

# **The Adam Walsh Act: An Empirical Study**

**Assessing the Need, Costs, Effectiveness, Legality  
and Collateral Damage.**



**March 17, 2010**

**Conducted by the Sex Offender Solutions and Education Network**

# Study Overview

Study method used: Development – Extensive

Facts:

Today in America children are exposed to violence starting at a very young age. It is reported that 1,494 children younger than 18 nationwide were murdered in 2008.

(USA Today, October 8, 2009)

A report released by the Health Department of the New York City on June 16, 2009 showed that between 2001 and 2007, the national average rate of child deaths was 20 per 100,000 children aged 1 to 12 years. Homicide rates were 1.3 deaths per 100,000 among the group.

(<http://www.nyc.gov>)

A survey conducted by the U.S. Justice Department on 4,549 kids and adolescents aged 17 and younger between January and May of 2008 showed, more than 60 percent of children surveyed were exposed to violence within the past year, either directly or indirectly. Nearly half of all children surveyed were assaulted at least once in the past year, about **6 percent were victimized sexually**, and 13 percent reported having been physically bullied in the past year (The Associated Press, October 7, 2009). There have been at least 1,227 children died from abuse or neglect in Texas since 2002 (The Houston Chronicle, October 22, 2009).

Objectives:

1. To assess the need for a public sex offender registry
2. To determine the effectiveness of the public sex offender registry
3. Define the costs of the registry and the AWA
4. Define the effect and legality of the Adam Walsh Act
5. Define the collateral damage of the public registry

Study Outline

- History of Sex Offender Laws
- Summary of ADAM WALSH ACT Provision
- Estimated cost of the AWA
- Assessing the need for a public registry
- Effectiveness of the public registry
- Cite reasons for the failures of the registry
- The AWA, Civil (non punitive) or Criminal (Punitive)
- Cite court victories against the AWA
- Collateral Damage of the National registry and the Adam Walsh Act
- Conclusion – The facts distilled

# History of Sex Offender Laws

## The Pink Triangle



Germany May 15, 1871 - First Version of Paragraph 175 - Unnatural fornication, whether between persons of the male sex or of humans with beasts, is to be punished by imprisonment; a sentence of loss of civil rights may also be passed.

In 1935, the Nazis broadened the law so that the courts could pursue any “lewd act” whatsoever, even one involving no physical contact, such as masturbating next to each other, leading to the possibility of punishment for acts as mild as kissing, fondling, or mutual masturbation that previously would not have been considered criminal. This was not merely an aberration of the Nazi era: the courts in the Federal Republic (West Germany) understood the term similarly. Convictions multiplied by a factor of ten to about 8,000 per year. Furthermore, the Gestapo could transport suspected offenders to concentration camps without any legal justification at all (even if they had been acquitted or already served their sentence in jail). Thus, between 5,000 and 15,000 sex offenders were forced into concentration camps, where they were identified by the **pink triangle**. The majority of them died there.

According to the official rationale, Paragraph 175 was amended in the interest of the moral health of the Volk – the German people

This aggravation of the severity of Paragraph 175 in 1935 increased the number of convictions tenfold, to 8,000 annually. Only about half of the prosecutions resulted from police work; about 40 percent resulted from private accusations (Strafanzeige) by non-participating observers, and about 10 percent were denunciations by employers and institutions.

In contradistinction to normal police, the Gestapo were authorized to take sex offenders into preventive detention (Schutzhaft) of arbitrary duration without an accusation (or even after an acquittal). This was often the fate of so-called “repeat offenders”: at the end of their sentences, they were not freed but sent for additional “reeducation” (Umerziehung) in a concentration camp. Only about 40 percent of these pink triangle prisoners – whose numbers amounted to an estimated 10,000 – survived the camps.

## The Need for a Public Sex Offender Registry

The publicity of several high profile murders has brought sex offenders front and center in the public eye. Another outcome of these murders has been parents of the deceased who are outraged and begin to campaign for tougher sex offender laws.

However it should be noted at the outset that crimes such as these are rare. FBI: Stranger Abductions Of Children Are Rare - An FBI spokeswoman says it may appear there's a crime wave -- but she says "that's just not the case."

Sexual offence against children in the United States account for 1% to 10% of all crimes against children depending on the studies used. These figures drop to below .01% when murder is the outcome.

We offer this study by;  
 Crimes Against Children Research Center  
 University of New Hampshire  
 126 Horton Social Science Center  
 Durham, NH 03824  
 David Finkelhor, Ph.D. - Director  
<http://www.unh.edu/ccrc/factsheet.html>

Homicides				
Year	Number of Juvenile Homicides	Type of Crime	In School	Out of School
1985	1,592	Serious Violent*	202,000 (24%)	636,000 (76%)
1986	1,739	Violent**	1,055,000 (40%)	1,556,000 (60%)
1987	1,738	Theft	1,666,000 (52%)	1,552,000 (48%)
1988	1,949	Total	2,721,000 (47%)	3,107,000 (53%)
1989	2,182			
1990	2,317			
1991	2,605	Sexual Abuse		
1992	2,592	Year	Estimated Number of Children	
1993	2,883**	1990	146,000	
1994	2,695**	1991	149,000	
1995	2,652	1992	150,000	
1996	2,427**	1993	147,000	
1997	2,087*	1994	140,000	
Physical Abuse		1995	128,000	
Year	Estimated Number of Children	1996	124,000	
1990	228,000	1997	117,000	
1991	235,000			
1992	241,000			
1993	241,000			
1994	242,000			
1995	244,000			
1996	238,000			
1997	235,000			

