- Title II—Federal Criminal Law Enhancements Needed to Protect Children from Sexual Attacks and Other Violent Crimes
- Title III—Civil Commitment of Dangerous Sex Offenders

A synopsis and discussion of those sections follows. Areas relevant to sex offender registration and notification are discussed in detail.

Title I: Sex Offender Registration and Notification Act

Subtitle A: Sex Offender Registration and Notification

This portion of the AWA essentially supplants the Wetterling Act. The new law states that it is a response to the sexual assaults and/or deaths of seventeen people which had occurred over the previous seventeen years.4 Based on a literal reading, the new national law is thus predicated on the tragic cases of seventeen individuals dating back two decades. Whether it is sound public policy to use these seventeen isolated cases to create federal law is for the reader to determine.

Section 111 creates something that many states have already created, which is a classification system for sex offenders. A Tier I sex offender is “a sex offender other than a Tier II or Tier III sex offender.” Tier II sex offenders are offenders convicted of committing (or conspiring to commit) certain crimes against a minor, including sex trafficking, coercion and crimes enticement, transportation with the intent to engage in criminal sexual activity, abusive sexual contact, use of a minor in a sexual performance, solicitation of a minor to practice prostitution, or production or distribution of child pornography. Tier III sex offenders are offenders convicted of committing (or conspiring to commit) the following: aggravated sexual abuse, sexual abuse, abusive sexual contact against a minor under thirteen, or nonparental kidnapping of a minor.5

The Amie Zyla provision requires the inclusion of juveniles in a state sex offender registry. Juveniles who must register are those over the age of fourteen who are prosecuted in adult court, or those convicted of a sex offense that is the equivalent of (or more severe than) aggravated sexual abuse.6 This is a critical new provision. Under Wetterling (the old law) there was no requirement as to whether or not juvenile sex offenders had to register. That decision was left to the states. Some states included juveniles, while others did not. This provision is discussed more in Part II below.

Tier I offenders must register for fifteen years, Tier II offenders for twenty-five years, and Tier III offenders for life. Offenders who stay “clean” for a minimum of ten years may reduce the length of time they must register.
There is no provision for an offender to be removed from the registries prior to those minimum dates. Offenders are required to allow the jurisdiction to verify their addresses and take a current photograph of them:

- Every year if they are a Tier I offender.
- Every six months if they are a Tier II offender.
- Every three months if they are a Tier III offender.7

Offenders may even stay on their state’s registry after they die. Attorney General Mukasey argued that information about dead sex offenders “may remain of value” to the public and to law enforcement.8 Apparently even in death, sex offenders are still dangerous.

Another new provision is the creation of a new criminal charge for sex offenders. States are required to make “failure to register” a felony offense.9 It is unclear if the “failure to register” provision of the law is triggered if offenders fail (or fail with the requisite frequency) to accurately update their registration information. The law implies that such a failure does constitute a felony offense.

The critical policy questions this ambiguity poses are questions of accurate record-keeping, cost, and oversight. For example, someone (presumably one or more individuals employed by state or local police agencies) must have an electronic record of each offender’s last verification. Databases containing such information would have to be regularly staffed and maintained. Given that the registration is often conducted at the municipal level, it is unclear what kind of staffing and technology implications compliance with this provision requires. For communities that do not have advanced sex offender programs, this provision could prove costly. Additionally, for major cities that have thousands or tens of thousands of registered offenders, the costs of quarterly verification or prosecution may be extraordinary. This provision is also discussed later. Sex offenders must be notified of their duty to register either before their prison release or at the time of sentencing.

Section 118, the Dru Sjödén National Sex Offender Public Website provision, authorizes creation of the National Sex Offender Website (operated by the FBI), which is to be publicly accessible. The AWA requires all states to have their own sex offender registries online and available for public use.10 Internet sex offender registries must be searchable by zip code and geographic zone. Some offender information that is maintained in the registry may be excluded from Internet dissemination. Such information includes the offender’s social security number, arrests that did not result in conviction, and other information to be determined by the attorney general. As will be discussed later, public dissemination of sex offender information has occasionally resulted in criminal vigilantism.

