

THE WHITE HOUSE
WASHINGTON

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BRUCE / ELENA / RACH —

ATTACHED PLEASE FIND A
COPY OF SOME OF THE
SUCCESS PHILADELPHIA HAS
HAD W/ATF'S GUN TRACING.
PLEASE NOTE THE MENTION
THAT "STRAW PURCHASERS"
MAY BE AN INCREASING
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INCREASED ATF INVOLVEMENT
IN LOCAL GUN TRAFFICKING
ESSENTIAL.

CC: LEANNE
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Joe

AARR PRESS RELEASE

For Immediate Release

4 PM, Friday, February 21, 1997

Contact:
Roger Conner,
Executive Director
(202) 785-7844

Controlling Sexually Violent Predators for Life: AARR Calls on States to Institute "Automatic Lifetime Supervision"

Based on findings from a new study published by the U.S. Justice Department, the American Alliance for Rights & Responsibilities is calling on all states to adopt a new policy -- "Automatic Lifetime Supervision" -- for all violent sex offenders and those who abuse children.

Roger Conner, Executive Director of the American Alliance for Rights & Responsibilities (AARR), said: "Thousands of American children face life-shattering trauma every year. Many thousands face abuse at the hands of criminals who have previously been convicted of a felony and released into the community. Based on new research, *we know how to stop most of these people from repeating their offenses, short of imprisoning them for life.* The key is "Automatic Lifetime Supervision," a radically new approach to sentencing of sexual offenders, coupled with a 'containment model' of supervision," Conner said.

AARR is a national organization that provides assistance to state and local leaders on crime and disorder issues and defends innovative policies in court. AARR has filed *amicus curiae* briefs in support of New York's version of Megan's law, and also in the U.S. Supreme Court to defend a Kansas law that allows civil commitment of sexually violent predators who are likely to repeat their offenses.

Conner stated, in response to front page articles in the Washington Post, New York Times and many papers across the country, "citizens who are reading in their papers today about a savage murder of a Tampa woman by Lawrence Singleton, a 69-year-old man with a history of violent sexual acts, are asking themselves this question: Is there any way to protect ourselves and our children from sexual offenders? Are the only alternatives vigilantism by citizens or automatic life sentences by judges?"

"The answer, based on new research published by the National Institute for Justice, is 'yes'" But state officials must make two dramatic departures from existing policies."

First, AARR proposes that **Sexual predators who violate children or use violence must receive "Automatic Lifetime Supervision."** Currently, over 60 per cent of all sexual offenders in the typical state receive probation instead of going to jail. The vast majority of the 88,100 offenders in prison (as of 1994) will be released into the community, many on parole. Persons on probation or parole can be subjected to stringent limits on their behavior, but "the system has one huge loophole," according to Conner: "under typical state laws, the term of the conditions can run no longer than the maximum allowed for imprisonment."

The case of Lawrence Singleton, the accused Florida murder, is illustrative. He was in prison for eight years, then on parole for six more. He has been living in Florida for four years, and recent erratic



U. S. Department of Justice

Office of Intergovernmental Affairs

Director

Washington, D.C. 20530

March 26, 1997

MEMORANDUM FOR:

Stefanie Sanford
Office of Cabinet Affairs
Executive Office of the President

FROM:


Nicholas M. Gess
Director
Office of Intergovernmental Affairs

SUBJECT:

Presidential Directive Regarding the
Registration of Federal and Military Sex
Offenders

The 1994 Crime Act and subsequent legislation require states to report registration information for certain convicted sex offenders. The law does not require this of Federal convicts. Later this week we expect the President to enter a directive requiring that Federal agencies which hold convicted offenders begin the process of reporting such registration information. A copy of the current draft directive is attached.

As best as we can determine, convicted sex offenders are held by only two Federal agencies: 1) the Department of Justice (Bureau of Prisons) in the case of civil offenders; and 2) the Department of Defense in the case of military offenders tried under military law.

However, out of an abundance of caution, we would appreciate it if Cabinet Affairs would circulate this memorandum and the accompanying draft. The sole question is whether the recipient cabinet agency holds sentenced sex offenders pursuant to Federal civil or military law.

Should any agency hold such prisoners, we would deeply appreciate a call to either Eric Rosen or me on (202) 514-3465. Negative responses need not call. Thank you in advance for your assistance.

Enclosure

MEMORANDUM FOR THE ATTORNEY GENERAL
 THE SECRETARY OF DEFENSE
 ALL FEDERAL LAW ENFORCEMENT AGENCIES

SUBJECT: Registration of Federal and Military Sex Offenders

One of the most important duties of the government is to protect our children and others from sexual offenders. Law enforcement data show that, as a group, sex offenders are significantly more likely than other offenders to commit additional sex crimes. And a recent Justice Department report found that on any given day, 60%, or over 140,000 of the 234,000 convicted sex offenders under the care of corrections officials, are living in the community on either probation or parole. Recidivism by these offenders presents significant challenges to law enforcement in protecting children and others from sex crimes.

Among the most significant provisions in the 1994 Crime Act is the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. It promotes the establishment by States of effective registration systems for child molesters and other sexually violent offenders. In addition, I recently signed two major pieces of legislation that build upon the registration requirement. The first of these, "Megan's Law," requires States to make public relevant information about released child molesters and sexually violent offenders. The second, the "Pam Lychner Sexual Offender Tracking and Identification Act," refines and strengthens the earlier registration requirements.

In June of last year, I directed the Justice Department to develop a national sexual predator and child molester registration system, - a computerized system that would, for the first time, link together the sex offender registration and notification systems being developed in all 50 States. On February 23, 1997, an important first step occurred toward making that national registration system a reality, when the FBI's interim national sex offender registry became operational. The FBI has modified its existing Flash Program to allow arresting officers and others to identify immediately an individual as a convicted sex offender and indicate where that person is registered.

Much still needs to be done to make this system an effective tool in combatting and preventing sex crimes. The new national registry will only be as good as the quality of the information on sex offenders that it contains. We must forge a close partnership between the FBI, other federal agencies and state law enforcement agencies in ensuring that accurate and up-to-date information on the whereabouts of sex offenders is timely loaded into the system and available to those who need it.

A few states have already risen to this challenge and are loading their sex offender information into the national system. Other states are moving rapidly toward that objective. But, for the system to work, all states must work together. I have called upon

every state to load its information on sex offenders into the national registration system as soon as possible.

At the same time, it is important that federal sex offenders be registered, including those released from federal or military prisons, or placed on probation. The potential danger to the public from a released child molester or sexually violent offender whose whereabouts are unknown to the authorities is the same, regardless of whether the offender was convicted in a state, federal, or military court.

I am accordingly asking the Attorney General and the Secretary of Defense to maximize the use of current administrative options to ensure that: (1) federal and military authorities notify the appropriate state authorities concerning the release to their areas of federal and military sex offenders, (2) federal and military sex offenders are required to register in the states where they reside, and (3) complete and current information on released federal and military sex offenders will be included in the registries of the states where they reside and in the national sex offender registry. I am also asking the Attorney General and the Secretary of Defense to report, within 60 days, on any legislative changes that would be needed to realize these objectives fully and to allow the national sex offender registry to completely realize its important potential. Finally, I encourage federal and state cooperation with Indian tribes toward the inclusion of sex offenders who have been adjudicated through tribal justice systems.

[WILLIAM J. CLINTON]

§ 13-604.01

CRIMINAL CODE

Title 13

CLASSIFIC

Ch. 6

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§ 13-604.

A. Notw
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1. "Dangerous crime against children" means any of the following committed against a minor under fifteen years of age:

- (a) Second degree murder.
- (b) Aggravated assault resulting in serious physical injury or committed by the use of a deadly weapon or dangerous instrument.
- (c) Sexual assault.
- (d) Molestation of a child.
- (e) Sexual conduct with a minor.
- (f) Commercial sexual exploitation of a minor.
- (g) Sexual exploitation of a minor.
- (h) Child abuse as defined in § 13-3623, subsection B, paragraph 1.
- (i) Kidnapping.
- (j) Sexual abuse.
- (k) Taking a child for the purpose of prostitution as defined in § 13-3206.
- (l) Child prostitution as defined in § 13-3212.
- (m) Involving or using minors in drug offenses.

