



Legislative
Research
Council

MINUTES

Sex Offender Registry Study

First Meeting
2009 Interim
Wednesday, July 8, 2009

Room 414
State Capitol Building
Pierre, South Dakota

The first meeting of the interim Sex Offender Registry Study Committee was called to order by Senator Gene Abdallah, Chair, at 9:13 a.m. (CDT), on Wednesday, July 8, 2009, in Room 414 of the State Capitol, in Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Gene Abdallah (Chair) and Sandy Jerstad (appearing telephonically); Representatives Richard Engels, Peggy Gibson, Brian Gosch (Vice Chair), Jacqueline Sly, and Roger Solum.

Staff members present included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; Jacquelyn Storm, Principal Legislative Attorney; and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was web cast live. The archived web cast is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

Staff Report

Mr. Reuben Bezpaletz, Chief Analyst for Research and Legal Services, reviewed a binder of information that he compiled for the committee. The information included the following:

- 1) Chapter 22-24B – Sex Offender Registry statutes (**Document 1**);
- 2) Recent South Dakota Sex Offender Legislation (**Document 2**):
 - A) 2009 Legislation:
 - i) SB 152 – Failed
 - ii) HB 1079 – Passed
 - B) 2008 Legislation:
 - i) HB 1260 – Passed
 - ii) SB 136 – Failed
 - iii) HB 1218 – Failed
 - C) 2007 Legislation:
 - i) HB 1219 – Failed
 - D) 2006 Legislation:
 - i) HB 1066 – Failed
 - ii) SB 102 – Failed

- iii) SB 140 – Failed
- iv) SB 141 – Failed
- v) SB 148 – Passed
- vi) SB 149 – Passed
- vii) SB 150 – Passed
- viii) SB 203 – Passed
- ix) SB 208 – Passed

3) Committee Correspondence (**Document 3**):

- A) A study of the Issue of Sex Offender Registry (suggestions for committee focus points from LRC's Executive Board);
- B) Letter from Representative Joni Cutler;
- C) Letter from Mr. Larry Patzlaff, Salem, South Dakota, dated May 31, 2009, and a copy of his sex offender registry page; and
- D) An article from the Argus Leader dated July 4, 2009;

4) Materials from Office of the Attorney General (**Document 4**):

- A) Memorandum dated July 2, 2009, regarding HB 1079;

5) Materials from the Department of Justice (**Document 5**):

- A) Sex Offender Registration and Notification Act (SORNA) - Substantial Implementation Checklist;

6) Materials from Committee Staff (**Document 6**):

- A) Sampling of SD Sex Offender Registry of very small towns hosting sex offenders and a breakdown of the number of registrants (1,809); and

7) Typical Pages from Registries of South Dakota and Neighboring States (**Document 7**).

Mr. Bezpaletz noted that persons currently in the corrections systems are not on the sex offender registry website. The registry represents one-fourth of one percent of the state's population. Two percent of the registry is comprised of women; twenty-six percent are Native American, and twenty-three percent are out-of-state offenders that have moved to South Dakota.

He also noted that North Dakota's registry uses a risk assessment that could be useful to the public.

Briefing by the Office of the Attorney General

Mr. Larry Long, Attorney General, provided a brief introduction to the information they would be presenting and also introduced Mr. Scott Swier as the legislative liaison and Mr. John Strohman as the sex offender registry expert for the office. A copy of the PowerPoint presentation was provided electronically to the committee following the meeting (**Document 8**).

HB 1079 – An Act to revise certain provisions regarding the sex offender registry.

Mr. Scott Swier, Assistant Attorney General, explained the two major changes that HB 1079, which was passed during the 2009 Legislative session and became effective July 1, 2009, accomplished. The primary reason for the registry is to track sex offenders and notify the public of the whereabouts of same. House Bill 1079 closed the sex offender registration "loophole" and provided equal protection for juvenile sex offenders.

