COALITION FOR JUVENILE JUSTICE

BUILDING SAFE COMMUNITIES
ONE CHILD AT A TIME

April 30, 2007

VIA ELECTRONIC AND FIRST-CLASS MAIL

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

Re: OAG Docket No. 117
Comments in Opposition to Interim Rule RIN 1.105--AB22

Dear Attorney General Gonzales:

Thank you for the opportunity to comment on the above-referenced rule.

For the reasons that follow, the Coalition for Juvenile Justice recommends that the interim rule be withdrawn. Further, the Coalition strongly urges the U.S. Department of Justice and Congress to revisit the Adam Walsh Child Protection and Safety Act of 2006 and work diligently to craft legislation that protects and defends all of our nation's children and youth, including those who are victims of sexual abuse and assault, as well as children and youth who are adjudicated for sexual offenses.

Introduction

The Coalition for Juvenile Justice (CJJ) is a representative national nonprofit organization based in Washington, D.C. Created in 1984, CJJ comprises Governor-appointed State Advisory Groups (SAGs) charged to fulfill the mandates as well as the spirit of the federal Juvenile Justice and Delinquency Prevention Act. Working together with allied individuals and organizations, SAGs seek to improve the circumstances of vulnerable and troubled children, youth and families involved with the courts, and to build safe communities. Today, more than 1,500 CJJ members span the U.S. states and territories, providing a forum for sharing best practices, innovations, policy recommendations and peer support.

There is not just one but rather fifty-six different juvenile justice systems across the nation and the U.S. territories, each with its own structure, laws, policies and service-delivery models. To varying degrees, each jurisdiction has proactively taken steps to protect its citizens from repeat sexual offenders, and our members are eager to partner with the federal government to better hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. In the spirit of this partnership and per your invitation, we take this opportunity to comment on recent policies that we believe unnecessarily hinder the states, territories and federal government from achieving these goals together.

Our comments primarily address the Attorney General's interim determination that Title I of the Adam Walsh Child Protection and Safety Act of 2006 (the Act), also known as the Sex Offender Registration and Notification Act (SORNA), applies retroactively to all sex offenders as defined by the Act regardless of when they were convicted. We, however, also take this opportunity to express our grave concerns with and opposition to the overall applicability of Title I to children and youth who have been adjudicated within the juvenile system and not convicted as adults.

SORNA Should Not Be Applied Retroactively to Children and Youth Adjudicated within the Juvenile Court System

In articulating his rationale for retroactivity, the Attorney General acknowledges that he is determining "the applicability of SORNA's requirements to *virtually the entire existing sex offender population . . . regardless of when they were convicted*" (emphasis added). Respectfully, the Attorney General greatly underestimates how difficult it would be for the states to apply the mandates of the Act retroactively.

In order to comply, each state would first have to review thousands if not tens of thousands of case files to determine which children and youth fall under the mandates of the Act. Given that many states either still lack the information technology to store these files electronically or only recently obtained this ability, taking this first step towards compliance would mean conducting a paper review of thousands if not tens of thousands of case files.

Next, each state would have to locate and notify each child still living in that state, which presents its own set of difficulties. Poor and low-income children and youth are disproportionately represented in our nation's juvenile justice systems, and a constant challenge for poor and low-income families is frequent relocation of their residence. Case managers have a difficult time monitoring children and youth who are currently juvenile justice-involved, let alone children and youth who have been discharged and no longer required to report to the agency.

Moreover, retroactivity does not take into account those children and youth who have moved out-of-state. Currently, state juvenile databases are not linked to nor do they communicate with juvenile databases in other states. Thus, a likely scenario could include a child who was adjudicated in one state, but has subsequently moved to another. It is unlikely that the first state has a forwarding address for the child, and equally unlikely that the second state is aware that the child is now in its jurisdiction.

Finally, despite the Attorney General's determination that retroactive applicability of the Act does not violate the ex post facto protections of the U.S. Constitution, CJJ asserts the retroactivity runs afoul of fundamental fairness. At the time of disposition, neither the judge nor the juvenile nor the prosecuting or defending attorney were proceeding with the expectation that the child's adjudication would trigger the additional sanction of registering for 25 years to life as a sex offender.

Based on such reasons, CJJ asserts that it is impractical and burdensome for the states to comply with SORNA retroactively**.** In addition, for states to attempt to manage such a burden, they will be forced to take on additional costs—or to consider use of federal juvenile justice appropriations in a manner would be entirely at odds with the core prevention, early

intervention and system improvement goals for federal appropriations to states and localities under current federal juvenile justice laws.