A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense.

2. "Predicate felony" means any felony involving child abuse, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.

Added by Laws 1985, Ch. 364, § 6, eff. May 16, 1985. Amended by Laws 1987, Ch. 166, § 1; Laws 1987, Ch. 307, § 4.

¹ Section 13-1001 et seq.

Historical Note

Laws 1987, Ch. 166, § 1, provided in subsec. A for taking a child for the purpose of prostitution and child prostitution, and add pars. (1)(k) and 1(l) to subsec. K.

Laws 1987, Ch. 307, § 4, provided for involving a minor in a drug offense in subsec. A, and added subsec. K1(m).

Former § 13-604.01, added by Laws 1982, Ch. 322, § 2, amended by Laws 1983, Ch. 32, § 1, Laws 1984, Ch. 163, § 1, and Laws 1985, Ch. 227, § 1, and relating to punishment for

offenses committed while released from confinement, was renumbered as § 13-604.02 by Laws 1985, Ch. 364, § 5, effective May 16, 1985.

1987 Reviser's Note:

This section contains the amendments made by Laws 1987, Ch. 166, § 1 and Ch. 307, § 4, which were blended together as shown above pursuant to authority of § 41-1304.03.

Cross References

Aggravated assault, see § 13-1204.

Child abuse, see § 13-3623.

Children's behavioral health programs personnel, certification as to criminal offenses, see § 36-425.03.

Commercial sexual exploitation of a minor, see § 13-3552.

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ten years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for fifteen years.

D. The presumptive sentences prescribed in subsections A, B and C of this section may be increased or decreased by up to five years pursuant to the provisions of § 13-702, subsections C, D and E.

E. A person sentenced for a dangerous crime against children in the first degree pursuant to this section is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement on any other basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served.

F. A person who stands convicted of any dangerous crime against children in the first degree having been previously convicted of two or more predicate felonies shall be sentenced to life imprisonment and is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement on any other basis except as specifically authorized by § 31-233, subsection A or B until the person has served not fewer than thirty-five years.

G. Notwithstanding chapter 10 of this title, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the second degree is guilty of a class 3 felony and shall be sentenced to a presumptive term of imprisonment for ten years. The presumptive term may be increased or decreased by up to five years pursuant to § 13-702, subsections C, D and E. If the person is sentenced to a term of imprisonment the person is not eligible for release from confinement on any basis until the person has served not less than one-half the sentence imposed by the court.

H. Section 13-604, subsections H and I apply to the determination of prior convictions.

I. In addition to the term of imprisonment imposed pursuant to this section and notwithstanding any other law, the court shall order that a person convicted of any dangerous crime against children in the first degree be supervised on parole after release from confinement on such conditions as the court or the board of pardons and paroles deems appropriate for the rest of the person's life. If the person is convicted of any dangerous crime against children in the second degree the court, in addition to any term of imprisonment imposed or in lieu of the term if probation is otherwise authorized, may order that the person convicted be supervised on probation or on parole after release from confinement on such conditions as the court or board of pardons and paroles deems appropriate for any term up to the rest of the person's life.

J. The sentence imposed on a person by the court for a dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time.

K. In this section:

§ 13-604

Note 187

187. Probation revocation, sentences

In probation revocation proceeding, sentence imposed on defendant of imprisonment for not less than ten nor more than 21 years for the original conviction of robbery with a prior conviction was not excessive. *State v. Mendibles* (App.1981) 129 Ariz. 124, 629 P.2d 91.

188. Resentencing

Conduct of trial court when, after sentencing defendant in absentia as a "dangerous" offender and detaining in a postconviction proceeding that an allegation of "dangerousness" had not been submitted to jury, it resentenced defendant on charge of second-degree murder, a repetitive class two felony, to the maximum term of 21 years did not amount to a violation of due process because the defendant was sentenced originally to less than the maximum term where the trial court reiterated the factors which it had originally considered when it imposed the original sentence and expressed its belief that the resentence was the appropriate punishment for the particular crime and the particular offender. *State v. Williams* (App.1984) 141 Ariz. 127, 685 P.2d 764.

§ 13-604.01. Dangerous crimes against children; sentences; definitions

A. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving second degree murder, sexual assault, taking a child for the purpose of prostitution, child prostitution or sexual conduct with a minor or involving or using minors in drug offenses shall be sentenced to a presumptive term of imprisonment for twenty years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for thirty years.

B. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving aggravated assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, child abuse or kidnapping shall be sentenced to a presumptive term of imprisonment for seventeen years. If the convicted person has been previously convicted of one predicate felony the person shall be sentenced to a presumptive term of imprisonment for twenty-eight years.

C. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children in the first degree involving sexual abuse shall be sentenced to a presumptive term of imprisonment for

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189. Review, sentences

Penalty imposed by trial court upon conviction will not be reduced unless it clearly appears that sentence imposed is excessive, resulting in an abuse of trial court's discretion. *State v. Jerousek* (1979) 121 Ariz. 420, 590 P.2d 1366.

In reviewing propriety of trial judge's discretion in imposing sentence, supreme court must look to general character of both party convicted and offense charged. *Id.*

Where, at first trial, state alleged two prior convictions but offered no proof, allowing state to prove prior convictions at third trial was a violation of fundamental fairness in that it penalized defendant for seeking a new trial, so that even though issue was not timely raised at trial, as no objection was made until time set for sentencing, issue could be considered on appeal of conviction pursuant to third trial. *State v. Corrales* (1976) 26 Ariz.App. 344, 548 P.2d 437.

The Court of Appeals, did not have appellate jurisdiction in prosecution charging burglary in the first degree with a statement of prior conviction since offense was punishable under habitual criminal statute by imprisonment for not less than 10 years nor more than life. *State v. Cuzick* (1967) 5 Ariz.App. 498, 428 P.2d 443.

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ten years. If predicate felony imprisonment

D. The provision may provisions of

E. A person degree pursuant of sentence, confinement on subsection A

F. A person in the first degree felonies shall suspension of furlough or fully authorized fewer than ten

G. Notwithstanding eighteen years convicted of of a class 3 term for ten up to five years is sentenced from confinement one-half the

H. Section convictions.

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**"Child Protection and Sexual Predator
Punishment Act of 1998"**

Title I – Protecting Children from Sexual Predators and Child Pornography

- Prohibits *contacting* a minor over the Internet for the purposes of engaging in illegal sexual activity. This prohibits soliciting a minor for sexual acts
- Prohibits knowingly transferring obscene materials to a minor over the Internet
- Increases penalties for enticing a minor to travel across State lines to engage in illegal sexual activity
- Increases penalties for using a computer to entice a minor to engage in illegal sexual activity
- Increases penalties for sending child pornography to a child
- Increases penalties for possessing 50 or more images of child pornography (there is currently no greater punishment for the possession of large quantities of child pornography)
- Allows for criminal forfeiture for federal offenses under chapter 109A and 117 crimes, including: 1) transportation of a minor for illegal sexual activity; 2) coercion or enticement of a minor to engage in criminal sexual activity; 3) transportation in interstate commerce with intent to engage in criminal sexual activity with a minor
- Authorizes pretrial detention of federal child sex offenders
- Increases penalties for using a computer to coerce or entice a minor to engage in sexual activity

Title II – Punishing Sexual Predators

- Requires the U.S. Sentencing Commission to review and amend the sentencing guidelines to increase the penalties for 1) transporting a minor across State lines for the purposes of engaging in certain sexual abuse offenses; 2) traveling in interstate commerce with the intent to engage in sexual activities with a minor

- Allows for federal prosecution of certain sexual assault cases involving the crossing of State lines
- Mandates life in prison for anyone who commits a federal sexual assault and has twice been convicted of a serious State or federal sex crime
- Doubles the penalties for repeat sex offenders
- Allows for civil remedy for personal injuries resulting from certain sex crimes against children

Title III – Federal Investigations of Sex Crimes Against Children

- Allows for administrative subpoenas in certain child exploitation investigations
- Allows for the immediate commencement of federal investigations involving kidnaping offenses (eliminates the 24-hour rule)
- Allows for federal investigation of kidnaping offenses if: 1) any facility or means of interstate or foreign commerce was used in furtherance of the offense, or 2) the kidnaping offense affects interstate or foreign commerce
- Allows for federal investigation of serial murder offenses when the offender crosses State lines with intent to commit first degree murder
- Reorganizes the Morgan P. Hardiman Missing and Exploited Children's Task Force to improve its effectiveness in kidnaping and serial murder investigations. The task force would be simplified through the establishment of regional task forces in FBI field offices which would serve as a liaisons for State and local law enforcement and other federal law enforcement agencies in cases of child abduction and serial murders. The task force would be authorized at a level of \$7,500,000 each year for the next three years.