Section 121 of the law, the Megan Nicole Kanka and Alexandra Zapp Community Notification Program, requires that information on sex offenders be released to appropriate law enforcement agencies . . . each school and public housing agency . . . . in which the individual lives, is employed or is a student . . . Social service entities responsible for protecting minors . . . . volunteer organizations in which contact with minors or other vulnerable individuals might occur . . . and any organization, company, [or] individual who requests such notification.11

States have three years to implement the provisions of the AWA, with two possible one-year extensions, or they will lose ten percent of their federal crime funds provided under the Byrne Grant.

Subtitle B: Improving Federal Criminal Law Enforcement to Ensure Sex Offender Compliance with Registration and Notification Requirements and Protection of Children from Violent Predators

Section 141 clarifies federal penalties for sex offenders who fail to register or accurately update their registration information. Section 143 expands “Project Safe Childhood.” This program will increase the coordination of investigative and prosecutorial efforts in addressing child exploitation and pornography.

Section 146 authorizes the creation of the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, or SMART, to be housed in the Department of Justice. The director of the SMART office, Laura L. Rogers, was appointed by President Bush in December 2006.12 The SMART office will administer the AWA,13 oversee state compliance with the Act, and recommend the withholding or awarding of Byrne Grant funds, as related to AWA compliance.

Title II: Federal Criminal Law Enhancements Needed to Protect Children from Sexual Attacks and Other Violent Crimes

Section 202, the Jetseta Gage Assured Punishment for Violent Crimes against Children provision, requires mandatory minimum sentences at the federal level for violent crimes committed against children. Specifically, the law calls for the following:

- A minimum of thirty years to life for the murder of a minor, aggravated sexual abuse of a minor, or sexual exploitation of a minor.
- A minimum of twenty-five years to life for crimes of violence involving kidnapping or maiming.
- A minimum of ten years to life for crimes of violence involving a dangerous weapon, coercion and enticement of children, child prostitution, or violent crimes resulting in serious bodily injury.14

Other measures included in Title II of the law include the prohibition of Internet sales of “date-rape drugs,”15 the elimination of a statute of limitations in federal sex offense cases,16 and changes in bail for sex offenses.17
Title III: Civil Commitment of Dangerous Sex Offenders

Under § 301, the Jimmy Ryce State Civil Commitment Programs for Sexually Dangerous Persons, the attorney general is authorized to create a grant program for states to establish or enhance effective “civil commitment programs for sexually dangerous persons.” As this provision is voluntary (no state is under financial penalty for non-compliance), it is not under examination in this Article. This section of the law also clarifies the procedures for civil commitment of federal sex offenders.

Title IV: Immigration Law Reforms to Prevent Sex Offenders from Abusing Children

This section primarily makes “failure to register” as a federal sex offender a deportable offense. The creation of a “failure to register” crime is discussed later.

Title V: Child Pornography Prevention

In § 501, Congress reports several “findings” about the child pornography trade. Specifically this section focuses on the interstate commerce nature of child porn, which is the justification for federal intervention. Section 505 authorizes the use of criminal and civil asset forfeiture in federal child pornography cases.

Remaining portions of the law provide funding for various related social programs, research, and grants to state and local agencies to assist in implementation. Other relevant provisions include an annual report to Congress on the status of the Sex Offender Registration and Notification Act and funding for the National Institute of Justice (NIJ) to conduct research on the law’s efficacy. Finally, the General Accounting Office (GAO) is required to conduct a feasibility study examining if and how drivers’ licenses can be used to enhance sex offender registration.

II. Policy Discussion

There are several critical questions which must be asked in connection with the enactment of the AWA:

- Why was Wetterling replaced by the expansion of sex offender registration and notification procedures embodied in the AWA?
- What impact did Wetterling have on sexual assault rates and/or sex offender recidivism?
- What are the critical differences between Wetterling and the AWA?
- As states implement the new guidelines, what are the potential unintended consequences of the AWA?

A. Why Walsh in Place of Wetterling?

One reason may simply be politics. Sex offenders and the crimes they commit are disdained by society, emphasized by the media, and aggrandized by legislators and would-be legislators. As the murders of Samantha Runnion, Alexandra Zapp, Jessica Lunsford, and others occurred, it was an extraordinarily common, yet simplistic view that existing sex offender laws only needed to be “fixed.” After learning about such tragedies, state and federal legislators introduced new bills to close “loopholes” in the sex offender registry. After earlier attempts in 2005 and 2006, Congress finally passed the AWA. Numerous scholars have argued that legislators will often enact and expand sex offender policies regardless of their efficacy and primarily in response to calls from constituents and depictions of horrible sex offenders in the media.

