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Supreme Court Refuses to Hear Challenges to 'Megan's Laws'

By LINDA GREENHOUSE

WASHINGTON, Feb. 23 — The Supreme Court today turned down constitutional challenges to laws in both New York and New Jersey that provide for communities to be notified about the whereabouts of paroled sex offenders.

The Justices made no comment in rejecting nearly identical appeals, brought by the Public Defender's Office in New Jersey and by the Legal Aid Society of New York. Both argued on behalf of offenders convicted and sentenced before the statutes known as "Megan's Laws" took effect — in 1994 in New Jersey and in 1996 in New York — that the notice requirement was an unconstitutional added punishment.

Although this challenge to the retroactivity of the laws would not have affected future offenders, critics viewed it as their best chance to blunt the laws' impact.

The Federal appeals court in Philadelphia upheld the New Jersey law on Aug. 20 on the ground that the notice provision served the "nonpunitive goal" of community safety and did not amount to additional punishment. Two days later, the Federal appeals court in Manhattan upheld the New York law under a similar analysis. That court, the United States Court of Appeals for the Second Circuit, has also upheld a similar law in Connecticut.

The Federal appeals court in San Francisco has upheld the notification law in the state of Washington. Washington's was actually the first such law in the country, although it was the New Jersey Legislature's response to a shocking 1994 crime, the rape and murder of a 7-year-old girl named Megan Kanka by a convicted sex offender who lived across the street, that gave these laws their name and inspired their rapid spread throughout the country.

The Supreme Court's actions today in turning down the appeals were not rulings on the merits of the issue. They do not set a legal precedent, and there is nothing to prevent the Justices from hearing future challenges to such laws now in effect in 45 other states, or even from hearing cases raising different legal arguments against the New Jersey and New York laws. The New Jersey Public Defender has a case before the United States Court of Appeals for the Third Circuit, in Philadelphia, challenging the notification provision on the ground that it violates the former offenders' right to privacy.

Nonetheless, officials in both states expressed satisfaction with the Court's disposition of the cases today. The New Jersey law has been in effect since December, when the Supreme Court refused to extend a stay. Since then, according to figures released today, county prosecutors

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This group is composed of people whose sentences were imposed before Jan. 21, 1996, when the New York law took effect. Mr. Mahoney said that the New York law was already in effect for subsequent offenders, for whom there was no question of the law's retroactive impact, but that this group was very small because any serious offender convicted in the last two years was likely still to be behind bars.

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The appeals court based its ruling on Supreme Court decisions upholding the right of anonymous political speech. But in its appeal, *Buckley v. American Constitutional Law Foundation*, No. 97-930, Colorado is contending that in the case of petitions, disclosures are necessary to maintain public confidence in what the state termed "in essence, a preliminary ballot."

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New York Times
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PHOTOCOPY
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Clinton: Deal needs test

But U.S. cautiously OKs pact

By Bill Nichols and Susan Page
USA TODAY

WASHINGTON — President Clinton expressed cautious approval Monday of the agreement between U.N. Secretary-General Kofi Annan and Iraq that averted U.S. bombing, at least for now.

While the deal appears to meet U.S. demands for unrestricted access by U.N. weapons inspectors, "what really matters is Iraq's compliance," not its stated commitment," Clinton said in an Oval Office statement. "Not what Iraq says, but what Iraq does."

To test that, inspections of contested sites could begin within days, U.S. officials said.

The agreement, announced in Baghdad Monday, gives U.N. inspectors access to sites that Iraqi President Saddam Hussein had declared off-limits, including eight presidential palaces. The inspectors are searching for nuclear, chemical and biological weapons of mass destruction.

But in a concession to Iraq, which accused some of the inspectors of being spies, the agreement calls for their teams to be accompanied by U.N.-appointed diplomats. Details are to be discussed at a Security Council session today.

The accord also notes Iraq's desire to escape crippling economic sanctions imposed after the 1991 Persian Gulf war. But U.S. officials said no concessions were made on that point. Meanwhile, U.S. military forces remain on alert in the region, Clinton said. He warned of "serious consequences" — a reference to his willingness to renew the military threat — if the agreement is breached.

Critics in Congress accused Clinton of accepting a flawed deal that just delays the day of reckoning with Saddam. Senate Majority Leader Trent Lott, R-Miss., said Annan's diplomacy had "put the president in a box," making it politically impossible for him to reject whatever deal was negotiated.

But governments around the world reacted to the agreement with general relief and optimism. Britain, the U.S.'s strongest ally in the latest standoff with Iraq, also greeted the pact with wary optimism. "We have to check the fine print," said Prime Minister Tony Blair.

In Baghdad, Iraqi Deputy Prime Minister Tariq Aziz, who signed the agreement with Annan, angrily rejected the notion that Saddam's government caved in to U.S. pressure. Aziz said the deal was not due to U.S. "saber-rattling" but to Annan's patient diplomacy.

Doctors grow vessels to skirt heart blockages

By Steve Sternberg
USA TODAY

Doctors for the first time have grown new blood vessels to shunt blood past heart patients' blocked coronary arteries without surgery, says a report out today.

Researchers at Fulda Medical Center in Germany report in the journal *Cardiology* that they triggered the growth of the new blood vessels using a genetically engineered human growth factor called FGF-1.

The protein was injected into the hearts of 20 volunteers while they were undergoing traditional bypass surgery.

Within four days of the injections, new vessels began to grow in all 20 people, the report says.

The vessels radiated out from the injection like spokes in a bicycle wheel, seeking to graft themselves to existing vessels that plunge into the heart muscle, the report says.

Now, three years later, the new blood vessels have pro-

duced a twofold to threefold increase in the amount of blood reaching the heart.

The hearts are pumping 13.5% more blood to the rest of the body.

The experimental procedure may become a lifesaver in a few years for people whose blocked vessels cannot be bypassed through conventional surgery.

"At the moment, this procedure could not replace conventional bypass surgery," says lead researcher Thomas-Jo-

seph Stegman. But it could be used in bypass patients to increase the amount of blood reaching the heart.

More than 300,000 bypasses are done in the USA each year.

Elizabeth Nabel of the University of Michigan, Ann Arbor, says no one knows how new vessels seek out existing blood vessels or why they veer toward blood-starved parts of the heart. "New blood vessels always go where they are needed," she says. "We don't understand why."

USA TODAY • TUESDAY, FEBRUARY 24, 1998

High court rejects Megan's Law challenge

By Tony Mauro
USA TODAY

New Jersey's so-called Megan's Law, aimed at informing communities about convicted sex offenders in their midst, survived a constitutional challenge before the Supreme Court Monday.

The high court declined to review a case in which a group of sex offenders claimed that telling their neighbors about their past amounts to a second

punishment for the same crime. Double jeopardy is barred by the Fifth Amendment to the U.S. Constitution.

The court action removes the key legal barrier to full use of Megan's Law and similar statutes adopted in most other states after the death of seven-year-old Megan Kanka in 1994 in Hamilton Township, N.J. Jesse Tim-



Megan Kanka AP

mendequas, a twice-convicted sex offender who lived across the street, was convicted of her murder.

"I've had faith in this law from day one," said Megan's mother, Maureen Kanka, Monday. "It is the right thing to do, and it is such a prevalent problem in this country."

Sex offenders are required

to register in all 50 states. Besides New Jersey, 36 states require some form of community notification.

In New Jersey, registered offenders are classified according to their perceived risk to the community. The locality is not notified about low-risk offenders. Schools and day-care centers are alerted about moderate-risk offenders, and door-to-door notification is required for high-risk offenders.

Nearly 2,000 state residents

have been classified under the law, which took effect Feb. 9.

A lower court upheld the New Jersey law but said offenders had the right to question their classifications. The Supreme Court's action has the effect of affirming both parts of the lower court decision.

Another challenge to the law may be mounted claiming it invades personal privacy. Other challenges are pending, asserting that the laws violate the rights of association and travel.

Swarm hit after many were asleep

COVER STORY

By Laura Parker and Deborah Sharp
USA TODAY

AI
KISSIMMEE, Fla. — Manuel and Judy Rincon cowered in horror early Monday as the house they saved 10 years to buy literally broke apart around them.

Then it got worse.

The garage door blew open and tore away. The door into the kitchen opened, and the wind sucked like a vacuum cleaner, pulling their 5-year-old daughter, Elissa, away.

"She was horizontal, and my wife was holding onto her legs," he says. "There was

all this glass, and everything started to disappear, all the furniture, the insides of the walls. If my wife had let go of Elissa, we wouldn't have been able to find her."

But Judy's grip held. And in a few moments, the tornado had passed and Elissa was safe in her arms with only a glass cut on her ankle. "I don't care about the house," Manuel says, his eyes tearing up. "If something had happened to her."

The Rincons were lucky. At least 38 people in central Florida were killed in the deadliest tornado outbreak in the state's history. Nine twisters flattened hundreds of homes and left 135,000 people at least temporarily without power. But the early morning tornadoes spared the tourist attractions of Disney World, Universal Studios Florida and Sea World in Orlando.

"To have that number of strong and violent tornadoes concentrated in a small geographical area is unprecedented for Florida," says Dave Sharp, a National Weather Service meteorologist in Melbourne, Fla. "It is a historical event."

Please see COVER STORY next page ►

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President Clinton said he was sending representatives of the Federal Emergency Management Agency, including director James Lee Witt.

"Our thoughts and prayers are with the people in central Florida," Clinton said before a meeting with the nation's governors. Florida Gov. Lawton Chiles left in order to return home.

Trouble seen as early as Friday

El Nino, a periodic warming of the Pacific Ocean that pushes the jet stream — a fast-moving current of air in the upper atmosphere — from its normal route, is at least partly to blame for the devastation. The jet stream carried a weather disturbance into central Florida, where unusually high temperatures and humidity had combined with wind shears to create a tornado-friendly atmosphere.

El Nino also was responsible for a Feb. 2 "Groundhog Day" storm that spawned at least a dozen tornadoes in south Florida.

Monday's outbreak "was another storm on the El Nino conveyor belt," says Craig Fugate, chief of preparedness and response in the state Division of Emergency Management. "Climate center predictions are basically saying El Nino is running full bore."

The National Weather Service saw the trouble gathering as early as Friday. "The atmosphere was primed for this type of event," Scott Spratt, another Weather Service meteorologist in Melbourne, says. "The potential was there as early as Friday."

Worried by the potential, the weather service issued its first tornado watch for the area about 2 p.m. Sunday. The first of three major storms developed between 9 and 9:30 p.m. near Tampa and started moving east across central Florida. The first twister known to have touched down struck near Daytona Beach late Sunday.

The Weather Service says it was able to start issuing full-blown tornado warnings 15 to 20 minutes before tornadoes started touching down. The warnings are broadcast almost immediately on TV and radio; the goal is to give at least 10 minutes' warning. "This is almost our best-case scenario," meteorologist Spratt says.

But the tornadoes hit after many had gone to bed, and there are no sirens because central Florida has so few tornadoes.

Some of the tornadoes may have had wind speeds as high as 210 mph, the weather service's Bob Ebaugh says. That would make them F4 tornadoes, the second-most severe in the service's ranking system. But the tornadoes won't be officially classified until investigators survey the wreckage to determine exact wind speeds, perhaps as early as today.

Houston Astros camp barely escapes

Regardless, it was the deadliest round of tornadoes in Florida since the weather service started keeping detailed records a half-century ago. And it was the state's most deadly day since Hurricane Andrew struck in 1992, killing at least 32 people in Florida, Louisiana and the Bahamas; 14 of Florida's 67 counties were declared disaster areas.

A pickup truck here ended up on its nose inside a wrecked living room, and retirees lost nearly everything they had.

Baseball's Houston Astros barely escaped disaster. Six Astros were staying in homes at Lakeside Estates, near Osceola County Stadium in Kissimmee, their spring training home.

"If the tornado had gone a little to the left of its path, I don't think a lot of us would have been here," Houston pitcher Chris Holt says. "We would have been pummeled."

A tornado landed near the Astros clubhouse, smashing a batting cage and ripping up two sections of artificial turf. "If it had been at 1:15 p.m. instead of a.m., the field would have been filled with players," Astros spokesman Rob Matwick says.

Curfews were set for dusk in the hardest-hit areas. More than 250 people were injured, including a 16-year-old girl who was blown 150 feet out of a window into a pasture.

One man was holding his 18-month-old baby in his mobile home near Kissimmee when a tornado roared in before dawn.

"The baby was in the father's arms, and it got sucked out into the tornado," Osceola County Fire Chief Jeff Hall says. The child's body was found by late afternoon; it wasn't immediately known if the toddler was a boy or a girl.

Florida Christian College students rush to help

Daylight revealed the devastation at the Ponderosa Park mobile home park in Kissimmee: telephone poles snapped like toothpicks, trailers tossed like toys, blood-stained blankets littering the ground.

Thirteen people were killed in the park, including a man whose body was blown onto the Florida Turnpike.

"Everything's gone," says George Capaz, who returned from an overnight trip to Tampa to find his trailer gone, leaving only rubble and a broken pine tree on Site S-3. "It's just not there."

For students at nearby Florida Christian College, separated by a small field from the destruction at the trailer park, the tornado was a test of faith.

"They laid all these stretchers along one side of the street, and those were the people who were already dead," says student Adam Hicks, 19, who rushed with dozens of others to the park to offer aid.

Some in pajamas, some in wheelchairs, the survivors were helped from the scene. "They were crying, in shock, wondering where their family members were. We prayed with them," says Hicks, who plans to be a minister.

Retirees Kittie and William Dupps drove nearly two hours from the Atlantic coast to search Ponderosa Park for longtime friend Glenn Vearil and his wheelchair-bound wife, Irene Vearil. In the confusion, the Dupps could find no list of victims, no one to tell them who had lived and who had died. Eventually they left, despairing.

Hours later, however, Glenn Vearil, 69, emerged from the trailer park pushing Irene, 68, in her wheelchair. They survived the storm in their 12-by-34 foot trailer as the homes and belongings of others flew around them.

"We're OK. We made it," says Vearil as he accepted cold pizza and a gallon jug of water being passed out by volunteers.

A block from the trailer park on Boggy Creek Road, Gary Stephens, 55, cut downed tree limbs with a chainsaw and counted his blessings.

"From what we've seen, we were very lucky," Stephens says. He lost a part of his roof and a barn.

"We've got leaves stuck to our walls, and glass shards in our cabinets," his wife, Jennifer, says. But their damage was nothing like the destruction in Ponderosa Park.

Says Jennifer Stephens, "They were just sitting ducks."

Contributing: Rod Beaton, Paul Wiseman, wire reports

COVER STORY

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notice provision served the "nonpunitive goal" of community safety and did not amount to additional punishment. Two days later, the Federal appeals court in Manhattan upheld the New York law under a similar analysis. That court, the United States Court of Appeals for the Second Circuit, has also upheld a similar law in Connecticut.

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The notification of communities about paroled sex offenders is at issue.

classification chosen by the prosecutor. The Justices today turned down New Jersey's appeal of that part of the Third Circuit ruling.

For offenders at the lowest level of risk — about two-thirds of the group so far — only law enforcement officials receive the information. At the intermediate risk level, notice goes to nearby schools, day-care centers and other institutions. For the highest level of risk — so far, only about 2.4 percent — the neighbors are notified as well.

The New York law works differently, requiring the state to set up a 900 number that members of the public can call, at \$5 a call, to learn if

there are convicted sex offenders living nearby. Local police departments will also keep the information on file, and the law gives the local police considerable discretion over whether and how to actively notify the community about the highest-risk offenders.

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TUESDAY, FEBRUARY 24, 1998

The New York Times

THE DAMAGE

Lives and Homes Destroyed In a Night of Deafening Fury

By JON NORDHEIMER

SANFORD, Fla., Feb. 23 — Joel Heaton's luck finally abandoned him shortly after midnight today.

It was then that the black funnel of a tornado roared down on Freddie's Fish Camp, about five miles east of this Central Florida city, and carried away a house trailer with Mr. Heaton in it.

Next door, a trailer housing another single man, Fred Padgett, also sailed away with its occupant. But Mr. Padgett splashed down in the marshy waters of the St. Johns River, a few hundred yards from land. Rescuers found him before dawn, suffering cuts and broken ribs but alive, clinging to an overturned houseboat.

By evening, however, there still was no trace of Mr. Heaton, whose nickname Lucky was testimony to his history of escaping close calls. Police divers searched the murky waters near the fish camp, where anglers, mostly rawboned men who grew up in these parts, keep boats and fish for large-mouth bass in the headwaters of the river.

Tornadoes always leave caprice amid destruction, and that was the case here in Seminole County, where the police said 11 people died and scores were injured when a line of twisters danced across Central Florida around midnight.

In a neighborhood south of the Sanford jetport, a wide swath of houses and mobile homes were destroyed, while structures across a street lost barely a shingle.

The hardest-hit neighborhoods were those along a southern path to the jetport, where clusters of housing owned by people of modest means stood. Dozens of residences were smashed into rubble, with muscle cars and stout sports vehicles tossed aside like a child's playthings.

Carmen Rivera, 38, and her 12-year-old daughter, Diane, had moved into a mobile home three days ago after moving here from Bridgeport, Conn. They were aware of tornado warnings last night but were unprepared for the two minutes of terror that dipped out of the sky. The first sign of danger, Mrs. Rivera said, was the shrieking wind and windows that rattled so hard that the family knew it was experiencing more than a heavy thunderstorm.

"We were clinging to each other when the windows blew out and one wall ripped away," she recalled today as she sat in the First Presbyterian Church in downtown Sanford, where an emergency shelter was set up to provide for the newly homeless.

Across town, Brad Fauver, surveyed the ruined heap of what the day before had been an unoccupied two-story house he had remodeled. Only splintered wood and a partial foundation were left.

"I guess I did my remodeling a little too soon," Mr. Fauver said.

Sanford is considered the first population center in Central Florida, about 30 miles northeast of Orlando, where palm trees and scrub palmetto dissolve into the tall oak trees draped with Spanish moss more typical of the northern tier of the state.

Most tourists who pass through Sanford, population 36,000, are passengers on the Auto Train — Sanford is the southern terminus of the rail system that transports cars and their drivers between here and Virginia. A devastating freeze 13 years ago laid waste to the orange groves that covered the landscape from horizon to horizon, and they and the citrus economy never recovered.

But the sprawl of the Orlando area is spilling into southern Seminole County, and the new jetport here has become the fascination of package charter flights from Britain that deliver one million tourists a year bound for Walt Disney World and other Florida destinations, local officials said.

Hurricanes occasionally sweep through this part of the state, but few

residents were ready for tornadoes in late February, a season when dusty, chilly winds are expected but not the tropical storms now delivered by El Niño far away in the Pacific Ocean.

Freddie's Fish Camp is off State Road 46, where the St. John's River meets Lake Jessup. The camp lies unprotected on a spit of land flanked on three sides by water, about two acres in all, with 12 year-round residents in trailers and a small fleet of older vessels and weather-scarred houseboats.

The proprietor, Rod Goddard, 58, said he was dozing off shortly after midnight when he heard "a whistling sound coming harder and harder and harder."

"You could hear this roar and the power lines going down," Mr. Goddard said. "My wife ran out the door, and I was trying to get into my pants and follow her when it hit. The windows blew out, and the force slammed me against the wall. I couldn't get out the door."

Trees twisted and snapped, and mundane objects like lawn mowers and mailboxes became deadly missiles, he said. His black Chevy 1500 pickup truck parked in the yard took several direct hits that shredded metal fenders, crushed windows and left the vehicle pockmarked with battlefield-like wounds.

Nearer the river, a resident who identified himself only as Ernie had sought shelter in a tin-roofed pavilion on concrete pilings. He said he scrambled under a concrete picnic table as the tornado bore down, lifting the structure.

"The roof was sucked right into the sky, and debris was flying all around me" he said.

When he could crawl from beneath the branches of a tree that had landed on the picnic table, the fish camp had been transformed into a jumble of beached or overturned boats frozen in his sight by flashes of lightning.

When the survivors could gather to assess the damage no one could account for Mr. Heaton or Mr. Padgett. As the hours passed, hope that Mr. Heaton, like Mr. Padgett, would be found alive began to dim.

"We called him Lucky because he had driven a pickup truck off the road into ditches a couple of times and walked away," Ernie said as he stood barefoot and watched the police divers search. A strong western wind had picked up and dragged a new cover of clouds overhead.

"It doesn't look like he was so lucky this time" Ernie added, his eyes scanning the wind-whipped river a final time before he walked away.



The New York Times

A series of tornadoes left their mark yesterday in most of Florida.

The New York Times

TUESDAY, FEBRUARY 24, 1998

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Sex Offenders Saw Double Jeopardy in Notification Policy

By Joan Biskupic
Washington Post Staff Writer

The Supreme Court yesterday rejected a constitutional challenge to "Megan's Law," the New Jersey statute that requires authorities to notify communities of convicted sex offenders in their neighborhoods.

The law, named for a 7-year-old girl who was raped and murdered by a twice-convicted sex offender, was the first of its kind. Provoked by the tragedy of Megan Kanka and by New Jersey's 1995 law, 36 other states, including Maryland and Virginia, as well as the District, have since adopted similar statutes.

Community notification laws and harsher penalties for sex crimes are part of a national trend to try to protect children from those who would prey on them. But such efforts also have drawn protests from defense lawyers who say civil liberties and rights are being trampled.

In the Megan's Law case, a group of sex offenders whose crimes were committed before the New Jersey law was enacted sued, claiming the policy making their names and addresses public and subjecting them to community harassment and violence imposes a second punishment on them, violating the double-jeopardy guarantee against multiple punishments.

They also argued that the law's retroactive effect breached the guarantee against ex post facto laws. The Constitution prohibits laws that increase a defendant's punishment beyond what was on the books when the crime was committed.

The U.S. Court of Appeals for the 3rd Circuit upheld Megan's Law last year. The appeals court ruled the law cannot be considered additional "punishment," saying, "The state had imposed no restrictions on a [person's] ability to live and work in a community, to move from place to place, to obtain a professional license or to secure governmental benefits."

Yesterday's Supreme Court action, letting that ruling stand, sets no national precedent and does not stop legal challenges to other state laws. However, it does offer a vote of confidence to states that require prosecutors to notify local residents about convicted sex offenders. Under Megan's Law, prosecutors evaluate the record of a convict's offense and other private information to determine his or her potential risk to the community and decide how extensive community notice should be.

The high court action, made public in a one-sentence order in a day of varied court business, was not accompanied by any comment from the justices.

"The lawsuit we fought so hard to win is over," said New Jersey Attorney General Peter Verniero, hailing the court's action.

Indicative of the broad interest among politicians and policy makers, President Clinton issued a statement saying the Supreme Court action leaves intact "a crucial tool to protect children from known sexual predators." He said the administration was working with states to establish a national sex offender registry.

John J. Gibbons, lawyer for the unnamed sex offenders in the case, said yesterday that many convicts believe if they have served their time they should be able to live in quiet anonymity. Noting that lower courts were divided over whether state notification laws were unconstitutional additional punishment, Gibbons had urged the justices to take the appeal to rule definitively on the question.

Last year, the Supreme Court ruled that locking up a repeat sex offender in a mental institution after he has served his time does not violate double-jeopardy protections. That decision in a Kansas case partly influenced the 3rd Circuit's ruling that the New Jersey law did not rise to the level of a second punishment for a defendant. "All Megan's Law mandates is registration and notification," the appeals court said.

The sex offenders' original lawsuit had challenged a part of Megan's Law that allows prosecutors to rank sex offenders according to their perceived risk to a community. The appeals court agreed that the process lacked sufficient safeguards and violated the convicts' constitutional guarantee of due process of law.

The appeals court said an offender must be able to object to the classification at a hearing and that the state must be able to justify by "clear and convincing" evidence the individual's classification and planned scope of notification. New Jersey officials had appealed this part of the ruling, but their case also was rejected by the high court in its orders in *W.P. v. Verniero* and *Verniero v. W.P.*

In other action yesterday, the Supreme Court without comment rejected an appeal by nine FBI and U.S. Marshal employees sued by Kevin Harris, who was wounded in the 1992 shootout at Ruby Ridge, Idaho. The court spurned a challenge to a 9th Circuit Court of Appeals ruling that said the agents were not shielded from a civil rights lawsuit by Harris, who contended that fabricated statements by the agents had led to his wrongful arrest and prosecution.

The justices also denied appeals by the Dallas Morning News, trying to see sealed records from the Oklahoma City bombing prosecutions, and by groups challenging a ban—on free-speech grounds—on T-shirt sales on the Mall and at the Vietnam Veterans Memorial (*Dallas Morning News v. United States and Friends of Vietnam Veterans Memorial vs. Stanton*).

FOR MORE INFORMATION

To read about key cases from this term and background, click on the above symbol on the front page of The Post's Web site at www.washingtonpost.com

Supreme Court Refuses to Hear Challenges to 'Megan's Laws'

By LINDA GREENHOUSE

WASHINGTON, Feb. 23 — The Supreme Court today turned down constitutional challenges to laws in both New York and New Jersey that provide for communities to be notified about the whereabouts of paroled sex offenders.

The Justices made no comment in rejecting nearly identical appeals, brought by the Public Defender's Office in New Jersey and by the Legal Aid Society of New York. Both argued on behalf of offenders convicted and sentenced before the statutes known as "Megan's Laws" took effect — in 1994 in New Jersey and in 1996 in New York — that the notice requirement was an unconstitutional added punishment.

Although this challenge to the retroactivity of the laws would not have affected future offenders, critics viewed it as their best chance to blunt the laws' impact.

The Federal appeals court in Philadelphia upheld the New Jersey law on Aug. 20 on the ground that the notice provision served the "nonpunitive goal" of community safety and did not amount to additional punishment. Two days later, the Federal appeals court in Manhattan upheld the New York law under a similar analysis. That court, the United States Court of Appeals for the Second Circuit, has also upheld a similar law in Connecticut.

The Federal appeals court in San Francisco has upheld the notification law in the state of Washington. Washington's was actually the first such law in the country, although it was the New Jersey Legislature's response to a shocking 1994 crime, the rape and murder of a 7-year-old girl named Megan Kanka by a convicted sex offender who lived across the street, that gave these laws their name and inspired their rapid spread throughout the country.

The Supreme Court's actions today in turning down the appeals were not rulings on the merits of the issue. They do not set a legal precedent, and there is nothing to prevent the Justices from hearing future challenges to such laws now in effect in 45 other states, or even from hearing cases raising different legal argu-

ments against the New Jersey and New York laws. The New Jersey Public Defender has a case before the United States Court of Appeals for the Third Circuit, in Philadelphia, challenging the notification provision on the ground that it violates the former offenders' right to privacy.

Nonetheless, officials in both states expressed satisfaction with the Court's disposition of the cases today. The New Jersey law has been in effect since December, when the Supreme Court refused to extend a stay. Since then, according to figures released today, county prosecutors

have issued 43 notifications. Thirty-one more notifications are awaiting final judicial approval, and nearly 800 former offenders will soon have hearings on their notification status.