## Characteristics of Nonfamily Abduction Perpetrators

Characteristic of Perpetrator	Percent of All Nonfamily Abduction Perpetrator Victims (n = 58,200)	Stereotypical Kidnapping Victims (n = 115)
<b>Identity of main perpetrator</b>		
Friend	17*	—
Long-term acquaintance	21*	—
Neighbor	5*	—
Authority person	6*	—
Caretaker or babysitter	4*	—
Stranger	37*	71†
Slight acquaintance	8*	29†
Someone else	3*	—
<b>Child's location prior to Episode</b>		
Own home or yard	5*	16
Other home or yard	18*	3*
Street, car, or other vehicle	32*	40
Park or wooded area	25*	14*
Other public area	14*	n/a†
School or daycare	5*	2*
Store, restaurant, or mall	1*	8*
Other location	1*	9*
No information	1*	8*
<b>Other episode characteristics</b>		
Child was taken or moved	70	95
Child was detained	35*	83

All nonfamily abduction victims  
58,200

Caretaker missing 33,000

Reported missing‡ 12,100

Stereotypical kidnapping victims  
115

Study by,  
U.S. Department of Justice  
Office of Justice Programs  
Office of Juvenile Justice and  
Delinquency Prevention  
Washington, DC 20531

## Table 7: Duration and Outcome of Nonfamily Abductions

<b>Duration of episode (hours)*</b>		
2 or less	29†	8†
3 to less than 24	62†	83
24 or more	10†	10
<b>Episode outcomes</b>		
<b>Child returned alive</b>	<b>99</b>	<b>57</b>
Returned child was injured	1†	32
<b>Child was killed</b>	<b>1†</b>	<b>40</b>
Child not returned or located	1†	4†

\* Estimate is based on too few sample cases to be reliable.

† n/a = not available.

## Sex Offender Registry Overview

The Adam Walsh Child Protection and Safety Act was signed into law by U.S. President George W. Bush on July 27, 2006.

The AWA requires states to adopt a three tier system based on the offence committed, with no assessment for likelihood of reoffending being administered.

SORNA is also part of the AWA. SORNA is a national sex offender registry. Under the AWA failure to register and update information is a felony. The Adam Walsh Act is part of the Criminal Code.

Adam Walsh was murdered in 1981. A serial killer, Ottis Toole claimed responsibility for Adams death while confessing to 100's of other murders. Ottis Toolie was also a serial confessor. Ottis Toolie was not a sex offender; he was an arsonist and a murderer.

Jacob Erwin Wetterling was a boy from St. Joseph, Minnesota who was kidnapped from his hometown at the age of 11 on October 22, 1989. His fate remains unknown. [http://en.wikipedia.org/wiki/Jacob\\_Wetterling](http://en.wikipedia.org/wiki/Jacob_Wetterling)

### Overview and History of the Jacob Wetterling Act

1994 - The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act is passed as part of the Federal Violent Crime Control and Law Enforcement Act of 1994. This law requires states to implement a sex offender and crimes against children registry.

1996 - Megan's Law amends the Wetterling Act. It requires states to establish a community notification system.

The Pam Lychner Sexual Offender Tracking and Identification Act of 1996 becomes an amendment to the Wetterling Act. It requires lifetime registration for recidivists and offenders who commit certain aggravated offenses.

1998 - Provisions contained in Section 115 of the General Provisions of Title I of the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (CJSA) amend the requirements of the Wetterling Act to include heightened registration requirements for sexually violent offenders, registration of federal and military offenders, registration of non-resident workers and students, and participation in the National Sex Offender Registry (NSOR).

2000 - The Campus Sex Crimes Prevention Act amends the Wetterling Act, requiring offenders to report information regarding any enrollment or employment at an institution of higher education and to provide this information to a law enforcement agency whose jurisdiction includes the institution.  
2006 - The sex offender registration provision of the AWA, known as SORNA, replaces the Jacob Wetterling Act.

## BRIEF SUMMARY OF ADAM WALSH ACT PROVISIONS

Title I: SORNA, national sex offender registry including both residence and employer/school, community notification, three tiered classification system based on crime rather than risk, giving immunity to law enforcement and NCMEC when acting in "good faith," DNA database, US Marshals given jurisdiction in sex cases

Title II: Stiffens penalties for sex and related crimes (such as selling date rape drugs), and gives victims greater leeway in criminal cases

Title III: Civil commitment for "dangerous sex offenders"

Title IV: Immigration laws making sex offenses deportable offenses, and bars offenders against minors from obtaining a family-based visa.

Title V: Stronger record keeping requirements for porn industry to ensure no minors are used in creation of porn, civil forfeiture.

Title VI: Funding for numerous programs, including GPS pilot program, fingerprinting children, and a national child abuse registry.

Title VII: Increasing penalties for Internet related crimes, funding for increased LE, and expand the civil remedy available to sex crime victims (HR 4472- Adam Walsh Child Protection and Safety Act of 2006: Legislative Notice." July 20, 2006).  
<http://www.oncefallen.com/AdamWalshAct.html>

### The Cost of the AWA

When considering a law that is as sweeping in effect as the AWA, financial responsibility must be weighed.