The most traditional avenues in understanding legislative intent come from an examination of the Congressional Record, House and Senate conference reports, and implementation guidelines from federal agencies. Below are a few of the stated “reasons” the AWA was passed.

Rep. Mark Foley (R-FL): “The Adam Walsh Act is the most comprehensive piece of child protection legislation this Congress has ever considered. The bill creates, among other things, new State and Federal regulations, community notification requirements, as well as Federal criminal penalties for sex offenders. It also gives law enforcement new resources, including authorizing U.S. Marshals to go after missing sex offenders, 20 new task forces, 200 new Federal prosecutors, 45 new forensic scientists dedicated to investigating crimes against children. . . . It used to be that we tracked library books better than we do sex offenders, but this bill will even that score.”

Sen. Joe Biden (D-DE): “The Adam Walsh Child Protection and Safety Act takes direct aim at this problem. Plain and simple, this legislation, I can say with certainty will save children’s lives. Sexual predators must be tracked, and our cops and our parents have a right to know when these criminals are in their neighborhoods. That is what we do here.”

Hyperbolic rhetoric is not that unusual when it comes to child safety legislation. However, a closer review of the Congressional Record does not provide much insight as to why the AWA was needed and what the flaws with Wetterling were. A little more specificity is provided by an examination of the National Guidelines published by Attorney General Michael Mukasey in 2008. In explaining the rationale behind the Sex Offender Registration and Notification Act (SORNA), Title I of the AWA, the attorney general surmises that following the enactment of the Wetterling Act in 1994, the Act was amended a number of times, in part reflecting and in part promoting trends in the development of the state registration and notification programs. Ultimately Congress concluded that the patchwork of standards which had resulted from piecemeal amendments should be replaced with a comprehensive set of standards—the SORNA reforms, whose implementation these Guidelines concern—that would close potential gaps and loopholes under the old law, and generally strengthen the nationwide network of sex offender and registration and notification programs.

The record of the legislative rationale for the AWA is scant. It is a reasonable interpretation that one of the reasons the law was passed was based on the effectiveness of
interest groups. John Walsh, father of Adam, who was murdered in 1981, has been a very high-profile activist. His lobbying efforts are repeatedly cited in the Congressional Record as a justification. Much of the general public is more familiar with John Walsh as the host of the television show America’s Most Wanted. The notoriety of John Walsh undoubtedly helped in the law’s enactment.

The National Center for Missing and Exploited Children (NCMEC) is a strong and influential advocate for child safety legislation. Law enforcement agencies also publicly support such laws with a hope that they will result in increased funding. As Timothy Griffin and Monica Miller note, these types of interest groups can be very effective in advocating for legislation that appears to be effective and dramatic.24

On the other side, there are very few powerful advocates for research-based sex offender policies. It is reasonable to say that as a group, sex offenders are politically indefensible. With the exception of some treatment providers, researchers, and civil libertarians, the chorus of voices calling for a rational policy is quite small. As discussed below, reason and research are secondary factors in the passage of sex offender laws.

**B. Evidence of Impact**

Although Wetterling and sex offender registries (SORs) are extremely popular politically, after nearly fifteen years of implementation there is no definitive or clear evidence that SORs reduce sex-offender recidivism.

Washington State, an innovator and leader in the sex offender registration/notification/civil commitment field, published a series of studies assessing its efforts, which predate passage of the 1994 federal law. Researchers found that “violent and sexual felony recidivism by sex offenders . . . has decreased since the passage of a 1997 statute.” However, they also note that claims of causation are suspect, because crime overall has decreased in the state and the nation during the same timeframe.25

Sarah Welchans conducted a review of twelve evaluations of SORs. This review, the first of its kind, did not find a definitive positive impact of SORs.26 Jeffrey Walker and his colleagues utilized time-series data to assess, pre- and post-implementation, what impact the Wetterling Act had on the incidence of rape. In the ten-state dataset, the researchers found mixed results and concluded that SORs had no definitive impact. In fact, one of the four states that demonstrated a statistically significant change (California) actually had a post-implementation increase in rapes.27 Numerous other studies have found that sex offender registration and notification programs demonstrate little, if any, positive effect on public safety.28

In the fourteen years of sex offender registries, it is a reasonable alternative view that the basic concept of sex offender registration is fatally flawed. Yet the potential of SORs for sexual-assault prevention has been exalted to the point of being iconic. There appears to be a widespread belief, fueled by media and legislative blaming, that sex-offender registries will, in fact, prevent sexual assault. As discussed earlier, this has occurred in spite of significant research efforts which have found that SORs have either negative or neutral effects on sex-offender recidivism and/or sexual assault.