Under the New Jersey law, the extent of the notification is calibrated to an assessment of the risk that the former offender poses of committing a new crime. The Third Circuit court's ruling last August placed on the state the legal burden of establishing the level of risk.

That decision entitled many offenders to new hearings because the New Jersey Supreme Court had previously given the offenders themselves the burden of rebutting the

The notification of communities about paroled sex offenders is at issue.

classification chosen by the prosecutor. The Justices today turned down New Jersey's appeal of that part of the Third Circuit ruling.

For offenders at the lowest level of risk — about two-thirds of the group so far — only law enforcement officials receive the information. At the intermediate risk level, notice goes to nearby schools, day-care centers and other institutions. For the high-

est level of risk — so far, only about 2.4 percent — the neighbors are notified as well.

The New York law works differently, requiring the state to set up a 900 number that members of the public can call, at \$5 a call, to learn if

there are convicted sex offenders living nearby. Local police departments will also keep the information on file, and the law gives the local police considerable discretion over whether and how to actively notify the community about the highest-risk offenders.

Joseph G. Mahoney, a spokesman for Dennis C. Vacco, the New York Attorney General, said the state "will now move at warp speed" to get the telephone database set up and take other steps to put the law into effect for the approximately 5,000 former offenders whose status was at issue in the case, *Doe v. Pataki*, No. 97-7023.

This group is composed of people whose sentences were imposed before Jan. 21, 1996, when the New York law took effect. Mr. Mahoney said that the New York law was already in effect for subsequent offenders, for whom there was no question of the law's retroactive impact, but that this group was very small because any serious offender convicted in the last two years was likely still to be behind bars.

The only three states without similar laws on the books are Kentucky, Nebraska and New Mexico. All three have laws in various stages of legislative consideration. Congress has enacted a Federal version of Megan's Law, requiring states to adopt such laws or forfeit various Federal funds.

The New Jersey case was *W. P. v. Verniero*, No. 97-887.

Returning from a four-week recess, the Supreme Court also dealt with hundreds of other cases today.

In one case, the Justices agreed to hear an appeal by the state of Colorado from a Federal court ruling that invalidated several requirements for circulating petitions in citizen initiatives to put proposals on the state

ballot.

In a ruling last year, the United States Court of Appeals for the 10th Circuit, in Denver, said it violated the First Amendment rights of free speech and association for the state to require people circulating petitions to wear a badge disclosing their names and status as a volunteer or paid worker. In addition, the appeals court struck down requirements that a person circulating petitions must be a registered voter and the names of a petition drive's proponents be filed with the secretary of state.

The appeals court based its ruling on Supreme Court decisions upholding the right of anonymous political speech. But in its appeal, *Buckley v. American Constitutional Law Foundation*, No. 97-930, Colorado is contending that in the case of petitions, disclosures are necessary to maintain public confidence in what the state termed "in essence, a preliminary ballot."

Without comment, the Court also refused to hear the Federal Government's appeal of a ruling that invalidated a 1934 Federal ban on broadcast advertising of casino gambling.

In a decision last year, the United States Court of Appeals for the Ninth Circuit, in San Francisco, held that the law violated broadcasters' First Amendment rights because numerous exceptions written into the statute over the years had rendered it essentially irrational. For example, the law permits broadcast ads for gambling conducted by Indian tribes and for lotteries run by states and nonprofit organizations.

The law was challenged in Federal court by television stations in Las Vegas, Nev., and Reno.

The case was *U.S. v. Valley Broadcasting*, No. 97-1047.

Supreme Court Kills Challenge to Megan's Law

By DAVID G. SAVAGE
TIMES STAFF WRITER

WASHINGTON—The Supreme Court on Monday rejected a constitutional challenge to the original Megan's Law, the much-copied New Jersey measure that requires sex offenders to register with police after their release from prison and in some cases notifies the neighborhood of their presence.

Without comment or dissent, the justices refused to hear offenders' claims that the law amounts to a second, after-the-fact punishment for the same crime.

The high court's action, while not an official ruling, clears away most legal doubts about these new laws, which are designed to alert communities to the danger posed by sexual predators.

Since 1994, all the states, as well as the federal government, have passed versions of Megan's Law. The laws were named for Megan Kanka, a 7-year-old New Jersey girl who was abducted and murdered on July 29, 1994, by a paroled sex offender who had moved into her neighborhood.

Her killer, Jesse Timmendquas, was convicted and sentenced to death.

Under Megan's Law, all released sex offenders must register with the police. In the case of those who pose a moderate risk to commit further crimes, officials are obliged to notify schools, youth centers and day-care facilities of their presence in the community. In high-risk cases, officers go door-to-door notifying neighbors.

Monday's court action was foreshadowed by a June ruling upholding a Kansas law that went beyond Megan's Law. In California, Kansas and five other states, officials are authorized to send sex criminals to locked mental hospitals after they have served their prison terms.

On a 5-4 vote, the court's conservative majority upheld these "civil confinement" laws in the

case of Kansas vs. Hendricks by defining the term "punishment" narrowly.

The Constitution's bans on double jeopardy and ex post facto laws are commonly said to prohibit the imposition of a second or an after-the-fact punishment for a single offense. But the court's conservative majority said that "punishment" refers only to a criminal prison term.

"Even though they may be confined" against their will, wrote Justice Clarence Thomas in June, Leroy Hendricks and his fellow Kansas sex offenders locked up in a state mental hospital "are [not] being punished."

The U.S. court of appeals in Philadelphia followed this approach in upholding Megan's Law. In August, the appeals court cited the decision in Kansas vs. Hendricks and said that the regulations affecting released sex offenders in New Jersey do not "constitute punishment" and therefore do not violate the Constitution.

However, the sex offenders won a partial victory, as well. The judges said that New Jersey officials bear the burden of showing in a judicial proceeding that a released offender poses a true risk to the community. While all released offenders must register with the police, only those judged to pose a risk are subject to the community notification rules.

Because each side in the litigation won on some points and lost on others, lawyers for both New Jersey and the sex offenders appealed to the Supreme Court and urged the justices to reconsider the issue.

But the Supreme Court decides legal questions, not just interesting or significant cases, and in this instance, it was clear that the high court already had resolved the legal questions. As a result, the appeals in both cases—W.P. vs.

Verniero (the New Jersey attorney general), 97-887, and Verniero vs. W.P.—were denied without comment.

In other actions, the court:

- Agreed to rule on whether states can require persons gathering signatures for ballot initiatives to wear badges that say whether they are volunteers or paid for their work. A U.S. appeals court in Denver struck down such a Colorado requirement on free-speech grounds. The case (Buckley vs. American Constitutional Law Foundation, 97-930) will be heard in the fall.

- Refused to block at a preliminary stage a damage claim filed against nine federal agents by a man who was wounded during the 1992 shootout at Ruby Ridge, Idaho. While government agents cannot be held liable for their actions if they follow the law as they understand it, this partial "immunity" does not shield them if they clearly violate the law. In this case (Smith vs. Harris, 97-1051) a federal judge, the U.S. court of appeals and now the Supreme Court have refused to block a suit alleging that the federal siege and shooting violated the constitutional rights of Kevin Harris, who was wounded.

- Cleared the way for broadcasters in the West to air ads promoting state-licensed casinos, such as those in Nevada. Since 1934, federal communications law has barred certain gambling ads, but that prohibition has been whittled away in a series of free-speech rulings. Two Nevada stations challenged the restriction and last year the U.S. 9th Circuit Court of Appeals struck it down as unconstitutional.

The Clinton administration appealed the ruling, which covers California, Nevada and seven other Western states. But without comment, the justices denied the appeal (United States vs. Valley Broadcasting, 97-1047).

High court rejects Megan's Law challenge

By Tony Mauro
USA TODAY

New Jersey's so-called Megan's Law, aimed at informing communities about convicted sex offenders in their midst, survived a constitutional challenge before the Supreme Court Monday.

The high court declined to review a case in which a group of sex offenders claimed that telling their neighbors about their past amounts to a second

punishment for the same crime. Double jeopardy is barred by the Fifth Amendment to the U.S. Constitution.

The court action removes the key legal barrier to full use of Megan's Law and similar statutes adopted in most other states after the death of seven-year-old Megan Kanka in 1994 in Hamilton Township, N.J. Jesse Tim-



Megan Kanka AP

mendequas, a twice-convicted sex offender who lived across the street, was convicted of her murder.

"I've had faith in this law from day one," said Megan's mother, Maureen Kanka, Monday. "It

is the right thing to do, and it is such a prevalent problem in this country."

Sex offenders are required

to register in all 50 states. Besides New Jersey, 36 states require some form of community notification.

In New Jersey, registered offenders are classified according to their perceived risk to the community. The locality is not notified about low-risk offenders. Schools and day-care centers are alerted about moderate-risk offenders, and door-to-door notification is required for high-risk offenders.

Nearly 2,000 state residents

have been classified under the law, which took effect Feb. 9.

A lower court upheld the New Jersey law but said offenders had the right to question their classifications. The Supreme Court's action has the effect of affirming both parts of the lower court decision.

Another challenge to the law may be mounted claiming it invades personal privacy. Other challenges are pending, asserting that the laws violates the rights of association and travel.

High Court Broadens Taxpayers' Right To Receive Refunds on Invalid Taxes

By EDWARD FELSENTHAL

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — The Supreme Court broadened the rights of taxpayers to seek tax refunds after the taxes are declared invalid.

The ruling came in a case involving taxes on magazine sales that Newsweek Inc. paid between 1988 and 1990. The dispute arose over a Florida law that exempted newspapers, but not magazines, from the state's sales tax. In 1990, the Florida Supreme Court said that was an illegal distinction. After that ruling, Newsweek, a unit of **Washington Post Co.**, filed for a refund, which the state denied. Newsweek then sued, claiming the refusal to refund the money violated its due-process rights under the Constitution.

A lower court threw out Newsweek's case, and an appeals court affirmed that decision, saying that Newsweek's due-process rights hadn't been violated because it could have protested the tax before paying it. But in an unsigned opinion, the Supreme Court reinstated the case. The high court said that Florida had a longstanding policy of giving relief to taxpayers who had already paid their taxes and that it would be unfair for the state to suddenly "declare, only after the disputed taxes have been paid, that no such remedy exists."

"While Florida may be free to require taxpayers to litigate first and pay later, due process prevents it from applying this requirement to taxpayers, like Newsweek, who reasonably relied on the apparent availability of a post-payment refund when paying the tax," the court said. (*Newsweek vs. Dept. of Revenue of Florida*)

Separately, the court refused to hear an appeal by Toys "R" Us Inc. of a \$50 million arbitration decision against it in a case involving a contract with a Kuwaiti firm.

The case raised the question of how much authority courts should have to overturn an arbitration ruling. Courts are reluctant to do so because the point of arbitration is to solve disputes efficiently and keep them out of the courts. But Toys "R" Us argued that "clear legal error" was justification for vacating an arbitration award.

The Kuwaiti company, **Yusuf Ahmed Alghanim & Sons W.L.L.**, had a license to open Toys "R" Us stores in Kuwait and 13 other Mideast countries. After claiming that Alghanim wasn't meeting its end of the bargain, Toys "R" Us sought to have the agreement terminated. But an arbitrator ruled that Toys "R" Us didn't have the right to do so and awarded Alghanim \$46.44 million, plus interest, in lost profits. Toys "R" Us appealed the ruling to a district court and then the federal appeals

court in New York, both of which upheld the arbitrator's award.

Toys "R" Us, Paramus, N.J., argued in its brief to the Supreme Court that courts need to step in when "an arbitrator errs as a matter of law in interpreting a contract and awards damages in a clearly irrational amount." Alghanim responded that the effort by Toys "R" Us to "jettison the well-established principle of limited judicial review of arbitral decisions" was "baseless."

A Toys "R" Us spokeswoman said "obviously we're disappointed, but we knew our chances were slim to begin with. We're focusing on business as usual." The Supreme Court decision had no financial impact on Toys "R" Us, which took a \$55 million pretax charge in its fiscal 1997 second quarter ended Aug. 3, 1996, to reflect the arbitration award. The charge amounted to \$37.8 million after tax. (*Toys "R" Us, vs. Alghanim*)

The Supreme Court also declined to disturb a lower-court decision that struck down a federal law restricting ads for casino gambling. The law, which bans television and radio stations from broadcasting advertisements of privately run casinos, was challenged by two Nevada companies that own television stations.

The federal appeals court in San Francisco ruled last year that the law violated the First Amendment, citing "numerous exceptions" to it, such as an exemption allowing casinos run by Indian tribes to advertise. The appeals court said those exceptions undermined the government's justifications for maintaining the law. The appeals court ruling applies only in nine Western states. (*U.S. vs. Valley Broadcasting*)

—Mark Maremont in Boston
contributed to this article.

States Search for Fairness in Implementing Megan's Law

By DALE RUSSAKOFF
Washington Post Staff Writer

PEMBERTON TOWNSHIP, N.J. Virginia Doyle's 6-year-old was emptying out his backpack the other day—hockey team schedules, fliers from school clubs, lunch menus—when out came a sealed, official-looking envelope that he handed her with purpose. "They said to make sure you see this," he said.

Doyle expected to find a letter from a teacher or perhaps a report card when she pulled out what resembled a wanted poster saying, "SEX OFFENDER RELEASE NOTICE," in inch-high letters. Underneath were a photograph, name and description of a convicted sex offender living near her children's school.

Even before the U.S. Supreme Court's decision Feb. 23 to let stand New Jersey's "Megan's Law," the template for sex-offender notification statutes in effect in 47 states, authorities here and nationally began moving aggressively to alert communities to sex offenders in their midst—and tapping an ever-expanding array of communications networks to do so.

As a result, thousands of children, parents, employers, landlords and neighbors find themselves in a new, information-drenched world in which names of sex offenders are being delivered to their front doors by police, posted on the Internet, e-mailed across campuses, displayed on telephone poles, published in newspapers and, in New Jersey's latest variation on the theme, sent home like a report card in a child's backpack.

Differences in laws from one state to the next are raising widely varying issues—from Louisiana, where newspapers are required to publish photographs of released child sex offenders, to New Jersey, where residents are explicitly

warned of prosecution for leaking notices to the press.

At the Doyle household 23 miles east of Philadelphia, the entry into this new world went fairly smoothly, despite warnings from the law's critics that it will incite panic and vigilantism. Doyle said she and her three children sat down for a long, difficult talk about 7-year-old Megan Kanka of central New Jersey, the law's namesake, who was kidnapped, raped and murdered in

1994 by a released sex offender who had moved in across the street.

Doyle and several other parents interviewed said they welcome the chance to reinforce safety precautions with children. "I feel more comfortable, knowing they'll be aware," Doyle said. But several said they would have been horrified if children had read the notices on their own.

New Jersey is one of 18 states sending pictures and addresses of all high-risk sex offenders directly to area homes and businesses, usually via police officers.

In other states, notification is more passive. In California, for example, residents can go to sheriffs' offices and view a data base of more than 60,000 sex offenders by zip code. In New York, a 900 number soon will offer residents information for \$5 on sex offenders living nearby. Florida, Kansas, Alaska, Indiana, Georgia, Michigan and Oregon have World Wide

Web sites with offenders' names, addresses and photos.

In Maryland, people and organizations are notified only as authorities deem necessary. In Virginia, access to offender information is limited, but the legislature is moving to establish a Web site. The District is still formulating a notification system.

New Jersey passed its Megan's Law in October 1994, four months

after Megan's murder, and in 1996 Congress passed a federal version requiring states to pass sex-offender notification laws or risk losing federal law enforcement money. Only Kentucky, New Mexico and Nebraska have yet to enact laws, but legislatures there are considering them.

New Jersey's system, revised by several court rulings, is unique, according to Todd Mitchell of the National Center for Missing and Exploited Children in Arlington, Va., because it joins the most aggressive notification technique with the most aggressive privacy protections for offenders.

The unusual combination reflects the collision of a powerful parents' right-to-know movement with a state supreme court long known as a civil liberties bastion. It requires that notifications go only to those "likely to encounter" high-risk offenders. Notices are hand-delivered by police to homes and businesses in a court-approved radius—from a few blocks to two miles—but also are sent outside it to parents whose children attend school within it.

Offenders designated by prosecutors as "high risk"—which triggers a door-to-door notification—or "moderate risk" can challenge the designation before a judge, as well as the scope of the notification. Moreover, every notice comes complete with warnings that anyone who leaks them to the press or even "beyond your immediate household" could be prosecuted.

The limits already have raised First Amendment questions. In January, the Home News Tribune in East Brunswick, N.J., published a front-page picture and article on the first sex offender in the area whose neighbors were notified. Local prosecutors immediately launched an investigation to find the leak, so far without result, and Attorney General Peter Vernino summoned newspaper executives to warn against "abuse" of the law.

"After all the court challenges we've had, I felt they could have jeopardized our law," said Maureen Kanka, Megan's mother, who also spoke out.

The Home News Tribune stood firm. "Megan and Megan's Law are huge stories in New Jersey, and this was the first notification and

New Jersey's

system joins the

most aggressive

notification

technique with the

most aggressive

privacy protections

for offenders.

in our opinion that made it news," said managing editor Teresa Kline. "We take the position it is not up to prosecutors to decide what news is. That's what editors are for."

More recently, WPVI-TV of Philadelphia obtained a leaked notice about the Pemberton Township fire and aired it Feb. 25.

The experience here is significant because the Center for Missing and Abused Children, which helped the Kanka family campaign for notification laws, views New Jersey's law here as "a model for other states to emulate," Mitchell

said, because it is "battle-tested" by state and federal courts and "looks like it balances" interests of children and parents with rights of offenders.

Critics of the laws say, however, that the incidents here raise questions about whether the balancing act can work.

"How do you have a uniformed officer show up at the door to tell people about a high-risk person and then say, 'Don't let us catch you talking to the press or neighbors?'" asked Ed Martone of the American Civil Liberties Union of New Jersey. "I think we're in the early stages of seeing this just isn't something government can do."

A Pemberton mother, who insisted on anonymity for fear of being prosecuted for even talking to a reporter, said she supports Megan's Law but feels "very uneasy about this order not to talk. So much has changed since I was a child. You never locked doors; now you lock every door. Maybe this is just something else we have to learn to live with."

The New Jersey system is proving to be extremely labor-intensive. All 21 New Jersey counties have a "Megan's Unit" in the prosecutor's office to coordinate registering released offenders, assessing their risk, litigating their court challenges to risk rankings and notification plans and then overseeing police, schools and community leaders who disseminate notices.

"We have a five-person unit, three lawyers, a detective and a secretary, and this is all we do, full time," said assistant Union County prosecutor Maureen O'Brien in central New Jersey.

- **"Megan's Law":** Many lawsuits have been brought challenging the constitutionality of the State "Megan's Laws." Losing offenders in the Second and Third Circuit petitioned the Supreme Court to review claims that the community notification provisions impose "punishment" and therefore violate the Ex Post Facto and Double Jeopardy Clauses of the Constitution. On February 23, the Supreme Court declined to review both cases. To date, the Second, Third, and Ninth Circuits have issued decisions generally rejecting the constitutional challenges to the registration and community notification features of the State laws.
- **Oil Companies Case:** DOJ intervened in a suit filed against 14 oil producing companies. The suit alleges that the companies knowingly underpaid royalties owed to the Government and Indian tribes. The U.S. intervened as to four of the defendants -- Amoco Oil Company, Burlington Resources, Inc., Conoco, Inc., and Shell Oil Company, as well as subsidiaries and affiliates of these four companies. Investigation of the other ten companies continues.

DEPARTMENT OF INTERIOR

- **Eagle Mountain:** For a second time, a CA State court has determined that the environmental impact statement for construction of the Eagle Mountain Landfill project is deficient. The proposed landfill, to be built at the site of an old copper mine, is in close proximity to Joshua Tree. NPS has been critical of the project due to concerns about potential environmental degradation, including impacts on the air, adjacent habitat, and endangered species. The developer has agreed to use \$600,000 annually of landfill proceeds for restoration purposes if the project is approved. BLM has approved an exchange of 3,500 acres of public lands around the mine for 2,850 acres owned by the developers to create habitat for the desert tortoise.
- **Fluid Sampler Patent:** A USGS employee has been awarded a patent for a "Fluid Controlled Isokinetic Fluid Sampler." This invention can sample flowing fluid from streams, rivers, effluent of industrial plants, or waste water treatment plants. This is the first practical sampler design capable of taking depth-integrated samples of water and sediment that are accurately representative of conditions below a depth of about 15 feet.
- **Personal Watercraft Rule:** Within the next month, NPS plans to publish a proposed rule on use of personal watercraft (PWC) within national parks. The rule would authorize local park managers to establish park-specific regulations. Industry opposes restrictions, while conservation groups expanded use of PWCs.
- **FDR Memorial:** On March 9, the FDR Memorial Committee and NPS will conduct a public meeting at the National Capital Planning Commission to receive public input on how to modify the memorial to recognize President Roosevelt's disability.

Deportation Ordered for Saudi Who Had Promised Cooperation in Probe of '96 Bombing

By William Branigin
Washington Post Staff Writer

A Saudi man suspected of involvement in a June 1996 truck bombing in Saudi Arabia that killed 19 U.S. Air Force personnel has been ordered deported from the United States, officials said yesterday.

Hani Abdel Rahim Sayegh, 29, was found "inadmissible" to the country for national security reasons Wednesday by the Immigration and Naturalization Service, which then issued a deportation order, an INS spokesman said. No date was set for his removal, and the INS has yet to determine where he will be sent. Meanwhile, he remains in INS custody.

Sayegh was turned over to the United States by Canada last June after he

agreed to cooperate with the FBI in an investigation of the truck bombing. As a Shiite Muslim militant who had studied and trained in Iran, Sayegh was believed to have information on the involvement of top Iranian officials in an international terrorist campaign against the United States.

He had flown to Canada in August 1996 and requested political asylum, but was arrested by Canadian authorities the following March as a security risk.

Fearing that Canada would deport him to Saudi Arabia, where he would risk heading for his alleged role in the plot, Sayegh agreed to provide information to U.S. authorities as part of a deal in which he would be sent to the United States instead. In a sealed plea deal, he agreed to plead guilty to a

conspiracy charge here in a planned 1995 attack against a U.S. military installation in Saudi Arabia. That plot was never carried out, but is believed by U.S. officials to have led to a separate conspiracy that resulted in the 1996 bombing of the Khobar Towers apartment complex in the eastern Saudi port of Dhahran.

Soon after arriving in the United States, however, Sayegh reneged on the plea agreement, declaring that he would plead not guilty if brought to trial. Last September, the Justice Department dropped the terrorism conspiracy charge against Sayegh. FBI Director Louis J. Freeh said federal authorities decided not to pursue the case in part because the Saudi government had failed to provide evidence that could be used in a U.S. court.

Sayegh was then remanded to the custody of the INS. After closed proceedings under a section of immigration law that applies to foreigners who may pose a threat to U.S. national security, the INS ordered his expulsion. INS officials said they believe the decision cannot be appealed to a court.

Sayegh can be jailed for up to six months while arrangements are made to deport him, INS officials said. Determining where to send Sayegh involves "complex legal issues" that have yet to be resolved, INS spokesman Russ Bergeron said. Among the possibilities is Sayegh's country of nationality, Saudi Arabia, which has said it wants him back. Others include Canada, where he last resided, or another country of Sayegh's choosing that agreed to accept him. The decision is up to the U.S.

government, which can reject any destination suggested by Sayegh, Bergeron said.

According to Canadian court documents and Saudi sources, the Khobar Towers bombing was carried out by a Shiite group called Saudi Hezbollah, a branch of the radical Lebanese-based Hezbollah, or Party of God, that has long been aided by the Shiite authorities in Iran. Sayegh allegedly drove a vehicle that was used to signal the driver of the bomb-laden truck when to pull in front of the apartment complex, which served as a military compound for U.S. servicemen deployed in Saudi Arabia after the Persian Gulf War. Sayegh denied any involvement in the attack.

As part of the deal that led to his

transfer to U.S. custody last year, however, he implicated a top Iranian intelligence official, Brig. Gen. Ahmad Sherifi, in the 1995 conspiracy to attack American targets in Saudi Arabia, U.S. sources said.

None of the information Sayegh gave to U.S. officials specifically tied Iran to the Khobar Towers bombing.

According to an account published by a London-based Arabic magazine and reportedly based on documents supporting Sayegh's request for asylum in Canada, he went to Iran for religious studies in 1986 and came under pressure from Iranian security officials to work for them. Sayegh reportedly was sent to a military training center in Tehran and enrolled in an organization opposed to the Saudi government.

Publication of Data About Sex Offender Angers N.J. Officials

Associated Press

NEWARK, Jan. 22—Under Megan's Law, authorities may go door-to-door to tell residents about sex offenders moving into their neighborhood.

Now, two newspapers have printed stories quoting information from a "sex offender release notice," angering authorities who meant it only for neighbors' eyes and alarming those who fear such notices can lead to vigilante action.

The Home News Tribune of East Brunswick and the Asbury Park Press published an article about the notice naming Ronald Terpak.

The flier, which also carried his photos, was distributed to a small area straddling Union and Middlesex counties, with a warning that it "may not be released beyond your immediate household, given to the press, or posted anywhere." The newspapers omitted Terpak's address, but the Tribune article and a front-page map identified the streets of his neighborhood.

"We heard the fliers were going out, and thought we'd be remiss if we didn't do it," said Teresa Klink, managing editor of the Tribune. She would not say how the newspaper got a copy of the notice.

Terpak has been free since March 1993 after serving three years for attempting to endanger the welfare of a child. He could not be reached Wednesday for comment.

New Jersey Attorney General Peter Verniero said giving the information to the newspapers was improper. He said prosecutors will investigate how the information got out. "Improper dissemination may be considered contempt of court," Verniero said in a statement.

Under Megan's Law, authorities may go door-to-door to notify residents that sex offenders considered as posing a high risk of committing new crimes have moved nearby. The notification area must be approved by a judge and may be challenged by the offender at a closed hearing.

The law was named for Megan Kanka, a 7-year-old who was raped and murdered by a sex offender who had moved into her neighborhood.

When it upheld Megan's Law in 1995, the state Supreme Court wrote "we assume that the media will not knowingly frustrate the explicit legislative goal of confining notification to those likely to encounter the offender."

The state public defender's office said the newspapers' action is evidence that notification can result in an invasion of an offender's privacy.

The Washington Post

FRIDAY, JANUARY 23, 1998

Microsoft to Allow Browser Blocking

Limited Settlement Removes Justice Department Contempt Threat

By Rajiv Chandrasekaran
Washington Post Staff Writer

Microsoft Corp. agreed yesterday to let personal computer makers block access to the company's Internet browser when installing the latest version of its Windows 95 operating system, a significant concession to the Justice Department that prevents the software giant from being found in contempt of court.

The settlement, agreed to this morning by U.S. District Judge Thomas Penfield Jackson in Washington, resolves a major issue in the Justice Department's antitrust battle with Microsoft. It likely will remain in effect until Windows 95 is replaced by a new product, legal experts said.

The settlement, which was reached after intense discussions Wednesday night, does not clear up larger issues in Justice's case against Microsoft. The agency argues that Microsoft, in requiring that PC manufacturers that want to use Windows must distribute its Internet Explorer browser, is violating a 1995 consent decree with the government that sought to mute some

of the company's business practices.

