

TESTIMONY OF

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for the

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY

“SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA)”

March 10, 2009

Mr. Chairman and members of the Subcommittee, I welcome this opportunity to appear before you to discuss the sexual exploitation of children and the importance of the Adam Walsh Act. Chairman Scott, we are deeply grateful for your long history of advocacy for children and for your leadership on these issues.

As you know, the National Center for Missing & Exploited Children is a not-for-profit corporation, mandated by Congress and working in partnership with the U.S. Department of Justice. NCMEC is a public-private partnership, funded in part by Congress and in part by the private sector. For 25 years NCMEC has operated under Congressional mandate to serve as the national resource center and clearinghouse on missing and exploited children. This statutory mandate (see 42 U.S.C. §5773) includes 19 specific operational functions, among which are:

- operating a national 24-hour toll-free hotline, 1-800-THE-LOST® (1-800-843-5678), to intake reports of missing children and receive leads about ongoing cases;
- providing technical assistance and training to individuals and law enforcement agencies in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children;
- tracking the incidence of attempted child abductions;
- providing forensic technical assistance to law enforcement;
- facilitating the deployment of the National Emergency Child Locator Center during periods of national disasters;
- working with law enforcement and the private sector to reduce the distribution of child pornography over the Internet;
- operating a child victim identification program to assist law enforcement in identifying victims of child pornography;
- developing and disseminating programs and information about Internet safety and the prevention of child abduction and sexual exploitation;
- providing technical assistance and training to law enforcement in identifying and locating non-compliant sex offenders; and
- operating the CyberTipline, the “9-1-1 for the Internet,” that the public and electronic service providers may use to report Internet-related child sexual exploitation.

The CyberTipline is the national clearinghouse for leads and tips regarding child sexual exploitation crimes. It is operated in partnership with the Federal Bureau of Investigation (“FBI”), the Department of Homeland Security’s Bureau of Immigration and Customs Enforcement (“ICE”), the U.S. Postal Inspection Service, the Internet Crimes Against Children Task Forces (“ICAC”), the U.S. Secret Service, the U.S. Department of Justice’s Child Exploitation and Obscenity Section, as well as other state and local law enforcement. We receive reports in eight categories of crimes against children:

- possession, manufacture and distribution of child pornography;
- online enticement of children for sexual acts;
- child prostitution;
- sex tourism involving children
- extrafamilial child sexual molestation;
- unsolicited obscene material sent to a child;
- misleading domain names; and
- misleading words or digital images on the Internet.

These reports are made by both the public and by Electronic Service Providers, who are required by law to report to the CyberTipline. The leads are reviewed by NCMEC analysts, who examine and evaluate the content, add related information that would be useful to law enforcement, use publicly-available search tools to determine the geographic location of the apparent criminal act, and provide all information to the appropriate law enforcement agency for investigation. These reports are also triaged to ensure that children in imminent danger get first priority.

The FBI, ICE and Postal Inspection Service have “real time” access to the CyberTipline, and assign agents and analysts to work at NCMEC. In the 10 years since the CyberTipline began, NCMEC has received and processed more than 667,000 reports. To date, electronic service providers have reported to the CyberTipline more than 5 million images of sexually exploited children. To date, 21 million child pornography images and videos have been reviewed by the analysts in our Child Victim Identification Program, which assists prosecutors to secure convictions for crimes involving identified child victims and helps law enforcement to locate and rescue child victims who have not yet been identified.

In 2008, Congress amended NCMEC's authorization to specifically authorize us to provide training and assistance to law enforcement agencies in identifying and locating non-compliant sex offenders. All states/jurisdictions currently require sex offenders to register; California enacted the first such law in 1947. As of our latest survey of the states, there were 673,989 sex offenders who are required by law to register their address and other information with law enforcement and update this information as it changes. However, the mobility of offenders and inconsistencies among current state registration laws have resulted in as many as 100,000 "missing" sex offenders – law enforcement does not know where they are, yet they are living in our communities.

The Adam Walsh Child Protection and Safety Act, passed by Congress in 2006, conveyed "fugitive" status on non-compliant sex offenders who have left the state and failed to register, and charged the U.S. Marshals Service with tracking them down. In response, NCMEC created a Sex Offender Tracking Team. Upon request from the Marshals, we run searches of non-compliant sex offenders against public-records databases donated to us by private companies for the assistance of law enforcement. We also conduct internal searches for potential linkages of non-compliant sex offenders to NCMEC cases of child abduction, online exploitation and attempted abductions. We forward all information to the Marshals, who use it to locate the offenders so they can be charged with the crime of non-compliance. This has resulted in thousands of arrests of fugitive sex offenders by the Marshals. In addition, NCMEC provides assistance to any requesting law enforcement agency trying to locate non-compliant sex offenders. Most of the law enforcement agencies who request assistance from NCMEC have exhausted all of their resources trying to locate these offenders and have been unable to do so. To date, we have provided more than 1,200 analytical leads packages to law enforcement upon request, and act as liaison between local law enforcement and the Marshals Service, where necessary.