Some scholars have argued that sex offender registries may simply be another form of moral panic immune to empirical testing.29 Given the general failure of sex offender registration to prevent sex crimes, it is important to understand how the AWA differs from its predecessor.

**C. Critical Differences between the Wetterling Act and the Walsh Act**

There are crucial differences between the two laws. Table 1 provides a summary of key differences with a narrative discussion that follows.

**Table 1**

<table>
<thead>
<tr>
<th>Critical Differences in Federal Laws on Sex Offender Registration/Notification Provisions</th>
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<tbody>
<tr>
<td>No requirement that states make their statutes retroactive</td>
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<tr>
<td>No requirement for states to include juveniles in state registries</td>
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<td>No mention of penalties for “failure to register”</td>
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<td>Classification process and requirements left up to states; only designation was the “sexually violent predator” designation</td>
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<tr>
<td>No requirement that states create and maintain an Internet SOR</td>
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<td>Primary audiences for notification were law enforcement, child-centered institutions, and the general public</td>
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<tr>
<td>Provided no direct funding for states in implementation, although a grant-making process was eventually added</td>
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<td>No requirement for NIJ-funded research on SORs</td>
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1. Requiring Juvenile Sex Offenders to Register Section I of the AWA includes a mandatory requirement that juvenile sex offenders register and be subject to community notification. This is a substantial departure from the original Wetterling guidelines. In the 1994 legislation, there was no requirement that states include juvenile sex offenders in their registries. The Amie Zyla expansion in the new law requires all states to include certain offenders over the age of fourteen. This national requirement is controversial for many reasons.

Sue Righthand and Carllann Welch, among other scholars, argue that forcing juvenile sex offenders to register may undermine treatment and efforts at early detection and prevention. Clinical treatment providers have also argued that the provision will undermine efforts at rehabilitation and may increase juvenile sex offending.

My study of Massachusetts, which included juveniles in its registry under the Wetterling guidelines, reported a myriad of problems. I found that judges and probation officers would routinely downgrade or reclassify offenses to avoid requiring juveniles to register. The refusal by law enforcement officials to implement this provision became so problematic that a new state law was enacted, which eroded judicial discretion in juvenile sex offender cases.

Aside from potential problems it may create in treating juvenile offenders, it is also unclear if and how this federal provision may contradict state laws that shield juvenile records.

2. Tiers Section 111 of the AWA makes an awkward attempt at classifying sex offenders. This particular provision will create a variety of implementation problems. Table 2 illustrates the proposed classification scheme and corresponding registration/notification requirements.

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<tr>
<th>Tier/Level</th>
<th>Registration Requirements</th>
<th>Notification</th>
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<tbody>
<tr>
<td>Tier III</td>
<td>Aggravated sexual assault, abusive sexual contact, nonparental kidnapping, assault committed after offender is registered as a Tier II</td>
<td>Lifetime registration</td>
</tr>
<tr>
<td>Tier II</td>
<td>Sex trafficking, coercion and enticement, transporting for sexual purposes, abusive sexual contact, child porn, use of a minor in a sexual performance, solicitation for child prostitution</td>
<td>25-year minimum</td>
</tr>
<tr>
<td>Tier I</td>
<td>All other sex offenses</td>
<td>15-year minimum</td>
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</table>

For states that have no existing scheme of sex offender classification, the proposed scheme may be beneficial. However, many states have developed very complex and sophisticated classification schema. In the Massachusetts SOR regulations, offenders must be accorded a classification hearing with ample evidence to determine their level of risk. Factors included in risk classification include an offender’s criminal history; response to sex offender treatment; age when the offenses were committed; educational, familial, and economic history; nature of the offense (e.g., whether weapons were used); history of substance abuse; and so forth.