Prior to July 1, 2009, sex offenders had to register within 5 days of (1) coming into any South Dakota county to reside; (2) temporarily domiciling in South Dakota; (3) attending school in South Dakota; (4) attending postsecondary education classes in South Dakota; or (5) working in South Dakota. HB 1079 expanded the requirements to include "apply for or receive a South Dakota driver license, register a motor vehicle, establish a postal address, and register to vote" which closed the loophole for out-of-state sex offenders who would establish a postal address in the state but not actually reside in South Dakota.

The other major change in HB 1079 addresses the problem of equal protection to juveniles. Adult sex offenders are eligible to be removed from the registry if they received a suspended imposition of sentence, they satisfy the terms of the conditions, and have no criminal history. Juvenile sex offenders were not eligible to receive a suspended imposition of sentence. In 2008, this provision was challenged in *The People of the State of South Dakota in the Interest of Z.B.*, 757 NW2d 595 (SD 2008). The South Dakota Supreme Court ruled in Z.B.'s favor. HB 1079 revised SDCL 22-24B-2 by permitting a juvenile sex offender to be removed from the registry if he/she receives a suspended adjudication of delinquency.

Sex Offender Registry Overview

Mr. John Strohman, Assistant Attorney General, provided an overview of the registry. The sex offender registry was implemented in 1994 by SDCL 22-24B-1 which defined "sex crimes." He noted that a violation of SDCL 22-19-1 – Kidnapping (if victim is a minor) is the only crime not sex related that South Dakota requires the offender to be registered as a sex offender. South Dakota requires registration in person every 6 months. Local law enforcement receives the registration forms and forwards information to the Division of Criminal Investigation (DCI) who enters the information into the State database and Federal Sex Offender Database. The web site for the sex offender registry is <http://www.sor.sd.gov>.

South Dakota currently has 2,534 registered offenders and has a compliance rating of 96%.

Mr. Strohman reviewed the differences between adults, juveniles, and transients' registration requirements. He noted that South Dakota requires juveniles 15 years of age or older to register whereas the Adam Walsh Act (AWA) age requirement is 14 years of age or older. He also explained the process for being removed from the registry. He noted that as a result of *People in the Interest of Z.B.*, all 15-18 year old South Dakota adjudicated juveniles previously listed on the registry have been removed. Mr. Strohman explained the community safety zones (within 500 feet of a school, public park, public playground, and public pool), exceptions, and the criteria required to petition for an exemption.

Mr. Strohman reviewed the AWA and the three tier system that it uses. South Dakota has been given an extension through July 2010 to be in compliance with the Act. He noted that South Dakota state laws are applicable if they are more restrictive than the provisions of the AWA. He also reviewed how the nine South Dakota Tribes handle the sex offender registration on the reservations. South Dakota has a few minor changes that need to be changed to be in compliance with the minimums of the AWA.

A handout entitled "Table A-Tier I, Table B-Tier II, and Table C-Tier III" was distributed (**Document 9**) which showed the various Federal and South Dakota Offenses and where they fall in the tier system used in the AWA.

In response to a question on where sex offenders reside and what crimes they had been convicted of, Mr. Strohman distributed documents entitled "South Dakota Division of Criminal Investigation Sex Offender Totals Registered Agency Report Date: 7/8/2009" (**Document 10**) and "State of South Dakota Sex Offender Registry Statistics on: 7/8/2009 1:14:25 pm" (**Document 11**).

In response to a question if it was the intention of the Office of the Attorney General to make recommendations to the Legislature regarding compliance with the AWA, Attorney General Long responded that his office is working on it. If the state is not in compliance, a percentage of the Byrne Grant funding would be lost. He will provide the percentage to the committee at the next meeting.

In response to a question on how South Dakota is handling states that have passed laws to drive sex offenders out-of-state, Attorney General Long stated that there is a higher penalty for out-of-state sex offenders if they fail to register in South Dakota.

The committee recessed at 12:10 p.m. for lunch and reconvened at 1:14 p.m.

