



**Legislative Analysis:
The Adam Walsh Child Protection and Safety Act of 2006**

NAESV did not take a formal position in support of or in opposition to the Adam Walsh Act as a whole. However, NAESV is concerned that the political discussion surrounding sex offender management issues, both on the national and state level, has become greatly skewed towards efforts to increase penalties for offenders and create more restrictive offender management programs in lieu of addressing the underlying issues which lead to sex offending behavior. While offender accountability and management are important factors in how our communities respond to sexual violence, it is critical that these issues do not replace or diminish efforts to provide victims with rights and services and to prevent future victimization. NAESV would like to stress the ongoing and critical need to provide victims with substantive rights, increase funding for direct victim services, increase funding for rape prevention education, and to pursue other victim and prevention focused policy initiatives.

What follows is an analysis of the Act that may help you with both the implementation of this legislation in your state as well as state legislation related to sex offenders. Summaries of each title are followed by notes for advocates and, where appropriate, NAESV's position on particular aspects of the Act. NAESV also has a position statement on sex offender management issues that can be found on our website (www.naesv.org).

Title I

Title I creates a comprehensive **national system for the registration of sex offenders**. Three tiers of sex offenders are defined with increasing levels of crime severity. Some aspects of the registration system include:

- National Sex Offender Registry maintained at the FBI by the Attorney General.
- A public website for retrieval of information about registered offenders in a geographic area.
- A community notification program that directs officials to notify a broad group of public and private agencies and individuals (upon request) when an offender registers or updates a registration.
- The Sex Offender Management Assistance (SOMA) program to provide grants to jurisdictions to implement registries.
- Options for Indian Tribes to comply (see details below).
- A new offense for sex offenders who fail to register.
- Authorization of \$47 million to fund these programs.

This title also includes several new programs related to child exploitation including:

- Project Safe Childhood which aims to integrate efforts to prosecute child exploitation, provide training for law enforcement and create community awareness and educational programs.

- Expansion of training and technology efforts related to the use of the internet and technology to exploit children.
- Subtitle C which requires background checks for foster and adoptive placement and directs the Attorney General to assist states in conducting background checks of current or potential school employees.

Note: Based on an interim rule decision by the Attorney General effective February 28, 2007, provisions of The Sex Offender Registration and Notification Act (SORNA), as this title of the act is referred to, are to be applied retroactively to sex offenders. Public comment can be made until April 30, 2007.

NAESV Position: Sex offender registration can be useful for law enforcement agencies in their identification and tracking of convicted sex offenders. However, over-inclusive public notification can actually be harmful to public safety by diluting the ability to identify the most dangerous offenders and by disrupting the stability of low-risk offenders in ways that may increase their risk of re-offense. Therefore, NAESV believes that internet disclosure and community notification should be limited to those offenders who pose the highest risk of re-offense.

In addition, it is NAESV's position that internet disclosure and community notification should be limited to those offenders whose public disclosure will not immediately or implicitly identify the victim. Without such limitations, victims who are related to the offender may be deterred from reporting their crimes.

Any internet disclosure or community notification should include comprehensive community education. Regarding internet disclosure, the community education components should be shown on pages required to be viewed prior to the listing of sex offenders, so that community members are fully apprised prior to seeing the listing.

Title II

Title II consists of numerous **penalty enhancements** for various sex offenses and provides for **increased mandatory minimum sentences** for some offenses. Some of the more notable penalty enhancements and provisions include:

- Creation of a crime to sell “date rape drugs” over the internet.
- Creation of mandatory minimum sentences for violent crimes against children.
- A new maximum penalty for “sexual abuse” of life in prison (previously the maximum was 20 years)
- Several provisions that are similar to “Jessica’s Law” provisions that have been passed in several states. These provisions include lengthy mandatory minimum sentences and even the death penalty in cases involving murder in the commission of certain child sex offenses.
- Increases the penalty for federal mandatory reporters of child abuse who fail to make a report from 6 months to 1 year.
- Increases the mandatory minimum for coercing children into prostitution or other illegal sexual activity.