The federal government requires every state to implement the AWA. Failure of implementation will cost a state 10% of their Byrne program law enforcement assistance funds. What the government has stated in this requirement is not that the state will be given money for implementing the AWA. Far from it; what is being said is that if a state fails to implement the AWA that state will have money subtracted from its law enforcement grant fund.

"What is the true cost of the AWA?" The federal government estimated \$6.00 for every person living in the U.S.A. This cost does not include running the program and the increased costs for more people being added to the registry every day. **\$1,853,304,000.00** total.

Or if calculated by each Stereotypical kidnapping victim in one year, (115) **\$16,116,382.00** each.

Or if calculated by the number of abductions that end in murder. (40) **\$463,346,000** each.

If then calculated by each murder victim that had been sexually assaulted (24) the cost is, **\$772,243,000** each.

## Studies that debunk Sex offender recidivism myths

“New research in California shows that only a tiny fraction – 3.38 percent – of released sex offenders are convicted of a new sex offense within 10 years of release. The study followed 3,577 prisoners who were released between 1997 and 2007 after serving time for sex offenses. In an even larger parallel study by California’s Sex Offender Management Board, tracking 4,204 paroled sex offenders, only 3.21 percent were convicted of a new sex offense within 5 years of release.”

<http://washparkprophet.blogspot.com/2009/07/sex-offender-recidivism.html>

“In 2007, the State Bureau of Investigation in North Carolina made significant changes to its sex offender registration system, including new search criteria that include an “offender status” search, enabling an explicit search for convicted sex offense recidivists in the sex offender database. Manual searches by county using the new criteria yield some of the lowest recidivist percentages ever disseminated by any law enforcement establishment. In the entire State of North Carolina, there are only 71 recidivists shown on the registry, if incarcerated offenders are included. Per-county results for “Registered” status offenders compared against “Recidivist” status offenders on the North Carolina registry yield actual convicted recidivist percentages ranging from zero to fractions of one percent.”

[http://en.wikipedia.org/wiki/Sex\\_offender](http://en.wikipedia.org/wiki/Sex_offender)

“The evidence suggests otherwise. Sex crimes researchers R. Karl Hanson and Kelly E. Morton-Bourgon of Public Safety Canada conducted a large-scale meta-analysis (quantitative review) of recidivism rates among adult sex offenders. They found a rate of 14 percent over a period averaging five to six years. Recidivism rates increased over time, reaching 24 percent by 15 years. The figures are clearly out of alignment with the public’s more dire expectations.”

<http://www.scientificamerican.com/article.cfm?id=misunderstood-crimes>

NYS DPCA Research Bulletin: Sex Offender Assessment – Research on a sample of 917 sex offenders on probation across the U.S. in 17 states from 1986 to 1989 indicates that while under probation supervision, 11.7% were arrested for a non-sex offense during a three year follow-up period, and 4.5% were arrested for a new sex crime within three 4 years (Meloy, 2005).

Another study involving sex offender probationers revealed that after five years, 5.6% were arrested for a new sex offense (Kruttschnitt, Uggen and Shelton, 2000).

<http://dPCA.state.ny.us/pdfs/somgmtbulletinmay2007.pdf>

- Sex offenders were less likely than non-sex offenders to be rearrested for any offense — Anderson Cooper

<http://ac360.blogs.cnn.com/2009/08/28/recidivism-rates-for-sex-offenders/>

Numerous studies are finding the same statistics regarding former sex offenders. So in order to put the cost of the AWA into perspective let’s look at the numbers this way. The majority of studies on the subject including a 1994 study by the Department of Justice put the recidivism rate of sex offenders at about 5.3%. According to this, 94.7% of all former sex offenders will never commit another crime.

In effect the AWA is supposedly protecting children from 5.3% that are a danger, while tax payers are being charged to watch over 100% of former sex offenders.

## Studies on the Effectiveness of Megan’s Law

“A December 2008 study by Kristen Zgoba Ph.D., Philip Witt Ph.D., Melissa Dalessandro M.S.W., and Bonita Veysey Ph.D. found that Megan’s Law has no effect on community tenure (i.e., time to first re-arrest), showed no demonstrable effect in reducing sexual re-offenses, has no effect on the type of sexual re-offense or first time sexual offense (still largely child molestation/incest), and has no effect on reducing the number of victims involved in sexual offenses. Moreover costs associated with the initial implementation as well as ongoing expenditures continued to grow over time.” [http://wapedia.mobi/en/Megan’s\\_Law](http://wapedia.mobi/en/Megan's_Law)

Report finds Megan’s Law fails to reduce sex crimes, deter repeat offenders in N.J. “Despite wide community support for these laws, there is little evidence to date, including this study, to support a claim that Megan’s Law is effective in reducing either new first-time sex offenses or sexual re-offenses,” [http://www.nj.com/news/index.ssf/2009/02/study\\_finds\\_megans\\_law\\_fails\\_t\\_1.html](http://www.nj.com/news/index.ssf/2009/02/study_finds_megans_law_fails_t_1.html)

Megan’s Law: does it protect children? “Most states have very little evidence on the actual impact of community notification on their jurisdiction. Most of the understood benefits of the laws are based on assumptions about the nature of sexual offending and the behavior of parents and community members. Such assumptions are rarely supported through research, but continue to legitimize the law for law enforcement workers and members of the public” [http://www.nspcc.org.uk/Inform/research/Findings/meganslaw\\_wda48233.html](http://www.nspcc.org.uk/Inform/research/Findings/meganslaw_wda48233.html)