States that use complex classification processes often draw upon the works of R. Karl Hanson and others in developing a complete view of an offender’s risk of reoffending. Numerous complex tools such as the Static-99 and the Minnesota Sex Offending Screening Tool–Revised (MnSOST-R) objectively measure an offender’s risk of reoffending. These tools are in use in a number of states.

The question of risk classification is a complex one, and many scholars debate which criteria should be weighted the most. Should criminal history be the most influential factor? Usage of weapons? Age and nature of victim? Response to treatment? Arrests that did not result in convictions? Should quantitative composite scores guide the classification criteria? Many would question the reliability of relying exclusively on one or two criteria. The three tiers required by the AWA rely on the offense of conviction and the age of the victim.

There are numerous problems with the above federal “tiers.” For states that already have classification processes, must they change them to correspond with the federal scheme? How will these states downgrade or simplify their classification criteria to stand in compliance with the AWA? Will offenders who have already been classified according to state law have to be reclassified according to the federal law? Does the classification process begin with state implementation of the AWA, or was it required as of the passage of the new law? How much will changing classification procedures cost state and local sex offender registration boards? Do offenders have due process protections to challenge the federal classification criteria?

Ironically, if states must dumb down their classification schema to correspond to the federal “tiers,” the public will have less accurate information. In effect, as a result of this plan, the public may become less safe.

3. Failure to Register AWA § 113(E) requires all states to “provide a criminal penalty that includes a maximum term of imprisonment that is greater than one year for failure of a sex offender to comply.” One intent of this provision is to reduce the number of unregistered sex offenders. One federal report estimated that there are as many as 150,000 eligible offenders who refuse to register and are evading law enforcement.

The AWA assumes that offenders who do not register will be strongly persuaded to register if they face another
felony conviction. As some scholars have noted, truly motivated offenders and perhaps the most dangerous or lawless offenders will not be persuaded by fear of another criminal penalty.39

Perhaps the most disconcerting issues with making failure to register a felony offense are the inevitable exhaustive legal challenges. The AWA is ambiguous on a number of practical and due process considerations regarding the charge of failure to register. Are law enforcement officials to arrest an offender on the first “failure to register” offense? The tenth? At what point does local law enforcement actively seek an individual for failure to register? One day after the deadline? A week? When do they call in the U.S. Marshals? Should law enforcement actually pursue Tier I offenders who fail to register? Or should they focus their efforts on Tier III offenders? Does it matter if an offender was convicted for a nonviolent sex offense (e.g., lewd and lascivious behavior)?

The law also requires offenders to present themselves to law enforcement (or SOR personnel) to verify their registration information regularly. Tier I offenders must provide law enforcement an in-person verification annually. Tier II offenders must provide law enforcement an in-person verification every six months, while Tier III offenders must provide law enforcement an in-person verification every three months. The law is unclear if failure to update verification information routinely and accurately constitutes “failure to register.” If the answer to this is yes, then any offender who provides a false address or updates the information outside of the deadlines may be prosecuted. This will present a significant increase in prosecutorial and judicial caseloads and court expenses.

Additionally, the AWA states that an offender has three business days to report any changes in any of his or her addresses before becoming subject to criminal prosecution. One implementation problem that arises with these address verification requirements is that for law enforcement officers to know if an offender has “failed to register,” they would need accurate electronic records and/or databases. Some local agencies would need to have an electronic database of all registered sex offenders within their jurisdiction. Each database would also need to have an accurate record of all the addresses and dates when an offender registered or changed his or her information. Some form of a flagging system would need to be established to automatically notify law enforcement as to when an offender is out of compliance. These databases would presumably require staffing. The final guidelines published by Attorney General Mukasey note the requirement that states implement the law with electronic databases.

Although the legislation provides some modest exemptions from the failure-to-register requirements, there is a distinct possibility that offenders will take great exception to this provision and launch repeated litigation efforts. The AWA specifies no due process protections for offenders to challenge the failure-to-register charge. States may feel compelled to provide legal protections for offenders for fear of enacting an unconstitutional state statute.

Although the AWA authorizes the creation of a grant program to subsidize address verification, there is neither a specific appropriation nor an approximation of what this laborious provision may cost. Address verification costs are highly likely to be borne at the local level, where police departments maintain the information and investigate individuals who fail to register.

