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Via Electronic Mail  
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Attn: Mr. David J. Karp, Senior Counsel  
Office of Legal Policy  
Room 4509, Main Justice Building  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

RE: Comments on the interim regulations to Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA); OAG Docket No. 117

On behalf of the American Bar Association, I am writing to express our opposition to the proposed captioned interim regulations that would apply SORNA retroactively to juvenile offenders.

ABA juvenile justice policy is set forth in 20 volumes of IJA-Juvenile Justice Standards ("Standards") developed by the Association in conjunction with the Institute of Judicial Administration. The Standards call for individualized treatment that is fair in purpose, scope and not arbitrary. These goals are set forth in the Standard Relating to Disposition:

The purpose of the juvenile correctional system is to reduce juvenile crime by maintaining the integrity of the substantive law proscribing certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of juveniles, and that give juveniles access to opportunities for personal and social growth.

The Standards set forth clear parameters for juvenile justice sanctions: the definition and application of sanctions should address public safety; give fair warning about prohibited conduct; and recognize "the unique physical, psychological, and social features of young persons."<sup>1</sup> The Standards, as well as

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1. Standards Relating to Juvenile Delinquency and Sanctions, 1.1 Purposes.

accepted research in developmental science, recognize that juveniles are generally less culpable than adults, and that their patterns of offending are different from those of adults.<sup>2</sup> Thus, ABA policy supports sanctions that vary in restrictiveness and intensity, and are developmentally appropriate and limited in duration.

Given the goals of the juvenile justice system and the transitory characteristics of juvenile offenders, ABA policy also limits the way juvenile records are compiled and disseminated. The Standards frown on “labeling” offenders, require very careful control of records, and prohibit making juvenile records public. In addition, “[a]ccess to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to juveniles, or an interference with the purposes of official intervention.”<sup>3</sup> This is so because most adolescent anti-social behavior is not predictive of future criminal activity.

Most importantly, ABA policy prohibits collateral consequences for delinquent behavior: “No collateral disabilities extending beyond the term of the disposition should be imposed by the court, by operation of law, or by any person or agency exercising authority over the juvenile.”<sup>4</sup> Lifetime registration violates this Standard and is detrimental to both rehabilitation and crime prevention.

The ABA opposed those provisions of the Adam Walsh Act that apply to juvenile offenders. A large percentage of “sex offenses” occur within families and do not rise to the level of sexual predation that is the target of the Act. The “Lifetime Registration” provisions of the Act are likely to have a chilling effect on the reporting of these crimes and will reduce admissions (guilty pleas) to the charges in the cases that do get reported. Concerns about the prospects of the retroactive application of the Walsh registration provisions already are having an adverse effect across the country with respect to admissions and delinquency adjudications in sex offense cases. As a consequence of its “Lifetime Registration” provisions, the ultimate impact of the Walsh Act here will be far more contested proceedings in these cases; far fewer delinquency adjudications; and far fewer juveniles getting the treatment they need. In addition, the fact-finding and guilty plea (admission of guilt) processes in most juvenile courts have fewer safeguards than in the adult system. Adjudications for sex offenses tend to lack the precision required by ABA policy (See Standards Relating to Adjudication). Furthermore, sex offending in adolescence has limited correlation to adult sex offending (the number of false positives close to 90 percent).<sup>5</sup>

Because the Adam Walsh Act is inconsistent with ABA juvenile justice policy and because we believe the statute is overbroad in this respect, we urge you to draft the regulations so as to not further broaden the reach of the act and to minimize the harm that will result from application of the statute. The clearest way to accomplish this is to reject retroactive application of the Act to those who were under 18 at the time of their offenses. To the extent possible, the

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2. See Standards Relating to Juvenile Delinquency and Sanctions, Part III: General Principles of Liability.

3. Standards Relating to Juvenile Records and Information Services, Part XV: Access to Juvenile Records.

4. Standards Relating to Dispositions, 1.2 (I).

5. See Zimring, *The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort* (January 2007).

regulations should also provide a reasonable method for low-risk offenders to petition to be removed from federal and state sex offender registries. Finally, the ABA also suggests that the Department of Justice urge Congress to reconsider whether the Act should apply to juvenile offenders.

Sincerely,

A handwritten signature in black ink that reads "Denise A. Cardman". The signature is written in a cursive style with a long horizontal flourish at the end.

Denise A. Cardman