### Findings based on the research

- Fears remain about the potential for offenders to ‘go underground’. Offender compliance levels vary across states, but are usually higher in dense urban areas.
- Methods used to locate offenders who have gone underground are often inadequate. In many cases where a warrant has been issued, states rely on offender traffic violations or ‘sweeps’ where they attempt to locate missing offenders. Both methods have limited results.
- By focusing on a small number of known offenders, the system may detract attention from more common crimes such as intra-familial abuse, leaving parents and children vulnerable to abuse from people known to them.
- There are conflicting reports about the extent to which members of the community will take measures to protect family members, and increase the surveillance of known sex offenders.
- There is some evidence that victims of intra-familial abuse may be deterred from reporting crimes because of fears related to community notification.
- Surveys suggest that, at a general level, community notification is popular with respondents. However, there is academic evidence to suggest that some parents may develop a false sense of fear of offenders in the community, as the laws exaggerate the true level of offender recidivism.
- Practitioners speak of the success of Megan’s Law in terms of increased use of risk assessments, better information-sharing and additional funding for treatment and surveillance. However, these practices are distinct from the community notification element for which there are no evidenced benefits.
- Rules around offender residency, registration and notification are being tightened across all the states in response to perceived loopholes and high-profile sex attacks on children.
- The financial cost of implementing community notification is high.

## Leading Cause for the Ineffectiveness of the Sex Offender Registry

The registry is based on the premise that stranger abduction is rampant and parents need to be concerned about it and know where the people most likely to abduct their children are living. The problem is that the premise of the law is wrong.

### Stranger Danger the Facts

“Child abductions rare, stranger abductions even rarer - Kidnapping makes up less than 2 percent of all violent crimes against juveniles reported to police, with stranger kidnapping being the most uncommon form of reported kidnappings, according to the Office of Juvenile Justice and Delinquency Prevention.” <http://www.wmur.com/news/1566029/detail.html>

“Reconsidering the Leading Myths of Stranger Child Abduction - “This paper addresses the two foremost myths of child abduction: (1) that it is generally committed by strangers; and (2) that the phenomenon is a growing problem. These commonly held views are considered in light of the extant empirical knowledge base, including the recently released NISMART-2 study. Research indicates that stranger abduction occurs less frequently than family abduction or acquaintance abduction; stereotypical stranger abductions are rarer still, and stereotypical stranger abductions resulting in homicide are extraordinarily rare.”

<http://www.sacbee.com/static/weblogs/momme/2009/08/child-abductions-rare-stranger-kidnappings-more-infrequent.html>

“Offenders are more likely to be relatives or acquaintances of their victim than strangers.”

[http://en.wikipedia.org/wiki/Child\\_sexual\\_abuse](http://en.wikipedia.org/wiki/Child_sexual_abuse)

The July 2000 NIBRS report:

Forcible rape,  
Forcible sodomy,  
Sexual assault with an object, and  
Forcible fondling.

Findings include statistics on the incidence of sexual assault, the victims, their offenders, gender, response to these crimes, locality, time of incident, the levels of victim injury, victims' perceptions of offenders' ages, and victim-offender relationships, and other detailed characteristics.

Highlights from 2000 include the following as reported to law enforcement:

67% of victims of sexual assault were juveniles (under age 18);

34% of sexual assault victims were under age 12;  
1 of every 7 victims of sexual assault were under age 6;

40% of offenders who victimized children under age 6 were juveniles (under age 18).

Child Abuse & Child Sexual Abuse ~ Substantiated

Composition of substantiated child abuse in 2000:  
879,000 children were victims of child maltreatment.  
Neglect ~ 63%  
Physical ~ 19%  
Sexual ~ 10%  
Psychological ~ 8%

Victimization rates declined as age increased.  
Rate of victimization per 1,000 children of the same age group:

Birth to 3 years old = 15.7 victims per 1,000.  
Ages 16 and 17 = 5.7 victims per 1,000.

Except for victims of sexual abuse, rates were similar for male and female victimization:  
11.2 and 12.8 per 1,000 children respectively.

Rate of sexual abuse by gender:  
1.7 victims per 1,000 female children  
0.4 victims per 1,000 male children.

Rate of child abuse by race:

White = 51%  
African American = 25%  
Hispanic = 15%  
American Indian/Alaska Natives = 2%  
Asian/Pacific Islanders = 1%

The comparative annual rate of child victims:  
decreased steadily from 15.3 victims per 1,000 children in 1993

to 11.8 victims per 1,000 children in 1999;  
then increased to 12.2 per 1,000 children in 2000.

Whether this is a trend cannot be determined until additional data are collected.

Source: US Dept of Health and Human Services,  
Administration for Children & Families,  
Child Welfare Information Gateway (formerly Nat'l  
Clearinghouse on Child Abuse & Neglect), 2000.

***About 95% of victims  
know their perpetrators.***

***In 90% of the rapes of children less than  
12 years old, the child knew the offender,  
according to police-recorded  
incident data.***

Sex offenders comprise on average:

1 percent of the federal prison population;  
9.7 percent of the state prison population;  
3.4 percent of jail inmates;  
3.6 percent of offenders on probation; and  
4 percent of the offenders on parole.