"This is a very important victory for consumers and innovators," Assistant Attorney General Joel I. Klein said in an interview. He said the settlement shows technology companies "that their products can compete on their own merits and not be snuffed out by Microsoft's use of monopoly power."

Robert Herbold, Microsoft's executive vice president and chief operating officer, said in an interview that the company decided to settle so it can focus on the broader issue of whether it is violating the consent decree.

See MICROSOFT, G4, Col. 4

MICROSOFT, From G1

"We want to get on with this," he said. "By resolving this controversy, we're putting the focus back where it belongs, back on the substance of this case."

In the limited settlement reached yesterday, the department won relief for its contention that Microsoft was flouting a preliminary injunction issued by Jackson in December by offering two browser-less versions of Windows 95 that were inoperable or that lacked features of the latest version.

The company had insisted that the wording of Jackson's injunction required it to delete all browser files from Windows 95, despite its contention that the operating system cannot function without most of the browser's files. That hard-line position had created a public relations debacle for Microsoft.

The Justice Department wanted the company to let PC makers use the already-developed "add/remove" function to "uninstall" Internet Explorer. That approach removes some—but not all—browser files without harming the underlying operating system.

In issuing his December injunction, Jackson ordered an in-depth review of Microsoft's licensing requirement before making a final ruling. The company has appealed the preliminary injunction and Jackson's decision to appoint a Harvard University law professor as a "special master" to conduct the review.

Under the settlement, Microsoft will

give computer makers that don't want to distribute the browser two new options:

- They can use an "add/remove" function in Windows 95 to delete a handful of Internet Explorer files, which removes both the desktop "icon" for Internet Explorer and the other ways an ordinary user can access the browser.

- They can simply remove the icon for Internet Explorer, making the browser harder—but not impossible—to access.

"It's a pure hiding rather than a removing approach," William H. Neukom, Microsoft's vice president for law and public policy, said at a news conference. Neukom said no PC maker has expressed interest in any versions of Windows 95 without a browser.

In a related development, Microsoft's chief rival in the Internet browser wars, Netscape Communications Corp., announced yesterday that it would make its Navigator browser free, copying a tactic used by Microsoft.

Although Justice and Microsoft lawyers have been talking off and on since the department sued the company in October, the settlement discussions began in earnest late last week, after Jackson held a two-day hearing into the contempt issue, sources close to the case said.

At the hearing, Jackson skeptically questioned a top Microsoft executive about the company's compliance with his preliminary injunction—a move that, to some legal observers, suggested he was moving to rule against the company.

During the negotiations, Microsoft initially proposed to Justice that the PC makers only be allowed to remove the icon but not the 26 files that are deleted during the uninstall process, the sources said. Finally, late Wednesday night, Microsoft agreed to provide the two options to computer makers, the sources said.

The settlement likely will remain in effect until at least this summer, when Windows 95 is to be replaced with a new product called Windows 98, which is the subject of a separate Justice Department inquiry. That's because yesterday's agreement will continue for 90 days after Microsoft's appeal is decided, a step not expected to occur until spring.

Microsoft executives said as recently as a week ago that they were not inclined to make a settlement offer because it could be interpreted as a concession to the government that could affect prospects for an appeal. Herbold and Neukom said yesterday that they felt the agreement would not weaken an appeal.

Microsoft's competitors in Silicon Valley applauded the move yesterday.

"There is enormous significance to what's happened," said Gary Reback, a partner with the Palo Alto, Calif.-based law firm Wilson Sonsini Goodrich and Rosati who represents Netscape. "It demonstrates the government's willingness to go to bat, and that the government can get meaningful results."

Staff writer Elizabeth Corcoran in San Francisco contributed to this report.

The Washington Post
FRIDAY, JANUARY 23, 1998

'Megan's Law' Notice on Sex Offenders Is Limited in New Jersey, Megan's Home

By ROBERT HANLEY

Months ago, Alaska posted a list of its 1,600 paroled sex offenders on the World Wide Web. California provides information on about 64,000 offenders on CD-ROM at any county sheriff's office or big-city police department. And three months ago, Connecticut began allowing local police stations to release the names, addresses and pictures of paroled offenders to anyone who calls.

But in New Jersey, the state that inspired the nationwide movement for public warnings about the presence of sex offenders, information is held far more tightly.

Since New Jersey's community-notification law was hurriedly enacted in 1994 amid the outcry that followed the killing of Megan Kanka of Hamilton Township, it has faced an onslaught of constitutional challenges, and nearly three years of review and revision by Federal and state judges.

Indeed, the original "Megan's Law" is soon to emerge from legal limbo as one of the most restricted in the nation, with tight limits on which offenders are identified, who has access to the information and how those facts may be passed on.

By the end of this month, when most of New Jersey's 21 county prosecutors are expected to begin issuing names and addresses of offenders, only about 600 parolees will be listed: those classified as posing a moderate or high risk of committing new sex crimes. That total is about one-third of all classified offenders; the two-thirds considered low risk are free from any notification requirement.

And, unlike other states, New Jersey will allow only a relatively few people, those approved by state judges, to learn about the moderate- and high-risk offenders.

For convicts considered the most dangerous, some neighbors will receive judges' clearances to get the warnings, but others will not.

For offenders deemed moderate risks, school superintendents and principals, and maybe some security guards, will be alerted. But they cannot legally pass that information on to schoolchildren or their parents. Leaders of Scout troops and coaches of youth teams can be told, but not the children they oversee. Operators of women's shelters and day-care centers are legally entitled to receive warnings, but not the women or children in their care.

Also, those who are approved by judges to get the alerts risk contempt-of-court citations if they pass the information to those who are not.

New Jersey's limited warnings are to start now that a long Federal court ban on them has lapsed and state judges are ready to begin hearings that will define the scope of the notifications.

Of the 47 states that have some type of notification law, nearly all give information more freely than New Jersey. A recent analysis by the National Center for Missing and Exploited Children in Arlington, Va., suggests that only the laws in Michigan and Virginia are as restricted as New Jersey's.

New York State's law provides for a directory, available at local police stations, listing offenders considered having the highest risk of committing new sex crimes. It lists them alphabetically by county. New York's law also creates a 900 telephone number at \$5 a call, giving biographical material and ZIP codes, but no home addresses, for moderate- and high-risk offenders.

But use of both the directory and 900 number have been blocked by a Federal court at least until the United States Supreme Court decides whether to hear a challenge to the constitutionality of New York's law by the Legal Aid Society.

New York's Attorney General, Dennis C. Vacco, and Connecticut's Attorney General, Richard Blumenthal, favor putting the names of offenders in their states on the Internet sometime in the future. In New Jersey, that would be illegal.

New Jersey's law was rushed through the Legislature in the fall of 1994, after the murder of Megan Kanka, 7, that summer by a twice-convicted child molester who lived across the street. The original law provided for townwide alerts about the most dangerous offenders. Some were made in early 1995, and a few of them led to cases of harassment and vigilantism.

That summer, the New Jersey Supreme Court upheld the constitutionality of the law. But it ordered an end to the townwide notifications and imposed the restrictions now taking effect. The court's goal was to strike a balance between giving information to some members of the public to protect themselves, and preserving the privacy rights of offenders who had finished prison terms.

The court permitted notifications only to those "likely to encounter" a paroled sex offender, based on their proximity to the offender's home, workplace or an establishment the offender frequented. The ruling limited the notifications about moderate-risk offenders to school officials and the owners or operators of community establishments that have custody of women and children or care for them.

For high-risk offenders, these establishments may get warnings, as well as schoolchildren and their parents and immediate neighbors.

But these warnings now cover only about one-third of New Jersey's paroled offenders. Of the 1,939 whom county prosecutors have evaluated for potential risk, only 47, or 2.4 percent, are classified as high risks and subject to the widest warnings. Another 585, or 30.2 percent, are deemed moderate risks. The remaining 1,307, or 67.4 percent, are low risks. Only law enforcement officials can receive information about them.

New York State, on the other hand, has classified 71 percent of its paroled offenders, or 4,738 of 6,637, as moderate or high risks and subject to warnings to the public.

On the eve of the alerts, New Jersey officials overseeing the law say that during the two and a half years the law was tied up in Federal courts, the public has become confused and uncertain about who is

entitled to receive warnings and who is not.

For instance, any community organization that supervises or cares for children and women and wants to receive alerts has to give its name to the local police. But some local police departments say the state has not told them whether they have to urge these groups to sign up or whether the groups know they have to do so on their own.

Detective Sgt. James Vieldhouse, head of the Youth Bureau in Wayne, N.J., says real estate agents often call him asking whether released of-

fenders live near homes their clients are considering buying. He says he cannot tell them because the law does not provide for notices to home buyers until they close on a house, and then only in cases of high risks.

"That's very hard," Sergeant Vieldhouse said. "They want to know if bad guys live on the street."

Some people have called prosecutors' offices with questions about the allowable breadth of notifications and think countywide alerts are permissible. The law never allowed that.

Ike Gavzy, an assistant Bergen County prosecutor in charge of its sex crimes unit, says that in his discussions about the law and its limits, school officials are sometimes troubled by this supposition: What if a superintendent or principal is warned about a moderate-risk offender living near the school, and does not have approval to tell anyone about him, and then a child in the school is molested by the offender?

"It's a difficult one to answer," Mr. Gavzy said. "We try to explain we always have to be careful in today's society. We all have to be vigilant all the time. There's no guarantee of safety."

Other law enforcement officials warn that people who illegally tell others about an offender's whereabouts face possible contempt citations for violating a judge's orders on the scope of notification. But the officials question how they can realistically prevent people from spreading information, especially in schools.

"There's nothing to stop the cafeteria grapevine," one said. And, he suggested, the state would probably create a political storm if it prosecuted a mother for illegally telling another mother about an offender's living in their neighborhood.

Gov. Christine Todd Whitman and New Jersey's Attorney General, Peter G. Verniero, have repeatedly warned that the state will vigorously prosecute any vigilantism. But Mr. Verniero says he is confident New Jersey residents will not violate judges' limits on notifications.

"I'm not willing to concede that the public won't follow the law," Mr. Verniero said. "I think the public wants this law to work. I have faith the public will abide by the rules. The quickest way to lose the protections of Megan's Law is to abuse the law itself."

2 Systems May Help Pilots Detect Turbulence Ahead

By MATTHEW L. WALD

WASHINGTON, Jan. 4 — To the Federal Aviation Administration, the problem seems almost insurmountable: every year, a dozen or so airplanes hit turbulence so severe that the cabins of big jets suddenly resemble roller coasters. Passengers and flight attendants suffer broken bones, concussions and, once in a while, like Dec. 28 on a United Airlines flight from Tokyo, death.

Two tiny companies, though, say they think they have solutions for detecting these invisible potholes in the sky, using remote sensing technologies that sound like something out of "Star Trek."

Both technologies began in the Pentagon as new and better ways to kill people, in this case by using lasers for detecting rapid movements in air, which can help detect enemy ships and planes and improve the accuracy of bombs. With help from the Federal Aviation Administration and the National Aeronautics and Space Administration, both systems will be tested beginning early this year.

Turbulence associated with thunderstorms is easy to spot, but the main technique for detecting clear air turbulence, the kind that hit the United flight, has always been to fly right into it. Eager to reduce the casualty toll, the pilots turn on the seat-belt light at the first sign of a bump, or the first report from another airplane, but they do this so often that passengers disregard the warnings, and most injuries come when the seat-belt light is already on.

"For years, the number one causal factor for injuries to passengers on commercial airlines has been clear air turbulence," said Clifford Hay, a program manager at the F.A.A. in charge of one of the new research efforts, which uses lasers as a giant ear to listen for sounds of turbulence. It will get a first test at Kennedy International Airport in New York this month or next.

A more advanced laser effort will be tested aloft in April. It is from Coherent Technologies of Boulder, Colo. After 14 years of research, financed in part by \$30 million from the Pentagon, Coherent Technologies has a new kind of detector that it believes will sense the movement of air miles ahead, providing time for a pilot to take evasive action, or at least issue a more authoritative warning to passengers and the cabin crew.

"The most conscientious pilot in the world, if he doesn't have good information, can't do a very good job of controlling the seat-belt light," said Rodney K. Bogue, a staff scientist at NASA's Dryden Flight Research Center, in Edwards, Calif. The center has sponsored some of Coherent Technologies' work and plans to test the system in flight in April. A light that turned on only when there was significant turbu-

lence, Mr. Bogue said, would "go a long way to make believers out of people" and prompt passengers to buckle up.

The Coherent Technologies system is called Lidar, for Light Detection and Ranging. (Radar stands for Radio Detection and Ranging.) It sends out a laser beam 2 to 4 inches wide. A patented electronic device switches a gate open and shut to create pulses 50 yards long, at a rate of 150 to 200 pulses a second. Air cannot reflect laser signals, but tiny particles suspended in the air can, and the system measures the reflected laser light.

Detecting such tiny particles requires a very short wavelength. For example, the F.A.A.'s radars operate at a wavelength of 2 meters, or about 6 feet, and can see a solid object as small as 3 feet in diameter; Doppler radar images shown on television weather reports use radio signals with wavelengths in the millimeter range, one one-thousandth as long. Lidar uses infra-red, which is one one-thousandth as long as that, or one one-millionth as long as F.A.A. radar wavelengths.

NASA plans to install the system in a twin-engine turboprop for several days of tests in April, measuring air movements in front of the plane and then flying the plane into it, to see how the lidar readings correlate with the bumps.

The system uses low power levels, so the laser cannot blind other pilots, but a major question is how far ahead the system can see. Paul A. Reveley, marketing manager at the company, said scientists believed it would be 6 to 10 miles. "It should be able to provide a pilot with somewhere in the neighborhood of 30 seconds of advance warning of some sort of turbulence event ahead, and a direct measure of how severe it would be," he said. Like new electronic systems that warn of mountains ahead, this one can be programmed to show hazards in distinctive colors or sound an alarm.

But by sensing air movements ahead, the system would also help pilots identify nearby altitudes with better tail winds or less head wind, the company believes, and in the intensely competitive aviation industry, would be adopted as a fuel-saving measure.

Much of the early work in the field was done for the Air Force, which measures wind between a plane and the ground to allow more accurate drops of paratroopers, parachuted cargo pallets, bombs and artillery rounds fired from the air.

Sewell I. Sleek, the chief operating officer, said Coherent Technologies believed it could produce the system for \$250,000 a unit now, but that airlines with which the company had discussed the system indicated that they wanted to pay only about \$150,000, which is more typical of other big electronic systems for

planes.

Mr. Sleek said that about 10,500 big jets in commercial service around the world constitute the potential market. In addition, the system could be used to spot the turbulence caused by big planes landing. To keep planes out of the wakes of the planes ahead, controllers now separate them by miles. If controllers knew where the turbulence was, they could squeeze the planes closer together.

Coherent Technologies is privately held but is considering an initial public offering in 1998, Mr. Sleek said.

A second approach, sponsored by the F.A.A. and overseen by Mr. Hay, is to use lasers to make a "virtual microphone," to listen for the sound of turbulence or airplane wakes. A regular microphone uses a membrane that vibrates in response to sound waves; this one will use a laser beam 100 yards long to detect passing sounds, by measuring the sudden changes in air density. The laser beam travels more slowly through denser air.

Using several beams at different locations around the airport and noting the time at which the sound arrives at each, a computer can calculate the direction and distance to the source.

The system, called Socrates, will be tested at Kennedy Airport. The effort is led by a 6-month-old private company, Flight Safety Technologies of New London, Conn., using methods perfected by the Navy for submarine use.

Samuel A. Kovnat, a physicist who is chairman and chief executive of Flight Safety Technologies, said the experiments will develop a "voice-print" for all the sounds the beam will hear, by listening for different frequencies. An early goal is to distinguish the sounds of jet engines, air rushing over the wings, airplane brakes and turbulence in airplane wakes. Later, he said, engineers will listen for wind shear, a kind of turbulence that at low altitudes has caused several plane crashes.

If the ground-based system can be made to work, engineers plan a flying version that would send lasers out to sense sound vibrations a few hundred feet from the airplane. They would sense sound by measuring particles in the air as they vibrated.

Speaking of the Socrates system, Mr. Hays said, "they've had some good initial results on this, and they've got us very interested."

Do 'Megan's laws' make a difference?

Pariah status may not deter sex offenders

BY JOSHUA WOLF SHENK

When Scott Lee Stoller, a convicted child molester, left prison in 1996, Seattle police notified his neighbors with a community meeting and a flier that called him "a high risk to reoffend." But that August, Stoller drove 10 minutes across Lake Washington to Redmond, where parents hadn't been warned of his violent past, and molested two girls, ages 5 and 6. "I don't count on notification to protect anybody," says Robert Hales, a Redmond detective who helped arrest Stoller. "But at least the public is aware that these individuals are living in their neighborhoods."

Washington State was the first in the country to pass a law requiring that communities be notified when a sex offender moves nearby. These laws—now known as "Megan's laws" after the New Jersey girl raped and murdered by her neighbor in 1994—got a big boost in the Supreme Court last week, when it refused to hear arguments that such civil actions constitute double jeopardy, or two punishments for the same crime.

But even if these laws are constitutional, a more basic question remains: Do they deter offenders? Evidence from Washington State's eight-year experience with the law suggests that community notification has little, if any, impact on the likelihood that a convicted sex criminal will strike again. According to a 1995 state study, in the period before the state's "Megan's law," 22 percent of sex offenders who had been arrested went out again and committed sex crimes. After the law went into effect, the number hardly budged: It was 19 percent.

Biggest worry. Officials say that notification is mostly useful as a way to educate the public. Robert Shilling, a Seattle detective who has run hundreds of community meetings, says he uses them to make a broader point. "I always say, 'This person is not your biggest worry. Your biggest worry is the person you don't know about, yet.'" By raising the profile of sex crimes, notification laws have put pressure on police to apprehend suspects and the justice

system to mete out tougher punishment.

But heightened awareness can also lead to increased fear and suspicion. Sandra Yudilevich, the nurse who examined Stoller's most recent victims, wonders about the long-term consequences of injecting such worry into children's lives: "It's an unknown quantity. I can foresee problems, particularly in homes where protectiveness is really overdone."

the family. Some even argue that Megan's laws could have an adverse affect, silencing victims of incest for fear that those molesting them—their parents or siblings—will become pariahs. This is a particular concern in Louisiana, which is the only state that requires sex offenders to notify the community themselves. Judges have even required offenders to wear special clothing or sandwich boards announcing their past crimes.

One common effect of such disclosure is to make communities rise up against individual offenders. Even in Washington State, where police publicly vow to protect the right of past offenders to be left alone, more than 30 acts of vigilantism have been recorded since the notification law took effect. Most dramatically, in 1993, arsonists burned down the home to which a paroled child rapist was supposed to be released.



COMMUNITY CONCERN. Last week, in Marysville, Wash., residents discussed the arrival of convicted child molester Dustin Slater, who tried to molest the 7-year-old son of Curtis and Joanie Cochran (left and center) in 1996. Jody Gordon (right) now lives next door to Slater.

Polls bear out changing attitudes about safety: About half of Washington parents, for example, say they're less likely than before the law was passed to leave their kids alone—even with a baby sitter. Roxanne Liéb, an expert on notification laws at the Washington Institute for Public Policy, calls it a rare sight to see younger children walking home from school alone or even waiting for the bus.

Such fear of strangers may be misplaced. Skeptics of notification point out that fewer than 10 percent of sex criminals are strangers to their victims. The most common category of abuse is within

Many offenders' daily lives are affected, too. One recently released child molester bought a boat with his wife but was rejected by dozens of different docks in the Seattle area before finding one that would lease him space. Kevin, who asked to be identified by his first name only, says he supports community notification because "the best indicator of future behavior is past behavior." But he noted that even intense scrutiny is often not enough to stop many offenders: "No external factor is going to keep me from reoffending—not the program, not my wife, not God. Only me."

American colleges are 'Weapons U.' for Iraq

No one tracks thousands of students from terrorism-sponsoring countries

BY DOUGLAS PASTERNAK

It's no wonder that Iraq has top-notch scientists capable of developing chemical, biological, and nuclear weapons. Many of them were trained here in the United States.

In fact, they keep coming: In the seven years since the end of the gulf war in 1991,

Moreover, the Immigration and Naturalization Service readily admits it has no idea what schools these students attend, what they study, who finances their studies, whether they have been involved in criminal activity, or even whether they have overstayed their visas. One foreign student who dropped off the radar screen was a Jordanian named Eyad Ismoil. Ismoil had entered the United States in 1989 on a student visa, attended Wichita State University, and dropped out, remaining in the country illegally. In 1992 he joined up with a former high school friend named Ramzi Yousef, and the following year they bombed the World Trade Center in New York. Ismoil will be sentenced in April for his role in the bombing.

American know-how. Before the gulf war, Saddam Hussein sent hundreds of students abroad to study sciences related to biological, chemical, and nuclear weapons. Samir Al-Araji, the head of Iraq's nuclear weapons program, received his doctorate in nuclear engineering from Michigan State University, for instance. And at least three Iranians involved in Tehran's nuclear program were also educated in the United States, according to a recent report by the Washington Institute for Near East Policy.

Restrictions on study programs are loose. Only Iraqi, Libyan, and North Korean students (and Iranian males ages 18 to 65) receive automatic

background checks. All students have to declare an intended major, but none is specifically barred from pursuing nuclear, chemical, or biological studies. And because it lacks up-to-date data, the INS would never even know if a student who was listed as an English major had switched to nuclear physics.

Investigators also suspect that terrorists—including members of the Lebanese organization Hezbollah—have deliberately used student visas to enter the United States. One Lebanese student who had

overstayed his visa by 10 years was recently deported when he was linked to the organization.

The student visa program is bound up in a long-standing U.S. policy to expose foreigners—even from hostile nations—to democracy. And any proposal to get tough on monitoring and tracking foreign students while they are here faces practical and philosophical obstacles. Barring students from countries such as Iran and Iraq could also run afoul of a covert CIA program that seeks to recruit foreign students as intelligence sources, according to former FBI and intelligence officials—though some officials add that the program has had strikingly little success.

Pilot program. A law passed by Congress in 1996 does require the INS to develop the means to track foreign students during their stay in the United States. Last June the agency responded with a pilot program called CIPRIS—the Coordinated Interagency Partnership Regulating International Students. CIPRIS now monitors 10,000 foreign students from all nations in 22 schools in Georgia, Alabama, and North and South Carolina. Via the Internet, school officials report to the INS when students change their address, academic status, or major. Students also must carry an ID card with a photo and fingerprint.

Still, fully implementing CIPRIS would face sharp political opposition from some quarters. Gary Althen, president of the National Association of Foreign Student Advisors, argues that the program would have little practical effect on curbing terrorism, while unfairly painting all foreign students and scholars as potential terrorists and turning educators into "clerks for the INS."

Larry Johnson, former deputy director of the State Department's Counterterrorism Office, agrees. "Science is science," he says. "You can use it for either good or evil. The courses someone would pursue for becoming a doctor, a world-renowned biochemist, or a biological terrorist are the same. If we look at all pre-med students as potential terrorists, I think we've gone to the ultimate extreme of insanity."

But law enforcement officials believe that CIPRIS would have been of enormous help just last month when the FBI, concerned over potential acts of terrorism as war with Iraq loomed, asked the INS to supply the names and addresses of all Iraqi students in the United States. The data the INS was able to supply were of limited usefulness: They consisted of nothing but the names of the schools the students said they planned to attend when they first arrived in this country.



nearly 11,000 visas have been issued to students from nations that sponsor terrorism—including 503 Iraqis, 5,154 Iranians, 113 Libyans, 3,227 Syrians, 1,604 Sudanese, 103 Cubans, and 129 North Koreans. Although these states face tough sanctions for their involvement with terrorist groups—they are barred from receiving any U.S. economic or military aid and cannot purchase any technology that might have military applications—current law does not disqualify them from sending students to the United States.

'Megan's Law' Hoax Decried in N.J.

Flier Falsely Identified Guidance Counselor as Sex Offender

By DEVON SPURGEON
Washington Post Staff Writer

NEW YORK, March 19—Police knocked on Arthur Goldsworthy's door in suburban New Jersey late last week, carrying an "official notification" that identified the longtime high school guidance counselor as a person who "has been convicted of a sexual or predatory crime involving minors."

As he stood with the police in his hallway, Goldsworthy, 63, who has no criminal record of any kind, read in bold black letter his name, his address and these words: "Parents of young children are strongly cautioned that [Goldsworthy] is a serious potential threat. . . ."

The notification had been distributed around the neighborhood. Some neighbors called police because they recognized it as fake: The masthead belonged to the fictitious "Department of Sexual and Predatory Crimes." The police then went to Goldsworthy's home to inform him.

"I was shocked. I just couldn't think of anyone that had that much hate for me and would want to do something like that," Goldsworthy said in an interview today.

The fraudulent notice marks the first time that "Megan's Law," which requires law enforcement officials to notify neighbors when a convicted sex offender moves into a locality, has been used to falsely

label an innocent person, New Jersey officials said today. The law went into effect in 1996.

"Such action undermines the laudatory purpose of Megan's Law and demonstrates a blatant disregard for lawful process," said New Jersey Attorney General Peter Verniero, who vowed to prosecute those responsible for the forgery.

Megan's Law—named after 7-year-old Megan Kanka, who was raped and murdered in 1994 by a convicted sex offender living in her New Jersey neighborhood—has been the prototype for sex-offender notification statutes passed in 47 jurisdictions, including Maryland, Virginia and the District of Columbia.

The U.S. Supreme Court last month upheld the laws by refusing to hear an appeal challenging their constitutionality. In New Jersey, notices that name newly relocated sex offenders have since been sent home in elementary school students' backpacks, posted on the Internet and published in local newspapers.

Goldsworthy was instructed by police not to mention the notice to anyone while they tried to find out who forged and distributed it. A local newspaper reported the hoax this morning, ignoring Goldsworthy's plea that the story not be published until the investigation was over.

"This does give one pause to

reevaluate the notification part of Megan's Law, where perhaps innocent people can be affected negligently," said Richard Charwin, who is Goldsworthy's boss and supervises guidance counselors in the Bridgewater-Raritan School District.

A New Jersey spokesman for the American Civil Liberties Union, which has been critical of Megan's Law since it was first proposed, said the law has inadvertently created a means by which the reputations of innocent people can be tarred.

"Megan's Law gives the government an authority it shouldn't have, but in this situation whoever forged the notice is presumably a private actor. I don't see how I can blame the government for this one," said Ed Martone, executive director of the ACLU in New Jersey.

Goldsworthy, who has worked at Bridgewater-Raritan High School since 1959, said he was pained by the experience but supports the intentions behind Megan's Law.

"No law is perfect," he said, adding that more may have to be done to educate the public about the possibility of forged notifications.

"There are still people on my street who do not yet know the notice is a hoax," he said.

