

Office of Sex Offender Sentencing, Monitoring, Apprehending,
Registering, and Tracking (SMART)
FY 2010 Comprehensive Approaches to Sex Offender Management Newsletter
December 2012

Introduction

This edition of the newsletter for CASOM grantees features:

- Highlights from a new publication on risk and protective factors for juvenile sex offenders;
- An overview of current case law and issues regarding sex offender registration and notification from the SMART office;
- An update from SMART on recent court findings related to notification;
- Information about states, tribes, and territories that have implemented SORNA;
- A summary of findings from the National Intimate Partner and Sexual Violence Survey (NISVS); and
- A listing of important upcoming dates and events.

New Publication: Risk and Protective Factors for Recidivism Among Juveniles Who Have Offended Sexually

Literature on risk factors for recidivism among juveniles who have sexually offended (JSOs) is limited. In addition, there have been no studies published concerning protective factors among this population. The purpose of this recent study was to examine the relationship of risk and protective factors to sexual and nonsexual recidivism among a sample of 193 male JSOs (mean age = 15.26). Youths were followed for an average of 7.24 years following discharge from a residential sex offender treatment program. The risk

factor opportunities to reoffend, as coded based on the Estimate of Risk of Adolescent Sexual Offense Recidivism, was associated with sexual recidivism. Several risk factors (e.g., prior offending; peer delinquency) were associated with nonsexual recidivism. No protective factors examined were associated with sexual recidivism, although strong attachments and bonds as measured by the Structured Assessment of Violence Risk in Youth were negatively related to nonsexual recidivism. These findings indicate that risk factors for nonsexual recidivism may be consistent across both general adolescent offender populations and JSOs, but that there may be distinct protective factors that apply to sexual recidivism among JSOs. Results also indicate a need for further research on risk factors, protective factors, and risk management strategies for JSOs.

To read the article in full, see <http://sax.sagepub.com/content/early/2012/09/27/1079063212459086.abstract>

New Resource from the SMART Office: Sex Offender Registration and Notification in the United States: Current Case Law and Issues

The SMART Office has compiled a new resource that summarizes the sex offender registration and notification system within the United States, as well as pertinent case law, available here:

[Sex Offender Registration and Notification in the United States: Current Case Law and Issues \(July 2012\)](#)

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In addition, the SMART Office produced an outline-form case law summary in 2009, which is accessible here:

[Case Law Summary, January 2008 - July 2009](#)

Update from SMART: Impact of *Carr v. United States* on the Implementation of SORNA

The SMART office has also provided additional clarification of the impact of the decision in *Carr v. United States* on SORNA implementation. *Carr v. United States*, 130 S.Ct. 2229 (2010), was a narrow holding about the statutory language of 18 USC §2250. There are a number of issues that the case did *not* address:

- Whether SORNA is an unconstitutional *ex post facto* law (not addressed, *Smith v. Doe* still governs)
- Whether an offender convicted prior to SORNA is required to register (the retroactivity regulation, 28 CFR 72.3, still governs, and, generally, a jurisdiction's registration scheme(s) will govern)
- Whether an offender convicted prior to SORNA is required to update his registration when he moves state-to-state (the retroactivity regulation, 28 CFR 72.3, still governs, and, generally, a jurisdiction's registration scheme(s) will govern)
- Whether a jurisdiction is required to register offenders convicted prior to SORNA's passage (a jurisdiction's statutes will govern)

Carr only addressed the specific question of whether an offender convicted prior to SORNA's passage, *who also traveled in interstate commerce before SORNA's passage*, and who failed to register after SORNA's passage, can be convicted of a violation of 18 USC §2250. The Court hung its proverbial hat on its interpretation of the "traveled" issue, and did not address anything else.

28 CFR 72.3 (the retroactivity regulation) is still in full force and effect, without modification, because of the decision in *Carr*. It applies to *sex offenders directly*, and generally provides that sex offenders have to register pursuant to SORNA, regardless of when they were convicted.

The final guidelines issued by SMART (which cite the retroactivity regulation) and proposed supplemental guidelines apply to *SORNA registration jurisdictions*. They state that a jurisdiction may substantially implement SORNA if that jurisdiction registers persons convicted prior to the jurisdiction's implementation of SORNA who fall into one or more of four categories (as opposed to all offenders convicted prior to SORNA's implementation in a jurisdiction):

1. Offenders who are incarcerated;
2. Offenders who are on probation or parole;
3. Offenders who are presently registering; and
4. Offenders who are convicted of a new criminal offense of any kind (the proposed supplemental guidelines would limit this

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subsection (4) to those offenders convicted of a new *felony* offense).

For any additional information or clarification, please contact the SMART Office at getsmart@usdoj.gov.

SORNA Implementation Update

SMART has also announced that Pennsylvania and the U.S. Virgin Islands are the latest jurisdictions to implement the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006.

“We are encouraged by the efforts of so many jurisdictions to implement SORNA’s requirements, and we commend those that have substantially implemented the Act,” said Linda Baldwin, Director of the SMART Office. “We are also encouraged that the vast majority of jurisdictions are committed to exchanging information in a manner that will lead to improved monitoring and tracking of sex offenders across the United States and abroad.”