Related Measures for Consideration:

1. H.R. _____, sponsored by Rep. Deborah Pryce. Withholds 5% of Byrne Grant funding to States that allow a prisoner incarcerated for a pornography or sex crime involving a child access to any interactive computer service without supervision. Requires BOP to prohibit prisoners from unsupervised Internet access.

Remarks: Mrs. Pryce has written to the Subcommittee urging action on her proposal. This is a priority and she is open to any improvements to the measure.

2. H.R. 1972, by Rep. Bob Franks. Prohibits the sale of personal information about children without their parents' consent.

Remarks: The Subcommittee held a hearing on a nearly identical bill in the 104th Congress. Mr. Frank's office has contacted the Subcommittee indicating that this bill is a priority for Mr. Franks.

3. H.R. 2173, by Rep. Bob Franks. Requires reporting of child sexual abuse (e.g., child pornography) by Internet service providers.

Remarks: Mr. Franks has contacted the Subcommittee, urging action on his proposal. A similar proposal was transmitted by the administration in the 104th Congress. America On-Line and the National Center for Missing and Exploited Children have expressed some concerns.

4. H.R. 2815, by Reps. Weller and Hastert. Provides penalties for use of an interstate facility to target children for sexually explicit messages or contacts.

Remarks: This bill is a priority of Mr. Weller and Mr. Hastert's and was written for constituents who were victimized in their District. While the current language is somewhat vague, both Members have requested changing the language to resemble a Florida State statute which prohibits the exchange of minor's names for the purposes of facilitating sexual activities with any minor.

5. H.R. 3185, by Rep. Bob Riley. Makes illegal the possession of one or more images of child pornography. (It is currently illegal to possess 3 or more images of child pornography.)

Remarks: Mr. Riley has contacted the Subcommittee urging action on his bill.

C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to his offense and that condition has not been satisfied, the court at any time prior to the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than three years.
2. For a misdemeanor, not more than one year.

D. Notwithstanding any other provision of law, justice courts and magistrate courts may impose the probation periods specified in subsection A, paragraphs 3, 4 and 5¹ and subsection B, paragraph 1 of this section.

E. After conviction of a felony offense that is included in chapter 14 of this title,² if probation is available, probation may continue for a term not less than the term that is specified in subsection A of this section up to and including life and that the court believes is appropriate for the ends of justice.

Amended by Laws 1993, Ch. 223, § 4; Laws 1993, Ch. 255, § 17, eff. Jan. 1, 1994.

¹ So in original. Should read, "5, 6 and 7".

² Section 13-1401 et seq.

For text of section effective until January 1, 1994, see § 13-902, ante

Application

Laws 1993, Ch. 255, § 99, provides:

"Sec. 99. Applicability

"The provisions of §§ 1 through 36 and §§ 88 through 95 of this act apply only to persons who commit a felony offense after the effective date of this act."

Historical and Statutory Notes

The 1993 amendment by Ch. 223 inserted subsec. B and references thereto; and redesignated the other subsecs. accordingly.

Laws 1993, Ch. 223, §§ 11 and 12, provide:

"Sec. 11. Severability

"If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

"Sec. 12. Delayed repeal

"Section 11 [So in original. Should read, "Section 10".] of this act is repealed from and after December 31, 1992."

The 1993 amendment by Ch. 255 rewrote subsec. A, and added subsec. D relating to convictions for offenses covered by chapter 14 of title 13 (subsection, paragraph and subdivision designations modified by 1993 blend; see Reviser's Note, post). Subsec. A had read:

"A. Unless terminated sooner, probation may continue for the following periods:

"1. For a class 2, 3 or 4 felony, the term authorized by § 15-701, subsection C.

"2. For a class 5 or 6 felony, three years.

"3. For a class 1 misdemeanor, three years.

"4. For a class 2 misdemeanor, two years.

"5. For a class 3 misdemeanor, one year."

Laws 1993, Ch. 255, § 101, provides:

"Sec. 101. Legislative Intent

"It is the intent of the legislature that the provisions of this act relating to parole, work furlough, home arrest, earned release credits and other early release programs have only prospective effect. For any person convicted for an offense committed before the effective date of this act the provisions of this act shall have no effect and such person shall be eligible for and may participate in such programs as though this act has not passed."

1993 Reviser's Note:

This section contains the amendments made by Laws 1993, Ch. 223, sec. 4 and Ch. 225, sec. 17 that were blended together as shown above pursuant to authority of § 41-1304.03.

§ 13-903. Calculation of periods of probation

Notes of Decisions

1. Equal protection

Time defendant spent in jail after his arrest on allegation of probation violation and until disposal

tion of charge was not billable; presentence incarceration implicating equal protection clause of Fourteenth Amendment so as to require defendant

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jail term imposed as condition of reinstating probation. *State v. Snider*, 1982, 172 Ariz. 163, 835 P.2d 496.

79. Motor vehicle licenses

Court properly ordered probation on two additional counts of driving under influence with suspended license, imposed to run consecutively to

sentence on first count, to begin after defendant's release from parole supervision as opposed to his physical release from prison on first count of driving under influence with suspended license; sentence on first count was not satisfied until defendant was released from prison and parole supervision. *State v. Gandara*, 1992, 174 Ariz. 105, 847 P.2d 606.

§ 13-902. Periods of probation

Text of section effective until January 1, 1994

A. Unless terminated sooner, probation may continue for the following periods:

1. For a class 2, 3 or 4 felony, the term authorized by § 13-701, subsection C.
2. For a class 5 or 6 felony, three years.
3. For a class 1 misdemeanor, three years.
4. For a class 2 misdemeanor, two years.
5. For a class 3 misdemeanor, one year.

B. Notwithstanding subsection A of this section, unless terminated sooner, probation may continue for the following periods:

1. For a violation of § 28-692, five years.
2. For a violation of § 28-697, ten years.

C. When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to his offense and that condition has not been satisfied, the court at any time prior to the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than three years.
2. For a misdemeanor, not more than one year.

D. Notwithstanding any other provision of law, justice courts and magistrate courts may impose the probation periods specified in subsection A, paragraphs 3, 4 and 5 and subsection B, paragraph 1 of this section.

Amended by Laws 1993, Ch. 223, § 4.

For text of section effective January 1, 1994, see § 13-902, post

§ 13-902. Periods of probation

Text of section effective January 1, 1994

A. Unless terminated sooner, probation may continue for the following periods:

1. For a class 2 felony, seven years.
2. For a class 3 felony, five years.
3. For a class 4 felony, four years.
4. For a class 5 or 6 felony, three years.
5. For a class 1 misdemeanor, three years.
6. For a class 2 misdemeanor, two years.
7. For a class 3 misdemeanor, one year.

B. Notwithstanding subsection A of this section, unless terminated sooner, probation may continue for the following periods:

1. For a violation of § 28-692, five years.
2. For a violation of § 28-697, ten years.

behavior -- two shoplifting incidents and an attempted suicide -- would have been enough to trigger action by a parole officer that could have prevented the murder. But Silverman was no longer on parole.