Brimmer's Colleagues Want Him Out

D.C. Control Board Members Say They'll Go if Chairman Is Reappointed

By DAVID A. VISE

Washington Post Staff Writer

Several members of the D.C. financial control board will decline reappointment to the powerful panel that presides over District government if Andrew F. Brimmer is named by President Clinton for a second term as chairman, people familiar with the matter said yesterday.

While the five-member board has played a central role in helping the District achieve a remarkable financial turnaround, Brimmer's autocratic style has

irked his colleagues on the panel and made him the target of criticism from Mayor Marion Barry and members of the D.C. Council.

The selection of a new control board this spring by Clinton will have a more immediate impact on the future of the city than this year's mayoral election, which has been described as one of the most important since the inception of home rule in 1974. The control board, in addition to overseeing the District's finances, is in charge of running virtually the entire city government and will continue in that role until the city produces four consecutive balanced budgets.

At separate forums yesterday, two people with influence on D.C. issues at the White House—Alice M. Rivlin, vice chairman of the Federal Reserve, and Eric H. Holder Jr., deputy U.S. attorney general—stressed the need for greater cooperation between the next control board and the District's elected leaders.

"The new board should work far more closely and visibly with elected officials than the board has and reach out for input from citizens and their representatives," Rivlin said in a speech at the Georgetown Public Policy Institute. "At the same time, elected officials and candidates for elected office have to recognize that unless the D.C. government visibly embraces substantial managerial and operational reform, they will never get real power back."

As the administration's point man on District matters, federal budget chief Franklin D. Raines is the Cabinet member Clinton will rely on most when deciding who will lead the presidentially appoint-

ed control board after the current members' three-year terms expire in June. The president also will consider the views of Del. Eleanor Holmes Norton (D-D.C.), who is opposed to Brimmer's reappointment and who will present Clinton with a memo outlining her vision for a board that would work more closely with city officials.

"You have got to have a control board that knows how to run a city and knows how to work with elected officials so they can, in turn, seamlessly take over the job of running the city when the control board sunsets," Norton said yesterday. "You have got to look for a different set of actors."

Raines, who wants continuity on the board, has another option besides renaming Brimmer chairman: He could advise Clinton to choose control board member Constance B. Newman, the number two official at the Smithsonian Institution. Newman's selection would be very popular with city officials and other control board members, including Vice Chairman Stephen D. Harlan, who has told the White House that he would be willing to remain on the panel if Newman were selected as chairman, people familiar with the matter said.

But Newman is a Republican, and selecting her would raise political issues for a Democratic president in a city whose voters are nearly all Democrats, too. "I don't plan to do anything about that," Newman quipped yesterday, confirming that she intends to remain a registered Republican.

Newman has worked closely with D.C. Council members and the mayor on personnel reform and other issues. Her collaborative style and willingness to share information have endeared her to local politicians, who often have been shut out of the decision-making process by Brimmer.

Newman said yesterday that Brimmer deserves enormous credit for leading the city's financial

rebound and improving its credibility on Wall Street and Capitol Hill. She said his financial acumen, strong credentials as an economist and experience on the Federal Reserve and numerous corporate boards gave the District the stature it needed at the height of the financial crisis in 1995.

"He was the best person to be chair at the beginning of the control board," Newman said. "The next phase is a combination of management reform but, importantly, transition. I don't know for certain that he could not adapt to that change, but I haven't up until recently seen it."

Newman was referring to Brimmer's surprising decision this week to affirm his commitment to home rule by stating that the D.C. Council, rather than the control board or Congress, was the right body to decide whether the city needs limits on damages in medical malpractice cases. Brimmer has shown no hesitancy to make tough decisions in the past, but he went out of his way this week to emphasize that malpractice awards are a "political issue" that should be left up to the council.

Raines is quite pleased with the city's financial progress and con-

vinced that the control board is properly focusing on improving schools, repairing roads and overhauling other services. He and Brimmer share similar views about the potential benefits of cutting taxes in the District, given the city's projected financial surpluses.

"Dr. Brimmer and his colleagues on the ... board have done a very good job in restoring the financial health of the District government under difficult circumstances," Raines said yesterday. "They have been good partners in the effort to

**OJP's Center for Sex Offender Management Initiative
Executive Summary**

Origins of the Center for Sex Offender Management (CSOM)

- The 1994 Violence Against Women Act allocated funds to support probation, parole and others managing sex offenders under community supervision.
- In November 1996, the Office of Justice Programs convened a national summit to gain input from over 180 experts about the most effective management strategies. Their recommendations resulted in the Center for Sex Offender Management (CSOM), a national project to support local jurisdictions in the effective management of sex offenders under community supervision.

Goals and Activities of CSOM

- To enhance public safety by preventing further victimization through improving the management of sex offenders who are in the community.
- To offer the most current knowledge and effective practices in the field of sex offender supervision to those responsible for managing sex offenders.
- The CSOM project includes four primary activity areas: an information exchange, training initiatives, resource sites initiatives, and technical assistance.

CSOM's Information Exchange

- The goals of the information exchange are: to respond to the field's need for current, readily available, and practical information that can provide assistance to practitioners; and to collect and synthesize information on sex offender management strategies from jurisdictions around the country.
- The activities under the information exchange include: the development of policy and practice briefs on pressing issues; the development of a web-site; the creation of a network of existing agencies to handle telephone inquiries from the field; and the compilation and distribution of information collected from local and state agencies around the country.

CSOM's Training Initiatives

- The goals of the training initiatives are to provide practitioners and decisionmakers who carry the primary responsibility for the disposition and management of sex offenders with information on effective strategies to manage this population; and to provide intensive training opportunities, in single and multi-disciplinary settings, to provide basic knowledge to the field.
- Some of the activities under this initiative include the development of intensive training programs for professionals in the field; development of a comprehensive

training curriculum that will be made available on a statewide or regional basis; development of a video-based training curriculum, and a video conference series.

CSOM's Resource Sites Initiative

- The goals of this initiative are to inventory, document, and analyze the accomplishments of jurisdictions that have developed innovative strategies to sex offender management and make these lessons available to others.
- Potential resource sites include: Jackson County, Oregon; New Haven, Connecticut; Maricopa County, Arizona; the Wisconsin Treatment Network; the State of Massachusetts; Westchester County, New York; the First Judicial District, Colorado; the State of Vermont; Washington State; and the Johns Hopkins/National Institute for the Study, Prevention, and Treatment of Sexual Trauma.

CSOM's Technical Assistance Initiative

- The goals of this initiative are to respond to the short-term, immediate, and focused needs for information and skills of agencies and jurisdictions; and to foster the development of new and promising approaches to share with the field.
- One technical assistance grant has been awarded to date. Several technical assistance requests have been responded to through the dissemination of information or referral to specific individuals to serve as resources. Four additional requests are currently in process.

CSOM's National Resource Group

- The Center for Sex Offender Management has established a National Resource Group to guide the activities of the project. Members include some of the country's leading experts and practitioners in the fields of sex offender management, treatment, and supervision. The Resource Group includes victim advocates, law enforcement officials, parole and probation representatives, judges, researchers, treatment providers, legislators, practitioners, and representatives of national criminal justice constituency groups.

The Center for Sex Offender Management

An Initiative of the Office of Justice Programs

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OVERVIEW OF THE CENTER FOR SEX OFFENDER MANAGEMENT

The National Summit: Promoting Public Safety Through the Effective Management of Sex Offenders in the Community

- The 1994 Violence Against Women Act allocated funds to provide support to probation, parole and others involved with the management of sex offenders under community supervision.
- In November 1996, the Office of Justice Programs convened the *National Summit: Promoting Public Safety Through the Effective Management of Sex Offenders in the Community*. The Summit sought input from over 180 practitioners, academic researchers, and other experts about the most effective management strategies for this challenging offender population. Participants were asked as well about the information, training, and other needs of their colleagues as they work together to make America's communities safer. Their recommendations resulted in the creation of the Center for Sex Offender Management.

Establishment of the Center for Sex Offender Management

- The Center for Sex Offender Management (CSOM) is a national project designed to support local jurisdictions in the effective management of sex offenders under community supervision. The project is supported by the Office of Justice Programs (OJP). The National Institute of Corrections (NIC) and the State Justice Institute (SJI) are collaborating with OJP and are devoting additional resources to support corrections professionals and the judiciary as they address this critical issue within their specific arenas. The project is being administered through an interagency agreement among OJP, NIC and SJI, and a cooperative agreement between OJP and the Center for Effective Public Policy, in collaboration with the American Probation and Parole Association.

Goals of the Center for Sex Offender Management

- It is critical that those responsible for managing sex offenders have ready access to the most current knowledge and effective practices in the field of sex offender supervision.
- Courts, corrections agencies, and treatment providers around the country have demonstrated -- through collaboration between criminal justice and health system agencies -- that with careful supervision and control, combined with

appropriate treatment interventions, they can manage sex offenders and increase public safety.

- Others can draw upon these experiences, and create similar results in their own communities, if provided the opportunity to learn about and observe effective supervision strategies for these difficult offenders.
- *CSOM's goal is to enhance public safety by preventing further victimization through improving the management of sex offenders who are in the community.*

The Activity Areas of the Center for Sex Offender Management

These goals are carried out through four primary focus. These are:

1. To facilitate the exchange of information;
2. To design and conduct intensive training programs;
3. To understand and learn from the work of jurisdictions that have developed innovative practices in this field; and
4. To provide technical assistance to agencies across the country in order to promote further innovations in the field.

Each of these primary focus areas are described in the following pages.

CENTER FOR SEX OFFENDER MANAGEMENT: INFORMATION EXCHANGE

Goals of the Information Exchange

- The CSOM Information Exchange is designed to respond to the field's need for current, readily available, practical information, including current resource materials and referrals to other organizations that can provide assistance to practitioners.
- The Information Exchange is also designed to collect and synthesize information on sex offender management strategies from jurisdictions across the nation.
- That information will be shared with others and used to shape future CSOM technical assistance efforts.

The Activities of the Information Exchange

- Development and distribution of policy and practice briefs on pressing issues (current and upcoming briefs are described further below);
- the design of a web-site, scheduled for early 1998;
- the establishment of a network of existing agencies around the country that are prepared to accept telephone inquiries from the field; and
- the compilation and distribution of information collected from local and state agencies around the country.

The Center for Sex Offender Management Mailing List

In June 1997, the Center for Sex Offender Management established a national mailing list. In these past six months, over five hundred individuals nationwide have been added to the mailing list, and it continues to grow by approximately thirty people each week. The mailing list includes individuals from a wide variety of disciplines, including:

- probation and parole representatives;
- prosecutors;
- defense attorneys;
- treatment providers;
- legislators;
- judges;
- polygraphers;
- law enforcement;
- researchers;
- victim advocates;
- students; and
- other community members.

Those asking to be included on the mailing list are learning about the project in a variety of ways, including:

- distribution of the CSOM project announcement at conferences;
- announcements in nationally distributed professional publications; and
- through postings on the Internet, including the American Probation and Parole Association (APPA), National Institute of Corrections (NIC) Information Center, and the National Criminal Justice Research Service (NCJRS) websites.

Demand for CSOM's Services

- Over 80 agencies and over 500 individuals have requested information on the assistance that CSOM can provide to the field since June of 1997.
- CSOM is tracking and responding to each of these requests.

Overview of Upcoming CSOM Policy and Practice Briefs

- The Center for Sex Offender Management (CSOM) will produce a series of policy and practice briefs that will address critical topics in the area of effective sex offender management. These policy and practice briefs will focus their efforts on providing an overview of promising practices in the field, as well as a discussion of the benefits and limitations of such practices. The briefs will be distributed nationally through direct mailings, and will be available on the Internet and through the major national criminal justice libraries.

Policy and Practice Brief #1: *An Overview of Sex Offender Community Notification Practices: Policy Implications and Promising Approaches*

- CSOM's first brief, ***An Overview of Sex Offender Community Notification Practices: Policy Implications and Promising Approaches***, has already been distributed, and is attached as Appendix 1.
- The next five policy and practice briefs will address the following topics and issues:

Policy and Practice Brief #2: *Lifetime Supervision*

- A discussion of lifetime probation practices in Maricopa County, Arizona;
- the emergence of discussions of lifetime probation, and parole in jurisdictions across the nation;
- the benefits and limitations of lifetime supervision;

- challenges to the implementation of these practices; and
- what current research suggests about the effectiveness (as it relates to recidivism and public safety) of lifetime supervision.

Policy and Practice Brief #3: *Sentencing Issues*

- A discussion of the factors that are considered at sentencing in individual cases and their relationship to the purposes of the sanctions;
- the current research about risk factors and the dangerousness of offenders;
- how legislation in the form of mandatory sentencing, sentencing guidelines, sentencing ranges, and the availability of civil commitment impacts sentencing decisions;
- typical probation conditions and sentence conditions in sex offender cases; and
- the role of victim trauma and the victim's future safety in the sentencing decision.

Policy and Practice Brief #4: *Intervention Strategies for the Effective Management of Sex Offenders*

- A discussion of primary preventions (including chemical and physical castration) and secondary interventions;
- risk assessment, including definitions and an overview of state of the art practices, the validity of current risk assessment instruments, and their predictive ability;
- an overview of sex offender typologies;
- the key role of collaboration in sex offender management, including the interface of criminal justice agencies, treatment providers, communities, and victims; and a description of the need for education of the parties which must precede collaboration to ensure maximum effectiveness;
- other elements of effective management practices, including monitoring and surveillance, the use of the polygraph, and supervision through specialized caseloads; and
- the importance of continuity of treatment from the institution to the community.

Policy and Practice Brief #5: *A Criminal Justice Professional's Guide to Sex Offender Treatment*

- A discussion about the need for validated assessment tools and a description of what such instruments might look like;

- the need to utilize treatment providers who are specialists in sex offender treatment, including a list of those states that have standards for treatment providers;
- a list of sources of training, information, materials, and treatment provider networks;
- appropriate conditions of probation or parole; and
- the treatment needs of special populations, including different cultural groups, the developmentally or physically disabled, female offenders, and the dually diagnosed.

Policy and Practice Brief #6: *Juvenile Sex Offenders*

- A discussion of the various juvenile sex offender typologies;
- effective management and supervision strategies; and
- the amenability of juvenile sex offenders to various types of treatment.

CENTER FOR SEX OFFENDER MANAGEMENT: TRAINING INITIATIVES

Goals of the Training Initiatives

- One of the chief recommendations arising from the National Summit was the need for training. Many of the practitioners and decisionmakers who carry the primary responsibility for the disposition and management of sex offenders -- probation and parole officers, sheriffs and police officials, judges, prosecutors, and defense attorneys -- are in critical need of information on effective strategies to manage this population. One of the primary goals of the CSOM project, therefore, is to respond to this pressing need.
- CSOM will provide intensive training opportunities, in single and multi-disciplinary settings, to provide basic knowledge to the field, while underscoring the critical need for agencies to collaborate with one another on the management of this population.
- These training events will focus on several key issues: (1) The role that individual members from the criminal justice, treatment, and victim advocacy communities play in the case management process; (2) the importance of collaboration in the case management process; and (3) the importance of collaboration in the development of policy at the state or local level that promotes effective management practices.

Intensive Full-Day Training at APPA Winter Institute -- January 6, 1998

- Participants will include teams from:
 - Three state-wide probation/parole agencies (Delaware; North Carolina; and Montana) and
 - Three urban court probation systems (Cleveland, Ohio; Tucson, Arizona; and Washington, D.C.).
- The training faculty is composed of a widely-respected, interdisciplinary team which includes representatives from probation/parole agencies, the victims' advocacy community, and treatment providers.
- The training will emphasize:
 - Community safety through effective supervision;
 - The importance of the perspective of the victim;
 - Collaboration across the criminal justice system; and
 - ***Community involvement and notification.***

State and Regional Comprehensive Training on Sex Offender Management for Probation and Parole Agencies -- Spring/Summer 1998

- These three-day intensive trainings will be tailored to accommodate the individual organizations, resources, and statutes within a specific state or region.
- The training modules will include the following topics: risk assessment; effective supervision strategies; collaboration between probation/parole and treatment providers; special conditions of supervision; use of the polygraph; community notification; and victim-centered supervision.
- The training will be geared to line agents as well as middle and top management -- and to interagency agreements on sentencing strategies, plea agreements, supervision and information sharing.
- The training will carry forward CSOM's focus on the victim, collaboration, and community safety.

Development of Video-Based Training Events and Curricula on Sex Offender Management for Probation and Parole Agencies -- Fall 1998

- This training program will enable CSOM to deliver critically needed training to large audiences for a relatively limited investment.
- The training may be delivered through a national video conference, a video-based curricula, or both;
- The training modules will be designed for the probation and parole community, as well as for the policymakers collaborating with probation and parole on the management of sex offenders -- including judges, prosecutors, treatment providers, victims' organizations, and community representatives.

Development of a Video-Based Training Curriculum on Sex Offender Management for Judges

- CSOM will develop a training curricula, including both videotapes and a printed curriculum, for judges under the support of the State Justice Institute. (SJI is a collaborator with OJP on the implementation of the CSOM project.)
- This curriculum will be available in 1999 and will be distributed to each state's judicial educator as well as each of SJI's libraries.

CENTER FOR SEX OFFENDER MANAGEMENT: RESOURCE SITES INITIATIVES

Goals of CSOM's Resource Sites Initiatives

- There are a number of jurisdictions around the country that have developed innovative ways to coordinate the components of a team approach to sex offender management. Each jurisdiction has developed its approach in a different way, developed different strengths, and compensated for different weaknesses or gaps. The result is an array of approaches for addressing sex offender management. It is from these innovative jurisdictions that the rest of the field will learn how to create their own strategies.
- One of CSOM's chief tasks will be to inventory, document, and analyze the accomplishments of these sites and make available the learnings to others.

Initial Meeting of the Resource Sites

- February 22 - 25, Phoenix, Arizona, Maricopa County Court Training Facility
- This meeting of teams from the potential resource sites will be held:
 - to look at principles that define "best practice";
 - to help the participating jurisdictions to assess their performance in meeting their own goals;
 - to develop a technical assistance plan for each jurisdiction;
 - to exchange information;
 - to give all the participants the opportunity to expand their knowledge; and
 - to advance generally the state of the art in the field.

Potential Resource Sites

1. Jackson County, Oregon
 - among the earliest programs (developed in 1982) to use a comprehensive, collaborative approach, involving treatment providers, corrections, law enforcement, polygraphers, mental health and children's services, and the prosecutor;
 - participants in collaboration meet monthly;
 - they offer treatment to the offender, the non-offending family members, and victims;
 - community corrections agency has provided leadership across the state on effective community notification that enhances safety.

2. New Haven, Connecticut

- unusual collaboration between the Office of Adult Probation (part of the Connecticut Judicial Branch) and victims' advocates: a victim advocate has been hired with Probation Department funds to serve as part of the sex offender supervision team in New Haven;
- this new effort builds on collaborative supervision model developed in another area of the state;
- it also builds on previous collaboration among probation, the police, and victim advocates in other efforts like community notification and safety training.

3. Maricopa County, Arizona

- implementing lifetime probation supervision, including intensive supervision;
- extensive collaboration among probation, the court, the prosecutors' office and law enforcement;
- the presiding judge of the criminal court is a national expert in aspects of this topic, and has involved himself extensively in the development of "lifetime supervision" legislation in Arizona and in their local efforts.

4. Wisconsin Treatment Network

- used the initial support of the Corrections Department to create specialized, professional treatment capacity across the state;
- the Network provides training for new professionals and continuing education and networking for Fellows of the Network.

5. Massachusetts

- the various parts of the criminal justice system, from probation through parole, are working together to create a continuum of care and intervention for sex offenders;
- a single treatment provider is providing treatment within the institutions, training to probation and parole officers, and advice to the parole board on sex offenders;
- researchers have been added to the institutional treatment staff to offer additional opportunities for program evaluation and the development of refined risk assessment instruments.

6. Westchester County, New York

- the combined leadership of the district attorney and the chief probation officer lend strength to a supervision model that incorporates close working relationships with treatment providers and law enforcement.

7. First Judicial District, Colorado

- a rural district, with a well-developed supervision model, special probation unit, has extensive collaboration with the district attorney, treatment providers, and law enforcement;
- site of the first juvenile sex offender probation unit in the state, which is developing the standards for the rest of the state;
- the state is doing extensive data collection in several sites, including this one, to test/validate seven different risk assessment instruments on sex offenders.

8. Vermont

- using volunteer community members as part of the supervision team; these volunteers also serve as supports to the offender's reintegration and to the relapse prevention process.

9. Washington State

- Spokane, noteworthy for innovative leadership of law enforcement particularly in the area of neighborhood supervision in conjunction with probation and community organizations;

or

- Seattle, noteworthy for innovative leadership of law enforcement for using community notification as a vehicle for community education and safety organizing.

10. Johns Hopkins/National Institute for the Study, Prevention, and Treatment of Sexual Trauma

- represents the medical approach to the treatment of sex offenders;
- has strong defense bar representation via offenders voluntarily seeking treatment prior to arrest or conviction.

CENTER FOR SEX OFFENDER MANAGEMENT: TECHNICAL ASSISTANCE

Goals of the Technical Assistance Initiative

- CSOM's technical assistance initiative is designed to respond to the short-term, immediate, and focused needs for information and skills of agencies and jurisdictions across the country.
- CSOM has created the capacity to respond to these needs as a means to assist jurisdictions to develop solutions to emerging problems.
- The delivery of this form of technical assistance also increases CSOM's knowledge and experience base, and fosters the development of new and promising approaches which in turn are shared with the field. This component of the project creates a constant stream of new information and learning -- about the challenges the field is facing and new efforts to address those challenges.
- CSOM responds to these technical assistance requests in a variety of ways: through the provision of documents; referral to another practitioner for discussions and advice; and through inclusion in a planned intensive training program. However, other requests are best met through on-site technical assistance from a fellow practitioner, a trainer, a researcher, or other individual who could lend first-hand expertise to an agency or jurisdiction.
- Technical assistance is requested through the completion of a brief application form. All requests are responded to within sixty days.

Technical Assistance Requests To Date

- On October 30, 1997, CSOM supported a national teleconference, on Sex Offender Registration and Community Notification, through the Council of State Governments. Participants from around the country were linked together via telephone conference to discuss registration and notification issues with guest presenter, Roxanne Lieb, Director of the Washington State Institute for Public Policy.
- More than ten telephone inquiries for specific kinds of information on managing sex offenders have been received and responded to thus far.
 - Two were inquiries about sex offender treatment programs;
 - three were inquiries about the use of the polygraph; and
 - five were inquiries from law enforcement agencies looking for information on sex offender registration and notification.

Current Requests for Technical Assistance

There are currently four "open" requests for technical assistance. They include:

- Central Kansas Community Corrections -- Requesting assistance to develop sex offender-specific treatment programs in their community.
- Northwest Piedmont Council of Governments -- Requesting in-state training (for pretrial release, community corrections, treatment providers and probation staff) on how to identify and manage sex offenders in the community.
- District of Columbia Board of Parole -- Requesting assistance in the development of sex offender treatment programs in the community and assistance training their supervision staff.
- Maine Department of Corrections -- Requesting assistance in program design and the development of policies and procedures for a sex offender program.

Technical Assistance Requests Currently In Process

- CSOM is aware of the following forthcoming requests:
 - Washington State Department of Corrections -- to validate a sex offender risk prediction instrument they recently developed; and
 - Minnesota Department of Corrections -- to provide training for the transition of sex offenders from prison to the community.

The Center for Sex Offender Management National Resource Group

The Center for Sex Offender Management has established a National Resource Group to guide the activities of the project. The members of the National Resource Group include some of the country's leading experts and practitioners in the fields of sex offender management, treatment, and supervision. The disciplines represented include victim advocates, law enforcement officials, parole and probation representatives, judges, researchers, treatment providers, legislators, practitioners, and representatives of national criminal justice constituency groups. The members of the National Resource Group are:

Judith Becker	.....	Professor of Psychology, University of Arizona
Fred Berlin	.....	Director, National Institute for the Study, Prevention, and Treatment of Sexual Trauma, Baltimore
Gail Burns-Smith	.....	Executive Director, Connecticut Sexual Assault Crisis Services, Inc.
Kim English	.....	Director of Research, Division of Criminal Justice, Colorado Department of Public Safety
Faye Fagel	.....	Area Coordinator, Oregon Youth Authority
Ana Mariá Guzmán	.....	Client Service Specialist, Office of the State Public Defender, Milwaukee, Wisconsin
Gail Hughes	.....	Executive Secretary, Association of Paroling Authorities International
John Hunter	.....	Clinical Director, Pines Treatment Center, Virginia
Connie Isaac	.....	Executive Director, Association for the Treatment of Sexual Abusers
Michael Lawlor	.....	State Representative, Connecticut House of Representatives
Roxanne Lieb	.....	Director, Washington State Institute for Public Policy
Robert Freeman-Longo	.....	Director, Safer Society Press, Vermont
Michael Mowen	.....	Chief of Police, Decatur, Illinois
Sam Olsen	.....	Adult Probation and Parole Officer, Jackson County, Oregon
William Pithers	.....	Principal Investigator, Vermont Sexual Abuse Research Project
Rocco Pozzi	.....	Immediate Past President, American Probation and Parole Association
Robert Prentky	.....	Unit Director, Justice Resource Institute, Bridgewater, Massachusetts
Suzanne Pullen	.....	Senior Research Analyst, Division of Criminal Justice, Colorado Department of Public Safety
Ronald Reinstein	.....	Presiding Criminal Judge, Superior Court of Arizona
Traci Sanders	.....	Criminal Justice Counsel, National Association of Attorneys General

Lynn Schafran Director, National Judicial Education Program to Promote
Equality for Women and Men in the Courts
Lori Scott Supervisor of Adult Probation, Maricopa County Probation
Department, Arizona
Elisabeth Semel Director, Death Penalty Representation Project, American
Bar Association
Anne Seymour Consultant, Washington, D.C.
William Woodward Immediate Past President, National Criminal Justice
Association

An Overview of Sex Offender Community Notification Practices: Policy Implications and Promising Approaches

November 1997

Introduction

In 1996, Federal legislation mandated that states establish a community notification program or lose ten percent of their federal law enforcement funding under the Byrne Memorial State and Local Law Enforcement Assistance Funding program. As of October 1997, forty-seven states had passed "community notification" laws that require law enforcement agencies to inform local communities that convicted sex offenders are residing in their neighborhoods or allow the public access to this information.

Why have these laws emerged so quickly? What do they promise the American public? How are they being implemented? What have they achieved so far? What else must be done to assure that these laws help improve the reality -- as well as the perception -- of public safety? Can community notification be used as a tool to manage sex offenders in the community? What are the limits to community notification as a tool to manage sex offenders in the community? What civil rights questions are raised by these laws? What resources are available to learn more about community notification? What resources are required to implement community notification?

In this fact sheet, the Center for Sex Offender Management offers, in summary form, up-to-date information intended to inform citizens, state and local leaders, and criminal justice professionals about community notification, and to describe community notification procedures that promote sound public policy and practice.