States and territories had until July 27, 2011, to substantially implement SORNA. Beginning in 2012, those that did not were subject to a 10-percent reduction in their Edward Byrne Memorial Justice Assistance Grant Byrne (JAG) award. The penalty will continue to be applied on an annual basis until a state or territory substantially implements SORNA. “Fortunately, withheld JAG funding can be reallocated back to states and territories if these funds are applied toward SORNA implementation activities,” added Director Baldwin. “In

2012, all but five jurisdictions (Arizona, Arkansas, California, Nebraska, and Texas) requested reallocation of their SORNA penalty to continue SORNA implementation efforts and we are pleased to announce that we have granted all of the reallocation requests received.” Thirty-six federally recognized tribes have also substantially implemented SORNA’s requirements. The inclusion of tribal lands into the existing national system of sex offender registries was designed to eliminate safe havens where convicted sex offenders could avoid monitoring and registration. To read more of the press release issued by the SMART office on this issue, see:

<http://www.ojp.usdoj.gov/newsroom/press/releases/2012/ojppr092712.pdf>

Summary of Findings from the National Intimate Partner and Sexual Violence Survey (NISVS)

The Centers for Disease Control and Prevention (CDC’s) National Intimate Partner and Sexual Violence Survey (NISVS) is an ongoing, nationally-representative telephone survey that collects detailed information on sexual violence, stalking, and intimate partner violence victimization of adult women and men in the United States. The survey collects data on past-year experiences of violence as well as lifetime experiences of violence. The 2010 survey is the first year of the survey and provides baseline data that will be used to track trends in sexual violence, stalking and intimate partner violence. CDC developed NISVS to better describe and monitor the magnitude of these forms of violence in the United States. Findings from 2010 (the

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most recent year for which data are available) underscore that sexual violence, stalking, and intimate partner violence are widespread in the United States. The findings in the summary report highlight the toll of this violence, the immediate impacts of victimization, and the lifelong health consequences for victims. Key findings include:

- Women are disproportionately affected by sexual violence (and intimate partner violence and stalking).
- 1.3 million women were raped during the year preceding the survey.
- Nearly 1 in 5 women have been raped in their lifetime, while 1 in 71 men have been raped in their lifetime.
- 81% of women who experienced rape, stalking or physical violence by an intimate partner reported significant short- or long-term impacts related to the violence experienced in this relationship, such as Post-Traumatic Stress Disorder (PTSD) symptoms and injury, while 35% of men report such impacts of their experiences.
- Women who had experienced rape by any perpetrator or physical violence by an intimate partner in their lifetime were more likely than women who did not experience these forms of violence to report having asthma, diabetes, and irritable bowel syndrome.

- Men and women who experienced sexual violence were more likely to report frequent headaches, chronic pain, difficulty with sleeping, activity limitations, poor physical health and poor mental health than men and women who did not.
- Approximately 80% of female victims experienced their first rape before the age of 25 and almost half experienced the first rape before age 18 (30% between 11-17 years old and 12% at or before the age of 10).
- About 35% of women who were raped as minors were also raped as adults compared to 14% of women without an early rape history.
- 28% of male victims of rape were first raped when they were 10 years old or younger.

Overall, lifetime and one year estimates for sexual violence (and stalking and intimate partner violence) were alarmingly high for adult Americans. Women are disproportionately impacted. The NISVS also shows that most rape is first experienced before age 24, highlighting the importance of preventing this violence before it occurs.

Important Upcoming Dates and Events

National Adolescent Perpetrator (NAPN) Network 2013 Annual Conference

The NAPN 2013 28th Annual Conference will be convened from April 8-10, 2013. The theme for this year's event is "Seeing the

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Forest for the Trees: An Ecological
Perspective on Juvenile Sexual Offending.”

This conference is sponsored by the Kempe Center for Prevention & Treatment of Child Abuse & Neglect, University of Colorado School of Medicine, with Support from the Kempe Foundation and is hosted by the Oregon Adolescent Sexual Offending Treatment Network (Hosted by OASOTN). The event will be convened at the Double Tree Hotel in Portland, Oregon. For more information, visit the Latest from CSOM <http://csom.org/index.html>.

*Mid-Atlantic Region Association for the
Treatment of Sexual Abusers (MARATSA)
Conference*

The 5th Annual MARATSA Conference “Learning Together, Working Together” will be convened on May 8-9, 2013 at the Sheraton Station Square Hotel in Pittsburgh, Pennsylvania. Visit http://csom.org/pubs/MARATSA%20eBlast_V5.pdf for more information.

*New York State Association for the
Treatment of Sexual Abusers 2013
Conference*

The 18th Annual Joint NYS ATSA and NYSASOSP Conference will be held May 20-22, 2013 at the Hilton Albany, which is located at 89 State Street, in Albany, NY. Workshop and poster session proposals can be submitted to: nysatsa@gmail.com.

Next Newsletter

The next newsletter for CASOM grantees will be published in February 2013.



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