AARR's proposal -- that violent sexual offenders and sexual offenders against children be given "Automatic Lifetime Supervision" *in addition* to any other sentence that is administered would eliminate this loophole. "Persons under supervision should be given the chance to prove, before a judge, that the conditions be lifted, but the burden of proof must be on them to demonstrate that he/she is not a risk."

Second, AARR urges state probation and parole authorities to adopt the "containment model" outlined in the new study, in which the "primary purpose" of probation/parole for sexual offenders must become "community protection and victim safety." Under a "containment model,"

- **Offenders must be subjected to frequent polygraph exams.** Sex offenders "have developed complicated and persistent psychological [techniques] to assist them in denying the harm they cause to others, and often they are very accomplished at presenting a facade," the report points out. The standard parole/probation officer interview is essentially worthless.
- **Judges and probation/parole departments must develop detailed conditions** to prevent them from engaging in behavior that can lead to reoffending (e.g. reading child pornography, contacting victims without approval, frequenting places where children congregate).
- **Specially trained probation officers, therapists, and polygraph operators must work as a team** to identify individuals who are slipping into dangerous behavior and to modify probation/parole conditions as needed.

According to Conner, "the Containment Model" is a proven system. He pointed to the Maricopa County (Phoenix) program, where over 1800 sexual offenders have been released with a recidivism rate of 1.4% -- and the recidivists were discovered through polygraph exams, not standard law enforcement.

The recently published National Institute of Justice report, "Managing Adult Sex Offenders in the Community -- A Containment Approach" by Kim English, Suzanne Pullen and Linda Jones is available from the National Criminal Justice Clearinghouse, 1-800-851-3420.

Other sources on this issue:

Jeremy Travis, Director, National Institute of Justice: 202-307-2942

Kim English, Research Director, Colorado Division of Criminal Justice, 303-239-4453

Norm Elber, Maricopa County (Phoenix) Chief Probation Officer, 602-506-7244.

American Alliance for Rights & Responsibilities (AARR)

A voice for the community on crime and disorder issues

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AARR PRESS RELEASE

For Immediate Release

4 PM, Friday, February 21, 1997

Contact:
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Controlling Sexually Violent Predators for Life: AARR Calls on States to Institute "Automatic Lifetime Supervision"

Based on findings from a new study published by the U.S. Justice Department, the American Alliance for Rights & Responsibilities is calling on all states to adopt a new policy -- "Automatic Lifetime Supervision" -- for all violent sex offenders and those who abuse children.

Roger Conner, Executive Director of the American Alliance for Rights & Responsibilities (AARR), said: "Thousands of American children face life-shattering trauma every year. Many thousands face abuse at the hands of criminals who have previously been convicted of a felony and released into the community. Based on new research, *we know how to stop most of these people from repeating their offenses, short of imprisoning them for life.* The key is *"Automatic Lifetime Supervision,"* a radically new approach to sentencing of sexual offenders, coupled with a 'containment model' of supervision," Conner said.

AARR is a national organization that provides assistance to state and local leaders on crime and disorder issues and defends innovative policies in court. AARR has filed *amicus curiae* briefs in support of New York's version of Megan's law, and also in the U.S. Supreme Court to defend a Kansas law that allows civil commitment of sexually violent predators who are likely to repeat their offenses.

Conner stated, in response to front page articles in the Washington Post, New York Times and many papers across the country, "citizens who are reading in their papers today about a savage murder of a Tampa woman by Lawrence Singleton, a 69-year-old man with a history of violent sexual acts, are asking themselves this question: Is there any way to protect ourselves and our children from sexual offenders? Are the only alternatives vigilantism by citizens or automatic life sentences by judges?"

"The answer, based on new research published by the National Institute for Justice, is 'yes'" But state officials must make two dramatic departures from existing policies."

First, AARR proposes that Sexual predators who violate children or use violence must receive "Automatic Lifetime Supervision." Currently, over 60 per cent of all sexual offenders in the typical state receive probation instead of going to jail. The vast majority of the 88,100 offenders in prison (as of 1994) will be released into the community, many on parole. Persons on probation or parole can be subjected to stringent limits on their behavior, but "the system has one huge loophole," according to Conner: "under typical state laws, the term of the conditions can run no longer than the maximum allowed for imprisonment.

The case of Lawrence Singleton, the accused Florida murder, is illustrative. He was in prison for eight years, then on parole for six more. He has been living in Florida for four years, and recent erratic



Washington, D.C. 20530

June 24, 1997

MEMORANDUM

TO: Grace Mastalli
Lisa Sorkin
David Karp
Dena Sacco

FROM: Kristen Fennel

SUBJECT: Sex Offender Management Programs

I. Introduction

The issue of sex offender management has received considerable media attention in recent months, due to the trial and sentencing of Jesse Timmendequas, the man convicted of molesting and murdering Megan Kanka. Some communities have developed comprehensive programs for tracking and managing sex offenders; for example, the parole division in New York City imposes stringent parole conditions and aggressively tracks sex offenders. Maricopa County, Arizona, allows judges to place sex offenders on lifetime probation and requires all sex offenders, both those on lifetime probation and those serving shorter sentences, to participate in an intensive treatment and monitoring program.

Although the concept of lifetime probation seems attractive, it is unknown whether long-term management programs decrease recidivism. Experts agree that sex offenders basically are incurable, but that specifically tailored supervision and treatment (usually cognitive-behavioral therapy) enables some offenders to manage the propensity to reoffend. If this is true, treatment and monitoring, extended over the duration of the offender's life, may result in lowering the rate of recidivism

among convicted sex offenders. However, a 1996 General Accounting Office (GAO) study on the effectiveness of sex offender treatment programs cautions that definitive conclusions as to which treatment method is most effective in reducing sex offender recidivism could not be drawn.

II. White House Request for Information About Ariz. Rev. Stat. Ann. § 13-604.01(I)

The White House asked OPD to review an Arizona statute allowing the state to place any person convicted of a dangerous crime against a child on lifetime parole. This statute was invalidated by the Arizona Supreme Court in State v. Wagstaff, 794 P.2d 118, 120 (Ariz. 1990). As discussed below, the court invalidated the statute on grounds that the parole provision violated separation of powers but left open the question of the constitutionality of lifetime probation. Shortly thereafter, the Arizona Supreme Court held in State v. Lyons, 804 P.2d 744, that Arizona's lifetime probation statute did not violate separation of powers and was not unconstitutionally vague.

III. Sex Offender Management Options

A. GAO Report: Sex Offender Treatment: Research Results Inconclusive About What Works to Reduce Recidivism (June 1996)

Pursuant to a request from Congressman Bill McCollum, Chair of the House Judiciary Committee's Crime Subcommittee, GAO reviewed the available data on the effectiveness of sex offender treatment programs in reducing recidivism. GAO identified and reviewed 22 studies of sex offender treatment methods and found no consensus among the studies about which treatment successfully reduces recidivism. Most treatment programs (including Maricopa County's) use the cognitive-behavior treatment model, and this approach was the method most frequently reported to be promising, especially with respect to child molesters and exhibitionists. GAO concluded that "rigorous research" was needed to establish the most effective means of treating sex offenders.

B. NIJ Research: Community Management

In 1994, the National Institute of Justice sponsored research conducted by the Colorado Division of Criminal Justice to determine how sex offenders are managed in different communities. Researchers surveyed over 700 probation and parole supervisors and conducted field interviews in Arizona, Colorado, Louisiana, Ohio, Oregon, and Texas. This survey found that nearly a third of the probation and parole agencies surveyed had specialized sex offender caseloads, imposed special parole or probation conditions on sex offenders, and monitored sex

offenders during the evenings and on weekends. The most commonly reported special conditions imposed on sex offenders were attendance in sex offender treatment programs and no-contact-with-victim provisions. A few agencies reported monitoring sex offenders electronically and a few reported using polygraphs for treatment and management. Eighty percent of the agencies surveyed felt that mental health treatment should be mandatory for sex offenders, but nearly a third of these agencies felt that sex offender mental health treatment services were in short supply.