Definition

Community notification laws allow or mandate that law enforcement, criminal justice, or corrections agencies give citizens access to relevant information about certain convicted sex offenders living in their communities. These laws are distinct from *sex offender registration laws*, which require convicted sex offenders who are living in the community to notify police officials of where they are living, and from *victim notification laws*, which mandate that crime victims who wish to receive information about the criminal justice processing or release status of the person(s) who victimized them are provided with it. Police registration and victim notification laws are operating in fifty states; community notification is currently in place in forty-seven states.¹

¹The three states that do not have community notification legislation are: Kentucky, Nebraska and New Mexico.

Provisions of community notification laws vary from state to state. States differ in their methods of informing the public of a sex offender's presence in the community and the extent of the information they provide. Some states proactively inform the community of the presence of sex offenders. Other states do not proactively inform the community, but rather, make information available to citizens upon request. The information that is provided or is made available to citizens also varies widely. At one extreme, some states make available information about certain categories of high-risk offenders. California, at the other extreme, recently released a CD-ROM containing information about thousands of sex offenders of many types. These differences reflect the fact that there are no national standards to guide the practice of community notification. Rather, these practices are being developed on a state-by-state and sometimes community-by-community basis.

Origins

Community notification has its roots in various anti-crime campaigns.

In the 1960s and the 1970s, women's groups increased public awareness of rape, sexual assault against women, and battering. Rape crisis centers and domestic violence

shelters demanded a criminal justice response to previously hidden behaviors.

In the 1970s, the prevalence of physical and sexual abuse against children came out from behind closed doors.

Throughout the 1980s, the crime victim movement further expanded public concern over the unaddressed needs of all those who are victims of criminal violence.

In 1990, the state of Washington passed the first community notification law in the country in response to a particularly heinous crime. Louisiana and Oregon also passed laws in 1992 and 1993 in response to such crimes. Other states soon followed.

Four years later, in July 1994, seven-year old Megan Kanka was sexually assaulted and murdered by a neighbor, a sex offender who had been recently released from prison after completing his sentence. Megan Kanka's family, aided by victim advocates and supported by political leaders, encouraged a New Jersey (and later a national) campaign to enact a "Megan's Law" to inform community residents about the presence of convicted sex offenders in their neighborhoods.

Also in 1994, Congress passed and the President signed legislation, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. It requires states to establish sex offender registration for convicted offenders, and a system to track them, within three years of its passage or lose up to ten percent of their Byrne Memorial State and Local Law Enforcement Assistance funding. In 1996,

the Jacob Wetterling Act was amended to include the implementation of Megan's Law, the Federal community notification statute, by September 1997. Neither the original law, nor its amendment, include new funds for implementation.

Purpose

The original goals of community notification, as expressed in the state of Washington's legislation, were to prevent crime (letting community residents know that sex offenders lived in their neighborhoods) and to improve law enforcement (providing police with additional information to investigate sex offense cases).

Subsequently, as the concept of notification has gained acceptance, its usefulness for other purposes has been identified, including community education. These education efforts have focused on informing the public about sexual offending, the varying types of sexual offenders, and the role (and limits) of the criminal justice agencies that monitor and supervise sex offenders.

Intended Benefits

Community notification laws have been enacted in response to public demand. There is, as yet, little empirical evidence of their impact. Accordingly, most benefits of community notification are more accurately described as expectations. Future research is needed to identify the actual benefits of community notification.

Proponents of community notification suggest the following benefits:

- *The Right to Know.* Community residents, and parents in particular, have the right to know if a potentially dangerous person is living in their neighborhood.
- *Public Safety.* With knowledge that a person with a history of sexually abusive behavior lives nearby, citizens can better protect themselves, their children, and their neighbors' children.

The goals of Washington State's community notification legislation are crime prevention and law enforcement. **In pursuit of these goals, practitioners in Washington and elsewhere use notification as an opportunity to educate the community, to secure the support of communities in the supervision process, and to reduce the likelihood of acts of vigilantism.**

- *Increased Surveillance and Supervision.* Community notification alerts convicted offenders that the larger community, not just law enforcement, is monitoring them.
- *A Treatment Tool.* Overcoming denial is an important element of intervention with sex offenders. Community notification, some argue, encourages therapeutic intervention by serving as an external control that limits the offender's ability to live in secrecy and by threatening public exposure, which encourages compliance with treatment conditions. Research is lacking on the relationship between public exposure and self-referral to

treatment programs. Anecdotal evidence, however, raises some concerns: The Stop It Now Pilot Program in Vermont operates a toll-free information hotline. In addition to other forms of assistance, the hotline provides callers with a number to call for referrals to confidential psychosexual assessments. At the height of media publicity about community notification laws, program operators reported that hotline calls dropped significantly, suggesting that the likelihood of public exposure deterred offenders from seeking treatment.

- *Communication Among Community Groups.* Community notification offers the opportunity for more than simply sending letters to community residents or posting signs at community intersections. Rather, the implementation of notification laws can increase collaborative efforts among community members to promote public safety through the sharing of information and education.

How Community Notification Works

Many state notification laws, as well as the federal law, permit discretion in fashioning notification processes. Some states centralize the establishment of guidelines and reporting functions at the state level. In these states, boards have been established to assess and classify sex offenders. The method and extent of notification in an individual case is determined by these classifications. Other states provide the local jurisdictions within their state the discretion to assess offenders and

determine the method and extent of notification.

How and When Are Communities Notified?

Communities receive notification that sex offenders are in the neighborhood in a variety of ways, including public meetings, letters, posters, radio or television advertisements, and press conferences. Depending upon the state in which they live, citizens can also obtain information about specific persons from notifying agencies through published information, by contacting local law enforcement agencies, by telephone, by logging onto World Wide Web sites, or obtaining CD-ROMs. Different states, and even different jurisdictions within a state, have varying procedures for conducting community notification. In some instances, notification is made not only when an offender is released from prison, but also, for example, when an offender absconds from supervision, moves to a different community, or when the offender's perceived risk to the community changes.

Which Offenders are Communities Notified About?

Communities do not necessarily receive notification about all sex offenders living in their neighborhoods. Notification is often reserved for high-risk offenders² or offenders who have committed crimes against children, while intra-familial sex offenders are less frequently the subject of notification. More often, communities receive notification about sex offenders who were strangers to their victims.

²Jurisdictions differ in their classification of high risk offenders.

Many jurisdictions have established three-tier systems to identify (through the use of risk classification instruments, for example) the most predatory, dangerous offenders. In some places, only the highest risk offenders are subject to community notification. In other locations, no distinctions are made among the varying types of sex offenders and all are subject to notification.

Jurisdictions establish their own geographic limits for community notification practices. For example, in urban areas of Louisiana, when a sex offender moves into a neighborhood, only residents within a three-block radius are notified. However, when a sex offender moves into a rural area of New Jersey, residents within a two-mile area receive notification.

Who Gets Notified? Those states using community notification have essentially established four notification categories:

- Broad community notification (18 states) releases information about sex offenders to any person or organization who requests it.
- Organizational notification (14 states) informs organizations, such as day care centers and schools, that are especially vulnerable to particular offenders.
- Individual notification (13 states) informs victims and classes of victims of the presence of specific offenders in the community.
- Police notification (14 states) allows persons or organizations to obtain sex offender registry information

from local law enforcement agencies.

What Information Do Communities Receive?

Typically, individuals and organizations get offenders' names, photos, crime descriptions, and the age(s) of their victims. Information is often provided on how offenders target their victims as well as their *modus operandi*. Some notifying agencies may also provide community members with information about the nature of sexual offending, the characteristics of sex offenders, methods of self- or community-protection, and information about what can be done when one learns that a sex offender is living in their neighborhood.

Who Notifies Communities?

Different agencies in different jurisdictions are responsible for notifying the public. Corrections departments, probation and parole offices, and law enforcement agencies have varying levels of responsibility across the country. In Louisiana, for example, the law mandates that sex offenders themselves must notify the communities they live in of their presence. They must do this by sending a card to community members within a three block (in urban areas) to one mile (in rural areas) radius, and by placing advertisements in two local newspapers that inform the community of their presence. Probation and parole agencies supervise this activity to verify its completion. Two-thirds of notification states, including California and Illinois, have guidelines and procedures written into state law. Some states, such as Arizona and New Jersey, require Community Notification Guideline Committees to establish appropriate procedures. One-third of the

states, including Connecticut and Tennessee, give public officials broad discretion to develop their own procedures.

Who Monitors Those Offenders in the Community? Sex offenders who are under community supervision are

Community notification offers criminal justice officials an opportunity for ongoing communication with members of their community. In Oregon, for example, notification is not a single isolated event, but a series of steps that provide a setting for ongoing dialogue between community members and supervising officials. This allows the community to understand how best to protect themselves without resorting to inappropriate or unlawful attacks against sex offenders.

monitored by criminal justice agencies, such as probation and parole, *if* they are under the supervision of the court. Sex offenders who have satisfied the terms of their sentences are not supervised in the community. State sex offender registration laws may require that sex offenders contact the police if they should relocate, and notification practices may result in a new series of notification events. However, notification in and of itself does not provide for further supervision of sex offenders in the community beyond the terms established by the sentencing court.

Promising Practices

Community notification is relatively new, and states are still refining how best to put it into practice. However, those

jurisdictions that build community involvement into their notification practices appear to offer the greatest promise. Some of these emerging practices include:

Balancing Competing Interests. "The offender has to live somewhere," a probation officer said in a local newspaper report, "and the community has a right to safety." How can these interests be addressed in a balanced way? In Connecticut, a team of individuals, including community corrections officials, victim advocates and sex offender treatment providers, have developed a multi-dimensional approach to this issue: The team conducts community notification, works with victims, and has secured a grant to lower the adult probation sex offender caseload size to ensure careful supervision and monitoring of those sex offenders under community supervision. Connecticut's balanced approach directs services to the *entire* community.

Informing the Community. The public often has little understanding of sex offenders, sexual offending, and treatment interventions for these offenders. Some of the most proactive communities have used notification as an opportunity to *educate* their communities:

- *Public Meetings.* Some police departments in the state of Washington conduct public meetings to give community members concrete information that addresses their concerns and fears, including an overview of community notification laws and practices. In this forum, police counter misinformation, quell fears, discourage vigilantism and

offer actions that citizens can take to enhance their safety.

- *Personal Visits to Community Members.* In Oregon, probation officers go door-to-door in notified areas to meet with citizens and provide notification information.

In each of these examples other benefits accrue: criminal justice personnel get out into the community to provide assurance and reduce fear, and a problem-solving relationship develops between criminal justice professionals and local residents.

Risk Assessment. Classification instruments can be valuable tools to identify high risk sex offenders. However, these instruments must be used with caution because to date there are no risk assessment scales that have been developed or validated for all sex offenders. These assessments serve three distinct purposes:

- First, they aid law enforcement in identifying those offenders with histories that include behaviors indicative of risk.
- Second, they aid jurisdictions in targeting scarce resources. For example, departments are able to better identify which offenders are most in need of intensive supervision and treatment.
- Finally, they are used to determine the level and nature of community notification. Many states, such as Massachusetts, Minnesota, and Rhode Island, use a three-tier classification of sex offenders. The defining characteristics of each of these tiers may vary from state to state, but they are

generally ordered along an axis of dangerousness. The typical three-tier system covers offenders who are low risk to reoffend (notification information is shared just with police agencies); moderate risk to reoffend (where notification also includes schools, neighborhoods and other organizations); and high risk to reoffend (which may also result in press releases). Some states only use two tiers (dangerous and non-dangerous). Still other states require mandatory notification only for high-risk offenders.

Police Investigation Tool. In Illinois, police are using community notification, in conjunction with a sex offender registry, as a crime prevention and investigatory tool. For example, when a police officer conducts a routine traffic stop, along with a criminal history check, the officer receives information on known sex offenders and their release conditions. Thus, if a known sex offender is stopped while near a playground, the officer is immediately aware of the offender's history and the risk the circumstance presents.

Collaboration. Community notification processes appear to be most effective when they involve the close cooperation of numerous entities. Those agencies who conduct risk assessments, those who notify the public, those who monitor and treat the offender, and victim advocates in the community would do well to establish a good working relationship to ensure the effective implementation of community notification practices.

Research Results

Community notification laws are constructed on the assumption that letting neighbors know about sex offenders living near to them will help prevent further sexual assault. It may not be possible to learn the number of crimes prevented by these laws. Nonetheless, information can and should be gathered about the influence of community notification on community behaviors, perceptions and criminal justice practices.

Offender Recidivism. Only one study has been completed on the impact of community notification on offender recidivism to date. In the state of Washington, researchers found that in a matched sample of ninety offenders subject to community notification and ninety offenders not subject to community notification (comparable in all other aspects), results demonstrated that recidivists in the community notification group were rearrested sooner than recidivists in the non-notification group. However, the level of reoffending for members of each group after 4.5 years was the same. There was no statistically significant difference in reoffending between the two groups. Research also indicates that -- contrary to what is widely believed -- most new arrests for adult sex offenders are for non-sexually motivated crimes.

Cost. The level of expense associated with community notification depends upon the population density and geographic size of the area and the decisions made by policy makers. Smaller communities can often rely on word-of-mouth communications. Larger communities require postage, equipment costs, and a greater

commitment of staff resources. Other practices that may be costly include background investigations of offenders about to leave prison and the identification of the individuals in the community who are most likely to be affected by the release of particular sex offenders. Legal challenges to aspects or the entirety of community notification procedures can also add significantly to at least the initial costs of establishing notification practices. To date, only the State of Washington has measured the cost implications of these new policies.

Implementation Challenges

Community notification has swept across the nation with strong political and popular support. Notification legislation is a beginning, but it raises many questions still unanswered about how to achieve community safety most effectively.

What are Effective Community Roles? Community notification laws clearly affirm the desire for protection from assaultive and predatory behavior. However, they do not suggest what communities should do once they are notified that sex offenders live in their neighborhoods. Effective implementation will include education on how community members can protect themselves and their families and the potential negative impacts of vigilante behavior.

Community Reintegration. How can communities ensure that notification practices do not impede the equally desirable goal of moving offenders into law abiding lifestyles in the community? Effective notification will aid communities in understanding

the barriers confronted by released sex offenders and how addressing these barriers responsibly can reduce further victimization.

Resources for Implementation. Community notification laws, to date, have come with few or no resources for implementation. Thus, criminal justice agencies, from police to probation or parole, often have no additional resources with which to administer notification processes. The time devoted to notification may replace other public safety functions. Effective notification practices will include an examination of overall workload issues and adequate resource deployment that ensures community protection.

A Sense of Safety. The existence of community notification laws may create an unwarranted sense of security. Notification laws may provide useful information to community members but the challenge is to use that information wisely and to advise the public about what they can expect from notification, which does not in and of itself guarantee community safety. *The way criminal justice officials carry out public education around these laws and their implementation is likely to contribute significantly to their success or failure.*

Constitutionality. Community notification has been challenged in the courts on a variety of issues, including ex post facto application, violation of plea bargaining agreements, privacy, unwarranted search and seizure, excessive punishment, and inappropriate conditions of parole. Notification has been partially blocked in several states where some provisions are drawn more restrictively

than elsewhere. While notification laws have passed legal tests in some courts, resolution may ultimately come through a U.S. Supreme Court decision. The primary debate in this area is whether notification is viewed as punitive (and therefore subjects the offender to punishment beyond the original sentence) or regulatory (which is generally considered to be a permissible action of the state).

Retroactivity is another aspect of notification laws that has raised questions of constitutionality. Many sex offenders were sentenced prior to the enactment of notification laws. Some states, such as Alaska, allow the retroactive application of notification to these offenders. This practice faces legal challenge and has halted notifications in some cases. Other states allow notification only for cases that have come to court after the passage of notification laws.

Preventing Vigilantism. Opponents of community notification are concerned that individuals (and communities) will react aggressively towards sex offenders. Although such incidents have been limited, some areas of the country have reported that vehicles have been vandalized, offenders and their families have been beaten and verbally assaulted, and a single incident of a house burning has been documented. Some communities have worked to prevent this, but individual acts of violence are always possible. Further, anecdotal evidence suggests that there have been cases in which citizens have attacked or invaded the homes of persons that were believed to be sex offenders, only to discover a mistake in identification. States have generally made it clear that such action by citizens will

not be tolerated. In New York, for example, a telephone notification line gives out scant information, but firmly states that "taking things into your own hands" is illegal. Careful implementation of notification laws, along with comprehensive public education, may guard against such dangers. Community education and support are perhaps the only ways to prevent such acts.

Unintended Consequences. Although there has been no empirical research conducted, anecdotal evidence suggests that community notification practices have had some unintended consequences. These include an increase in plea bargaining³, a lack of offender compliance with registration requirements, a decrease in the reporting of incest cases, and the fact that some child protective agencies are not charging juveniles with sexual abuse to avoid subjecting children and adolescents to the scrutiny of public notification laws.

Recommendations for Policy Teams. In an effort to enhance public safety and the effectiveness of community notification laws, policymakers should ensure that notification is not perceived as the sole responsibility of a single agency. Rather, community notification should be viewed as a system wide -- indeed a community wide -- responsibility. Where system wide policy teams are in place, they are encouraged to explore the advantages of community notification and safeguard against unintended consequences.

³Offenders may plead to lesser charges (such as battery) that do not require community notification, or mandate treatment, for example.

Building a Body of Research. Because little research has been conducted on community notification issues, limited empirical evidence is available to support or contradict the presumed benefits or risks of community notification. Communities and states developing notification guidelines should work with researchers at local colleges and universities, in government agencies, and with non-profit organizations to conduct meaningful research to assess the effectiveness of their own practices.

Conclusion

Community notification laws and practices are new, and states are still grappling with their effective implementation. Case law is still developing in this area. As community notification laws come into practice in all states and territories, qualitative as well as quantitative research is needed to understand the impact of notification laws and their usefulness. Such research can improve public understanding of how these laws affect public safety, the cost and operation of criminal justice agencies, and the involvement of local communities in the development and implementation of effective criminal justice policy.

A Note to Readers

The Center for Sex Offender Management is interested in learning more about the implications and effective implementation of community notification in jurisdictions around the country. We would be pleased to hear from your community. Contact us at 8403 Colesville Road, Suite 720, Silver Spring, MD, 20910.

Resources

Articles

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Schram, D., and Milloy, C.D. (1995). Community Notification: A Study of Offender Characteristics and Recidivism. Seattle, WA: Urban Policy Research.

Technical Assistance

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Robert E. Freeman-Longo, The Safer Society Foundation, Inc., P.O. Box 340, Brandon, VT 05733-0340, 802-247-3132.

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Sam Olsen, Chair, Oregon Sex Offenders Supervision Network, P.O. Box 1584, Medford, OR 97501, 541-770-9538, ext. 224.

Donna Schram, Urban Policy Research, 12701 240th St., NE, Arlington, WA 98223, 360-435-7815; dschram@halcyon.com.

Detective Robert A. Shilling, National Community Notification Information and Education Services, Inc., P.O. Box 52, Lake Stevens, WA 98258-0052, 206-397-6226; NCNIES1@aol.com.

Mike Welter, Chief, Violent Crime Section, Illinois State Police, 500 Iles Park Place, Suite 400, Springfield, IL 62718, 217-785-0633.

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Edited by Madeline M. Carter, Project Director, Center for Sex Offender Management, with Peggy Burke, Leilah Gilligan and Peggy McGarry, Center for Effective Public Policy.

PROJECT ANNOUNCEMENT

Background

According to the U. S. Department of Justice, Bureau of Justice Statistics, on any given day there are approximately 234,000 convicted sex offenders under correctional supervision across the United States. Of these, sixty percent are under some form of community supervision. Given these numbers, it is critical that the individuals and agencies responsible for managing these offenders have ready access to the most current knowledge and effective practices in the field of sex offender supervision. Courts, corrections agencies, and treatment providers around the country have demonstrated -- through collaboration between criminal justice and health system agencies -- that with careful supervision and control, combined with appropriate treatment interventions, they can manage sex offenders and increase public safety. Others can draw upon these experiences, and create similar results in their own communities, if provided the opportunity to learn about and observe effective supervision strategies for these difficult offenders.

The Office of Justice Programs, the National Institute of Corrections and the State Justice Institute have Entered into a Collaborative Agreement to Create the Center for Sex Offender Management

Recognizing these needs, the U.S. Department of Justice, Office of Justice Programs (OJP), the National Institute of Corrections (NIC) and the State Justice Institute (SJI) are pleased to announce the establishment of the Center for Sex Offender Management, a national project to support local jurisdictions in the effective management of sex offenders under community supervision. NIC and SJI have joined OJP in the management of the project and are devoting additional resources to support corrections professionals and the judiciary as they address this

critical issue within their specific arenas. The project is being administered through an interagency agreement among OJP, NIC and SJI, and a cooperative agreement between OJP and the Center for Effective Public Policy, in collaboration with the American Probation and Parole Association.

The National Summit: Promoting Public Safety Through the Effective Management of Sex Offenders Provides Guidance on the Training and Technical Assistance Needs of the Field

In November 1996, the Office of Justice Programs convened the *National Summit: Promoting Public Safety Through the Effective Management of Sex Offenders in the Community*. The Summit sought input from over 180 practitioners, academic researchers, and other experts about the most effective management strategies for this challenging offender population. Participants were asked as well about the information, training, and other needs of their colleagues as they work together to make America's communities safer. Their recommendations have resulted in the creation of the Center for Sex Offender Management. The four components of the Center for Sex Offender Management will: establish an information exchange; conduct intensive training programs; identify and foster mentor jurisdictions; and provide technical assistance to promote innovations in the field.

Providing Access to the Most Current Information Through the Center's Information Exchange

The CSOM Information Exchange is designed to respond to the field's need for current, readily available, practical information, including current resource materials and referrals to other organizations that can provide assistance to practitioners. The Information Exchange is also

designed to collect and synthesize information on sex offender management strategies from jurisdictions across the nation. That information will be shared with others and used to shape future CSOM technical assistance efforts. The Information Exchange will: develop and distribute policy and practice briefs on pressing issues; unveil a web-site in late 1997; and compile and make available information collected from local and state agencies around the country.

Providing Training Through the Center's Intensive Training and Mentoring Programs

CSOM will design and deliver training programs for probation and parole agencies and officers, and for cross-system teams from jurisdictions across the country, throughout the two-year project. These training events will capitalize on the experiences of those in the field and prepare the jurisdictional teams to serve as mentors to communities that are interested in instituting successful supervision programs. One of the first CSOM-sponsored training events will take place at the American Probation and Parole Association's 1998 Winter Institute, scheduled for January 4 - 7 in Orlando, Florida. To receive more information about this training opportunity, write or e-mail the Center for Sex Offender Management.

Providing Support for Effective Innovations in the Field Through the Center's Technical Assistance Program

CSOM will support jurisdictions that have demonstrated their commitment to establishing effective supervision strategies for sex offenders in the community and now seek assistance to explore innovations in the delivery of those strategies. Technical assistance applications will be evaluated on a case-by-case basis. To receive an application packet, write or e-mail the Center for Sex Offender Management.

**TECHNICAL ASSISTANCE ANNOUNCEMENT:
TECHNICAL ASSISTANCE TO SUPPORT EFFECTIVE INNOVATIONS
IN THE MANAGEMENT OF SEX OFFENDERS**

About The Center for Sex Offender Management

The U.S. Department of Justice, Office of Justice Programs (OJP), the National Institute of Corrections (NIC), and the State Justice Institute (SJI) are pleased to announce the establishment of the Center for Sex Offender Management (CSOM), a national project to support local jurisdictions in the effective management of sex offenders under community supervision. CSOM will provide technical assistance to individual criminal justice agencies, courts, policymakers, and jurisdictional teams engaged in the development and implementation of innovative approaches to the management of sex offenders.

Criteria for Applying for Technical Assistance

All technical assistance requests must be directly related to CSOM's primary goal: to enhance public safety by preventing further victimization through improving the management of adult and juvenile sex offenders who are in the community. The following criteria will be used to determine CSOM's method of responding to the technical assistance request:

- ▶ The benefits of receiving technical assistance to the requesting agency(s) or jurisdiction;
- ▶ The extent to which the request is compatible with CSOM's primary goal;
- ▶ The extent to which the request for assistance advances the field's knowledge of sex offender management or has the potential to develop new, promising practices in the field;
- ▶ The commitment of key staff and leadership to participate in the assistance;
- ▶ The costs and time that would be necessary to deliver the assistance; and
- ▶ The unavailability of assistance from other sources.

How to Apply for Technical Assistance

There are no deadlines for submitting requests for technical assistance, however, funds are limited, and requests will be reviewed as they are received to assure that they meet the criteria outlined above. Technical assistance requests will be considered from September 1997 through December 1998. All applications will be acknowledged. Applicants who are approved to receive technical assistance will be notified as quickly as possible but no more than 60 days from receipt of the application.

The process for requesting technical assistance is as follows:

1. The requesting agency must complete the attached application form.
2. The written request is to be mailed or faxed to:

Becki Ney
Center for Sex Offender Management
c/o Center for Effective Public Policy
32 East Montgomery Avenue
Hatboro, PA 19040
telephone: 215-956-2335
fax: 215-956-2337

The Review of Technical Assistance Requests

When the written request is received, a CSOM staff person will review the application and, if further information is needed, telephone the contact person. CSOM's resources are limited; therefore, each request for assistance will be carefully reviewed to determine the best method of meeting the needs of the applicant organization or jurisdiction. If appropriate, applicants may be assisted through one of CSOM's other components, including:

- ▶ Consultation with colleagues in a mentor site for those jurisdictions interested in establishing and maintaining a collaborative team approach to the supervision of sex offenders.
- ▶ Scheduled training for criminal justice and other professionals responsible for the day-to-day management of sex offenders or for the development of state or local policies that effect that day-to-day management.
- ▶ Dissemination of resource materials, policy and practice briefs, manuals, research, books, and articles on current topics related to the management of sex offenders.
- ▶ Referral to practitioners or experts for specific advice or assistance through CSOM's Information Exchange.

Further Information

For further information about technical assistance, please contact Becki Ney.

The Administration, working with the Congress, has made great strides toward protecting our communities from sex offenders. We worked hard to pass, and have successfully defended in the courts, laws that require the registration of sex offenders and community notification of their whereabouts. In 1997, the Administration, through the Justice Department, established and funded the Center for Sex Offender Management. The Center is working to enhance public safety by developing and disseminating effective strategies for supervising sex offenders to prevent them from committing new crimes. The Center is gathering information on a number of effective state and local programs, with an eye towards replicating in the Federal system and throughout the country the successful features of programs like the lifetime supervision program in Maricopa County, Arizona.

In FY 1999, additional funding should be dedicated to expanding the Center's training activities and investigations into programs like the lifetime supervision program in Maricopa County, as well as establishing pilot programs that will put effective sex offender management techniques into practice across the country. (In the President's FY 1999 budget, \$5 million is requested for the Center; however, further legislative action will be needed to allow this money to be spent for the pilot programs.) To allow the Administration to monitor progress on this initiative, the President may wish to direct the Attorney General to report to him on the status of this project within 180 days.



Office of Policy Development

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 (3) 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.

(Steve
Hans)

- COPS
- PROBATION AND
DIRECTOR

- Juvie Mtg.