NCMEC also partners with ICE on the "Operation Predator" initiative. ICE developed this initiative to identify, investigate and arrest child predators and sex offenders. NCMEC's alliance with ICE is designed to facilitate the exchange of information on exploited children and those

who prey upon them. NCMEC supports ICE's efforts by providing analysis utilizing public records database searches and CyberTipline reports on potential child victims and those suspected of crimes against children. An ICE Special Agent has been assigned to work at NCMEC so that ICE can promptly and efficiently act on the information developed by NCMEC. This alliance has proved enormously successful: nearly 12,000 individuals have been arrested nationwide. Almost 85% of these arrests are of non-citizen sex offenders, more than 6,300 of whom have been deported.

However, despite our progress the victimization of children continues. There has been much attention given to the question of how many children are victimized by sexual offenders. Experts estimate that at least 1 in 5 girls and 1 in 10 boys will be sexually victimized in some way before they reach adulthood, and just 1 in 3 will tell anybody about it. Clearly, those numbers represent a broad spectrum of victimizations from very minor to very severe. Nonetheless, the numbers are powerful testimony to the fact that children are at risk and that we must do more.

There are strong empirical data as well. According to the U.S. Department of Justice, 67 percent of reported sexual assault victims are children¹ – more than two-thirds. And these are only the ones that law enforcement knows about. Most crimes against children are not reported to the police.² This means that there are many, many more victims of these heinous crimes than the statistics show.

In recent years, millions of Americans have followed with horror the devastating stories of Jessica Lunsford, Sarah Lunde, Jetseta Gage and others. These tragic cases have generated anger and indignation nationwide, and epitomize an area of great concern: how to effectively track, register and manage the nation's convicted sex offenders. Sex offenders pose an enormous challenge for policy makers. They evoke unparalleled fear among citizens. Their offenses are associated with the greatest risk of psychological harm. Most of their victims are children and youth. And, according to the National Institute of Justice, child abusers have been known to

¹ Snyder, Howard N., *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, July 2000, page 2.

² *1999 National Report Series: Children as Victims*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, May 2000, Page 7.

reoffend as late as 20 years following release into the community.³ As policy makers address the issue of sex offenders, they are confronted with some basic realities:

- most sex offenders are not in prison, and those that are tend to serve limited sentences;
- while most sex offenders are in the community, historically their presence was largely unknown to citizens;
- sex offenders represent the highest risk of reoffense; and
- while community supervision and oversight is widely recognized as essential, the system for providing such supervision is overwhelmed.

Of the estimated 100,000 non-compliant sex offenders, many are literally “missing.” They moved and failed to register their new address with law enforcement, or they provided the wrong address or some similar variation. The number of offenders required to register is only going to increase as new cases work their way through the criminal justice system. This problem is not going to go away. These offenders will be in our communities. The question is: what more can we do?

In 1994 Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Predators Act, mandating every state to implement a sex offender registration program. However, by 2006, even though all 50 states, the District of Columbia, and some U.S. territories and Native American tribes had created sex offender registries, there was still a striking lack of consistency and uniformity. In response, Congress passed the Adam Walsh Child Protection and Safety Act in July of 2006 in an effort to enhance and tighten the sex offender registration system. The Adam Walsh Act attempted to correct the serious discrepancies among the jurisdictions, eliminating loopholes in the laws that permitted sex offenders to cross state lines and remain undetected. By encouraging uniformity across jurisdictions, the Adam Walsh Act attempted to prevent sex offenders from “forum-shopping” in order to remain anonymous. However, despite Congress’ intent, the goals of the Adam Walsh Act remain unmet today.

³ *Child Sexual Molestation: Research Issues*, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, June 1997.

Title I of the Adam Walsh Act is commonly referred to as the Sex Offender Registration and Notification Act (SORNA). The Sex offender Monitoring, Apprehension, Registration and Tracking (SMART) Office is authorized to determine whether a jurisdiction has substantially implemented SORNA or to grant an extension of the deadline. A jurisdiction must submit materials about its registration program to the SMART Office. The Adam Walsh Act permits jurisdictions to apply for up to two one-year extensions. The deadline for submitting extension requests is April 27, 2009.