For over a dozen years, states have been implementing extensive and costly SORs. Tens of thousands of local police departments have been involved in implementation of local sex offender databases, locating offenders who did not register, and verifying addresses of those who did.

The Congressional Budget Office estimated for an earlier version of the law that each state would need to hire two new staff for address verification, costing $10 million from 2006 to 2008.40 This estimate did not analyze any new staffing that would be required at the municipal or county level, which is where most registration/verification occurs. This report also does not address the financial impact on court and prosecutorial caseloads, which would inevitably greatly increase.

It is conceivable that the CBO projections underestimate the costs of compliance for local criminal justice agencies. To provide a context, the CBO estimated that the annual national cost of Wetterling would not exceed ten to twenty million dollars. Yet, one state, the Commonwealth of Massachusetts, has spent over thirty million dollars on its sex offender registry in direct costs alone.41 Costs are discussed in more detail shortly.

4. Retroactivity The final guidelines require states to register all sex offenders under criminal justice supervision. The guidelines use the Supreme Court decision in Smith v. Doe as justification to register all offenders, including those previously not registered.42 This requirement of retroactivity is a substantial concern. When examining Massachusetts’s attempt at retroactive sex offender registration, I noted that it was one of the central factors in prolonged litigation and problems with implementation. The problems included personnel time needed to locate “lost” sex offenders, sex offenders who had died, and numerous due process issues.

States that already had retroactive statutes under Wetterling will more easily implement this provision of the AWA. Yet even those states who started registration with passage of the Wetterling Act may encounter numerous financial, practical, and legal problems.

D. Increasing Use of Federal Mandatory Sentencing and Law Enforcement Personnel

Subtitle B of Section I of the AWA expands the use of mandatory minimum sentences for sex offenses. This approach, although relatively new to sex-crime sentencing, has been used for decades in drug-crime sentencing. In the mid- to late 1980s, particularly with passage of the
Given the explosion of statutes aimed at preventing sexual assault, it is conceivable that the mandatory sex crime sentences will also increase the incarceration rate of federal sex offenders. Currently, federal sex offenders constitute only 3.2 percent of the Bureau of Prisons population. The transfer of mandatory sentencing to sex-crime sentencing, coupled with legislative efforts increasing preventive arrest via failure-to-register, conspiracy, and enticement charges, may greatly increase the number of federal sex offenders arrested and convicted under the AWA.

Additionally, the AWA increases the power and scope of federal law enforcement agencies, most notably the U.S. Marshals. The Marshals have the statutory power to investigate, identify, and arrest sex offenders who either abscond or fail to register. As mentioned earlier, failure to register may include a myriad of different failures. It may include failing to register one of the offender’s five addresses, an email address (for cyber sex offenders), a work telephone number, or all of the above. Since the law’s passage, the Marshals have opened more than 1,300 cases of failure to register, with 240 arrests. It is important to remember that what these offenders are being accused of is failure to register. They are being accused not of committing another sexual offense but of failing to keep their paperwork current. Whether this warrants federal police intervention is a legitimate question for debate.

E. Unintended Consequences

Over the past fourteen years, there have been numerous unintended consequences of sex offender registration and notification. These include a cavalcade of litigation, negative impacts on sex offender treatment, and tremendous unfunded local costs for state and local police, as well as vigilante attacks against registered sex offenders.

Numerous studies have shown that registration and notification often have negative effects on sex offenders. Research findings suggest that these policies increase offenders’ stress levels, affect their capacity to successfully complete treatment, and make the acquisition of suitable employment and housing difficult. Additionally, studies have reported that the policies make offenders’ overall reentry into society more difficult.

Given the hype around sex offenders and registration, it comes as no surprise that public dissemination of sex offenders’ information is often used to harass and attack them. Registered sex offenders are regularly subjected to violent and nonviolent acts of vigilantism. In April 2006, Stephen Marshall, a resident of Nova Scotia, Canada, identified the home addresses of two random sex offenders registered on the Maine sex offender registry Web site. Marshall drove to the home of the two men, with whom he had no personal relationship, and shot and killed both. Marshall would later commit suicide on a bus he had taken to Boston. One of the murdered men had become a registered sex offender based on having consensual sex with a girlfriend who was two weeks shy of her sixteenth birthday (thus being unable to legally consent).

These were not isolated and random murders, but two in a series of attacks on registered sex offenders. Press and research reports have documented other murders, assaults, and acts of vandalism and arson against registered offenders and their property.

