



# Adam Walsh Act

## Statement of Position

The California Sex Offender Management Board recommends the following related to Adam Walsh Act implementation.

The California State Legislature, Governor and citizens should elect **not to come into compliance** with the Adam Walsh Act. Current effective California state law and practice related to offender risk assessment, juvenile registration and sex offender monitoring is more consistent with evidence-based practice that can demonstrate real public safety outcomes.

Instead of incurring the substantial - and un-reimbursed - costs associated with the Adam Walsh Act, California should absorb the comparatively small loss of federal funds that would result from not accepting the very costly and ill-advised changes to state law and policy required by the Act. Any funding cuts to the JAG / Byrne grants to local law enforcement should be offset with other funds to ensure that the vital public safety work of those programs is continued.

## Background

The Adam Walsh Child Protection and Safety Act<sup>1</sup> of 2006 was signed by President Bush in 2006. It contains a broad span of provisions<sup>2</sup> that would significantly change state practice related to the registration and management of sexual offenders in California. Non-compliance with the act carries penalty of a 10% reduction of Byrne / Justice Assistance Grants (JAG) funding.

<sup>1</sup> Text of H.R. 4472 [109th]: Adam Walsh Child Protection and Safety Act of 2006, <http://www.govtrack.us/congress/billtext.xpd?bill=h109-4472>.

<sup>2</sup> The National Guidelines for Sex Offender Registration and Notification - Final Guidelines, July 2008, <http://www.ojp.usdoj.gov/smart/guidelines.htm>

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In addition to a significant number of lawsuits initiated in other states related to compliance, a case addressing the constitutionality of the Adam Walsh Act is pending in the Ninth Circuit Court.

## **Discussion**

The California Sex Offender Management Board identified the following broad issues as particularly problematic related to potential implementation of Adam Walsh Act:

### **Risk Assessment**

Since 2007, California, through legislation and Executive Order, has adopted a practice of assigning offender risk levels, through the use of actuarial risk assessment instruments (currently, the Static 99). These instruments use a predetermined range of variables that have high correlation to sexual recidivism such as criminal history, victim profile, and age at time of offense to determine an offender's potential risk of recidivism.

The Adam Walsh Act mandates an entirely different offense tier structure and demands that risk determination be based solely on an offender's crime of conviction, not an actuarial risk assessment score. According to the most recent research<sup>3</sup>, using crime of conviction as the primary method of determining offender risk is far less reliable than the use of actuarial tools.

Additionally, the Adam Walsh Act would require a retroactive reassessment and re-tiering of every sexual offender in the state of California, some of whom are currently beyond their duty to register.

### **Expansion of Juvenile Registration**

Available research and data indicates that the treatment, management and supervision of juvenile offenders can have a high potential for success<sup>4</sup>. Currently, a limited number of juveniles are included on the public Megan's Law website. Even though many juveniles have not been included on the Megan's Law website, they are still required to conform to the requirements of supervision and all registration requirements. Additionally, current law allows law enforcement agencies to perform notification related to a juvenile offender if they have determined that the juvenile poses risk to public safety.

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<sup>3</sup> Center for Sex Offender Management (CSOM); (2001): *Recidivism of Sex Offenders*. Silver Springs Md.

<sup>4</sup> Worling, J. R. (2001). Personality-based typology of adolescent male sexual offenders: Differences in recidivism rates, victim-selection characteristics, and personal victimization histories. *Sexual Abuse: A Journal of Research and Treatment*, 13(3), 149–166.

If California were to adopt the Adam Walsh Act the state would, for the first time, include juveniles over the age of 14, determined to be a tier three risk, on the public Megan's Law website. Adam Walsh Act also mandates the duration of juvenile registration to a term as long as 25 years, with no opportunity to petition for relief. There is no evidence, to date, that the inclusion of juvenile offenders into public registries increases public safety or promotes effective juvenile offender reentry<sup>5</sup>.

### **Adds Crimes**

In 1947 the State of California was the first state in the United States to create a sexual offender registry. Since that time, the Legislature has carefully considered, added and modified which crimes mandate the duty to register and are included on the public Megan's Law website.

The Adam Walsh Act adds registration crimes that have not been identified as registrable by legislature of the State of California. There is no available evidence to indicate that expanding California's list of registrable crimes would promote public safety.

### **An Unfunded Mandate**

A recent, initial, assessment from a representative of the Attorney General's Office of the potential costs of the potential costs of implementing Adam Wash Act far exceeded the 10%<sup>6</sup> reduction in Byrne / JAG funds that the Act mandates as a penalty for non-conformance. These costs, at minimum, include:

\$21.3 million dollar cost to probation to conduct pre-sentencing records checks, not including a one-time cost of 6 million dollars to conduct retroactive records assessments on previously convicted sex offenders.

\$10 million dollar cost to local law enforcement agencies to conform with changes in frequency of registration requirements. It is anticipated that this cost will significantly increase with ongoing staffing costs.

\$770,000 one-time cost to the Attorney General's office to re-tier currently registered offenders, this does not include the costs associated with retroactive tiering of offenders who are no longer required to register under current law but would be under the Act.

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<sup>5</sup> Justice Policy Institute. Bulletin: (2008) What will it cost states to comply with the Sex Offender Registration and Notification Act (SORNA).

<sup>6</sup> In Fiscal Year 2008, this would represent a \$1.2 million reduction to the fund. This amount is already an 87% decrease from previous funding levels.

It was impossible to calculate at this time the additional costs associated with the increased incarceration (in either jails or prisons) of offenders with registration violations

This incomplete list of potential expenditures related to Adam Walsh Act implementation cost significantly exceed the potential loss of \$2.1 million dollars in JAG/ Byrne funds<sup>7</sup>.

The federal government has **not allocated any consistent funding to underwrite the substantial cost that state and local governments would incur** if California were to attempt to come into compliance with the Act.

### **Final Comment**

Although there are many other policies and requirements associated with the Adam Walsh Act, these are the most problematic. Nothing would prevent California from independently adopting selected provisions of the Act which are consistent with good practices.

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<sup>7</sup> Byrne / JAG funding provides vital resources to local law enforcement services that are generally unrelated to the monitoring of sexual offenders. These funds are currently administered by CalEMA (formerly the Office of Emergency Services).