- Expands the list of permissible conditions of probation and supervised release of sex offenders.
- Eliminates the statute of limitations for child sex offenses.
- Creates victims right regarding habeas corpus proceedings.
- Creates a requirement that conditions of release for certain sex offenders include electronic monitoring and other safeguards.

NAESV position: Long mandatory minimum sentences can have a number of negative consequences that serve to decrease, rather than increase, public safety. For example, lengthy mandatory minimum sentences sometimes result in prosecutors not filing charges or filing charges for a lesser crime than a sex offense, as well as increased plea bargains down to a lesser crime. Similarly, judges or juries may be less inclined to convict a defendant on a sex offense because of the mandatory minimum sentence. Long mandatory minimum sentences can also keep victims who were assaulted by someone they know from reporting the crime. All of these possible negative consequences can result in fewer sex offenders being prosecuted and/or tracked, thus NAESV opposes mandatory minimum sentences.

Electronic monitoring can be an effective tool in controlling offender behavior during probation or parole, as preliminary studies indicate that electronic monitoring can provide greater surveillance of offenders under supervision. It is not yet clear, however, to what extent such monitoring deters recidivism (see for example, Florida Office of Program Policy Analysis and Government Accountability, Report No. 05-19, April 2005). Given the limited research results and the limited availability of public funds, NAESV believes electronic monitoring may be used most effectively in situations requiring intensive supervision and monitoring, such as for those offenders at highest risk of re-offense.

Title III

This title provides additional funding for state **civil commitment programs** and broadens the scope of offenders who can be civilly committed. Some of the provisions of this title include:

- An addition \$10 million per year through 2010 can be allocated by the Attorney General to states to pay for the commitment of sexually violent persons, so long states meet certain offender residency and placement criteria.
- Expands the definition of those offenders eligible for civil commitment to those who are “sexually dangerous to others.” This includes persons who suffer from a serious mental illness, abnormality, or disorder as a result of which s/he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

NAESV Notes to Advocates: Civil Commitment statutes allow state authorities to hold sex offenders after their criminal sentences have expired if the offender is deemed too dangerous to be released. Such statutes usually mandate that these offenders be confined to a treatment facility until they are no longer an imminent risk to the community. Legal opinions about civil commitment have indicated that appropriate treatment must be made available to those who are confined involuntarily and that such confinement must not be

oriented toward punishment. Additionally, civil commitment is extremely expensive, often five times or more as expensive as incarceration. Advocates may want to consider whether this allocation of public dollars is the most appropriate use of funds in their state.

NAESV recommends that advocates consider the importance of appropriate evaluation of offenders by expert treatment providers, complete pre-sentence investigations that include input from the victim and training for prosecutors and judges on the evidence-based management of sex offenders. Additionally, civil commitment cannot take the place of appropriate sentencing and/or appropriate probation/parole options.

Title IV

Title IV relates to **immigration law reforms** to prevent sex offenders from abusing children. The key components of this title are:

- Adding failure to register as a sex offender as a deportable offense.
- Barring convicted sex offenders from having family-based petitions approved (exceptions may be allowed).

NAESV notes to advocates: Barring people with sex offense convictions from petitioning family members may harm women and children by potentially preventing them from immigrating. Additionally, mandatory background checks may slow down an already ponderous process. Programs should be monitored to ensure that all efforts address the confidentiality and safety needs of victims.

Title V

Title V relates to **child pornography** prevention and provides Congressional findings about the deleterious effects of the creation and distribution of child pornography.

Specifically, the title:

- Creates new record keeping requirements for persons who produce pornographic materials including materials containing simulated sexual conduct.
- Provides penalties for those who try to conceal this activity when they are using a minor's image.
- Directs the government to prevent the dissemination or reproduction of evidence that is child pornography.
- Increases offenses for which criminal and civil forfeiture is available and makes forfeiture in obscenity cases conform to other types of cases.
- Criminalizes the production of obscenity (in addition to transportation, distribution and sale).