The Colorado researchers developed a five-part model containment process for managing sex offenders in the community, which includes:

- (1) A philosophy of community and victim safety.
- (2) Case management tailored to the individual offender's deviant sexual history.
- (3) Collaboration among law enforcement, social service, child protection, medical, and prison personnel.
- (4) Consistent sex offender management policies reflected by the state's governor, legislature, judiciary, and corrections institutions.
- (5) Quality control that includes documenting program success and identifying problems.

C. Maricopa County's Program

In 1987, Arizona passed legislation allowing courts to impose lifetime probation for offenders convicted of felony child sexual abuse or sexual assault if lifetime probation is "appropriate for the ends of justice." Ariz. Rev. Stat. Ann. § 13-902. As of June 1997, approximately 480 of 1,300 sex offenders on probation in Maricopa County, AZ were serving lifetime probation sentences. Another 500 were serving prison sentences, but will be on lifetime probation upon release.

Since 1993, the Adult Probation Department in Maricopa County has placed all sex offenders (including those on lifetime probation) in a specialized treatment and supervision program. The program includes comprehensive evaluation upon intake; intensive, specially-tailored treatment; community monitoring; and periodic reassessment. It uses polygraph exams extensively, both in initial intake and in periodic reassessment.

The Maricopa probation department reports that between May 1993 and December 1996, the program supervised a total of 1230

sex offenders (including both lifetime and other probationers). During that period, the program reported that 1.5 percent of participants reoffended; at least half of the recidivists were not on lifetime probation and reoffended by exposing themselves, rather than by committing more serious offenses.

Elements of Maricopa County's sex offender probation program include:

- Comprehensive intake report -- The probation department creates a comprehensive file on the offender, including a detailed description of current and past offenses, a list of all original charges and stipulations, the victim's statement, all interview information, the offender's complete social/sexual history, and the results of a complete psychological test battery. A polygraph specialist verifies the offender's sexual history information.
- Treatment program -- Offenders are required to complete a 37-hour course on sexuality and sexual deviancy, and spouses and partners are encouraged to attend free of charge. Offenders participate in group therapy for at least three years; the Maricopa program has found that sex offenders are often able to manipulate the therapist's sympathies when one-on-one therapy is provided.
- Regular reassessment of offender's degree of risk -- Polygraph and plethysmograph (testing penile response to visual or aural stimuli) exams and therapy feedback are given on a regular basis to ensure the offender is managing his sexual thoughts appropriately.
- Special probation conditions -- In addition to the conditions imposed on other probationers, sex offenders must abide by seventeen conditions designed to negate contact and communication with children. (See attachment)
- Specially trained case officers -- Case officers receive sex-offender-specific training and work with treatment providers, the prosecutors's office and probation officers as part of a multi-disciplinary team. For the first several years of probation, case officers conduct scheduled and non-scheduled work and home visits during the days, evenings, and weekends. In addition, case officers ensure the offender does not live near schools, playgrounds, swimming pools, or other areas frequented by children; offenders are required to relocate to another residence if the risk of reoffense due to location is deemed high.

D. Lifetime Probation as a Management Option

Maricopa County has found that imposing lifetime probation in conjunction with a regimented treatment and surveillance

program can be effective in monitoring and managing pedophiles who might never be able to change their primary arousal to children. Since an offender on lifetime probation can be reassessed during different phases of his life, treatment and surveillance can be adapted to changes in the offender's tendencies. Lifetime probation also ensures case officers and therapists sufficient time to work through any tangential issues hindering therapeutic progress, including the offender's own childhood victimization.

Little is known, however, about the effect of lifetime probation alone on recidivism. The tendency to reoffend appears to be manageable while the offender is in a treatment and monitoring program, but the precise effect on recidivism of the duration of probation, considered apart from the actual course of treatment, has not been determined. Studies have shown variances in recidivism rates among different types of sex offenders. In addition, recidivism rates among lifetime probationers in different communities almost certainly will vary as a result of different types of treatment and surveillance programs.

IV. Other States' Sex Offender Management Programs

Following are brief descriptions of three other states's sex offender management programs.

A. Colorado

In 1992, the Colorado legislature passed a legislative declaration and a series of laws creating a standardized identification, evaluation, treatment, and monitoring program designed to reduce recidivism. All sex offenders sentenced after January 1994 are required, as part of any probation or incarceration sentence, or as a condition of parole, to undergo sex offender treatment at the offender's expense.

Colorado also allows sex offenders to be placed on lifetime probation.

B. New York

The New York City regional subdivision of the State Division of Parole recently expanded its Sex and Special Offenders Unit to supervise all sex offenders in New York City and Long Island. In New York City alone, the Unit monitors 576 offenders. Officers in the Sex and Special Offenders Unit carry a caseload of approximately 30 offenders, roughly half of the usual caseload.

Unlike probation, parole is a supervised transition period between incarceration and release; a parolee may be locked up immediately upon violating a parole condition. Sex offenders in the New York City subdivision generally are prohibited from going

to places where they might meet children and are prohibited from owning toys or computer modems. Parole officers in the sex offender unit conduct unscheduled home visits, meeting with their clients twice as often as parole officers who supervise other types of offenders. Parole officers even are encouraged to follow their clients in secret, occasionally letting them know that they are under surveillance.

C. Florida

In 1993, Florida enacted the Florida Sexual Predators Act. This Act includes legislative findings that sex offenders are likely to reoffend, and that the high level of threat posed to society by sexual predators justifies the state in providing for specialized supervision by trained probation officers with low caseloads and requiring sex offenders to abide by specific probation conditions designed to minimize contact with children.

D. Vermont

Vermont has a sex offender management program in which therapists and parole officers work closely together to treat and supervise offenders. Vermont's program focuses on "relapse prevention," and enlists family members, colleagues, and employers to help supervise offenders and watch for signs of backsliding. The program boasted a recidivism rate of about two percent between 1982 and 1989.

V. Legality of Imposing Long-Term Probation

A. Arizona's Experience

Arizona courts have addressed both statutory and constitutional issues relating to the imposition of lifetime probation. Litigants in Arizona have challenged the constitutionality of lifetime probation on separation of powers and cruel and unusual punishment grounds. On all grounds, Arizona courts have upheld the lifetime probation statute.

Statutory/Sentencing

The Arizona Code defines probation as a sentencing suspension. Ariz. Rev. Stat. Ann. § 13-901 (1997). Arizona case law holds that lifetime probation may be imposed in lieu of, but not in addition to, a term of imprisonment for a given offense.¹ However, the sentencing court may require a defendant on probation to be imprisoned in the county jail; this is considered to be a probation condition and not a prison sentence. The

¹ State v. Lyons, 804 P.2d 744 (Ariz. 1990), State v. Risher, 574 P.2d 453 (Ariz. 1978).

defendant may be imprisoned for any amount of time during the probation period, including nonconsecutive intervals, for up to one year or for the maximum period of imprisonment for the offense, whichever is shorter. Ariz. Rev. Stat. Ann. § 13-901.

A court may not sentence an offender to prison and lifetime probation for the same offense; however, an offender who pleads to multiple counts may receive a prison sentence for one count and a prison sentence suspended to probation for a second count. Upon the defendant's violation of a probation condition, the court may revoke probation and impose a sentence on the basis of the original conviction.

Separation of Powers: Lifetime Parole vs. Lifetime Probation

In 1990, the Arizona courts addressed the constitutionality of both mandatory lifetime parole and discretionary lifetime probation. In May 1990, the Arizona Supreme Court held in State v. Wagstaff that Arizona's statute requiring lifetime parole in connection with certain sentences was an unconstitutional delegation of executive power to the judiciary.² The statute empowered the courts and the parole board to establish different parole conditions, creating the possibility that the two branches would contradict one another in imposing parole conditions and determining whether those conditions had been violated.³ The court reasoned that "the judicial branch cannot be placed in the position of encroaching on executive prerogative or of having to determine the constitutionality and pass objectively on a parole plan of its own design."⁴ The court explicitly stated that its opinion was not to be taken as a ruling on the constitutionality of the lifetime probation provision contained in the same statute.⁵

In December 1990, the Arizona Supreme Court held in State v. Lyons that Arizona's lifetime probation statute did not violate separation of powers because probation decisions lie solely within the discretion of the judiciary.⁶ The court held the judiciary alone has the power to determine whether a probation violation has occurred, and that once that determination is made, the court decides whether to revoke, modify, or continue the

² 794 P.2d 118, 121 (Ariz. 1990).