<http://www.prevent-abuse-now.com/stats2.htm>

## The AWA Civil (non punitive) or Criminal (punitive)?

When the AWA was debated and finally enacted it was said to be merely regulatory and not additional punishment. Since that time the AWA has been shown to be punitive in many instances. The landmark court case that went before the Supreme Court of the United States, *Smith V. Doe* 538 U.S. 84 set the standard. *Smith V. Doe* 538 U.S. 84 was a case that questioned the constitutionality of the Alaska Sex Offender Registration Act's retroactive requirements. The law was upheld however in it's decent court noted; "The dissenting justices held that the law was punitive and imposed severe deprivations of liberty. "It is also clear beyond peradventure that these unique consequences of conviction of a sex offense are punitive. They share three characteristics, which in the aggregate are not present in any civil sanction. The sanctions (1) constitute a severe deprivation of the offender's liberty, (2) are imposed on everyone who is convicted of a relevant criminal offense, and (3) are imposed only on those criminals. Unlike any of the cases that the Court has cited, a criminal conviction under these statutes provides both a sufficient and a necessary condition for the sanction." (Justice Stevens' dissenting opinion)"

This pre-AWA case set the bar and since this case many additions to the registry law have been added.

Does the AWA exceed this SCOTUS descent. Clearly it does.

**Commentary: Adam Walsh Act might go too far.** "A basic principle of criminal law is that someone who commits an offense against society must pay a penalty. Elected legislators set parameters for punishment, based on the severity of the crime. Juries and judges then decide actual punishment warranted in individual cases. Once a fine is paid or a sentence is served, those who committed the crimes are allowed to go on with their lives, having paid their debt to society."

"When prisoners are released, the government can attach reasonable conditions of probation or parole. But the government can't add punishment once a sentence is served. The Constitution — and justice — don't allow that. But that's essentially what the Adam Walsh Act allows. When prisoners convicted of sex-related crimes were finishing their federal sentences, the attorney general designated them as "sexually dangerous" and kept them in prison, some now years beyond the length of their original sentences." <http://www.mcclatchydc.com/homepage/story/82460.html> Please refer to page 2 of this study The Pink Triangle.

### Some Court Victories Against the AWA

*US v. Bobby Smith*, 481 F. Supp. 2d 846, 2007 (ED Mich., Mar. 8, 2007);  
*US v. Jackson*, 480 F. 3d 1014 (9th Cir. 2007): Ex post facto argument against AG regulation if defendant traveled before July 27, 2006; provision used word "travels" (future) not "traveled" (past tense)

*US v. Kapp & Duncan*, 487 F. Supp. 2d 536 (MD Pa. May 16, 2007); *US v. Marvin L. Smith*, 2007 WL 1725329 (SD W. Va. June 13, 2007): Offenders could not be tried for violating AWA because Interim rule had not applied at the time.

Note: Above cases may be result of "Falcon III" round-up which occurred in 2006, before AWA was implemented and AG applied interim rule (Jim Kouri, "Marshals, Cops Conduct Largest Fugitive Round Up in US History." *American Chronicle*, Nov. 6, 2006)

*State v. Boyd*, 160 Wash. 2d 424, 158 P 3d 54, 59 n. 4 (2007); *State ex rel. Tuller v. Crawford*, 211 SW 3d 676, 679 (Mo. Ct. App. 2007): Defense access to computer data in child porn cases cannot be restricted

*US v. Comstock et al.*, Case 5:06-hc-02195-BR [US Dist. Ct. ED N. Car. Sept. 9, 2007]: Held civil commitment standards must be "beyond a reasonable doubt" rather than by "clear and convincing evidence."

(*Evans v. Ohio*, CV-08-646797 [Cuyahoga Co. OH, May 9, 2008]) -- Ohio court rules AWA violates ex post facto, and cannot be applied retroactively *ACLU v. Masto et. al*, Case # 2:08-0822 [So. Dist. NV Sept. 2008] -- In Sept. 2008, a Federal Judge ruled AWA CANNOT be applied retroactively in Nevada! Kudos the ACLU of Nevada for this permanent injunction!

*Spangler v. State*, 2009-Ohio-3178 [11th App. Ct. Ohio, 2009]) -- Ohio's 11th Circuit Court of Appeals rules Ohio SB 10/ AWA violates the "separation of powers" clause! (I.e., federal laws cannot force the states to apply certain laws) <http://www.oncefallen.com/AdamWalshAct.html>

### The Adam Walsh Act is Part of the Criminal Code Not Part of the Civil Law Code, therefore the AWA is Punitive not Civil.

If a Person fails to register their vehicle they get a fine for driving it.

If a sex offender fails to register, under the AWA they get 10 years in Prison.

The AWA is a Punitive Criminal law.

# Collateral Damage of the Public Registry

## Murder

Are there adverse consequences to the AWA and registration laws? Yes there are and many of them. Let's look at a few of the worst effects of public registration.