Briefing by U.S. Department of Justice

Ms. Stephanie LoConto and **Ms. Lori McPherson**, Policy Advisors with the Sex Offender, Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) office of the U.S. Department of Justice, presented an overview of the Sex Offender Registration and Notification Act (SORNA). The purpose of SORNA is to enhance community safety, public awareness of risk, and assist law enforcement. It was passed on July 27, 2006, and was designed to create a national set of standards to eliminate loopholes and gaps in existing registry systems. If South Dakota fails to comply with SORNA by the July 26, 2010, deadline, it faces a 10% reduction of the Byrne Grant funding and if the Tribes do not comply, they face losing some of their sovereignty. Ms. McPherson stated that the compliance with fingerprint and DNA submissions may be a problem for some of the Tribes. The minimum standards of SORNA and the compliance process were reviewed.

In response to a question regarding if South Dakota was in compliance with SORNA, Ms. LoConto stated that if the Office of the Attorney General would submit South Dakota's sex offender statutes, they could do a preliminary review.

There are two national sex offender registries. The National Sex Offender Public Website (NSOPW) is a search engine operated and maintained by the SMART office (www.nsopr.gov or www.nsopw.gov). The National Sex Offender Registry (NSOR) is an actual database operated and maintained by the FBI and is for law enforcement only.

Some of the free tools available are the Tribal and Territory Sex Offender Registration System (TTSORS), the NSOPR Exchange Portal, and the Community Notifications. The SMART office's main website is www.ojp.gov/smart. The website offers case law updates, FAQ's, fact sheets, compliance checklist, and annual symposium information.

In response to a question regarding the Model Tribal Code, Ms. McPherson stated that it is SORNA compliant if adopted in its entirety and is available of their website.

Current South Dakota law inconsistencies with SORNA are:

- Frequency of recapture (6 months – for SORNA Tier III offenses, 3 months is required).
- Information required included in registration: passport and immigration documents, phone numbers, licensing information, temporary lodging information, copy of driver's license, vehicle registration number.
- Keeping registration current: South Dakota only requires immediate update of residence information; however, SORNA requires immediate in-person updates for residence, and immediate in-person and non-in-person updates of other information.

A copy of the PowerPoint presentation was distributed following the presentation (**Document 12**).

Committee Discussion/Staff Directives

Mr. Bezpaletz offered the following topics as possible ideas:

- 1) Sex offender registration from the law enforcement perspective;
- 2) Enforcement of community safety zones from the law enforcement perspective;
- 3) Input from public defenders;
- 4) Information from the State of Iowa on how there program is working;
- 5) Ideas for reform from Legislators.

For the next meeting, Chair Abdallah asked staff to schedule a speaker from Iowa for the morning and have public testimony in the afternoon.

Mr. Strohman stated he could work with Mr. Bezpaletz in obtaining an individual from Iowa that works with their sex offender registry. Regarding public testimony, he stated that it should be made clear that only the court can remove someone from the registry, this committee will only be taking comments.

Representative Solum suggested that victims also be asked to testify why the offenders should stay on the registry.

Representative Engels asked that the Attorney General's office provide the committee with the number of recidivism of sex offenders and their crimes.

Representative Gosch asked for a dollar amount of Byrne Grant funds that the state would lose if they are not in compliance with the AWA.

Representative Engels would like to know the number of sex offenders that have been removed from the registry.

Representative Gibson attended a National Conference of State Legislatures forum in April on SORNA. She shared with the committee three handouts entitled "2009 SORNA Related State Legislation", "SORNA RELATED STATE LAWS", and "Registering Harm – How Sex Offense Registries Fail Youth and Communities" (**Documents 13, 14, and 15**).

Chair Abdallah stated that he would like to see what needs to be changed in the state's statutes to be in compliance with the AWA before the third meeting.

Determination of Future Meeting Date

Chair Abdallah set the next meeting for August 18, 2009.

Adjournment

Representative Gosch moved, seconded by Representative Gibson, that the meeting adjourn. Motion prevailed on a voice vote.

The meeting adjourned at 3:12 p.m.

