SJR 348: Sex Offender Registry Requirements

July 25, 2011

Overview

- Study Authorization
- Literature Review of Registry Effectiveness
- Federal Sex Offender Registry Requirements
- Virginia Sex Offender Registry Requirements
- Areas Where Virginia Is Not in Compliance
- Discussion

Study Authorization

- Senate Joint Resolution 348 (sex offender registry requirements) was introduced by Senator Hanger during the Regular Session of the 2011 General Assembly.
- The resolution specifically directs focus upon:
  - Requirements for sex offender registries imposed by the federal government;
  - The extent to which Virginia is in compliance with those requirements;
  - The penalties for Virginia not being in compliance; and,
  - The effectiveness of registry and notification laws.

Literature Review

- Staff reviewed the academic literature on the effectiveness of registration laws on preventing recidivism.
- Based upon the literature reviewed, it is difficult to reach a definitive conclusion regarding the effectiveness of sex offender registries and notification laws due to a number of various factors:
  - Methodology of study;
  - Sample size;
  - Types of offenders examined;
  - Potential selection bias; and,
  - Differences between states.

Literature Review

- Further, examining effectiveness is a very recent field of inquiry. For instance:
  - Yet, it is improper to make sweeping judgments based on two introductory studies. There is still much to learn from goal-oriented evaluations as well as other evaluations of Megan's law….Research has only begun on this topic, and there is significant ground left to cover… ("Megan's Law: Evaluations of Sexual Offender Registries," Welchans 2005, p. 135).

Literature Review

- Schram and Darling Milloy (1995) studied recidivism rates amongst sex offenders subject to registration and notification requirements in Washington state.
  - They prospectively followed 125 offenders for 54 months, and matched this group with a control group of offenders not subject to notification.
- The study did not find any statistically significant difference in recidivism between the two groups.
- However, perpetrators subject to notification were arrested for new crimes more quickly.
  - It was unclear how many of the arrests were substantiated. Was this the result of nervous community members keeping an over-anxious eye on the known offenders? Or does this show registration laws are an effective tool for law enforcement in quickly arresting offenders who commit new crimes?

Literature Review

- Petrosino and Petrosino (1999) used a retrospective design, based in Massachusetts, to attempt to see how many sex offenses would have been prevented if the convicted offender had been subject to a registration and notification law at the time when he committed his most recent offense.
- The study focused on a group of 136 sexual psychopaths. The conclusion was that 6 offenses might have been prevented if the offenders had been subject to a notification law.
  - This is a very small sample size, and only focused on sexual psychopaths; would conclusions have been different if a larger group of non-psychopathic sex offenders had been studied?
  - The study assumes that notification, by itself, might have prevented the attack, which is perhaps over-optimistic.

Literature Review

- Prescott and Rockoff (2008) examined whether the inconsistent results between various studies on registries and recidivism might be due to the fact that two separate factors—registration, and notification requirements—were examined together, instead of separately.
- Examining data from a number of states, they found that the effects of registration, and notification, were in fact different.
- While registration did not deter offenders from committing their first offense, it did significantly reduce registrants' subsequent recidivism rates, particularly for offenses involving acquaintances.
- However, there was no evidence that notification laws reduced offender recidivism.

Literature Review

- Vasquez, et al. (2008) studied the general deterrent effects of sex offender registration laws, examining 10 states, using a time series analysis to see if there was an increase or decrease in the number of rapes as a result of such laws.
- Their conclusions were mixed.
  - Six states (Arkansas, Connecticut, Nebraska, Nevada, Oklahoma, and West Virginia) did not show any statistically significant change in the number of reported rapes associated with the passage of a registration and notification law.
  - Three states (Hawaii, Idaho, and Ohio) showed a statistically significant decrease in the number of reported rapes associated with the passage of such a law.
  - One state, California, showed a statistically significant increase in the number of rapes reported.

Literature Review

- A general conclusion that can be reached from these studies is that while important and meaningful research is being conducted on this topic, the area of inquiry is very new.
- Over the next ten to twenty years, social scientists and criminologists will likely develop more definite conclusions as to the effectiveness of registration laws in deterring future criminal sexual offenses.