Sex Offenders Murdered in Bellingham, WA "Two released sex offenders who were on a registration list available on the Internet have been murdered. A man is believed to have posed as an FBI officer, went to their apartment and shot them." <http://www.talkleft.com/story/2005/08/29/340/52675>

Two registered sex offenders murdered in Maine "A 20-year-old Canadian man suspected in two killings of sex offenders in Maine had three loaded handguns when police surrounded the bus he was riding near South Station, MBTA Transit Police said today." [http://www.boston.com/news/local/massachusetts/articles/2006/04/17/suspect\\_had\\_three\\_guns\\_on\\_bus/](http://www.boston.com/news/local/massachusetts/articles/2006/04/17/suspect_had_three_guns_on_bus/)

Alleged white supremacist charged with killing convicted sex offender, CA "PALM SPRINGS - An alleged white supremacist has been charged with using California's Megan's Law registry to track down and kill a convicted sex offender, it was reported today." <http://www.myvalleynews.com/story/44597/>

Did Sex Offender Listing Lead To Murder? "A neighbor of Oliver's said that two days before the killing, he "told every house" in the trailer park that he found Dodele's name listed on the Web site of convicted sexual offenders, and was uncomfortable living near him." [http://www.cbsnews.com/stories/2007/12/10/the\\_skinny/main3597422.shtml](http://www.cbsnews.com/stories/2007/12/10/the_skinny/main3597422.shtml)

Police search for intruder suspected of killing Holly Township sex offender, MI "State police say 64-year-old Dennis McCarthy was killed early Sunday morning after struggling with an intruder. McCarthy's wife was present during the attack but was not harmed. Trooper Trevor Radke said Monday the attack likely wasn't random and nothing was taken from the home." [http://www.mlive.com/news/flint/index.ssf/2009/08/police\\_search\\_for\\_intruder\\_sus.html](http://www.mlive.com/news/flint/index.ssf/2009/08/police_search_for_intruder_sus.html)

Two men in a small Tennessee town torched the residence of a man convicted of a child pornography charge. The man's hapless wife died in the fire." <http://forensicpsychologist.blogspot.com/2007/10/vigilanteism-coming-soon-to-community.html>



## Expert Opinion

"Publishing the names and addresses of people who are villainized as "sex offenders" is almost like handing out murder licenses to violent and unstable people."

"As law scholar John LaFond put it: "These [community notification] laws are almost a confession by the state that we have done all that we can, you must now take the defense of your family into your own hands." <http://forensicpsychologist.blogspot.com/2007/10/vigilanteism-coming-soon-to-community.html>

## Effects other than murder

Vigilantes: Coming soon to a community near you "in a scene reminiscent of the Salem witch trial days, a crowd of angry neighbors descended on a New Hampshire home, taunting the woman resident as a "molester" and "skinner" (prison lingo for a child molester) before tossing a burning scarecrow on her front porch."

"A drunken father and son broke into the house of a paroled sex offender in New Jersey and began beating another man whom they mistakenly took as the sex offender. Yet again, the vigilantes had found their victim through a "Megan's Law" community notification law."

"In Bakersfield, California, a knife-wielding vigilante tried to break down the door of a sex offender whose name, photograph and address had been distributed in the neighborhood by police. Police shot the vigilante dead." <http://forensicpsychologist.blogspot.com/2007/10/vigilanteism-coming-soon-to-community.html>

Vigilantes Use Online Sex Offender Map to Burn Down Wrong House "Critics of these tools often say that they can make those sex offenders targets of retribution crimes by would-be vigilantes, and that seems to be just what was attempted in a case of arson in Evansville, Indiana." <http://www.switched.com/2008/02/05/vigilantes-attempt-to-burn-sex-offenders-house-and-miss/>

Vigilantism against a wrongfully convicted sex offender "In June 1995 the state of California opened up a 900-number hotline in which callers can get information about registered sex offenders. Someone in the neighborhood found out that Ted was on the list. He and Jean have since been hounded and harassed. The neighbors have placed posters all over the neighborhood containing information about Ted. They have received three death threats." <http://www.privacyrights.org/node/2878>

"Scapegoating violence is 'that enigmatic quality that pervades the judicial system when that system replaces sacrifice. This obscurity coincides with the transcendental effectiveness of a violence that is holy, legal, and legitimate successfully opposed to a violence that is unjust, illegal, and illegitimate' (Girard, 1977, p.23)."

"Every sex offender, knows the experience of being scapegoated by wider society. Criminologist John Braithwaite refers to this experience as "stigmatizing shaming" (1989), based upon a "degradation ceremony" (also a Braithwaite term, Braithwaite and Mugford, 1994) which both the formal justice system and wider society too readily perform. The result is an expulsion, a scapegoating that is profoundly victimizing." <http://www.restorativejustice.org/RJOB/the-sex-offender-as-scapegoat-vigilante-violence-and-a-faith-community-response>

These are but a small sampling of vigilante attacks against registered former sex offenders.

## Other effects of the registry and the AWA

Beyond the consequences of vigilantism and the registry is an even larger form of collateral damage which is caused by these laws. This collateral damage is felt everyday by all 700,000+ Reformed, Former Sex Offenders and their families.

### As told by Sheila, wife of an RSO

We are fortunate that California has yet to impose residency restrictions on former offenders. You see, my husband, the man I love so dearly, is a registered former offender. Why do I say former? The reason escapes most people. It is because he is no longer an offender. To state it differently would be like saying that a man who broke his leg in 1993 is still in a cast today. No, he was in a cast. The same with offenders, they were offenders but the crime is not continuing, it is in the past, former.

It was 1993 when he committed his crime. Such a long time ago, a lifetime it seems, but with the laws such as they are it is never in the past, we live it every day. He was convicted in 1995, served a year in county jail and successfully completed 5-years probation in June 2000. He's always been considered low-risk to re-offend and he hasn't committed a crime of any kind in 16 years, but the Adam Walsh Act would make him go from low-risk, required to only register annually, to a high-risk offender and forced to register every 90 days. More punishment for a crime that has been paid for many years ago. And, if the Adam Walsh Act passes, my husband would automatically be classified as a Level 3 offender only because of his original crime way back in 1993, not because he has suddenly become a danger to anyone.