Currently, there are no jurisdictions listed on the SMART Office webpage as having achieved substantial compliance. Seventeen jurisdictions are listed as having been granted a one-year extension to July 26, 2010 (Alaska, Arizona, Arkansas, Florida, Fort McDowell Yavapai Nation, Guam, Iowa, Kansas, Kentucky, Menominee Indian Tribe of Wisconsin, Minnesota, Mississippi, Nevada, New Jersey, Quileute Tribe, Santee Sioux Nation, and South Carolina).⁴

Thirty eight jurisdictions have submitted materials for review.⁵ These are:

- Alabama
- Alaska
- American Samoa
- Arizona
- Arkansas
- Cheyenne River Sioux Tribe
- Coeur D'Alene Tribe
- Colorado
- Colorado River Indian Tribes
- Commonwealth of the Northern Mariana Islands
- Confederated Tribes of the Umatilla Indian Reservation
- Connecticut
- Florida
- Fort McDowell Yavapai Nation
- Guam
- Idaho
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maryland
- Menominee Indian Tribe of Wisconsin
- Minnesota
- Mississippi
- Mississippi Band of Choctaw Indians
- Missouri
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- Ohio
- Oklahoma
- Puerto Rico
- Quileute Tribe
- Rhode Island
- Santee Sioux Nation
- South Carolina
- Vermont

⁴ http://www.ojp.usdoj.gov/smart/faqs/faqs_statusofjurisdictions.pdf

⁵ Id.

A few states have announced that they have implemented SORNA, but only the SMART Office is authorized to make an official determination of substantial implementation.

Cost appears to be the primary hurdle for compliance. It is difficult to determine a particular jurisdiction's required costs to implement SORNA with accuracy. However, some jurisdictions are doing so in an attempt to weigh the costs of implementation against the loss of Byrne Grant funds.

NCMEC is in frequent contact with registering agencies and has learned anecdotally that they are most concerned about:

- personnel (40 states have fewer than 10 staff members);
- lack of law enforcement personnel dedicated solely to sex offender issues;
- database software purchase, installation and maintenance;
- outdated computer hardware and software;
- lack of centralized communication systems between jurisdictions for tracking offenders;
- lack of technology to easily identify fake addresses;
- lack of a national registry of sex offenders covering all tiers;
- in some states, registrants' verification is by mail and not in person;
- increased incarceration of offenders and related expenses;
- additional court proceedings;
- training of law enforcement, court and correctional personnel;
- lack of funding to conduct community notification of sex offenders;
- inability to track homeless registrants;
- lack of notice by jails of offenders' release;
- lack of a comprehensive national jail data system; and
- lack of uniformity in laws and requirements across jurisdictions.

In order to come into compliance with the Adam Walsh Act, many jurisdictions must make fundamental changes to their sex offender registration systems. Yet, these jurisdictions simply

do not have the resources to make the necessary changes, leaving us where we were prior to the enactment of the Act with inconsistency across the jurisdictions enabling some sex offenders to game the system.

In order to help protect our nation's children, we must improve our current registration system so that we know where all of the convicted sex offenders are. We must assume that those who represent the greatest threat are those least likely to be compliant. They are the most likely offenders to attempt to disappear.

From the beginning of the discussions that led to the passage of the Adam Walsh Act, it was always understood that the jurisdictions needed help in order to implement the new law. We are deeply grateful to Chairman Alan Mollohan, Congressman Frank Wolf and the House Commerce, Justice, Science Appropriations Subcommittee, and to Chairwoman Barbara Mikulski, Senator Richard Shelby and the Senate Commerce, Justice, Science Appropriations Subcommittee for their repeated attempts to do just that. On several occasions since the passage of the Adam Walsh Act in 2006, the CJS Subcommittees have passed appropriations measures providing seed funding to begin implementation at the state and federal level. Yet, for reasons unrelated to the merits of the Adam Walsh Act, and having to do with larger funding disputes which resulted in Continuing Resolutions and late session Omnibus Appropriations measures, the funds designated by the CJS Subcommittees were never actually appropriated. Once again this year, Chairman Mollohan, Chairwoman Mikulski and their subcommittees are taking steps toward providing assistance.

In our judgment, providing such funding is the key to being able to finally implement this critical system. However, with the compliance date looming and with essentially no funding having been provided to date, we think it imperative that Congress act to keep the Adam Walsh Act alive by extending the deadline for compliance and reauthorizing the statute.

We understand that resources are scarce and that there are many competing demands. However, it is hard to imagine a greater or more pressing priority. NCMEC urges lawmakers, law enforcement and the public to take a serious look at the dangers threatening our children today,

and to move decisively to help states create a seamless, coordinated, uniform system that works.
Now is the time to act.

Thank you.