Federal Requirements

- 42 U.S.C. §16901 *et seq.*, known as the Adam Walsh Act, contains the Sex Offender Registration and Notification Act ("SORNA").
- SORNA requires states to maintain sex offender registries, and provides requirements on (among other topics):
  - Who must register;
  - How long they must remain on the registry; and,
  - What verification processes must be used to ensure the information is accurate.

Federal Requirements

- SORNA requires every adult who has been convicted of any sex offense, even a misdemeanor, to be registered.
  - There is an exception for crimes that involve consensual behavior, if the victim is (i) an adult and not under the custodial authority of the offender, or (ii) is a minor, at least 13 years old, and the offender is not more than 4 years older.

Federal Requirements

- SORNA also requires registration for every juvenile, 14 or older, who has been adjudicated delinquent of an offense involving a "sexual act" that was carried out through force, threat of serious violence, or rendering the victim unconscious.
  - A sexual act includes any degree of genital or anal penetration or oral contact.
  - There is no requirement that the juvenile was transferred and tried as an adult.

Federal Requirements

- SORNA categorizes all sex offenders into three Tiers, depending upon the seriousness of their crime.
- Tier I: the least serious level of offender, including all sex offenders who do not meet the requirements of Tier II or Tier III.
  - Requires remaining on the registry for 15 years, with the possibility of being relieved from registry requirements after 10 years.

Federal Requirements

- Tier II: the intermediate level of offender; those whose offense is punishable by more than 1 year imprisonment, and:
  - (A) When the victim is a minor, is comparable to sex trafficking, as defined by 18 U.S.C.§1591, coercion and enticement, 18 U.S.C.§2422(b), transportation with intent to engage in criminal sexual activity, 18 U.S.C.§2423(a), or abusive sexual contact, 18 U.S.C.§2244; or,
  - (B) Involves use of a minor in a sexual performance, solicitation of a minor for prostitution, or production or distribution of child pornography; or,
  - (C) Occurs after the offender has become a Tier I sex offender.

Federal Requirements

- To summarize, Tier II sex offenses involve:
  - The use of a minor in prostitution;
  - Any kind of sexual contact with a minor;
  - The use of a minor in a sexual performance;
  - Production or distribution of child pornography;
  - An attempt or conspiracy to commit any of these offenses; or,
  - Someone who is already a Tier I sex offender, and then commits a sexual offense that is a felony, but is not a Tier II or III sex offense.
- Someone who is convicted of a Tier II sex offense must remain on the registry for 25 years. There is no possibility to shorten that length of time.

Federal Requirements

- Tier III: the most serious level of sex offender; those whose offense is punishable by more than 1 year imprisonment, and:
  - (A) Is comparable to aggravated sexual abuse, as defined by 18 U.S.C. §2241, or sexual abuse, 18 U.S.C.§ 2242, or if the victim is under the age of 13, any kind of abusive sexual contact, 18 U.S.C. §2244; or,
  - (B) Involves kidnapping of a minor, unless committed by a parent or guardian; or,
  - (C) Occurs after the offender has become a Tier II offender.

Federal Requirements

- To summarize, Tier III sex offenses involve:
  - Any "sexual act" that involves any degree of genital or anal penetration or oral contact, carried out by force or any kind of threat, or when the victim is unconscious or incapable of consent;
  - Any "sexual act" involving a victim under the age of 12;
  - Any direct touching, not through clothing, of the genitals of a victim under the age of 16;
  - Any "sexual contact" that involves the touching of intimate parts of the body, even through clothing, when the victim is under the age of 13;
  - Any non-parental kidnapping of a minor;
  - Any attempt or conspiracy to commit any of these offenses; or,
  - Someone who is already a Tier II sex offender, and then commits another sexual offense that is a felony.

Federal Requirements

- Someone who is convicted of a Tier III sex offense must remain on the sex offender registry for life.
- There is no possibility for an adult to ever be relieved from registry requirements.
- A juvenile, who was adjudicated delinquent of a Tier III sex offense, may be released from registry requirements after 25 years.
  - If the juvenile was tried as an adult, he must remain on the registry for life.