So far the state isn't putting his status as a registered citizen on drivers' licenses, etc. and his employer's name and address isn't shown on the internet. My husband has stayed at his job, working for a total jerk, for over 12 years because he feels that at 56 years old and being an RFSO, getting hired someplace that doesn't do background checks would be difficult, if not impossible. We would like to move to a nicer apartment, or try to buy a house, but we don't go forward because we are fearful that a future landlord will do a criminal background check or that the Adam Walsh Act or future state law would force us to move. Our worst fear is that we will become homeless since there are so few areas where we live that would not be off limits, should residency restrictions become a reality. We could not even live with or near his mother because her house is across the street from a high school and their athletic field.

If the AWA is passed, we would be subject to community notification. He would be considered a risk to every child. Even though he has remained crime free to this very day.

If the AWA is implemented we would not be able to attend baseball games or movies together. We wouldn't be able to go fishing at lakes and recreation areas. He probably would also have to resign from his bowling league and the position of president he now holds in that league. Going to parks to pitch horseshoes would also be on his banned activity list. The list could go on and on because children are present everywhere—grocery stores, restaurants. We would essentially be under house arrest, but lawmakers say it is not punishment...

If it got to the point where he had his status on his drivers license, his status would be known to the bank tellers when he deposits his paycheck and gets cash back. If he uses a credit card and has to show his ID, if we open a new bank account, and the list goes on. But it is not punishment or so they say.

For me, the worst part of this life is the constant black cloud overhead. I go through each day wondering if that will be the day the bottom will fall out of this world I live in now. I have been called names and considered lower than trash because I am with him. I've always been a private person, perfectly happy to be out of a spotlight, but I've had my life and privacy made public and subject to online harassment on an apartment ratings website. When the database hit the internet, the management of the 70-unit building we lived in attached a four-page letter to every tenant's door. The letter stated that it came to their attention that a registered sex offender had moved in to the building (we had lived there for four years without incident). Included was a section "educating" tenants about sex offenders, that they are known to be dangerous and that each tenant should take precautions to protect themselves and their families. We had neighbors run to and from their cars if we happened to be in the parking garage at the same time. Kids pointed and called out "pervert" to him, the man I love. One of those was the child of a police officer who lived in the apartment below us. It was a horrible 8 months until we moved from that building. During those 8 months, the stress was devastating and I did things that I couldn't believe I could do, considering I am a person with a strong analytical mind and penchant for numbers and detail. I got on the wrong train one day after work; the next day I forgot where I parked my car. By the time we moved, my husband had been granted an exclusion from internet disclosure and we thought we could live somewhat in peace for a change. Three years later in May 2008, that exclusion was rescinded due to a change in California law. That change in law and his information being put back on the internet, once again made us fear each day that neighbors would become vigilantes, which they do at times. We think that some neighbors may have seen my husband's information on the website, but so far they at least just ignore us. We keep our fingers crossed each day that it stays that way. Of course, we fear that one day someone will out him to our landlady and that she will evict us even though we've been great tenants for the past 4+ years, crime free.

Every day is fear. If I come home and see anything attached to the apartment doors as I drive up, I immediately think the worst—that our neighbors have been notified that a monster lives among them. It's never ending. But they say it is not punishment."

## Collateral Damage Continued;

As told by a weary RFSO who has already paid his debt: "I will tell you very bluntly that if my state enacts AWA, or if I move to a state that has enacted AWA, I will be forced into starvation or war.

That's not a statement I make lightly, and the reasons for saying this are equally grim.

I will forever more be unable to gain employment beyond the most menial, and likely most rural. I will be unable to live most places where there is any kind of facilities. In many cases the grocery stores here have child 'play-spaces' which would result in my being unable to buy groceries from these locations. I would become de-facto unable to vote, as the voting locations are attached to schools within these districts. (and entering the property would be a crime). Effectively, it would result in completing the destruction of my existence as a member of 'society', and removing any future employability."

As told by an RFSO from Ohio: Trapped behind enemy lines here in Ohio AWA has come and gone. I was due to be off in June of 2011 but got a letter one day that stated I would be staying until June of 2026 and be reporting twice a year. I am basically unemployed doing odd jobs here and there and waiting for this to end so I can move on with my life. When will it be over? That's a crap shoot. I had an offer to move to the West Coast last year but until this AWA business is over there is no sense moving to a new state only to get re classified yet again if that state takes a different direction as far as AWA or if my crime makes me a predator in that state Fallen one has been through that already.

I sit in Limbo waiting to see where the chips fall as the last of my productive years slowly slip away.

As told by an RFSO from New York: "There is no way of knowing how it will affect me if NY implements AWA. This is because the USAG's guidelines state that AWA is "a floor not a ceiling." I could be placed on the internet registry (I'm not listed there presently) or I could be dropped from the registry altogether. I have no idea. As regards former sex offenders, there is no finality in the law or predictability.

As told by a concerned wife. "My husband, who now has no risk level assigned, will become a Level 3 and will have lifetime registration and will be online for everyone to see. Our house will be lost, his business will shutdown, and since I had back surgery 3 years ago and have been unable to work, will be homeless along with him. That is what the AWA will do to us."