SORNA Should Not Be Applied to Children and Youth Adjudicated Within the Juvenile Court System

Practical considerations and burdens stated, CJJ also asserts that it is bad public policy for SORNA to be applied to children and youth adjudicated within the juvenile system, retroactively, or otherwise.

First, SORNA as applied to children and youth is not in accord with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children," in that it will expose certain children to adult offenders. Just as members of the public will be able to access the registry via the Internet and identify offenders in any and every community, adult offenders who are still inclined to offend will be able to access the registry via the Internet and identify adjudicated children and youth in any and every community. Moreover, the young person's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these children and youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and unlawful actions much easier for those adult offenders who are so inclined to target vulnerable children and youth.

Second, SORNA as applied to children and youth assumes a clear distinction between the children who are abused and children who abuse, which is not always the case. It is common knowledge among juvenile experts and practitioners that children who commit sexual abuse against others are far more likely than the general population to have been physically, sexually, or otherwise abused themselves. Research cites that between 40% and 80% of sexually abusive youth have themselves been sexually abused, and that 20% to 50% have been physically abused (Center for Sex Offender Management, 1999). These facts are critical to consider when policy decisions are made regarding a national sex offender registry. To be clear, CJJ strongly agrees that children who abuse others sexually must be held accountable for their actions and closely attended to, in order to ensure that they do not re-offend and that they receive the treatment they need to heal and overcome these harmful proclivities. Exposing such children and youth through a public registry, however, is counterproductive.

Third, research does not support the application of SORNA to children. According to the National Center of Sexual Behavior of Youth, a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center, the recidivism rate among juvenile sex offenders is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). The Center also found that juvenile sex offenders are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, children whose conduct involves sexual abuse and acting out—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults. Children and youth, therefore, do not need to be subjected to the same restrictions.

Fourth, the research does not support the application of SORNA to children and youth. According to the National Center of Sexual Behavior of Youth, a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center, the recidivism rate among children and youth who commit sexual abuse is substantially lower than that of adults (5-14% vs. 40%), and substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). The Center also found that children and youth who commit sexual abuse are more responsive to treatment than adults and that they are less likely than adults to re-offend when provided with appropriate treatment. In other words, children and youth do not pose the same threat to public safety as adults and do not need to be subjected to the same restrictions.

Fifth, SORNA as applied to juveniles flies in the face of some of the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders. This stripping away of confidentiality as it applies to children under the age of 18 cannot be taken lightly. It cannot be too strongly emphasized that children and youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

Sixth, SORNA as applied to children and youth will disrupt families and communities across the nation because SORNA does not just stigmatize the child; it stigmatizes the entire family, including the parents and other children in the home. Similarly, the mandates and restrictions associated with SORNA impact not only the child, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park. In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Seventh, SORNA as applied to children and youth could have a chilling effect on the identification and proper treatment of children and youth who exhibit inappropriate sexual behavior in that families will be more inclined to hide problems and not seek help for a troubled child or youth if they are aware of the potential long-term consequences of their child being not only labeled but also being required to register for life as a sex offender.

Finally, as a due process matter, the Act does not make clear exactly who should be held accountable and sanctioned if a child under the age of 18 does not comply. Minors, even those adjudicated delinquent, are still dependent upon adults, and children subject to SORNA would be dependent on adults to help them comply with the Act. Neither the interim rule nor the Act speak to how the state is supposed to respond, i.e., who the state is supposed to arrest, prosecute and punish, when a child's parent or guardian fails to or refuses to provide the child with the assistance s/he needs to comply with the Act.

For all of these reasons, CJJ asserts that it is bad public policy for SORNA to be applied to children and youth adjudicated within the juvenile system and strongly urges the U.S. Department of Justice and Congress to revisit the Adam Walsh Child Protection and Safety Act of 2006 and work diligently to strike a more compassionate and productive balance between victims of sexual abuse, particularly children, and child victims of sexual abuse who sadly exhibit abusive behaviors.

Conclusion

In closing, we reiterate the eagerness of the states to partner with the federal government to hold offenders accountable, protect vulnerable population and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the interim rule unnecessarily hinder us from achieving these goals together. We therefore urge the Attorney General to withdraw the interim rule, or alternatively, to exclude juveniles in its application.

We thank you for the opportunity to comment on the Interim Rule for the Applicability of the Sex Offender Registration and Notification Act of 2006 and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Nancy Gannon Hornberger
Executive Director
Coalition for Juvenile Justice
Acting for the whole of the organization and its Board.

The Coalition for Juvenile Justice was incorporated in 1985 as a national association of state juvenile advisory groups.