³ Id. at 122.

⁴ Id.

⁵ Id. at 126 n.6.

⁶ State v. Lyons, 804 P.2d 744, 745 (Ariz. 1990).

probation.⁷ Because probation is a sentence suspension, the court is free to revoke the suspension and impose any sentence it originally may have imposed if the defendant violates a condition of probation.

Cruel and Unusual Punishment

In State v. Everhart,⁸ the Arizona Court of Appeals cited its decision in State v. Byrd⁹ to imply that a prison sentence followed by a lifetime probation sentence would not violate the eighth amendment (as long as the two sentences were imposed for separate offenses).

In State v. Byrd, the Arizona Court of Appeals addressed the question of whether a twelve-year prison sentence for child molestation violated the eighth amendment. The court considered the three criteria set out by the U.S. Supreme Court in Solem v. Helm,¹⁰ and concluded the sentence did not violate the defendant's eighth amendment rights. The three criteria are: (1) the gravity of the offense in relation to the harshness of the penalty; (2) sentences imposed on other criminals in the same jurisdiction; and (3) sentences imposed for the same crime in other jurisdictions.¹¹ Applying the Solem criteria, the Byrd court reasoned that Arizona's legislature considers sex crimes against children to be among the most serious possible crimes and that severe sentences are accordingly imposed (Id.). The court further reasoned that "the sentences are not disproportionately severe" compared to sentences imposed on other criminals in Arizona and sentences imposed elsewhere for similar crimes.¹²

The Everhart court defined probation as a suspension of sentencing within statutory parameters. The court did not provide an analysis of the constitutionality of lifetime probation under the Solem criteria, instead stating "we believe that appellant's argument that the sentence constitutes cruel and unusual punishment has been answered by this court's prior decision in State v. Byrd."¹³ Although the Everhart court vacated the sentence on double jeopardy grounds (the defendant

⁷ Id. at 746.

⁸ Id.

⁹ 772 P.2d 1135 (Ariz. App. 1988).

¹⁰ 463 U.S. 277 (1983).

¹¹ Byrd at 1137.

¹² Id.

¹³ Everhart at 994.

had been improperly sentenced to prison and lifetime probation for the same offense), the court implied that lifetime probation properly applied would not violate a defendant's eighth amendment rights.

B. Other Constitutional Issues

Ex Post Facto Punishment

In Lynce v. Mathis, the U.S. Supreme Court held that a state statute which retroactively cancelled a prisoner's provisional early release credits, which were awarded to alleviate prison overcrowding, violated the ex post facto clause.¹⁴ The ex post facto clause prohibits the retroactive application of penal legislation. To fall within the ex post facto prohibition, the law must be retroactive and must "disadvantage the offender affected by it by altering the definition of criminal conduct or increasing the punishment for the crime."¹⁵

The Justice Department has submitted amicus briefs arguing that sex offender community notification laws are regulatory, rather than punitive, and therefore may be applied retroactively. In its briefs, the Department has argued in favor of applying the principles set forth by the Supreme Court in United States v. Ursery.¹⁶ The issue in Ursery was whether a civil in rem forfeiture constituted punishment for double jeopardy purposes. The Court held that in rem forfeiture was not punishment but was a remedial civil sanction.¹⁷ The Ursery Court directed courts first to inquire whether a sanction is designed as a remedial civil sanction, and then to consider whether the scheme is "so punitive in purpose or effect as to negate [the] intention to establish a civil remedial mechanism."¹⁸ The Department points out in its letter brief in Stearns v. Gregoire¹⁹ that the Ursery principles were derived from U.S. v. Ward²⁰, a self-incrimination clause case, which in turn derived the inquiry from

¹⁴ Lynce v. Mathis, 117 S.Ct. 891, 895 n.12 (1997).

¹⁵ Id. at 896.

¹⁶ 116 S.Ct. 2135 (1996).

¹⁷ Id. at 2142.

¹⁸ Id.

¹⁹ No. C95-1486D (W.D. Wash., Apr. 12, 1996), appeal pending, No. 96-35398 (9th Cir.).

²⁰ 448 U.S. 242, 248-49 (1980).

Flemming v. Nestor²¹, an ex post facto punishment case.

In June 1997, the U.S. Supreme Court decided Kansas v. Hendricks, a case involving a state statute allowing the involuntary civil commitment of sexual predators. Using language similar to that used in Justice Department's community notification briefs, the Court held that Kansas' civil commitment statute does not constitute criminal punishment and therefore is not subject to double jeopardy and ex post facto prohibitions.

VI. Conclusions

A 1996 GAO review of research on the effectiveness of sex offender treatment programs found that no conclusion could be drawn about which type of treatment reduces recidivism. In part, this conclusion was the result of methodological weaknesses in the studies GAO reviewed. In part, however, it was because experts differed on which specific treatment method was most effective. GAO concluded that more research was needed to determine the best method of sex offender treatment. In the interim, placing sex offenders in intensive, specially-tailored management programs appears to be a step towards decreasing recidivism. Maricopa County reports a low recidivism rate among sex offenders in its program, and New York City's monitoring program, while focused more on surveillance than treatment, also is geared toward reducing the number of reoffenses.

Considered separately from the issue of monitoring and treatment, lifetime probation's effect on recidivism is also unknown. Maricopa County plans to reduce the requirements with which sex offenders must comply once they are deemed able to manage their sexual impulses, but the effect of decreased therapy and monitoring on recidivism is unknown. Since most experts agree that sex offenders are incurable, it is worth questioning whether probation programs should ever relax sex offender treatment and surveillance conditions.

A three-part approach could be worthwhile, consisting of: (1) conducting research to determine the best sex offender treatment model; (2) encouraging states to establish treatment and monitoring programs in accordance with best treatment model; and (2) encouraging states to adopt lifetime probation legislation as a way to monitor sex offenders and to make sure they receive treatment. States may also consider enacting civil commitment statutes for sexual predators with mental abnormalities.

Lifetime probation alone probably would not decrease sex

²¹ 363 U.S. 603 (1960).

offender recidivism, and it appears likely that intensive treatment for a relatively short period of time would not enable an offender to manage for the rest of his life his propensity to reoffend. However, the combination of lifetime probation coupled with cognitive-behavioral treatment and monitoring over the long term appears to be resulting in lower sex offender recidivism rates in the communities in which it has been implemented.

MARICOPA COUNTY PROBATION CONDITIONS FOR SEX OFFENDERS

Name _____

CR# _____

CONTACT WITH CHILDREN:

1. You shall not initiate, establish, or maintain contact with any male or female child under the age of 18 nor attempt to do so except under circumstances approved in advance and in writing by your probation officer.
2. Notwithstanding any court order to the contrary, you shall not reside with any child under the age of 18 or contact your children in any manner unless approved in advance and in writing by your probation officer.
3. You shall not enter onto the premises, travel past, or loiter near where the victim resides except under the circumstances approved in advance and in writing by your probation officer. You shall have no correspondence, telephone contact, or communication through a third party.
4. You shall not go to or loiter near school yards, parks, playgrounds, arcades, or other places primarily used by children under the age of 18 without permission of your probation officer.
5. You shall not date or socialize with anybody who has children under the age of 18 without permission of your probation officer.

TREATMENT:

6. You shall actively participate in sex offender treatment and remain in such treatment at the direction of the supervising officer.
7. You shall submit to any program of psychological or physiological assessment at the direction of the probation officer, including the penile plethysmograph and/or the polygraph, to assist in treatment, planning, and case monitoring.
8. You shall allow therapist to disclose to the court information about your attendance and progress in treatment.