NAESV notes to advocates: NAESV fully supports Congress' recognition of the nexus between sex offending behavior and child pornography.

Title VI

Title VI creates a number of new **grant programs, studies and funding** related to community safety. These include:

- Increased funding for the National Police Athletic League Youth Enrichment Act.
- Pilot program for electronic monitoring of offenders.

- Treatment for offenders in prison.
- Apprehension and treatment of juvenile sex offenders.
- Prosecution of cases cleared through DNA backlog elimination.
- McGruff Club crime prevention campaign.
- RAINN sexual assault hotline, education and technical assistance (\$3 million).
- National Center for Missing and Exploited Children awareness campaign.
- Online child safety programs.
- Address verification grants.
- National registry of substantiated cases of child abuse.
- Study of sex offender management policies.
- Report on enforcement of registration requirements.
- Feasibility study of using driver's license registration requirement for sex offenders.
- Studies of Sex offender risk classification and Activity restrictions.

NAESV Notes to Advocates: When and if funding becomes available, advocates should monitor the implementation of new grant programs in their states and communities to ensure that programs collaborate with existing sexual violence prevention and intervention agencies and efforts and sound primary prevention strategies (see NAESV sex offender management position statement on guidelines:

<http://www.naesv.org/Policypapers/Community%20Management%20of%20Convicted%20Sex%20Offenders.htm>.)

In terms of community awareness and prevention strategies, NAESV points out that contrary to the popular myth of "stranger danger," children and youth are far more at risk of sexual abuse from adults they know. The same holds true for adult victims of sexual assault. Research shows that the vast majority of sex offenders know their victims, yet measures are generally designed to address situations in which the sex offender is presumed to be a stranger to the victim.

NAESV supports appropriations and research proposals related to the assessment and management of sex offenders such as those included in this title.

Title VII

Title VII is the Internet Safety Act and creates the crime of Child Exploitation Enterprise. Additionally, this title:

- Increases the penalties for sex offenders who commit a new sex offense against a minor.
- Penalizes anyone who deceives a person into viewing obscene material on the internet.
- Increases the capacity of law enforcement to investigate and prosecute sexual exploitation of children.
- increases the number of Internet Crimes Against Children Task Forces
- Clarifies that an adult who suffered sexual abuse as a minor can bring a personal injury suit for injuries that resulted from the abuse whether or not those injuries

occurred when the person was a minor and changes minimum damages in such a suit from \$50,000 to \$150,000.

NAESV notes to advocates: NAESV continues to support and work with other organizations like the National Center for Missing and Exploited Children who are addressing child exploitation and internet safety. NAESV encourages coalitions and advocates to establish or enhance their relationship with their statewide Internet Crimes Against Children Task Force. NAESV supports Congress's acknowledgement of the importance of civil remedies for adult survivors of childhood sexual abuse. While clearly there are individual sex offenders that are highly dangerous and must have very long sentences, enhanced penalties can also have unintended consequences including an increase in plea bargains to lesser crimes.

Tribal Issues

The Adam Walsh Act contains a section that requires tribal governments to affirmatively elect to comply with the mandates of the Act by July 27, 2007. If a tribe fails to pass a resolution stating its intention to comply with the Act by this date, the tribe will be treated as though it has delegated its authority under the Act to the state. *The state would then have the right to enter tribal lands to carry out and enforce the requirements of the Act.*

If a tribe elects to comply with the Act, it will be required to maintain a sex offender registry that includes a physical description, current photograph, criminal history, fingerprints, palm prints, and a DNA sample of the sex offender. Participating tribes will also be required to comply with the notification requirements established in the Act and maintain a web site making sex offender registry information available to the public. The Department of Justice will have some grant money available to help participating jurisdictions (including tribes) to build a registry and come into compliance with the law.

NAESV position: The National Alliance to End Sexual Violence supports the sovereignty and self-governance of tribal nations in the United States. This approach unnecessarily erodes tribal governmental authority on tribal lands and would represent an unprecedented grant of state jurisdiction on tribal lands for many tribes.