- AG opposition to both the Federal System - grant
conditions on states.

→ Models to States - possibilities, \$.

→ These types of initiatives may work when
accompanied w/ \$ - such is the case w/ AZ.

→ Move ideas from Sex Off. Mgmt Ctr to field
\$5 million (up from \$3 mil) in FY98 approx.
→ OA only, not for demonstration

→ E.G. of Maricopa + all the overall initiatives
in place.

→ Also, most promising conditions are not yet clear.

→ Have funded Maricopa City to collect data.

→ Center for Sex Offender Mgmt.

→ (from DAWA \$)

→ different type of offender; different
types of conditions on probation/parole

Set-up Partnership
w/ NGA

→ \$110 mil in Juvie build?

→ Why don't we just
increase penalties for
→ Interapping.

→ Innocent
Burger debate



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U.S. Department of Justice

Office of Justice Programs

*Office of Juvenile Justice and
Delinquency Prevention*

Office of the Administrator

Washington, D.C. 20531

MAR 20 1997

MEMORANDUM TO: Distribution list

FROM: Shay Bilchik 
Administrator
Office of Juvenile Justice and Delinquency Prevention

SUBJECT: National Child Protection Act Guidelines

Under the National Child Protection Act of 1993, PL-103-209, as amended by the Violent Crime and Law Enforcement Act of 1994, PL 103-222 Section 320928 (g)(1),(2), and (3), the Attorney General was directed to "develop guidelines for the adoption of appropriate safeguards by care providers and by States for protecting children, the elderly, or individuals with disabilities from abuse." Since the Office of Juvenile Justice and Delinquency Prevention (OJJDP) had previously issued a grant to the American Bar Association (ABA) to conduct extensive research on effective screening techniques for child care and youth service workers, we took the lead in developing these Guidelines and utilized the ABA to assist with this work. The enclosed document, "Guidelines for the Screening of Persons Working With Children, The Elderly, and Persons With Disabilities In Need of Support," represents the final draft of the proposed Guidelines.

During the past year the following steps were taken to develop this final draft: 1) an advisory board meeting was convened, with representation from the Department of Justice and the organizations and agencies stipulated in the National Child Protection Act; 2) a draft set of Guidelines was developed as a result of the advisory board meeting and distributed for review and comment; and 3) the ABA and OJJDP reviewed and, where appropriate, incorporated the comments.

This final draft is a product of a very thorough and extensive outreach to the field. We are now redistributing these Guidelines for review and comment. The most significant change in this final draft is the addition of an example on how to use the decision model. This was added at the request of OJJDP to make the model more user friendly.

While the development of these Guidelines has been very time consuming, I would like at this point to bring this project to closure as soon as possible. Therefore, I am asking that you provide comments by April 4, 1997. We would like to have the Guidelines submitted to the Attorney General for review by April 15, 1997. Please contact me at 307-5911 or Jeff Slowikowski at 616-3646 by April 4, 1997, if you have any questions or comments.

I appreciate your taking the time to review this important work.

cc: Kent Markus, Counselor for the Attorney General on Youth Violence
John Dwyer, Acting Associate Attorney General
Laurie Robinson, Assistant Attorney General, OJP
Noel Brennan, Deputy Assistant Attorney General, OJP
Harri Kramer, Director, OJP-OCPA

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GUIDELINES FOR THE SCREENING OF PERSONS WORKING WITH CHILDREN, THE ELDERLY AND PERSONS WITH DISABILITIES IN NEED OF SUPPORT

1. OVERVIEW

1.1 BACKGROUND

Over 87 million children are involved in activities provided by child and youth service organizations and agencies each year. Millions more adults, both elderly and individuals with disabilities in need of support, are served by many, many more organizations and agencies. These encounters run the gamut from relatively brief interactions with health care or recreation providers to surrogate family relationships in foster care or intensive dependent adult care services in or out of the home. The vast majority of these encounters are not harmful or abusive, but result in much needed services being provided, sometimes by volunteers, often by persons who are not among society's better-paid employees.

Abuses do, however, occur. Although studies are sketchy and do not provide a complete picture, one study indicated that 12.8% of the estimated 2 million elder abuse incidents occurring in the home were perpetrated by service providers.¹ A survey of 600 nursing home staff members suggested that elder abuse is a fact of institutional life with 10% admitting to physically abusing patients and 40% admitting to personally committing at least one psychologically abusive act in the preceding year.² As for children, estimates for child sexual abuse in day care centers, foster care homes and schools range from 1 to 7 percent.³ Although the incidence of abuse may be relatively small, abuse traumatizes the victims and shakes public trust in care providers and organizations serving these vulnerable populations.

Congress has acted to address concerns about this type of abuse. In 1993, the National Child Protection Act, P.L. 103-29, was passed. Section 3 of the Act set forth a framework through which states can authorize FBI criminal record checks for child care providers. In 1994,

¹Summaries of National Elder Abuse Data: An Exploratory Study of State Statistics, National Aging Resource Center on Elder Abuse. Washington, D.C. (1990).

²AARP Public Policy Institute, *Fact Sheet: Elder Abuse and Neglect* (April 1993).

³See *Effective Screening of Child Care and Youth Service Workers*, ABA Center on Children and the Law (1994) (citing Finkelhor & Williams, *NURSERY CRIMES: SEXUAL ABUSE IN DAY CARE*, Newbury Park, CA SAGE Publications (1988); Baas, *Background Checks on School Personnel*, U.S. Dep't of Education, Washington, D.C. (ED 324767 1990); Daro & McCurtly, *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1991 Annual 50 State Survey*, Chicago, Ill, National Center on Child Abuse Prevention Research, National Committee for Prevention of Child Abuse; Margolin, *Child Sexual Abuse by Nonrelated Caregivers*, 15 *CHILD ABUSE AND NEGLECT* 213 (1991).

the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-222, amended the 1993 Act so that states could also authorize FBI criminal record checks on those working with individuals with disabilities or the elderly. In addition, the Attorney General was directed to "develop guidelines for the adoption of appropriate safeguards by care providers and by States for protecting children, the elderly, or individuals with disabilities from abuse." In developing these guidelines, the Attorney General was further directed to "address the availability, cost, timeliness, and effectiveness of criminal history background checks and recommend measures to ensure that fees for background checks do not discourage volunteers from participating in care programs."

These guidelines supplement and incorporate those issued on July 17, 1995 (*see* CJIS Information Letter 95-3 at Appendix B). They will assist those faced with screening decisions by suggesting a decision-making model that can structure an analysis of screening issues. Its main virtue lies in presenting a framework for making decisions about who to screen and how to do so.⁴ Examples are provided to illustrate how the model can be of utilized in making screening decisions.

The decision-making model begins with factors triggering the need for screening, such as the level of direct worker-consumer contact, characteristics of the consumer served, and the amount of worker supervision present. These triggering factors set the stage for determining the types and extent of screening to perform. The next step presented in the model is to consider the intervening factors that may limit the ability to perform certain kinds of screening. These intervening factors include costs, access, and time constraints. By providing an opportunity to consider intervening factors, the model recognizes that the most optimal screening approaches may not, in fact, be realistic options for all settings. Following consideration of triggering factors and intervening factors, the best possible screening approach can be selected.⁵

The model contemplates that all organizations undertake at least Basic Screening (interview, verified application, reference checks) for even those situations requiring the most cursory screening. Thus, although some might suggest that no screening may be necessary for situations where the prospective volunteer or employer is known to the organization or agency, such an informal approach to screening is not advisable. Some formal review and reference process, such as that recommended with the Basic Screening practices, should be undertaken. Further, with respect to Basic Screening, organizations and professional associations are encouraged to develop model screening procedures and interview questions as part of hiring or volunteer placement procedures.

Two caveats must be given, however. First, although screening to weed out potentially abusive individuals is an important part of the process, it should supplement, not substitute for, an evaluation of skill development or competency. Second, all screening practices have limitations

⁴Whenever possible, words needing no special definition have been employed in these guidelines. For clarity, the term, "workers" refers to persons serving children, the elderly or individuals with disabilities, including employees and volunteers

and their use cannot guarantee that the individuals who pass through the process will not abuse children, the elderly and/or individuals with disabilities in need of support. Thus, activities to continue to protect against abuse are warranted.⁵

Before turning to an examination of the specific guidelines, an understanding of the purpose of screening practices as well as some understanding of the scope of specific practices that can be used to screen individuals is appropriate. In addition, because some screening practices include access to information held by the government (e.g., criminal records), an overview of the legal framework is also included. Thus, the remainder of part one reviews the purpose and specific types of screening practices as well as the legal framework for those practices. Part two sets forth specific screening guidelines and the decision-making model. Appendices include the National Child Protection Act, as amended, CJIS Information Letter 95-3, several state statutes to illustrate different approaches to screening legislation, and sample forms to consider in implementing screening in the organization.

1.2 PURPOSE: PROTECTION OF CHILDREN, THE ELDERLY AND PERSONS WITH DISABILITIES

The underlying reason for screening prospective workers who may come into contact with children, the elderly or individuals with disabilities⁶ in need of support is the same -- to identify potentially abusive individuals. When an individual entrusted with the care of someone abuses that person and then is found to have previously abused others, many questions arise including: How could such a person again be in a position of caring for children or other vulnerable individuals? How can this be prevented from happening again?

States, coalitions, and individual organizations have sought to answer these questions. Any effort to do so leads to a number of additional inquiries: How much screening should be done and who should decide? Should all who may or do come into contact with these vulnerable populations be screened? Volunteers as well as employees? Individual service providers and group or institutional providers? What kind of screening should be done? Federal and state criminal checks? State central child abuse registry checks? In which states? Who has access to these information databases? What kinds of limitations should be placed on access to this information? Should some of these decisions be made at the federal, state or local level? What determinations should be left to individual organizations? Should a worker be "on the job" in a paid or volunteer capacity pending the results of screening? Who bears the costs of the various screening practices?

⁵Although a detailed description of these continuing activities is outside the scope of this document, some activities are noted in Appendix C, "Post-Hiring Practices."

⁶For purposes of this project, we have used the definition of individuals with disabilities set forth in section 320928 of the Violent Crime Control and Law Enforcement Act of 1994:

"[T]he term 'individuals with disabilities' means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks."

These guidelines provide background information and a structure for analysis of these and other screening issues. With these materials, those in a position to decide screening matters will have a solid base from which to work.

1.3 SCREENING PRACTICES

Typically, when background "screening" is discussed, the focus has been on the use of criminal history record information (e.g., FBI fingerprint checks). It is important to recognize, however, that there are a multitude of other practices that can be utilized to weed out potentially abusive workers and volunteers. These range from standard interviewing and reference checking to more complex and controversial procedures such as screening against child abuse, dependent adult abuse and sex offender registries, psychological testing, drug testing, and home visits. (Not all of these practices are available in all states, however. The Legal Framework section, *infra*, has additional information on these practices.)

The table below is divided into three columns: 1) practices that can be considered "basic" screening; 2) more extensive background checks, e.g., criminal history checks; and 3) methods that may be used infrequently or for special types of workers only. Consideration of these screening methods is incorporated into the guidelines, particularly in the discussion of the decision-making model outlined in section 2.3.

SOME TYPES OF BACKGROUND SCREENING MECHANISMS

• Employment Reference Checks	■ Local Criminal Record Check	• Alcohol/Drug Testing
• Personal Reference Checks	■ State Criminal Record Check	• Psychological Testing
• Personal Interviews	■ FBI Criminal Record Check	• Mental Illness/Psychiatric History Check
• Confirmation of Education	■ State Central Child/Dependent Adult Abuse Registry Check	• Home Visits
• Written Application	■ State Sex Offender Registry Check	• On-the-Job Observation
	■ Nurse Aide Registry Record Check	
	■ Motor Vehicle Record Check	
	■ Prof'l Discipl. Bd Check	

Information about the practices currently being used is primarily limited to those used by organizations and agencies serving children and youth. The Department of Justice-funded study, *Effective Screening of Child Care and Youth Service Workers*,⁷ included a national survey of approximately 3,800 child and youth-serving organizations and agencies on the screening

⁷ABA Center on Children and the Law (Washington, D.C. 1995) (study funded by Office of Juvenile Justice and Delinquency Prevention, Department of Justice).

mechanisms they use (including costs, timeliness of information, quality and perceived effectiveness). The study's findings indicated some differences in the practices used to screen employees and those used to screen volunteers.

For potential employees

- Almost all conducted what can be called "basic screening" of potential employees: personal interviews (98%); reference checks with past employers (93%); personal reference checks (86%); confirmation of educational status (80%). (And 70% observed the applicant in the job position.)
- Overall, 60% conducted at least one type of criminal record check on employee applicants; state and local checks were used more often than FBI checks. The 60% figure reflects a range -- almost all juvenile detention/corrections facilities (94%) conducted criminal record checks on employees, compared to only 43% of private schools and half of youth development organizations.
- Less than 10% used psychological testing, home visits, mental illness/psychiatric history checks, alcohol or drug testing, or state sex offender registry checks on employees. (However, 86% of foster care agencies reported conducting home visits on prospective foster care and adoptive homes.)

For potential volunteers

- Volunteers were usually screened using personal interviews (76%) and personal reference checks (54%).
- Over one-third (35%) conducted at least one type of criminal record check on volunteer applicants; state and local checks were used more often than FBI checks. Again this figure reflects a range. Most juvenile detention/corrections facilities (83%) conducted criminal record checks on volunteers, compared to only 12% of private schools, 23% of public school districts, and 28% of hospitals.
- No more than 6 percent used psychological testing, home visits, mental illness/psychiatric history checks, alcohol or drug testing, or state sex offender registry checks on volunteers.

1.3 THE UNIVERSE OF PERSONS HAVING CONTACT WITH CHILDREN, THE ELDERLY AND PERSONS WITH DISABILITIES IN NEED OF SUPPORT

Attempts to determine who should be screened rapidly reveals the multitude of settings in which abuse might be perpetrated against children, the elderly, and individuals with disabilities. A partial list of settings in which individuals come into contact with children, the elder and persons with disabilities gives a sense of the enormity of the contact points:

- Day Care: child care, senior citizen centers, community day programs for adults;
- Health/Mental Health Care: hospitals, nursing homes/facilities, intermediate care, congregate care, board and care, group homes, psychiatric hospitals, residential treatment facilities, and "in-home" health care;
- Foster Care: placements for adults in need of support services or children in the state's care as a result of abuse or neglect, or from delinquency;

- Other Out-of-Home Settings: assisted living units/community living programs and semi- and independent living programs;
- Schools: public and private, including pre-school and nursery school;
- Shelters: homeless or domestic violence;
- Youth Development: community or volunteer organizations serving children and youth (e.g. Court Appointed Special Advocates (CASA), Boy Scouts of America, Girl Scouts USA, Big Brothers/Big Sisters programs);
- Volunteer Programs (for the elderly or individuals with disabilities): Social Security representative payee, AARP bill payer and representative payee money management, meals on wheels, and other community/volunteer programs.

Considering that these and other settings can encompass services provided in or out of the home by volunteers as well as employees, the instances where screening may be considered is extraordinary. State efforts to coordinate screening are strongly encouraged.

1.4 THE LEGAL FRAMEWORK

State social welfare and licensing agencies have increasingly required that certain practices be used to screen at least some types of prospective employees and in a number of states, statutes require that certain screening practices be used for some types of workers. Some of the screening methods involve the use of information that is held by government entities and may require legislative or administrative action before the information can be accessed for screening purposes. Specifically, checks of criminal records and state central abuse registries (which maintain information on "founded" or "substantiated" reports of abuse or neglect) involve governmental compilations of information and may require legislative or administrative action before they may be used for screening. Similarly, sex offender registries (that stem from statutes requiring convicted sex offenders to register with law enforcement agencies where they reside) often require legislative or administrative action to authorize their use for screening.

With a few rare exceptions, the information systems mentioned above were originally established for purposes other than the screening of workers. Criminal record keeping was developed to assist law enforcement or criminal justice entities in tracking crimes and criminals; central child abuse registries were established to assist state agencies responsible for child welfare in tracking children about whom allegations of child abuse or neglect may have been made; sex offender registration requirements were designed to aid law enforcement in investigating sex crimes by tracking persons convicted of sexual offenses.⁸

⁸See the discussion, *infra*, of each type of registry. See generally, DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CRIMINAL JUSTICE INFORMATION POLICY, ORIGINAL RECORDS OF ENTRY (1990) (criminal records); U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CRIMINAL JUSTICE INFORMATION POLICY, PRIVACY AND THE PRIVATE EMPLOYER (1981) (criminal records); NATIONAL CENTER FOR STATE COURTS, CENTRAL REGISTRIES FOR CHILD ABUSE AND NEGLECT: NATIONAL REVIEW OF RECORDS MANAGEMENT, DUE PROCESS SAFEGUARDS AND DATA UTILIZATION (1988) (central child abuse registries).

As a result of the different purposes for which these information sources were developed, their use to identify potentially abusive individuals has raised questions and spawned the development of procedures that attempt to provide information in a fair manner. Moreover, developing legislation on the appropriate uses of these information compilations raises sometimes conflicting public policies -- the protection of children, the elderly and persons with disabilities from potentially abusive individuals, the rehabilitation of offenders, "due process" issues, and privacy interests. Given these conflicting policy goals, it is no surprise that the state laws and regulations vary widely in the type and scope of screening required.

1.4.1 FEDERAL LAW

Screening, at least with respect to child care workers, has been a topic of federal legislation for some time.⁹ Recent federal action has focused on criminal records and sex offender registration. The National Child Protection Act of 1993,¹⁰ which was amended in 1994 by the Violent Crime Control and Law Enforcement Act of 1994,¹¹ addressed national criminal record checks. The National Child Protection Act, as amended, enhanced the existing national criminal check process through which states may authorize national criminal checks on persons providing care to children, the elderly or individuals with disabilities. The Act, as amended, did not itself permit or require that any such checks be done, but maintained respect for state policy-making in this area while encouraging states to consider screening legislation. Whether *national* checks are required or permitted continues to depend upon whether there is a *state* statute, approved by the Attorney General, that specifically authorizes the national (fingerprint) checks.¹² Appendix B (CJIS Information Letter 95-3) answers many questions about the Act. (A copy of the Act, as amended, appears at Appendix A.)

Sex offender registration was the focus of the Jacob Wetterling Crimes Against Children Act, passed as part of the Violent Crime Control and Law Enforcement Act of 1994. This Act mandated that the Attorney General establish guidelines for State programs requiring registration of sex offenders. Among other requirements, offender registration information is to be forwarded to a designated state law enforcement agency, which in turn is to transmit the conviction data and

⁹See P.L. 98-473, Title IV, §401(c)(2)(A), U.S.C.A.N (1984) (to get Title XX funds, states must have background check procedures for child care facility employees); The Crime Control Act of 1990, P.L. 101-647 (criminal checks required of employees at federally operated and contracted child care facilities).

¹⁰National Child Protection Act of 1993, 42 U.S.C. §5119a, 107 STAT. 2490 (1993) (also known as the "Oprah bill").

¹¹For the text of the National Child Protection Act, as amended by the Violent Crime Control and Law Enforcement Act of 1994, see the appendix.

¹²See National Child Protection Act, P. L. 103-209, 107 STAT. 2490, §3(b)(5) (requirement that any background check and the results thereof shall be handled in accordance with P. L. 92-544); Pub. L. 92-544, 86 Stat. 1109 (authorized national checks for non-criminal justice purposes if pursuant to state statute and through a state agency).

fingerprints to the Federal Bureau of Investigation. The information collected is to be treated as private data, but can be disclosed to government agencies conducting confidential background checks¹³

1.5.2 STATE LAWS

Legislation regarding the screening of persons working with children, the elderly and persons with disabilities has not been passed in all states. To the extent they exist, state screening laws may be found in licensing laws, laws governing state social welfare agencies, and laws regarding specific information systems, (e.g. criminal record repositories, child or elder abuse registries, or sex offender registries).

Screening laws vary in the types workers covered as well as the types of checks required. Licensing laws are obviously limited to the individuals or entities licensed. States have made differing determinations as to whom to license. Statutes that charge the human services department (or similar state agency with child welfare and protection responsibilities) often only reach those who participate in the child protection system. Typically, this may include child welfare workers as well as foster or adoptive parents and persons who may work with or care for children in other settings such as group homes or residential institutions.

Among the licensing and social welfare laws in effect, there is considerable variety in the type of check to be conducted. For example, some states may require checks from the state central abuse and neglect registry or criminal history records. A few licensing statutes may be more detailed and require licensees to make efforts to contact previous employers.

The laws also vary in the types of workers to be screened. Some laws requiring criminal checks of home health aides and attendants only cover employees. Laws in other states may include those providing direct care and substitute caregivers. In addition, the settings covered vary. For example, many states require criminal record checks for day care workers, some cover schools, some include licensed home health care facilities, and some cover "those with supervisory or disciplinary authority over a child." Specific exceptions, however, often exist. With respect to services for children, exceptions have included: (1) school-based child care; (2) child or youth recreation groups, such as scouting or camping organizations; (3) child care affiliated with a religious group; (4) youth programs operated in adult facilities; (5) babysitting arrangements; (6) single family "nanny" situations; and (7) day care situations in which less than a specified number of children -- often 3, 4, or 5 -- are cared for.

¹³Subpart (d) also permits disclosure to law enforcement for law enforcement purposes, and the designated State law enforcement agency and any local law enforcement agency authorized by the State agency may release relevant information (other than the victim's identity) that is necessary to protect the public concerning a specific person required to register.

Because licensing may not always be an appropriate mechanism for encouraging screening, a number of states has passed separate statutes authorizing certain screening practices. These generally include checks of state criminal records or the central child abuse and neglect registry.¹⁴ Most states do not maintain registries on persons who are being investigated for or have committed abuse against the elderly or dependent adults.¹⁵

More than half of the states have laws authorizing national criminal history checks for some type of person working with children, the elderly, or individuals with disabilities. A number of states also authorize state criminal history checks (either in lieu of or in addition to the national check). At least twelve states have enacted statutes mandating criminal background checks of nurse aides with several additional states having proposed legislation.¹⁶ The statutes do vary in that several require a more comprehensive background check than others, some set forth a more expansive listing of crimes prohibiting employment, and some broaden their scope beyond the hiring of nurse aides to all staff, including volunteers in certain circumstances, having access to children and adults in need of supportive services.

2. SPECIFIC SCREENING GUIDELINES AND DECISION-MAKING MODEL

2.1 STATE POLICIES/LEGISLATION

Basic Principles of Screening

To prevent the abuse of children, the elderly and individuals with disabilities, and to reduce the corresponding fiscal burdens of investigations, prosecutions, and treatments for the victims and their families, it is in the interest of states to analyze their screening laws and to pass new or amended legislation, as appropriate. The decision-making model outlined in these guidelines can assist legislators and others in such an analysis. At a minimum, however, states are encouraged to require basic screening practices, to consider the adoption of statutes authorizing criminal record checks, and to encourage abuse prevention training.

¹⁴See, e.g., ALASKA STAT. §12.62.035 (1990) (authorizing "an interested person" to request a criminal record check (for felonies, contributing to the delinquency of a minor and sex crimes) on a "person who holds or applies for a position of employment in which the person has or would have supervisory or disciplinary power over a minor or dependent adult").

¹⁵All states do have statutes providing for the investigation of elderly or dependent adult abuse and an estimated forty-two have some form of mandatory reporting. ABA Commission on the Legal Problems of the Elderly; obtained from chart compilations on Adult Protective Services and related statutes to be published.

¹⁶Information obtained from the National Coalition For Nursing Home Reform and Long-Term Ombudsmen programs revealed that the following states had enacted background checks for nurse aides (some cover other care givers as well): California, Florida, Kentucky, Louisiana, Minnesota, Nevada, Oklahoma, Rhode Island, Texas, Vermont, Virginia, and Washington.

- States are encouraged to have statutes and implementing regulations requiring the use of basic screening practices such as appropriately developed applications, personal interviews, and reference checks for all workers, including volunteers. Depending upon the circumstances, additional screening practices may be warranted for specific types of workers in certain settings. As outlined in the decision-making model, confirmation of education status may also be an appropriate screening practice.

Methods to encourage screening could include incentive programs that provide funds and/or recognition for the use of model screening practices. Screening practices could also be included in certification or licensing requirements, with penalties for noncompliance. Generally, these statutes and regulations should apply to all workers, including volunteers as well as employees.

- In keeping with the spirit of the National Child Protection Act of 1993, states should consider the adoption of statutes and regulations authorizing the use of national and/or state criminal record checks, as appropriate. The decision-making model provides a mechanism that can assist states in determining when legislation authorizing such checks might be appropriate.
- In authorizing screening practices, states are encouraged to prescribe appeal and review procedures that meet constitutional muster, which may include written notification to applicants concerning any records that will be searched and providing an opportunity to refute the information found is appropriate.

Moreover, notification that records will be searched may act as a deterrent to unsuitable applicants. (If done by conveying a sense of respect for the applicant while explaining the need for screening, the process need not alienate prospective workers.)

- States are urged to consider enacting statutes and implement regulations encouraging abuse prevention training for all workers (including employees and volunteers) at child and dependent adult service agencies, organizations, and facilities.

Criminal Record Repositories

An accurate and complete criminal record repository, whose records can be efficiently accessed is the goal. Toward this end, states are encouraged to consider:

- Passing/revising statutes and regulations on the appropriate use of criminal history information and developing specific criteria for using these records to screen persons working with children, the elderly and individuals with disabilities. States

should review the National Child Protection Act, as amended (*see Appendix*) for limitations on the use/disclosure of the FBI criminal record checks as well as requirements to complete records lacking disposition data.

- Passing laws allowing access to state criminal record information to broadly permit screening of persons working with children, the elderly and individuals with disabilities. Such laws are warranted because the current national criminal record system does not include all records in all states (many states have limited computerized records).
- Reducing the financial burden of conducting background checks by incorporating at-cost fees and providing discounts for volunteers of non-profit organizations, for workers at day care centers in poverty areas and by providing volume discounts to employers. For states requiring checks, the cost to those seeking the checks should be minimal and subsidized by the state, to the extent feasible.

State Central Child/Elderly/Dependent Adult Abuse and Neglect Registries

- Create and maintain registries in those states where they do not exist.
- States using abuse, licensing, and certification registries for purposes of screening should establish clear policies for their use and scope.

These policies should include specific guidelines consistent with due process in regard to the use of registries for screening, definitions, policies on retention of information, methods for purging names and cases accurately reflecting the results of dispositions, hearings and appeals by those listed in the registries.

- Consider separating the employment or volunteer screening function from the use of the civil abuse and neglect registries as a research and diagnostic and risk assessment tool.
- Standardize abuse definitions to make registries more consistent among jurisdictions to facilitate the exchange of information among jurisdictions. Standardized definitions could be developed through a national network of abuse registry directors or other interstate panel is advisable.

Ensure dependent adult abuse registries define abuse to include fiduciary abuse or exploitation and mental harm.

- Cross-index abuse registries by perpetrator, nature of offense, and locale to ease access to information; enact statutes or implement policy and procedure enabling cross-referencing between child and adult abuse registries.