OTHER BEHAVIOR:

9. Register as a sex offender with the Sheriff of the County in which you reside within 30 days of sentencing per A.R.S. 13-3821.
10. You shall reside at a place approved by your probation officer.
11. You shall abide by any curfew imposed by your probation officer.
12. You shall not possess any sexually stimulating or sexually oriented material as deemed inappropriate by treatment staff, nor patronize any place where such material or entertainment is available.
13. You shall be responsible for your appearance at all times. This includes the wearing of undergarments and clothing in places where another person may be expected to view you.
14. You shall not hitchhike or pick up hitchhikers.
15. You shall not utilize 900 telephone numbers without permission of the supervising probation officer.
16. You shall not operate a motor vehicle alone without specific written permission of the probation officer or unless accompanied by an adult approved by the probation officer.
17. Abide by all terms and restrictions of the family reunification procedure as mandated in writing by the supervising probation officer.

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Minority concerns FYI

Calley - file: Tobacco -
Legislation

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Total Pages: 7

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MESSAGE:

Discussion Draft - October 28, 1997

Review and Revisions to
Proposed Tobacco Settlement
Resolution dated June 20, 1997

I. Title I. Reformation of the Tobacco Industry

A. Restrictions on Marketing and Advertising

1. Marketing and Advertising Restrictions must include a ban on lifestyle and image advertising that are appealing to minority populations.
2. Marketing and Advertising Restrictions must be required on all military bases and in all prisons.
3. Deceptive advertising, e.g., "low tar" and discounting practices, must be banned.

B. Warnings, Labeling and Packaging

1. All warnings, labeling and packaging must be distributed in languages that will reach nonEnglish speaking populations.

non-english

C. Restrictions on Access to Tobacco Products

1. No comments at present.

D. Licensing of Retail Tobacco Product Sellers.

1. No comments at present.

E. Regulation of Tobacco Product Development and Manufacturing

1. No comments at present (see F).

F. Non-tobacco Ingredients

1. Minority population's use of mentholated tobacco products is disproportionately high. There has been limited research evaluating the combined effects of menthol and nicotine in tobacco products:

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2. The FDA's Scientific Advisory Committee must examine not only the effects of alteration of nicotine yield, but also the effects of mentholated products in tobacco products based on its prevalence in tobacco brands consumed by minorities.

G. Compliance and Corporate Culture.

No comments at present.

II. Title II. Look-Back Provisions

- A. Historically, tobacco consumption in certain minority youth populations have been significantly less than for White youth. However, there is evidence indicating a significant increase in tobacco consumption in certain minority youth populations in the last few years.
1. The benchmark used must adequately capture data reflecting this changing trend.
 2. The methodology used to compute the reduction targets must adequately capture changes in minority youth tobacco use.
 3. The benchmark and targets must measure use of all tobacco products, including cigarettes, cigars, smokeless tobacco and other similar products that serve as nicotine delivery devices.
 4. Any surcharge collected for failure to meet the targets must ensure that a percent of those funds be used exclusively for efforts to reduce tobacco use by minority youth. The percent would be based on the percent of minority youth tobacco users relative to all youth tobacco users.

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III. Title III. Penalties and Enforcement Consent Decrees: Nonparticipating Companies.

No comments at present.

IV. Title IV. Nationwide Efforts to Minimize Involuntary Exposure to Environmental Tobacco Smoke.

- A. All standards imposed must include the nation's prisons, mental health institutions and military bases.

V. Title V. Scope and Effects.

No comments at present.

VI. Title VI. Programs/Funding.

See Title VII.

VII. Title VII. Public Health Funds from Tobacco Settlement

A. Allocation of Grant Monies Among Programs

To date, research on factors contributing to tobacco use in minority populations has been limited. As a result, the success of many cessation/treatment programs have not proven effective in minority communities. Therefore, any future research and cessation/treatment programs must include and be effective for minority communities.

1. Reduction in Tobacco Usage. This section must earmark a specified percent of these funds to programs targeted at the minority communities. The percent would be ___ based on the percent of minority smokers to all smokers. The Secretary could provide grants to qualified nonprofit organizations.
2. FDA/State Enforcement. This section must ensure that minority communities are not disproportionately targeted in enforcement.
3. State/Local Tobacco Control Community Based Efforts. This section must earmark a specified percent of these funds to programs targeted at the minority communities. These programs could be based on any effectively program designed to reduce tobacco use, not just ASSIST, in the minority communities. The

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percent would be ____ based on the percent of minority smokers to all smokers. These funds could be distributed directly to qualified nonprofit entities.

4. **Research/Methods for Prevention and Cessation.** This section must earmark a specified percent of these funds to programs targeted at the minority communities. The percent would be ____ based on the percent of minority smokers to all smokers.
5. **Compensation for Past Sponsorship.** This section must earmark a specified percent of these funds to programs targeted at the minority communities. The percent would be ____ based on the percent of events sponsored by tobacco companies in minority communities.

B. Establishment of Programs by Secretary

1. The Secretary must be directed to ensure that any education, prevent and cessation campaign include culturally-sensitive, minority focused programs.
2. The Secretary must be directed to ensure that any research into and development of technologies designed to reduce tobacco use include minority communities.
3. The Secretary must be directed to evaluate the effects of menthol and tar, in addition to other tobacco and non-tobacco constituents of tobacco products.

C. Public Education Campaign.

1. The Commission must be directed to include representative of minority communities, without regard to whether the individual worked with an entity affiliated with tobacco. This is important due to the number of events and other activities in minority communities sponsored, in part, with tobacco dollars.
2. The Commission must earmark a specified percent of these funds be used to support campaigns that are targeted at the minority communities. The percent would be ____ based on the percent of minority smokers to all smokers.
3. The Commission must ensure that entities knowledgeable about

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these communities be provided with funding to develop campaigns designed to discourage and deglamorize tobacco product use.

4. The Commission shall be directed to contract with private nonprofit entities, beyond state health departments, to run such campaigns. These entities must have a demonstrated knowledge of the community in which the campaign is run.

D. Tobacco Use Cessation

1. This Trust Fund must earmark a specified percent of these funds be used to support tobacco cessation/treatment in minority communities. The percent would be ___ based on the percent of minority smokers to all smokers.
2. The Secretary must use a negotiated rule-making process to develop the criteria and procedure for implementing this section.

E. Public Health Trust Fund

1. The Commission must include representatives from various organizations representing minority communities.
2. The Commission must earmark a specified percent of these funds be used to fund research of minority-specific tobacco-related health matters. The percent would be ___ based on the percent of minority smokers to all smokers and will be administered by the new independent nonprofit corporation created under Section F, of which ___ percent shall be distributed to qualified educational institutions whose historic charter is designed to serve minority communities or who currently serve minority communities and who are eligible for funds under Title VIII of the Public Health Service Act. [Ensure that this wording is sufficient to include the 4 historically African-American medical schools, 4 medical school serving Hispanic communities and the 2 medical schools serving Native Americans.]

F. New Section.

1. ___ percent of the total payments described in Title VI, shall be distributed to an independent nonprofit organization with a Board made up of individuals and leaders with expertise in minority health and health-related professions, education, financial and other

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relevant professions that shall be created under this Act. The organization shall be able to distribute funds to eligible and qualified nonprofit organizations to conduct research designed to examine factors promoting tobacco use in minority communities, to develop culturally appropriate prevention, treatment and education programs designed to reduce tobacco use in minority communities and to provide other health-related services to minority communities.

- G. New Section. There shall be a clearinghouse created that will collect information regarding the use of funds distributed under this Title. The information collected shall include a description of all education, treatment, prevention and cessation programs and research funded under this Title and an evaluation of all such programs and research (including the program's effectiveness). This clearinghouse shall be maintained by the Office of Smoking and Health at the Center for Disease Control. This information shall be publicly available.
- H. New Section. Definitions
1. For purposes of this Act, the term "minority" shall have the meaning used in the Disadvantaged Minority Health Act.

VIII. Title VIII. Civil Liability.

- A. The Commission must include representatives from minority communities.
- B. In the event the annual aggregate cap is not reached in any year, _____ percent of those funds must be used to support smoking behavior programs and research targeted at minority communities.