As told by an RFSO from New Mexico: The primary effect on myself, over our current applicable schemes would be a lifetime of suffering instead of 15 more years for myself and my family in New Mexico.



As told by an RFSO who is hopeful of an end to the misery: I've been on the registry for 13 years now, without the AWA in place. However if the AWA is implemented here, I will have another 10 years on the registry before I'm allowed off. Right now as it stands come tomorrow, will be the last time I have to register barring the implementation of the AWA, which means I'm off in April of this year. But up until now, just being on the registry was hard enough. Finding housing, employment, assistance and even compassion was minimal. If the AWA passes, well I'm afraid I'll be going back to prison cause at that point, I might as well let the state pay to keep me locked up than me paying the state fees for another ten years.

When reading the feelings and emotions of these people, can you feel the heavy burden that is looming over them? The AWA will cause so much pain and suffering that it cannot be explained in a short article like this. The sampling of stories you have just read is but an insignificant reporting of the collateral damage from the registry and the AWA. What was left out was the stories of children of RFSO's. These stories would tear at the heart of any feeling person. I guess that is the crux of the situation, feelings. Can you feel the pain these laws are causing? If you cannot then you have not lived under them, yet.

As told by a mother of an RFSO: Virginia has implemented many pieces of AWA - some before it was even passed and some in a quiet effort to reach compliance. We actually exceed AWA requirements in many areas. We already have:

- \* Email/IM registration with re-registration required within 30 minutes of a change. The State Police say they have no way of doing this but will charge you if you don't comply. This places offenders at great risk for violation if, for example, you start a new account at Amazon and need a screen name. Using the same name all the time increases the possibility of identity theft.

- \* Employer name and address listed publicly - makes it very difficult to get a job. Employers are harassed if they hire an offender.

- \* Schools are listed publicly - this creates an embarrassing situation for the offender trying to further his education.

- \* Extended registration periods - Since we already had lifetime for about 89% of offenders, AWA changes only bumped up a few, so we're now at 93%. Many minor offenders moved up to 25 years. My son's registration duration was extended from 10 years to 15 despite the fact that if we were actually following AWA guidelines, he wouldn't have to register at all!

- \* Civil commitment - Virginia implemented civil commitment in 2006 (I think - it was definitely passed before that). There are 28 eligible offenses which place well over 90% of offenders at risk for commitment. Any offender who comes back into the system for any reason (even a probation violation or something like reckless driving) is at a high risk of being committed. This is an incredibly scary way to live!!

Yet to come:

- \* Public vehicle information for any car an offender uses - This one REALLY bugs me as it places the entire family at risk. My son would have to list our cars since his is, shall we say, unreliable? I am very active in my girls' schools. I'm picturing that every time I go to school, police will be alerted that there is a sex offender in the parking lot because the car info will be registered. Driving my children around will become dangerous. My son and my family could be subject to vigilantes at worst and embarrassment at best. Obviously there are many other pieces, but these are the AWA registry aspects that most impact our family.

## Conclusion

Each year there are an average of 5,828,000 serious crimes against children. Each year there are an average of 150,000 sex crimes against children. Less than .001% are abducted by strangers and only about .000005% are abducted and murdered by a sex offender. 91.56% of resources are being spent on sex offenders and monitoring programs.

Based on the empirical evidence available we conclude that the sex offender registry should be returned to its original purpose, to track only the most dangerous offenders and it should be taken out of the public view due to the danger and detriment it poses to RSO's and their families.

To date the evidence proves that the registry is costly and ineffective. The money that is being spent to curtail so few crimes against children would be better spent on a wider variety of programs to protect all children from sexual abuse, physical abuse, neglect and prevention programs in all areas of child abuse.

We further offer this break down;

1. Sex Offender laws were enacted because of MURDER cases - not all were sexually motivated.
2. Sex Offender laws have been increasing in regards punishment due to more MURDER cases.
3. The AWA and the registry costs far more than any good they are doing would justify.
4. Sex Offenders have the lowest re-offence rate of all offenders beside murders.
5. The sex offender registry is ineffective: To date not one study including this one can show where even one child has been protected by the registry.
6. Stranger abductions are rare, stranger murders are exceedingly rare.
7. In many instances the AWA has been ruled punitive, ex post facto, and unconstitutional.
8. While the registry has not protected even one child, it has brought about the murders of many registered offenders.
9. While the registry has not protected even one child it has brought about vigilantism against registered offenders, their families, their employers, and some innocent people who were mistaken for registered offenders.
10. While the registry has not protected even one child it is causing homelessness, unemployment and ostracism of registered former offenders.
11. While the registry has not been proven to protect even one child it is causing over a million children who live within families of former offenders to be ostracized and punished along with their family members.
12. The registry and the AWA prevents most reformed former sex offenders from reentering society and becoming productive citizens. This is contrary to the purpose of the prison system which was intended to be about reform.
13. The AWA and the public registry are the most expensive law enforcement tools in the history of mankind and yet these laws are protecting no one.
14. These laws and the public hysteria over sex crimes have become a way for politicians to say, "LOOK AT ME! I am tough on crime!" When in fact what they have truly said is, "parents protect your own children and stop complaining to us."
15. We predict that if current trends are not halted, a final solution much the same as Hitler proposed will come to be in the United States. Already the trend is progressing down that same path.