State Sex Offender Registration

All states currently have laws requiring sex offenders released from custody to register with state or local law enforcement where they reside. The Jacob Wetterling Crimes Against Children Act, 42 U.S.C. 14071, sets forth federal law requirements for these registries. States are encouraged to consider:

- Permitting access to child and dependent adult-serving organizations for screening purposes.
- Developing a flagging system for those sex offenses in which the victim was a child, or dependent adult.
- Compiling an automated, up-to-date statewide listing of registered sex offenders to facilitate screening.
- Implementing procedures which ensure offender compliance with registration requirements.

One aspect of ensuring compliance would be increasing awareness among local jurisdictions and offenders regarding registration requirements immediately after every move. One possibility would be to not only require the individual offender to register, but also require the institution from which he/she was released or the legal entity which rendered the offender guilty of a sex crime to forward the information. Another compliance measure is the address verification process found in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. 14071.

- Increase information sharing among criminal justice agencies, particularly from the local to the state level to enable screening to be conducted.

Special Considerations:

In addition to directly encouraging or requiring screening by child and youth serving agencies, states regulate a wide range of activities which also impact on screening. States may wish to consider using these other regulatory powers to further systematize identification of unsuitable workers:

- Implement a system so that information about individuals currently working in settings requiring licensure or certification who commit violent crimes, sex crimes, or crimes involving children, the elderly or individuals with disabilities is conveyed to the appropriate agencies. Operational details about how such a system might

work in a particular state would, of course, have to be developed with the FBI and the appropriate state agencies.

A *flagging system* to obtain information as it arises and ensure that it is passed on to the appropriate sources, e.g., licensing or certification agencies, would be of assistance. Such a system could be modeled after that used by the Federal Aviation Administration (FAA) and the FBI. When the FBI comes across a case involving a pilot, this information is flagged and sent to the FAA. A similar system could be used, with information about abusers forwarded to child and/or adult protective services and/or state licensing agencies.

- Increase the role of state licensing agencies

Many aspects of services provided to children, the elderly or individuals with disabilities are subject to licensing regulations and professional certification. The following efforts would be useful:

Establish clear procedures for timely disposition of abuse cases;

Implement a system for sharing reported complaints of abuse among social services and agencies, with appropriate due process safeguards and a clear statement of investigative responsibilities and agencies' duties to notify other agencies regarding those committing relevant crimes.

Adopt clearly written policies on information-sharing among agencies;

Implement mechanisms within and between states to track convicted offenders and prevent their continued work with children, the elderly and individuals with disabilities; and

Develop licensing/registration laws and regulations to include: minimum staff qualifications; personal and past employment reference-check procedures; abuse awareness and other training; clearly defined requirements of adequate supervision; written application with signed affidavit verifying truthfulness and accuracy of information in application coupled with clear statement that untruthfulness is a basis for suspension or termination of employees/volunteers; authorization to licensing agency to impose fiscal penalties and/or revocation of license.

In revising licensing/registration laws, particular consideration should be given to reviewing existing exemption or exception clauses so licensing/registration provisions encompass entities providing services to children, the elderly and individuals with disabilities, as appropriate. In

addition, agencies should be equipped with sufficient staff to monitor compliance with laws and regulations.

- Consider developing incentives for insurance companies to expand their role in providing coverage to entities providing services to children, the elderly and individuals with disabilities.

State regulations encouraging insurance coverage of employers may promote careful review of agency screening mechanisms and consequences of screening in order to maintain coverage. The insurance industry could take the lead in addressing concerns regarding the suitability of persons to work with or around vulnerable populations.

Information, Interstate Communication and Coordination

In conjunction with federal guidelines, states have the power to enhance communication both within their own state agencies and with other states. In order for interstate information effectively to be accessed through registries, criminal record repositories and other screening mechanisms, states are encouraged to consider:

- Establishing a mechanism to develop appropriate, common statutory definitions of abuse and neglect and to clarify the rights and responsibilities of all parties.
- Increasing communication, coordination and cooperation between the various repositories, other law enforcement/criminal justice entities, state regulatory/licensing bodies and community agencies.
- Working with interstate organizations representing state interests (e.g., National Governors Association) towards the development of uniform offense codes, reporting procedures and standardized training for personnel entering and documenting data in criminal record repositories and other information registries.
- Modifying current criminal history information systems so that all records containing crimes involving children, the elderly and individuals with disabilities are flagged for easy and immediate identification during background screening.
- Developing computer systems that transmit screening information efficiently and timely and that may ultimately decrease the costs of accessing this information.

In the 1990's there has been a significant increase in the number and extent of on-line computer systems. Access to specialized computer networks would be one means of increasing the number of organizations able to use this information. Some states are experimenting with assisting agencies in accessing computer

networks and could continue this trend by creating specialized user lists for organizational access to certain information in the registries.

Further Study:

- Consider statutory amendments that would require employers to report employee/volunteer terminations from employment due to the employee/volunteer's inappropriate conduct toward consumer.

2.2 ORGANIZATIONS:

Levels of Screening:

- Adoption of a screening policy by organizations providing care/services to children, the elderly and individuals with disabilities is warranted. The three part decision-making model is a useful guide for organizations in developing such a policy.

Issues appropriate for a screening policy include: statements on minimum required screening standards; guidelines on when more extensive screening practices should be used; provisional hiring policies; guidelines on how to assess background screening information once it is received; maintenance and dissemination of background screening records; and standards for working with vulnerable populations. Advising applicants of the organization's screening policy is recommended. Reviewing this policy annually and as new information on available mechanisms arises is also appropriate.

- Basic screening of all potential workers is appropriate. (Additional screening, as noted below, may also be in order.)

All applicants who are seeking a position to work or volunteer with children, the elderly and individuals with disabilities should be screened at a basic level. Basic screening should include 1) a comprehensive *application* form with a signed statement; 2) a thorough personal *interview* which examines an applicant's past employment or volunteer experience and explores other indicators of potential problem behavior; and 3) *reference checks* with past employers (or appropriate reference checks for volunteers and young adults) and personal contacts. The references should be checked for each individual completely. In addition, a confirmation of education status may be appropriate.

- Screening practices in addition to those identified above as Basic Screening may be warranted

Thorough consideration of all relevant factors will inform an organization in determining whether additional screening practices are warranted for some or all of its workers. The decision-making model (see section 2.3) can assist organizations in making this determination.

- Organizations using additional screening mechanisms (e.g., personality or psychological testing, criminal records checks) are advised to do so in conjunction with other screening practices and with a full understanding of the limitations of each of the screening practices used.

Results of Screening:

Once screening information is received, it is important to have strategies for dealing with the information, especially when the screening process has yielded questions about the applicant. The following actions will assist an organization in developing such a strategy, which should be set forth clearly in written policies.

- To the extent possible, the hiring/placement of an applicant should be delayed until the screening process is completed. If this is not possible, the hiring/placement of an applicant pending the completion of the screening process should be restricted to situations where there is supervision and the worker is not alone with consumer for any period but is in the presence of at least one other worker at all times. In addition, the organization is advised to retain the right to terminate the individual if adverse or incorrect information turns up.
- As a minimum standard, automatic disqualification of a potential worker or volunteer is appropriate when the screening results indicate that the individual as an adult perpetrated any crime involving a child and/or a dependent adult (regardless of how long ago the incident occurred) and/or any violent crime within the last 10 years.

It is recommended that disqualification for all other crimes and/or questionable behavior be discretionary, with incidents evaluated based on consultation with appropriate professionals and attention to:

- the relationship between the incident and the type of employment or service that applicant will provide;
- the applicant's employment or volunteer history before and after the incident/behavior;
- the applicant's efforts and success at rehabilitation;

- the likelihood that the incident/behavior would prevent the applicant from performing his/her responsibilities in a manner consistent with the safety and welfare of the consumers served by the agency;
- the circumstances and/or factors indicating the crime is likely to be repeated;
- the nature, severity, number and consequences of incidents disclosed;
- the circumstances surrounding each incident, including contributing societal or environmental conditions;
- the age of individual at time of incident;
- the amount of time elapsed since incident occurred.

2.3 Decision-Making Model

BACKGROUND

The number of persons who may have contact with children and vulnerable adults is tremendous. Countless different professions and types of organizations serve these populations. Given the need to protect children and vulnerable adults from abuse in a variety of settings and the tremendous differences in organizational purpose, staffing needs and available resources, these guidelines include a decision making model rather than a list of screening practices to be used in every circumstance. The model poses questions to be asked when deciding what background screening practices to utilize. The model does, however, assume that screening for any position will include at least a written application with signed statement, reference checks and interview. Supplemental screening measures may well be warranted as well.

The decision making model provides a framework for analyzing when to conduct supplemental screening practices. As a framework or guide to assist states, organizations and others in developing screening policies, the model reflects Congress' desire to encourage screening practices, while maintaining deference to the states on this issue.¹⁷ The decision making model contemplates that a serious, careful examination take place focussing on opportunities for harm. This model is not the only set of steps that could be developed. States, coalitions, associations and organizations are encouraged to develop suggested screening practices and policies aimed at particular settings. Screening practices for specific settings and types of workers (employees or volunteers) could also incorporate practices aimed at evaluating competence for particular tasks. This model does not directly address these competence goals.

Further, screening must be placed in context. It is one tool aimed at preventing harm. Others include education (of staff and volunteers, parents and guardians, children and vulnerable adults as well as abuse prevention policies (discouraging opportunities for abuse and encouraging children and vulnerable adults to voice concerns about inappropriate behavior). Appendix C:

¹⁷Although this decision making model was drafted for states, organizations and others, some language may pertain to the organization only.

Some Suggestions for Implementing Screening in the Organization, and Appendix D: Post-Hiring Practices also set forth information that may be useful. Notably, these are suggestions for consideration. There may be many other ways to implement screening and other practices.

Preparation Steps Before Using the Model

Review Tasks and Positions. Reviewing the types of positions in the organizations and the general tasks and characteristics of each is useful before beginning to assess the screening that may be required for a particular type of position. Screening to prevent harm should supplement selection procedures aimed at evaluating the qualifications of an applicant for a particular task or job. This decision-making model focuses, however, on the former and not the latter.

Review Harms. Before beginning to use the model, it is also useful to ask: What are the harms that are being screened against? Physical, sexual, and emotional abuse? Theft and other property offenses? Arson, assault, murder, other offenses? A clear understanding of the specific harms to attempt to avoid in view of the particular positions will help to focus discussion of screening issues. For example, concerns about theft may be especially important in certain programs serving the elderly.

THE MODEL (Diagram of model follows textual discussion.)

Step 1: Assessment of Triggers -- A Look at Setting, Worker/Child Contact and Special Considerations

The screening decision-making model includes three major steps. The first step requires an assessment of the presence and degree of screening "triggers." These "triggers" can be divided into three categories --- those involving the setting, those pertaining to the worker's contact with the child, and special considerations.

Setting

The setting considerations include:

- (1) whether others (adults or children) will be present during the contact (the opportunity for abuse on location is increased if no one else is present);
- (2) who the other people are who are present (the opportunity for abuse may still be exceptionally high if other young children or certain vulnerable adults are the only others present);
- (3) whether the worker is closely monitored and supervised;
- (4) the precise nature of the worker's involvement with the organization and with the client population (whether the worker is an employee or volunteer may be part of this assessment);

- (5) the physical location of the contact (e.g. in a classroom, a camp, anywhere; care should be taken in considering all of the activities and their different physical locations, including transportation to and from events).

Contact

Considerations as to the contact between the worker (employee or volunteer) and child or vulnerable adult include:

- (1) the duration of the contact (how much time is spent with the client per occasion);
- (2) the frequency of the contact and the length of the relationship (e.g., one-time only, once a week for a year); and
- (3) the type of contact (e.g., does the worker have direct contact with children or vulnerable adults or does the worker have administrative or other duties that support the activities of the organization; with the latter, is there in fact one on one contact).

Special Considerations

Are there special circumstances that should be factored into the screening decision? An examination of the vulnerability of the persons served is important at this point. Those whose ability to communicate is impaired through age, infirmity, life history or for other reasons, may be exceptionally vulnerable to abuse. For example, children with certain learning disabilities or those with a history of abuse or neglect may fall into this category.

There may also be state laws or regulations that require certain screening practices to be used, triggering the use of a certain screening method. For example, states may require that state or federal criminal record checks be done. If a state license or certification is required, there may also be statutory or regulatory requirements in place.

Step 2: Evaluation of Intervenors to Decision Making

With the triggers in mind, consideration moves to the second step of evaluating "intervenors" or items that may limit or impact on the screening decision:

- Unavailable/Inaccessible Information. Certain screening mechanisms may not be available. For example, a number of states simply do not authorize criminal record checks to be done on a number of types of persons serving children, the elderly or individuals with disabilities.

- **Unexpected Absences or Departures.** An immediate need for staff may also "intervene" in the screening decision making process.¹⁸
- **Liability Concerns.** The risk of liability may impact on screening decisions. The law may give applicants and employees certain legal rights. For example, certain questions may not be asked during an interview/application process, and generally all inquiries must be relevant to the task/position at hand. Liability concerns may also stem from negligent hiring torts where organizations have found themselves being sued when a client has been injured by an employee or volunteer they selected.
- **Presence of Other Risk Reduction Measures.** A look at other risk reduction measures gives a more complete picture so that an evaluation can be made, with appropriate screening practices selected. The inclusion of risk reduction measures as an intervenor does not, however, suggest that these measures necessarily obviate the need for any supplemental screening. Rather, their presence is appropriate as a pragmatic factor to be considered in an evaluation of the screening practices to be used. Risk reduction measures may include training programs or levels of supervision.
- **Financial/Human Resources.** The practical impact that financial and human resources may have on screening is also a factor to be considered.

Step 3: Analysis and Selection of Screening Practices to Be Used

The third step puts together information gleaned from steps 1 & 2 along with various screening options. The advantages and disadvantages of each practice should be reviewed at this time.

The model contemplates that all situations will require at least the "Basic" Screening, which includes a written application with a signed statement, professional and personal reference checks, and personal interviews.

The model also contemplates that *supplemental* screening practices may very well be warranted based upon the information discerned from steps one and two. As the extent and number of "triggers" increases, supplemental screening measures are appropriate. For example,

¹⁸To reduce the utilization of "unscreened" individuals in "emergency" situations, child care centers and others that frequently have "unexpected" personnel departures may form relationships with umbrella organizations or private groups to provide personnel support by maintaining a roster of screened individuals. Or a screened staff person may be designated as a "floater" to fill in as needed.

circumstances where repeated one-on-one contact is had between one worker and one child or dependent adult, often in very private surroundings will merit supplemental screening practices.¹⁹

Supplemental screening practices might include the following: confirmation of a person's educational status (this may be particularly appropriate for young workers for whom a professional reference may not be available or when the educational degree is relevant to the task to be performed by the applicant, if selected); motor vehicle record check; local, state or FBI criminal record check; central child or dependent adult abuse registry check; sex offender register check; home visits; psychological testing; alcohol or drug testing; or psychiatric history check.

An Example Using the Decision-Making Model

To illustrate the use of the decision-making model, take the case of a mentoring program where mentors are matched with children and the goal is fostering one-on-one relationships between children and supportive non-familial persons to build the children's self esteem and expand their views of the world. Assume that the mentor program is an off-shoot of another organization and is limited to one city in one state. The mentor program has an extremely limited budget, with very few paid staff (mostly a percentage of the time of three individuals who have other duties as well. Mentors themselves are strictly volunteers.

The Mentor Example: Step 1

In using the model, the first step requires a look at setting, contact and special considerations.

The Mentor Example: Setting Considerations

(1) Will others will be present during the contacts? Although mentor programs vary widely, assume that in this case the contacts are set up directly by the mentor and child, perhaps the first Saturday afternoon of the month is set aside for these outings. Although the organization encourages educational or sports activities (e.g., visits to the library, museum, bowling) where other adults or children generally present, these "public" activities need not take place. The mentor and child could choose to go hiking, sit in a park and play cards, etc.

(2) Who else might be present? Under this scenario, it could be anyone or no one.

¹⁹Some of the local chapters of the Big Brothers/Big Sisters organization have developed extensive screening procedures. For example, the Big Brothers/Big Sisters of Greater Lowell, Massachusetts has developed a comprehensive interview screening tool. See Appendix E for a summary of the interview screening tool. Further, where authorized by law to do so, Big Brothers/Big Sisters generally obtains criminal record checks on their volunteers and staff.

(3) Will the mentors be closely monitored and supervised? In this case, assume that the initial meeting between a mentor and child takes place with someone from the sponsoring organization. After that, the mentor will check in with someone at the organization, at least by telephone, to let them know how the visits with the child are going, and every few months, the mentor meets with this "monitor." In addition, the mentor and child attend group events that may be sponsored by the organization. For example, a picnic takes place during the summer. These events occur once or twice a year. Further, the mentor picks the child up and drops him off for each visit and may briefly see the child's guardian at those pick up and drop off times. More often at first, and then every few months, someone at the sponsoring organization calls the child and his or her parent or guardian to see how the visits are going.

(4) How will the mentor be involved with the organization? In this case, the mentors will be volunteers who devote at least several hours once a month in visiting with a child. Some additional time will be spent conversing with staff at the sponsoring organization about how the visits are going and how best to work with children of that age.

(5) Where will the visits take place? Since the mentor picks up and drops off the child, the visits will include several different physical locations: the child's residence, the mentor's vehicle (or bus or cab), and a variety of other locations such as a restaurant, sports facility, park, hiking trail, zoo, museum, movie theater, etc. They could in fact take place at the mentor's home (for example, the mentor and child decide they want to learn to make pizza).

The Mentor Example: -- Contact Considerations

(1) How much time will be spent with the child on each visit/outing? Under our scenario, anywhere from one to three hours.

(2) What will the scope and frequency of the contacts be? Once a month for a period of a year.

(3) What type of contact will the mentors have? Each mentor will have direct contact with a single child.

The Mentor Example: Special Considerations

In our scenario, the children are preteen youth. Generally, they have some neglect or abuse in their past. They generally are referred to the sponsoring organization for matching with an adult through social service workers, foster parents and school counselors. Their personal histories may make them particularly vulnerable to abuse.

The Mentor Example: Summary of Step 1 – Assessing the Presence and Degree of Screening Triggers

In reviewing the answers to the series of questions that comprise the first step, it becomes clear that in this case, there are several factors that would trigger supplemental screening practices: repeated, direct, one-on-one contact over a period of a year, limited ability of the organization to monitor the visits, and children who may be particularly vulnerable to abuse.

The Mentor Example: Step 2 – Evaluating Intervenor

The second step is to examine the factors that may “intervene” and impact on the ability to screen. Under our scenario, assume that certain information -- state central child abuse registry and sex offender registry information is not available. Likewise, assume that state criminal record checks (done by name, not fingerprint) are not required but are available for a fee of \$5 per name. Assume that federal (fingerprint) checks are not authorized by state statute.

The Mentor Example: Step 3 – Analyze and Select Screening Practices

Under our scenario, supplemental screening factors are warranted. The repeated one-on-one contact, which may take place anywhere at various times of the day, presents risks. When coupled with the limited ability to monitor the mentor, and the relatively modest fee assessed for a state criminal check, use of this check would appear to be warranted. Some may, however, find that this determination would change given different facts. For example, if the mentors were high school students (generally aged 15-17 at time of beginning to mentor), some may find that running criminal checks is not warranted. Others may view the cost as being minimal (and able to be passed on to the applicant without losing volunteers), and would proceed with the criminal check out of an abundance of caution.

Appendix A: The National Child Protection Act, as amended.

To enable interested persons to review, *in context*, the changes to the National Child Protection Act of 1993, 42 U.S.C. 5119, brought about by the Violent Crime Control and Law Enforcement Act of 1994 (the "Crime Act"), this document sets forth the text of the National Child Protection Act, as amended by the Crime Act. The National Child Protection Act was signed into law on December 20, 1993. The amendments were signed into law as part of the Crime Act on September 13, 1994. (The amendments are set forth in bold; deletions are indicated by "****".)

This memorandum also sets forth Section 320928 (f) and (g) of the Violent Crime Control and Law Enforcement Act of 1994, which impact upon, but do not alter the National Child Protection Act of 1993.

THE NATIONAL CHILD PROTECTION ACT OF 1993, as amended by THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Child Protection Act of 1993".

SEC. 2. REPORTING CHILD ABUSE CRIME INFORMATION.

(a) **IN GENERAL.**--In each State, an authorized criminal justice agency of the State shall report child abuse crime information to, or index child abuse crime information in, the national criminal history background check system. A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions.

(b) **PROVISION OF STATE CHILD ABUSE CRIME RECORDS THROUGH THE NATIONAL CRIMINAL HISTORY BACKGROUND CHECK SYSTEM.**--(1) Not later than 180 days after the date of enactment of this Act, the Attorney General shall, subject to availability of appropriations--

(A) investigate the criminal history records system of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line basis through the national criminal history background check system;

(B) in consultation with State officials, establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of criminal history records and other procedures for carrying out this Act; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of each State timetable that the State--

(A) by not later than the date that is ** 5 years after the date of enactment

of this Act, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) **LIAISON.**—An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) **ANNUAL SUMMARY.**—(1) The Attorney General shall publish an annual statistical summary of child abuse crimes.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) **ANNUAL REPORT.**—The Attorney General shall, subject to the availability of appropriations, publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal history background check system.

(f) **STUDY OF CHILD ABUSE OFFENDERS.**—(1) Not later than 180 days after the date of enactment of this Act, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State; and

(C) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than ** 2 years after the date of enactment of this Act, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

SEC. 3. BACKGROUND CHECKS.

(a) **IN GENERAL.**—(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(b) **GUIDELINES.**—The procedures established under subsection (a) shall require—

(1) that no qualified entity may request a background check of a provider under subsection (a) unless the provider first provides a set of fingerprints and completes and signs a statement that—

(A) contains the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 of title 18, United States Code) of the provider;

(B) the provider has not been convicted of a crime and, if the provider has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) notifies the provider that the entity may request a background check under subsection (a);

(D) notifies the provider of the provider's rights under paragraph (2); and

(E) notifies the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to a person to whom the qualified entity provides ** care;

(2) that each provider who is the subject of a background check is entitled--

(A) to obtain a copy of any background check report; and

(B) to challenge the accuracy and completeness of any information contained in any such report and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(3) that an authorized agency, upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and local recordkeeping systems are available in order to obtain complete data;

(4) that the authorized agency shall make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity; and

(5) that any background check under subsection(a) and the results thereof shall be handled in accordance with the requirements of Public Law 92-544.

(c) **REGULATIONS.**—(1) The Attorney General may by regulation prescribe such other

measures as may be required to carry out the purposes of this Act, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

(d) **LIABILITY.**—A qualified entity shall not be liable in an action for damages solely for failure to conduct a criminal background check on a provider, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof, be liable in an action for damages for the failure of a qualified entity (other than itself) to take action adverse to a provider who was the subject of a background check.

(e) **FEES.**—In the case of a background check pursuant to a State requirement adopted after the date of the enactment of this Act conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed **** eighteen dollars, respectively, or the actual cost, whichever is less,** of the background check conducted with fingerprints. The States shall establish fee systems that ensure that fees to non-profit entities for background checks do not discourage volunteers from participating in child care programs.

SEC. 4. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.

(a) **USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.**—Section 509(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C.3759(b)) is amended—

- (1) in paragraph (2) by striking "and" after the semicolon;
- (2) in paragraph (3) by striking the period and inserting "; and"; and
- (3) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the child abuse crime records required under the National Child Protection Act of 1993 with the Attorney General for the purpose of implementing the National Child Protection Act of 1993."

(b) **ADDITIONAL FUNDING GRANTS FOR THE IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.**—(1) The Attorney General shall, subject to appropriations and with preference to States that, as of the date of enactment of this Act, have in computerized criminal history files the lowest percentages of charges and dispositions of identifiable child abuse cases, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this Act;

(B) for the improvement of existing computerized criminal history files for the purposes of this Act;

(C) to improve accessibility to the national criminal history background check system for the purposes of this Act; **

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal history background check system for the purposes of this Act, and

(E) to assist the State in paying all or part of the cost to the State of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or voluntary qualified entity to reduce the amount of fees charged for such background checks.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of \$20,000,000 for fiscal years 1994, 1995, 1996, and 1997.

(c) **WITHHOLDING STATE FUNDS.**—Effective 1 year after the date of enactment of this Act, the Attorney General may reduce, by up to 10 percent, the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 that is not in compliance with the requirements of this Act.

SEC. 5. DEFINITIONS.

For the purposes of this Act--

- (1) the term "authorized agency" means a division or office of a State designated

by a State to report, receive, or disseminate information under this Act;

(2) the term "child" means a person who is a child for purposes of the criminal child abuse law of a State;

(3) the term "child abuse crime" means a crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person;

(4) the term "child abuse crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, or convicted of, a child abuse crime;

(5) the term "care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individual with disabilities;

(6) the term "identifiable child abuse crime case" means a case that can be identified by the authorized criminal justice agency of the State as involving a child abuse crime by reference to the statutory citation or descriptive label of the crime as it appears in the criminal history record;

(7) the term "individuals with disabilities" means persons with a mental or physical impairment who require assistance to perform one or more daily tasks;

(8) the term "national criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(9) the term "provider" means--

(A) a person who--

(i) is employed by or volunteers with a qualified entity;

(ii) who owns or operates a qualified entity; or

(iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who--

(i) seeks to be employed by or volunteer with qualified entity;

(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(10) the term "qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides ** care or ** care placement services, including a business or organization that licenses or certifies others to provide ** care or ** care placement services; and

(11) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

Section 320928 (f) and (g) of the Violent Crime Control and Law Enforcement Act of 1994.

(f) COSTS OF THE FBI.—Funds authorized to be appropriated to the Federal Bureau of Investigation under section 190001(c) of this Act may be used to pay all or part of the cost to the Federal Bureau of Investigation of carrying out the National Child Protection Act of 1993, including the cost of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or voluntary qualified entity to reduce the amount of fees charged for such background checks.

(g) GUIDELINES.—

(1) IN GENERAL.—The Attorney General, in consultation with Federal, State, and local officials, including officials responsible for criminal history record systems, and representatives of public and private care organizations and health, legal, and social welfare organizations, shall develop guidelines for the adoption of appropriate safeguards by care providers and by States for protecting children, the elderly, or individuals with disabilities from abuse.

(2) MATTERS TO BE ADDRESSED.—In developing guidelines under paragraph (1), the Attorney General shall address the availability, cost, timeliness, and effectiveness of criminal history background checks and recommend measures to ensure that fees for background checks do not discourage volunteers from participating in care programs.

(3) DISSEMINATION.—The Attorney General shall, subject to the availability of appropriations, disseminate the guidelines to State and local officials and to public and private care providers.