Federal Requirements

- SORNA requires that states verify the accuracy of an offender's information, with periodic in-person visits:
  - At least once a year for Tier I offenders;
  - At least twice a year for Tier II offenders; and
  - At least every three months for Tier III offenders.
- The visits can be conducted at the offender's home, or the state can require the offender to report to a police station or other location.

Virginia Requirements

- Virginia's sex offender registry requirements are found at Va. Code§9.1-900 *et seq*.
- A conviction for practically any sex offense in Virginia results in a requirement to register.
- Juveniles who are transferred and convicted as adults of a sex offense are required to register.
- Juveniles over the age of 13 who are adjudicated delinquent of a sex offense may be required to register, if the judge determines that the circumstances of the offense require registration.

Virginia Requirements

- Similar to the requirements of SORNA, the Virginia sex offender registry scheme also "tiers" sex offenders, based upon the seriousness of their offense.
- Virginia uses a two tier approach (violent and non-violent):
  - Those who are convicted of (i) a "sexually violent offense" or (ii) murder, if the murder victim was under the age of 15, or was under the age of 18 and the murder was related to a sexual offense.
  - Those who are convicted of (i) any registerable sex offense that is not a "sexually violent offense" or (ii) manslaughter, if the death arose out contributing to the delinquency of a child, or the abuse and neglect of a child.

Virginia Requirements

- A person who is convicted of a "sexually violent offense" or a murder that requires registration will be on Virginia's sex offender registry for life.
  - There is no possibility of ever being relieved from the registry requirements.

Virginia Requirements

- A person convicted of any other sexual offense, or manslaughter that requires registration, can petition to be removed from the registry after 15 years.
  - If the offense was carnal knowledge of a detained juvenile by someone who provides services to juveniles under the purview of either a JDR court or DJJ; or the reproduction or distribution of child pornography; or the use of a communications system to solicit a juvenile for a sexual purpose, then the person must wait 25 years before petitioning to be removed.
  - If the person has been convicted of two registerable offenses, there is no possibility of ever being relieved from the registry requirements.

Virginia Requirements

- The Virginia State Police conducts an in-person verification of the registry information twice a year, for every person on the registry.
  - Currently, there are just over 18,000 people on Virginia's registry.
- In addition, the Virginia State Police requires every person on the registry to periodically verify their residency information with a mailed registration card.
  - Persons convicted of a sexually violent offense, or a murder that requires registration, are subject to this verification process every 3 months.
  - All other persons on the registry are subject to this verification process once a year.

Areas of Non-Compliance

- The U.S. Attorney General is required to determine which states have substantially implemented the provisions of SORNA.
- Any state that is deemed not to be in substantial compliance shall lose 10% of its Byrne Grant funding.
- The amount of Byrne funding received by Virginia last year was approximately 6 million dollars.

Areas of Non-Compliance

- The federal SMART Office ("Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking,") which is part of the U.S. DOJ, is charged with working with states to ensure that the provisions of SORNA have been implemented, and evaluating states' registration laws for substantial compliance.
- Last autumn, the SMART Office notified Virginia that its sex offender registry was not in compliance in three major areas:
  - Juveniles adjudicated delinquent of forcible sexual offenses involving penetration are not required to register;
  - Certain Virginia offenses are not tiered correctly, i.e., certain offenses need to be changed to "sexually violent offenses;" and,
  - The twice-a-year in-person verifications of persons convicted of a "sexually violent offense" are too infrequent.

Areas of Non-Compliance

- In 2008, the impact statement prepared by the Virginia Department of Planning and Budget for Senate Bill 590 analyzed the increase in the number of in-person verifications that would occur if registrants convicted of a "sexually violent offense" were visited four times a year instead of twice a year.
- At that time, it was estimated that the number of visitations would increase from 10,368 a year to 39,401.
  - This would necessitate the hiring of 88 additional sworn personnel, and 11 support staff.
  - The estimated cost to handle this proposal, and the others in SB 590, was 12.5 million dollars for the first year, and 8.9 million dollars thereafter.

Discussion