IX. Board Approval

No comments.

behavior -- two shoplifting incidents and an attempted suicide -- would have been enough to trigger action by a parole officer that could have prevented the murder. But Silverman was no longer on parole.

AARR's proposal -- that violent sexual offenders and sexual offenders against children be given "Automatic Lifetime Supervision" *in addition* to any other sentence that is administered would eliminate this loophole. "Persons under supervision should be given the chance to prove, before a judge, that the conditions be lifted, but the burden of proof must be on them to demonstrate that he/she is not a risk."

Second, AARR urges state probation and parole authorities to adopt the "containment model" outlined in the new study, in which the "primary purpose" of probation/parole for sexual offenders must become "community protection and victim safety." Under a "containment model,"

- **Offenders must be subjected to frequent polygraph exams.** Sex offenders "have developed complicated and persistent psychological [techniques] to assist them in denying the harm they cause to others, and often they are very accomplished at presenting a facade," the report points out. The standard parole/probation officer interview is essentially worthless.
- **Judges and probation/parole departments must develop detailed conditions** to prevent them from engaging in behavior that can lead to reoffending (e.g. reading child pornography, contacting victims without approval, frequenting places where children congregate).
- **Specially trained probation officers, therapists, and polygraph operators must work as a team** to identify individuals who are slipping into dangerous behavior and to modify probation/parole conditions as needed.

According to Conner, "the Containment Model" is a proven system. He pointed to the Maricopa County (Phoenix) program, where over 1800 sexual offenders have been released with a recidivism rate of 1.4% -- and the recidivists were discovered through polygraph exams, not standard law enforcement.

The recently published National Institute of Justice report, "Managing Adult Sex Offenders in the Community -- A Containment Approach" by Kim English, Suzanne Pullen and Linda Jones is available from the National Criminal Justice Clearinghouse, 1-800-851-3420.

Other sources on this issue:

Jeremy Travis, Director, National Institute of Justice: 202-307-2942

Kim English, Research Director, Colorado Division of Criminal Justice, 303-239-4453

Norm Elber, Maricopa County (Phoenix) Chief Probation Officer, 602-506-7244.

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Sexual
probation

PHS

Here is some information about life-time treatment for sexual predators. As you know, on Tuesday, July 22, 1997, ABC broadcast a segment about the success of the program in Maricopa County, Arizona. Perhaps we can plan an initiative or event in cooperation with the Department of Justice.

On June 24, 1997, Tom Freedman, Jose Cerda, Leanne Shimabukuro, and Mary Smith met with several people from DOJ to discuss possible initiatives for sex offenders. DOJ stated that the Arizona model is the subject of research and that DOJ is funding the Center for Sex Offender Management Project. According to DOJ, Colorado, New York, Florida, and Vermont currently have sex offender programs. However, DOJ believed that to promote the Arizona program was premature because that program is not yet fully evaluated. DOJ indicated that NIJ is planning to issue a report that will evaluate the individual effectiveness of the various components of sex offender programs. DOJ tentatively expected that the NIJ study will be available in six months.

STATISTICS OF THE MARICOPA COUNTY PROGRAM

- Maricopa County, Arizona, allows judges to place sex offenders on lifetime probation and requires all sex offenders, both those on lifetime probation and those serving shorter sentences, to participate in an intensive treatment and monitoring program.
- In 1987, Arizona passed legislation that permits the courts to impose lifetime probation for offenders convicted of felony child sexual abuse or sexual assault. Since 1993, Maricopa County has placed all sex offenders in a specialized treatment and supervision program.
- As of June 1997, approximately 480 of 1,300 sex offenders on probation in Maricopa County were serving lifetime probation sentences. Another 500 were serving prison sentences, but will be on lifetime probation upon release.
- The Maricopa County program includes comprehensive evaluation upon intake; intensive, specially-tailored treatment; community monitoring; and periodic reassessment. The program also uses polygraph exams extensively, both in initial intake and in periodic reassessment.
- The Maricopa probation department reports that between May 1993 and December 1996, the program supervised a total of 1230 sex offenders (including both lifetime and other probationers). During that period, the program reported only a 1.5% of recidivism. At least one-half of the recidivists were not on lifetime probation and reoffended by exposing themselves, rather than by committing more serious offenses.
- A 1996 GAO study on the effectiveness of sex offender treatment programs cautions that definitive conclusions as to which treatment method is most effective in reducing sex offender recidivism could not be drawn.

DOJ RECOMMENDATIONS

- DOJ recommends a four-part approach consisting of the following: (1) conducting research to determine the best sex offender treatment model; (2) encouraging states to establish treatment and monitoring programs in accordance with best treatment models; and (3) encouraging states to adopt lifetime probation legislation as a way to monitor sex offenders; and (4) encourage states to consider enacting civil commitment statutes for sexual predators with mental abnormalities.
- DOJ concludes that “the combination of lifetime probation coupled with cognitive-behavioral treatment and monitoring over the long term appears to be resulting in lower sex offender recidivism rates in the communities in which it has been implemented.”

TELEGRAM & GAZETTE (WORCESTER, MA.)

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HEADLINE: Police chiefs discuss sex registry effects

BYLINE: Christine Guilfooy; Telegram & Gazette Staff

DATELINE: LEOMINSTER

BODY:

School officials and real estate agents are among those who have requested information from the state sex offender registry.

Criminal History Systems Board lawyer Veronica Madden said school officials who ask must be given every name in the registry within a one-mile radius of the school.

Since schools are usually spread throughout the community, the effect is that school superintendents can obtain the entire sex offender list for their areas, Madden said.

Madden spoke to 125 police chiefs at the spring conference of the Massachusetts Chiefs of Police Association at the 4 Points Sheraton Hotel. Leominster Police Chief Peter F. Roddy is the host for the three-day conference.

Massachusetts Attorney General Scott Harshbarger was the keynote speaker yesterday. He said closer cooperation among police, prosecutors and the community have put a damper on crime.

Fitchburg Schools Superintendent Philip M. Fallon said he recently dealt with the registry when Fitchburg police told him a level-three sex offender had moved into the community. Level-three offenders are considered the most dangerous.

School officials informed the parents of school children who live close to the offender, Fallon said. Social workers and guidance counselors gave the information to the parents, he said. School officials told parents there was no evidence of further problems from the offender, he said.

CHECKS ON VOLUNTEERS?

Criminal background checks are done on all prospective employees, Fallon said. The schools do not check on volunteers, who are generally parents of students, he said. But Fallon said he is reconsidering whether checks should be made on volunteers.

Worcester Superintendent James L. Garvey said he is drawing up a general statement for parents, letting them know that information on sex offenders is available from the police. Garvey said he has been told Worcester has two level-three offenders.

Police automatically inform school officials of all level-two and level-three offenders in the community, Madden said.

"They're on their own as to how to disseminate it," Madden said.

Police departments can give the information to real estate brokers, but cannot put the information on a home page on the Internet, Madden said.

People who have been convicted of a sex crime since 1981 are required to register as sex offenders. Offenders are classified into one of three levels.

Level-three offenders are judged to be a high risk to commit another sex offense, Madden said. Level-two offenders are considered a moderate risk, and level-one are low-risk, she said.

7,000 NOT REGISTERED

Approximately 5,100 people have registered as sex offenders, Madden said. The state has the names of another 7,000 persons who should have registered, but have not, she said. They may have moved away after being released from prison, she noted.

Harshbarger said crime in Massachusetts has decreased significantly since introduction of preventive programs.

Community policing, safe neighborhood initiatives and community prosecutors have played a part in the decrease in criminal activity, Harshbarger said. Peer mediation programs and conflict resolution programs have helped, he said.

The Department of Public Health earlier this week said stabbings and shootings declined from 1992 to 1996.

On the prevention side, the attorney general said his office is working on a "prom checklist" aimed at keeping young people from drinking on graduation and prom nights.

The chiefs also discussed legal issues surrounding police chases, roadblocks, and fraudulent telemarketing.

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