Appendix B: CJIS Information Letter 95-3



U.S. Department of Justice
Federal Bureau of Investigation
Criminal Justice Information Services (CJIS) Division
Identification Services

Letter to All Fingerprint Contributors

July 17, 1995

RE: National Child Protection Act of 1993

Attached to this letter are guidelines for implementing the National Child Protection Act (NCPA) as amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act). The guidelines address the child abuse crime reporting requirements of the NCPA. The NCPA also encourages states to effect national background check procedures that will enable employers to learn beforehand an individual applicant's fitness to care for the safety and well-being of children, the elderly, or individuals with disabilities. Information is set forth in the guidelines relating to the implementation of such background checks of care providers.

The Crime Control Act requires the Attorney General to disseminate guidelines for protecting children, the elderly, or individuals with disabilities from abuse to state and local officials and to public and private care providers. The FBI strongly recommends that recipients make copies of the guidelines widely available to any "authorized agency," "qualified entity," or "provider" as those terms are defined near the end of the guidelines. Section III of the guidelines is set apart from other sections so it can be easily reproduced and disseminated to private entities interested in conducting care provider background checks.

C. David Evans
Acting Assistant Director
Criminal Justice Information
Services Division

**GUIDELINES FOR IMPLEMENTING THE
NATIONAL CHILD PROTECTION
ACT OF 1993
(P.L. 103-209)
AS AMENDED BY THE
VIOLENT CRIME CONTROL AND
LAW ENFORCEMENT ACT OF 1994
(P.L. 103-322)**

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**GUIDELINES FOR IMPLEMENTING THE
NATIONAL CHILD PROTECTION
ACT OF 1993
AS AMENDED BY THE
VIOLENT CRIME CONTROL AND
LAW ENFORCEMENT ACT OF 1994**

**I. CHILD ABUSE CRIMES REPORTING REQUIREMENTS BY CRIMINAL
JUSTICE AGENCIES**

A. Agencies That Must Report Or Index Child Abuse Crimes

Section 2(a) of the National Child Protection Act (NCPA) of 1993 requires that an "authorized criminal justice agency" of the state shall report or index child abuse crime information in the national criminal history background check system. The authorized criminal justice agency is the state identification bureau (SIB) in those states where the arresting agencies are required to forward all criminal fingerprint cards and related document submissions (e.g., final dispositions, expungements, and death notices) to the SIB for transmittal to the FBI. Such states are generally referred to as "single-source" states. As of July 1, 1995, the following 42 states met this criteria:

Alabama	Maryland	Oklahoma
Alaska	Michigan	*Oregon
Arizona	Minnesota	Pennsylvania
Arkansas	Missouri	South Carolina
California	Montana	South Dakota
Colorado	Nebraska	Tennessee
Connecticut	Nevada	Texas
Delaware	New Hampshire	Utah
*Florida	New Jersey	Vermont
Georgia	New Mexico	Virginia
Idaho	New York	Washington
Illinois	*North Carolina	West Virginia
Iowa	North Dakota	Wisconsin
Kansas	Ohio	Wyoming

* States under the National Fingerprint File Program that "index" rather than report child abuse crime information.

In the nonsingle-source states of Hawaii, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, and Rhode Island, and in the District of Columbia and Puerto Rico, each local and state law enforcement agency is the authorized criminal justice agency.

B. Child Abuse Crime Information That Must Be Reported

Section 2(a) of the NCPA of 1993 was amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act) to include the following clarification, "A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions." Therefore, those states that are submitting all felony and serious misdemeanor arrest and disposition data to the FBI need not be concerned about submitting crimes against children independently. However, those states not submitting all such data to the FBI are reminded that the reporting or indexing of child abuse crime information in the national criminal history background check system is mandated by the NCPA. As defined in the NCPA, a "child abuse crime" is: "A crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person." The NCPA defines an "identifiable child abuse crime case" as "a case that can be identified by the authorized criminal justice agency of the State as involving a child abuse crime by reference to the statutory citation or descriptive label of the crime as it appears in the criminal history record." These definitions are consistent with criminal justice information gathering methodologies in use and contain widely accepted terminology.

C. Method For Reporting Child Abuse Crimes

The reporting of child abuse crimes will be accomplished by the submission of criminal fingerprint cards and disposition report forms, both of which are used nationally to report offender-specific crime information, including demographic data, details of charges, and fingerprint impressions. The contents on the criminal fingerprint card and disposition report form must include the following information: the arrestee's full name, originating agency identifier (ORI), date of birth, literal terms describing the child abuse crime or charge for which the person has been arrested or has been convicted, and a complete set of fingerprint impressions on the card with any amputations noted. The following data should be included on the fingerprint card and/or the final disposition report form to the extent possible: any known aliases, race, sex, height, weight, eye color, hair color, social security number, scars, marks, tattoos, the signature of the person fingerprinted, statute citation, and the disposition of the charge when known. States may report or index any other information that they believe would be useful in identifying persons arrested for, or convicted of, a child abuse

crime in the appropriate information blocks provided on the criminal fingerprint card and disposition report form. An alternate method of submitting final disposition information to the FBI is by magnetic tape. The vast majority of final disposition data from the states is provided to the FBI via magnetic tape submissions.

II. COMPLETENESS OF RECORDS

Section 2(b) of the NCPA mandates that the Attorney General, subject to the availability of appropriations, investigate the criminal history record system of each state and determine for each state a timetable by which the state should be able to provide child abuse crime records including final dispositions on an on-line basis through the national criminal history background check system. As amended by the Crime Control Act, Subsection (2) requires that as a part of each timetable the state:

- A. by not later than the date that is five years after the date of enactment of the NCPA, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last five years;
- B. continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding five years; and
- C. take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

The Bureau of Justice Statistics (BJS) within the Office of Justice Programs (OJP) of the Department of Justice is administering these requirements. In this capacity, BJS conducted a survey of criminal history information systems in each state, and on the basis of the findings in the survey,

developed a timetable for each state to meet the goals set by the NCPA. In June 1994, the Attorney General advised each Governor of the timetable applicable to his or her state.

Section 4(b) of the NCPA establishes a grant program to help states improve the quality and availability of criminal records. Although the Act authorized \$20 million, to date no funds have been appropriated for this purpose.

However, funds available under the National Criminal History Improvement Program (NCHIP), another program administered by the BJS, can be used to meet the goals of the NCPA. Under the NCHIP, funds will be made available to each state to help improve its criminal history information and to support the establishment of the National Instant Criminal Background Check System. NCHIP awards will be made to the state agency designated by the Governor to administer NCHIP funds. Funds awarded under the NCHIP may not be used to cover costs associated with conducting background checks pursuant to the NCPA. For further information about the NCHIP or for information relating to state timetables, contact BJS at (202) 307-0759.

III. CARE PROVIDER BACKGROUND CHECKS

A. General Provisions

Under the National Child Protection Act (NCPA) as amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act), a state is encouraged to have in effect national background check procedures that enable a qualified entity to determine whether an individual applicant is fit to care for the safety and well-being of children, the elderly, or individuals with disabilities. The procedures would permit a "qualified entity" to ask an authorized state agency to request a nationwide background check on an applicant provider. The authorized agency shall access and review state and federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to an inquiry within 15 business days. The NCPA was enacted to, among other things, encourage states to require nationwide background checks to determine the suitability of a potential child care provider. Section 3(a)(1) of the NCPA was amended by the Crime Control Act to include care providers for the elderly and individuals with disabilities.

B. Background Check Guidelines

1. The procedures established by a state must require that no qualified entity may request a background check of a provider unless the provider first furnishes a complete set of fingerprints and completes and signs a statement that:

- a. contains name, address, and date of birth appearing on a valid identification document issued by a governmental entity;
- b. the provider has not been convicted of a crime, or if so, furnishes a description of the crime and the particulars of the conviction;
- c. notifies the provider:
 - i. that the qualified entity may request a background check;
 - ii. of the provider's rights (see paragraph 2 below); and
 - iii. that prior to the completion of the background check, the qualified entity may choose to deny the provider unsupervised access to a person to whom the qualified entity provides care.

2. Each provider who is subject to a background check is entitled to:

- a. obtain a copy of any background check report; and
- b. challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made by the authorized agency.

3. An authorized agency shall:

- a. upon receipt of a background check report lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data; and
- b. make a determination whether the provider has been convicted of or is under pending indictment for a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities, and convey that determination to the qualified entity.

4. Any nationwide background check and its results shall be handled in accordance with the requirements of Public Law (Pub. L.) 92-544.

C. Public Law 92-544 Requirements

The authority for the FBI to conduct a criminal record check for a noncriminal justice licensing or employment purpose is based upon Pub. L. 92-544. Pursuant to Pub. L. 92-544, the FBI is empowered to exchange identification records with officials of state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General's authority to approve the statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j). The standards employed by the FBI in approving Pub. L. 92-544 authorizations have been established by a series of memoranda issued by the Office of Legal Counsel, Department of Justice. The standards are:

1. The authorization must exist as the result of legislative enactment (or its functional equivalent);

2. The authorization must require fingerprinting of the applicant;
3. The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
4. The authorization must not be against public policy;
5. The authorization must not be overly broad in its scope; it must identify the specific category of applicants/licensees.

Fingerprint card submissions to the FBI under Pub. L. 92-544 must be forwarded through the SIB. The state must also designate an authorized governmental agency to be responsible for receiving and screening the results of the record check to determine an applicant's suitability for employment or licensing.

D. REGULATIONS

Section 3(c) of the NCPA states that the Attorney General may by regulation prescribe measures as may be required to carry out the purposes of the NCPA, including measures relating to the security, confidentiality, accuracy, use, misuse and dissemination of information, and audits and recordkeeping. Since NCPA background checks are to be handled in accordance with the requirements of Pub. L. 92-544, which was enacted in 1972, the FBI is of the view that the regulations implemented pursuant to Pub. L. 92-544 give adequate guidance. The standards used to approve state statutes for access to criminal history record information (CHRI) under Pub. L. 92-544 and the regulations set out below demonstrate a concern for the proper use, security, confidentiality, etc. of such information. Both Pub. L. 92-544 and Title 28, Code of Federal Regulations (CFR), Section 20.33 provide that dissemination of FBI CHRI outside the receiving governmental department or related agency is prohibited. Further, the exchange of CHRI is subject to cancellation if such unauthorized dissemination is made. Regulations found at Section 50.12 of Title 28 contain additional requirements regarding the use and dissemination of CHRI. Section 50.12 provides, among other things, that:

The CHRI may be used only for the purpose requested. Officials authorized to submit fingerprints and receive CHRI must notify the individual fingerprinted that the fingerprints will be used to check the criminal history records maintained by the FBI. Officials making the determination of suitability for employment or licensing must provide the applicant the opportunity to

complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials should not deny employment or the license based on information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so. If the applicant wishes to challenge the accuracy or completeness of the record, the official must advise the applicant that the procedures to change, correct, or update the record are set forth in Title 28, CFR, Section 16.34.

A caveat incorporating the above use and dissemination restrictions and challenge requirements is placed on each FBI identification record disseminated for employment and licensing purposes. Further, because updates to the records are made on a continuous basis, an authorized agency should obtain a current background check any time the individual applies for a new job.

E. Fees For Processing Background Checks

The FBI routinely charges \$24 (\$22 for billing states) for processing each fingerprint card submission under Pub. L. 92-544. Payment is made either by direct payment or billed to the SIB, depending on arrangements made between the FBI and each SIB, such as the execution of a Memorandum of Understanding for billing. With respect to the user fee for processing the fingerprints of a "volunteer" care provider, Section 3(e) of the NCPA has been amended by the Crime Control Act to read, "In the case of a background check pursuant to a State requirement adopted after the date of the enactment of this Act conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed eighteen dollars, respectively, or the actual cost, whichever is less." (underlining added for emphasis) The FBI has interpreted this language to allow both the FBI and the states to charge the \$18 or the actual cost, whichever is less. Based on a recommendation from the Department of Justice and for purposes of uniformity and consistency in administering this provision of the NCPA, the FBI has decided to also apply the \$18 fee to a volunteer care provider's fingerprints processed under the authority of a state statute adopted before the date of enactment of the NCPA.

Therefore, it is incumbent upon each SIB to notify in writing the Access Integrity Unit, Programs Support Section, Criminal Justice Information Services (CJIS) Division, if previously approved or future Pub. L. 92-544 statutes relating to

individuals applying to provide care to children, the elderly, or disabled persons include "volunteers." If so, that information will be added to our list of approved Pub. L. 92-544 statutes so that the reduced fee for processing the fingerprints of volunteer care providers can be implemented as required by the NCPA.

It is the contributor's responsibility to ensure that the reason the applicant is being fingerprinted, the state statute citation, and if appropriate, the word "volunteer" are clearly indicated in the "Reason Fingerprinted" block of the card. The CJIS Division's automated system is in the process of being reprogrammed to allow for billing only \$18 (\$16 for billing states) for "volunteer" care provider submissions. Until the programming is completed, billing statements will be adjusted accordingly. If the contributor of a card fails to indicate that the applicant is a "volunteer," our regular user fee of \$24 will be charged for processing the card. The above procedures and fee structure will become effective for fingerprint cards received at the FBI on or after the first day of our next billing period. A new billing period always begins on the first day of each month.

F. Definitions

For the purposes of the NCPA -

1. The term "authorized agency" means a division or office of a state designated by a state to report, receive, or disseminate information under this Act.
2. The term "care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.
3. The term "individuals with disabilities" means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks.
4. The term "national criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

5. The term "provider" means:

- a. a person who is employed by or volunteers with a qualified entity, owns or operates a qualified entity, or has or may have unsupervised access to children, the elderly, or individuals with disabilities; and
- b. a person who seeks to be employed by or volunteer with a qualified entity, seeks to own or operate a qualified entity or seeks to have or may have unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care.

6. The term "qualified entity" means a business or organization, whether public, private, for profit, not-for-profit, or voluntary, that provides care or placement services for children, the elderly, or individuals with disabilities, including a business or organization that licenses or certifies others to provide care or placement services.

G. Current Status

There are currently 38 states that have approved child care statutes; 8 states have approved statutes relating to care of the elderly; and 13 states have approved statutes relating to the care of disabled persons. Each SIB may expect to receive inquiries from various care providers, qualified entities, and others with questions concerning the NCPA. The CJIS staff believes that the information in these guidelines will answer most questions. Therefore, any assistance that recipients may provide in making copies of the guidelines available to affected care providers and qualified entities would be appreciated. It may also be helpful if each SIB would make available to interested parties a list of the categories of care providers and corresponding employment and licensing statutes which have been approved by the FBI as meeting the requirements of Pub. L. 92-544.

Appendix C: Some Suggestions for Implementing Screening in the Organization

Although it may seem simple to endorse the concept of performing careful worker screening prior to hiring the worker, in practice there are many details to consider. This section sets forth a series of steps for an organization to consider in implementing screening practices. This does not establish a standard of practice, nor is it the only set of steps for screening that can be developed. Rather these suggestions are intended to further the dialogue on screening in a concrete and practical way. Thus, organizations are encouraged to consider these (and other) ideas in developing screening practices and comprehensive abuse prevention measures. In addition, states and coalitions and associations whose members serve the many discrete types of persons working (or volunteering) with vulnerable populations are encouraged to develop suggested screening practices or policies aimed at those particular settings.

- Designate a person(s) within the organization who is responsible for receiving, reviewing and acting on background screening information.

Typically, an individual in the human resources/personnel department has responsibility for receipt and review of background screening information. This person should have a thorough understanding of all staff positions/roles so as to adequately assess the relevance of background information obtained. This person would also be responsible for developing and adhering to a screening/hiring policy based on the three-step decision model discussed in Section IV. Making one person responsible for overseeing the hiring/screening process ensures that a consistent approach is taken, the screening policy is used appropriately, and facilitates the maintenance of confidentiality of employee/volunteer records. In smaller settings, the director or assistant director should assume the centralized role of "keeper" of confidential worker information.

- Develop a comprehensive written application form which informs applicants of the organization's screening policies and facilitates the ensuing background screening process.

Matters to consider in the initial application process include:

- An explanation of the hiring/selection process, including a written release giving consent to verify information provided on the application and (signed by the applicant) to search criminal history and registry records (and conduct other checks), if appropriate.
- An application form complete with a signed statement (a verification) reflecting the understanding that falsifying information is grounds for dismissal and/or other action.

- Personal interviews that probe for more in-depth information about an individual which may not be available through other screening mechanisms; interview questions should be tailored to the needs of the setting and worker or volunteer role.

A standardized interview process would promote consistency among applicant interviews and help eliminate subjectivity associated with using multiple interviewers. Training on effective interviewing techniques, especially when delving into the more sensitive topic areas would be of assistance. Where possible, use of a team approach would increase objectivity, attain different perspectives, and promote adequate documentation. Follow-up interviews may be needed as information surfaces through other background screening practices.

- Conduct reference checks (and, where appropriate, educational status checks).
 - When asking applicants for references, a verbal or written statement that references will be checked may deter unsuitable applicants and reduce fabrication.
 - Centralizing the reference checking process and providing training would permit responsible staff to develop the ability to be persistent and deft in their inquiries. Fear of defamation or other lawsuits may limit the amount or detail of information a reference is initially willing to supply. Obtaining an applicant's written consent allowing for the release of information by previous employers may make for more effective reference checks. Some agencies ask references whether they know of any reason why the person should not be hired to work with the particular consumer population.
- Draft organizational policies on the appropriate use of criminal history information or other registry information, to the extent this information is available, and develop specific criteria for using this information for screening purposes.

Appendix D: Post-Hiring Practices

Pre-employment screening is only one aspect of identifying unsuitable workers and protecting vulnerable populations. Some individuals, such as first-time offenders, may not have a history of abuse. Effective child abuse prevention would also include on-going prevention practices as well as continued screening efforts after the worker is hired. Some suggested post-hiring practices to consider include the following. These suggestions are

- Best practices and management guides for each organization based upon organizational needs or on policies developed for similar groups.

These guides may take the form of written policies that include: (1) a code of conduct for staff relating to their behavior with the vulnerable client population(s); (2) policies on reporting suspected abuse; (3) policies on investigating staff or applicants concerning abuse; and (4) policies on hiring staff previously accused of or found guilty of abuse.

- Written organizational policies regarding abuse by staff.

Require employees/volunteers to attend an orientation and sign a statement that they have read and understood the agency's written policies regarding appropriate treatment of the vulnerable clients served (e.g., management of difficult behavior) and the state reporting laws. A clear and concise policy that sets the parameters for provision of care should be included in the organizational guides.

Inform employees and volunteers that the agency will cooperate with local officials (child protective services, adult protective services, and law enforcement) in investigation of cases.

- Staff (or volunteer) training

Risk reduction strategies engender confidence among individuals who use and who depend on the services to children and vulnerable adults. These risk reduction strategies include staff education and training. Ongoing personnel training topics might include the facility's crisis management techniques, identification and reporting of suspected abuse by employees and volunteers, effective communication techniques, and diversity issues. In addition, education and training on specific issues associated with working with a particular client population may be appropriate.

For those providing services to the elderly and individuals with disabilities, educational programs may encompass information on the nature of the illness or disability so that the care provider is better able to respond to an individual's needs.

- Supplement pre-employment background screening with on-the-job supervision and monitoring. On-going supervision of staff should be implemented.
- Establish procedures for periodic updating and review of workers.

Abuse and other relevant information revealed through screening should be updated with periodic checks for new information. This information can be obtained through traditional (e.g., child abuse and neglect and criminal record) and, where available, alternative (occupation-specific) registries. In the future, this information may be available through flagging systems.

- Increase parental, relative, and advocate involvement and communication; adopt an open-door policy for these individuals to make unannounced visits at any time.

Appendix E: Sample Forms

These forms are based on those developed by the Missing and Exploited Children Comprehensive Action Program and the National School Safety Center under a grant from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs Department of Justice. *See Hiring the Right People, Guidelines for the Selection and Screening of Youth-Serving Professionals and Volunteers* (1994).

These forms are included as a starting point for the development of forms by states, agencies, associations, organizations, coalitions or individuals serving children, the elderly and individuals with disabilities in need of support.

[Insert agency/organization name, logo, address]

**AUTHORIZATION
TO RELEASE INFORMATION**

REGARDING

Applicant's name: _____
Applicant's current address: _____
Applicant's social security number: _____
Agency Contact Person: _____
Authorization expiration date: _____

I, the undersigned, authorize and consent to any person, firm, organization, corporation or agency who is provided a copy (including photocopy or facsimile copy) of this **Authorization to Release Information** by the above-stated agency/organization to release and disclose to such agency/organization any and all information or records requested regarding me including, but not necessarily limited to my employment records, volunteer experience, military records, criminal information records (if any), abuse or neglect registry information, and background. I have authorized this information to be released, either in writing or via telephone, in connection with my application for employment or to be a volunteer at the agency or organization..

Any person, firm, organization, corporation or agency providing information or records in accordance with this Authorization is released from any and all claims or liability for compliance. Such information will be held in confidence in accordance with guidelines of the above-stated agency/organization.

This authorization expires on the date stated above.

Signature of Prospective Employee

Date

Witness to Signature:

Date

[Insert agency/organization name, logo, address]

REQUEST FOR INFORMATION

TO:

APPLICANT:

Name _____

Social Security Number _____

Dates of Employment _____

Immediate Supervisor _____

Our agency/organization *[insert name]*, is requesting information regarding the above-mentioned applicant who is seeking a position. This agency serves children and youth and, accordingly, undertakes background investigations to determine whether the individual poses a risk of harm to those who would be served.

We are interested in receiving any information or records that would reflect on the applicant's fitness to work with children, the elderly or individuals with disabilities *[define client population]*. Please complete the attached EMPLOYER DISCLOSURE AFFIDAVIT and return it to our agency at your earliest convenience. Although any information you wish to provide is welcomed, we are especially interested in any conduct, matter or things that involve established or a reasonable basis for suspecting physical, psychological or sexual misconduct with respect to children or youth.

You may receive a separate written or telephone request from our agency for an employment reference regarding the applicant. Please respond to each request independently.

With this request is an authorization executed by the applicant. This releases you from any liability for your reply, either in writing or via telephone.

Thank you for your assistance.

Very truly yours,

Failure by your agency or organization to provide information requested may result in automatic disqualification of the applicant.

[Insert agency name/logo/address]

APPLICANT DISCLOSURE AFFIDAVIT

(Please Read Carefully)

Our agency screens prospective employees and volunteers to evaluate whether an applicant poses a risk of harm to those whom it serves. Information obtained is not an automatic bar to employment or volunteer work, but is considered in view of all relevant circumstances. This disclosure is required to be completed by applicants for positions in order to be considered. Any falsification, misrepresentation or incompleteness in this disclosure alone is grounds for disqualification or termination.

APPLICANT: _____

Please print complete name and social security number.

The undersigned applicant affirms that I HAVE NOT at ANY TIME (whether as an adult or juvenile:

Yes **No** *(Initial if answer is yes or no and provide brief explanation for a "yes" answer below.)*

___	___	Been convicted of;
___	___	Pleaded guilty to (whether or not resulting in a conviction);
___	___	Admitted;
___	___	Have had any judgment or order rendered against me (whether by default or otherwise);
___	___	Entered into any settlement of an action or claim of;
___	___	Had any license, certificate or employment suspended, revoked, terminated or adversely affected because of;
___	___	Been diagnosed as having or treated for any mental or emotional condition arising from; or,
___	___	Resigned under threat of termination of employment or volunteer work for;

Any allegation, any conduct, matter or thing (irrespective of the formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

Yes **No** *(Initial if answer is yes or no and provide brief explanation for a "yes" answer below.)*

___	___	Any felony;
___	___	Rape or other sexual assault;
___	___	Drug/alcohol-related offenses;
___	___	Abuse of a person (including a minor or child), whether physical or sexual;
___	___	Incest;
___	___	Kidnaping, false imprisonment or abduction;
___	___	Sexual harassment;
___	___	Sexual exploitation of a minor;
___	___	Sexual conduct with a minor;
___	___	Annoying/molesting a child;
___	___	Lewdness and/or indecent exposure;
___	___	Lewd and lascivious behavior;
___	___	Obscene literature;
___	___	Assault, battery or other offense
___	___	Endangerment of a child;
___	___	Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;
___	___	Unfitness as a parent or custodian;
___	___	Removing children from a state or concealing children in violation of a law or court order;
___	___	Restrictions or limitations on contact or visitation with children or minors;
___	___	Similar or related conduct, matters or things; or
___	___	Been accused of any of the above.

EXCEPT THE FOLLOWING:

(If you answered "yes" to any of the above please explain, if none, write "none".)

Description

Dates

_____	_____
_____	_____
_____	_____

The above statements are true and complete to the best of my knowledge.

Date: _____

Applicant's signature

Date: _____

Witness to signature

[Insert agency/organization name/logo/address]

EMPLOYER DISCLOSURE AFFIDAVIT

(Please Read Carefully)

Our agency/organization screens prospective employees and volunteers to evaluate whether an applicant poses a risk of harm those whom it serves. Information obtained is not an automatic bar to employment or volunteer work, but is considered in view of all relevant circumstances. This disclosure is required to be completed by former employers in order for the applicant to be considered.

APPLICANT: _____

Please print complete name and social security number.

As an agent of the former employer of the undersigned applicant, I affirm to the best of my knowledge that the undersigned applicant HAS NOT at ANY TIME:

Yes No *(Initial if answer is yes or no and provide information for a "yes" answer below.)*

___	___	Been convicted of;
___	___	Pleaded guilty to (whether or not resulting in a conviction);
___	___	Pleaded nolo contendere or no contest to;
___	___	Admitted;
___	___	Had any judgment or order rendered against him or her (whether by default or otherwise);
___	___	Entered into any settlement of an action or claim of;
___	___	Had any license, certificate or employment suspended, revoked, terminated or adversely affected because of;
___	___	Been diagnosed as having or treated for any mental or emotional condition arising from; or,
___	___	Resigned under threat of termination of employment or volunteer work for;

Any allegation, any conduct, matter or thing (irrespective of the formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

Yes No *(Initial if answer is yes or no and provide brief information for a "yes" answer below.)*

___	___	Any felony;
___	___	Rape or other sexual assault;
___	___	Drug/alcohol-related offenses;
___	___	Abuse of a person (including a minor or child), whether physical or sexual;
___	___	Incest;
___	___	Kidnaping, false imprisonment or abduction;
___	___	Sexual harassment;

___ Sexual exploitation;
 ___ Sexual misconduct;
 ___ Annoying/molesting a child;
 ___ Lewdness and/or indecent exposure;
 ___ Lewd and lascivious behavior;
 ___ Obscene literature;
 ___ Assault, battery or other such offense;
 ___ Endangerment of a child;
 ___ Any misdemeanor or other offense classification involving a minor, elderly person
 or individual with disabilities or to which a minor was a witness;
 ___ Unfitness as a parent or custodian;
 ___ Removing children from a state or concealing children in violation of a law or
 court order;
 ___ Restrictions or limitations on contact or visitation with children or minors;
 ___ Similar or related conduct, matters or things; or
 ___ Been accused of any of the above.

EXCEPT THE FOLLOWING:

(If you answered "yes" to any of the above please provide information below, if none, write "none".)

DescriptionDates

The above statements are true and complete to the best of my knowledge.

Date: _____ *Signature* _____

Name _____ Title _____

Company _____ Address _____

City/State/Zip _____ Phone _____