As the legislative process occurs in Congress, proposed laws often increase in scope, scale, and cost. As with the Wetterling Act (and many federal-to-state mandates), Congress directed the states to comply with the AWA within three years or they would lose ten percent of their federal crime funds. Often, the larger the law, the more expensive it becomes to implement.

As discussed earlier, these ineffective sex-offender laws are quite expensive. The majority of the costs are borne at the city and county level, where police departments must implement the law and track offenders with little or no additional funding. State-level costs are also significant, with state legislatures often making new and increased appropriations. Although state funding may be supplemented by federal grants, it will still fall significantly short of the funds needed to implement the AWA.

The Justice Policy Institute recently reported that it may cost states ten times more than they would lose in federal crime funds for first-year AWA implementation. For example, the report estimates it would cost Massachusetts, Ohio, and Florida over ten million, eighteen million, and twenty-nine million dollars (first-year costs only) to implement the AWA. If those states did not comply with the federal mandate, they stood to lose $435,000, $622,000, and $1.2 million, respectively. I have argued that states often comply without regard to the monetary costs, but out of a sense of political obligation. So many lofty claims have been made about the potential power of sex offender registries that if a state or city did not comply, it might appear to be uncaring, irrational, or even acting in defiance of public opinion.

There are numerous other direct and indirect costs in complying with federal sex offender mandates. Indirect costs include tremendous volumes of litigation as to the laws’ constitutionality (state and federal), lost wages and taxes from sex offenders who cannot acquire work, unfunded law enforcement implementation costs, time and productivity costs accrued by citizens and organizations (e.g., schools) seeking and responding to information about registered sex offenders, and so forth. It is likely that the true costs of the AWA are staggering. These costs come during a time of tremendous uncertainty and failing in the American economy. These exorbitant costs also come in implementing an approach that research has concluded is largely ineffective.
As with any law, the actual unintended consequences will not unfold until the implementation and social response has begun. Other potential areas of unintended consequences may include the following:

- Variation and confusion in state interpretation and implementation of the Walsh Act.
- Increase in juvenile sex offending by those now required to register.
- Violation of existing state statutes protecting confidentiality of juvenile records by notification requirements of the AWA.
- Significant resources expanded to alter state classification schema to fit with new federal “tiers”.
- Inevitable legislation escalation/expansion when the next sex offender murder occurs.

III. Conclusion

It should be with great concern and apprehension that we embark on another expansion of sex-offender laws. Despite the lack of empirically demonstrated efficacy, untold financial costs, and faulty promises of sexual assault prevention, the politics of sex offender laws continue to dominate the policy debate. It is highly probable that as states implement the AWA they will continue to experience many problems, costs, and unintended consequences, with minimal likelihood of a reduction in sexual-assault rates. Simultaneously, we will likely see Congress begin to introduce more federal sex-offender laws, which will include exclusionary zones, “one-strike and you’re out,” and chemical castration, all policies with little or no scientific justification.

As states implement the AWA, perhaps voices of reason will aid state- and local-level efforts at compliance. Research, reflection, reason, and critical thinking must guide state and local compliance efforts to counteract this expansive, poorly designed federal law.

Notes

5. Adam Walsh Child Protection and Safety Act § 111.
8. Mukasey, supra note 6, at 56.
10. Id. § 118.
11. Id. § 121.
13. Id. at 21.
16. Id. § 212.
17. Id. § 215.
18. Id. § 301.
19. Id. § 505.
23. Mukasey, supra note 6.
32. Wright, supra note 2.
33. Id.
34. R. Karl Hanson, Recidivism and Age: Follow-Up Data From 4,673 Sexual Offenders, 17 J. Interpersonal Violence 1046 (2002).
37 Adam Walsh Child Protection and Safety Act § 113(E).
41 Wright, supra note 2.
42 Mukasey, supra note 6, at 7-8.
45 Id.
46 Levinson, supra note 28; Richard Tewksbury, Collateral Consequences of Sex Offender Registration, 21 J. Contemp. Crim. Just. 67 (2005); Mercado et al., supra note 28.
48 Wright, supra note 2; Wright, supra note 20; Mercado et al., supra note 28.
49 Mukasey, supra note 6.
51 Id.
52 Wright, supra note 2.