



Legislative  
Research  
Council

# MINUTES

## Sex Offender Registry Study

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**Second Meeting**  
**2009 Interim**  
**Tuesday, August 18, 2009**

**Room 413**  
**State Capitol Building**  
**Pierre, South Dakota**

The second meeting of the interim Sex Offender Registry Study Committee was called to order by Senator Gene Abdallah, Chair, at 9:05 a.m. (CDT), on Tuesday, August 18, 2009, in Room 413 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; Representatives Richard Engels, Peggy Gibson, Brian Gosch (Vice Chair), and Jacqueline Sly (appearing telephonically). Representative Roger Solum was excused.

Staff members present included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; Lou Adamson, Legislative Information System Coordinator; 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."

### Minutes

**Senator Jerstad moved, seconded by Representative Gosch, to approve the minutes of the July 8, 2009, meeting. Motion prevailed on a voice vote.**

### Staff Report

**Mr. Reuben Bezpaletz**, Chief Analyst for Research and Legal Services, reviewed several handouts. The information included the following:

- 1) Letter dated July 22, 2009, from the late Thomas Hennies, an advocate for keeping offenders on the list that pose a threat to the public (**Document 1**);
- 2) Letter dated August 9, 2009, from Mr. Larry Patzlaff regarding the registration process (**Document 2**);
- 3) Historical report from the Vera Institute of Justice entitled "The Pursuit of Safety: Sex Offender Policy in the United States" (**Document 3**);

- 4) Article from the National Institute of Justice entitled "Managing Adult Sex Offenders in the Community—A Containment Approach" (**Document 4**);
- 5) Summarization of an Iowa case entitled "Overview of Key Provisions of Prior Law vs. SF 340 (effective July 1, 2009) (**Document 5**);
- 6) Article from the August 8, 2009, issue of The Economist entitled "Unjust and Ineffective" which was previously mailed to the committee on August 13, 2009; and
- 7) Information regarding Penile Plethysmograph Assessments and the Abel Assessment for Sexual Interest (**Document 6**).

### **Presentations**

#### South Dakota Office of the Attorney General

**Mr. Scott Swier**, Assistant Attorney General, responded to committee questions from the July 8, 2009, meeting.

In response to Representative Gosch's question as to the dollar amount of Byrne Grant funds that the state would lose if they are not in compliance with the Adam Walsh Act (AWA), Mr. Swier stated that the state could lose up to 10%, or \$87,600. He explained that 64% of the Byrne Grant funds are directed to the Attorney General's office and the remaining 36% is given to the Governor's office for use for public safety. Since 2003, the amount of the Byrne Grant has diminished from \$2.4 million to an anticipated \$867,000 for 2009.

In response to Chair Abdallah's request to see what needs to be changed in the state's statutes to be in compliance with the AWA, Mr. Swier stated that the Attorney General's office has provided Ms. Stephanie LoConto with the SMART office detailed information of South Dakota's registry and they hope to have a preliminary report by September 1<sup>st</sup>.

In response to Representative Engel's question of how many sex offenders have been removed from the registry, Mr. Swier stated that since 1994, 1,200 people have been removed. The removals resulted because the sex offenders relocated to another state and had to file in the state of residency, petitioned the court under SDCL 22-24B-19, or were a juvenile and was affected by the Z.B. Supreme Court ruling.

In response to a question as to what purpose the sex offender registry serves, Mr. Swier stated that the South Dakota Supreme Court has ruled that it has been deemed not to be penal and has found the primary justification is the tracking and notification of the public as to the location of sex offenders.

Senator Jerstad commented that the current registry does not tell the public if the sex offender is really dangerous or not. Mr. Swier stated that using a tiered system would provide better information; however, it would be more expensive to administer.

In response to a question regarding if the underlying statute is repealed, are the persons convicted of the repealed laws automatically removed from the sex offender registry, Mr. Swier stated that they are not automatically removed.

#### Iowa Office of Attorney General

**Mr. Ross Loder**, Legislative Liaison, Iowa Highway Department of Public Safety, provided a summary of significant legislation in Iowa since 2002. He noted that Iowa's law enforcement community is more concerned where sex offenders are when they are awake than when they are asleep. He also noted that Iowa does use risk assessments as a tool for treatment; they no longer post the findings on their website as it provides a false sense of security if you rate someone low and they reoffend.

In response to a question about Iowa's civil commitment process, Mr. Loder stated that if a person is found to be a sexually violent predator and incapable of not reoffending, the person is committed to a treatment center.

#### Public Defenders/Defense Attorneys

**Mr. Ryan Kolbeck**, Sioux Falls, a Minnehaha Public Defender and President of the South Dakota Association of Criminal Defense Lawyers, speaking on his own behalf, asked the committee to review the purpose of the sex offender registry and whether everyone on the list should remain on the list forever. He believes that not everyone on the list is a threat. There needs to be an incentive to comply. He believes a tiered system is important; SDCL 22-22-1.3 provides for a presentence investigation report that could be used for risk assessment. He believes that the AWA requirement that employers and families also register is unfair. If a sex offender fails to register, the charge should be a misdemeanor not a felony. A major problem with the community safety zones is the shelters and halfway houses are located within the safety zones and they are not able to obtain the help they need.

At Representative Gibson's request, Mr. Kolbeck stated he would provide the committee with a written summary of his testimony.

**Mr. Jay Davis**, Rapid City, Pennington County Public Defender, speaking on his own behalf, testified that it is clear that not all twenty sex offenses are the same. An unintended consequence of the residency restriction is that it concentrates the sex offenders into lower income trailer parks where there are lots of families with small children.

#### Prosecuting Attorneys

**Ms. Wendy Kloeppner**, Pierre, Hughes County Deputy States Attorney, representing the South Dakota States Attorney Association, stated she had personal experience with the registration process and plea bargaining, and she answered questions relating to those areas.

### Legislators

**Representative Betty Olson**, Prairie City, appearing telephonically, testified that there are inconsistencies with the sex offender registry. She gave an example of an older man that had been charged with three counts of 3<sup>rd</sup> degree rape with his daughter; however, because the daughter would not testify, he was convicted of abuse and cruelty to a minor and is not required to register. She would like this addressed.

**Representative J.E. "Jim" Putnam**, Armour, testified that in his district there are at least two good citizens who are currently on the sex offender registry. He believes bad people should be punished; however, the sex registry has unintended consequences for the family and should not be punishment for life.

### Law Enforcement Officials

**Captain Greg Vandekamp**, Sioux Falls Police Department, provided information as an end user of the sex offender registry. Issues in the current statutes that they would like to see addressed have to do with the definitions of "residency" and "schools." If the AWA is adopted, it will impact law enforcement's workload.

### **Public Testimony**

**Ms. Kathy Kleinsasser**, Andover, appearing telephonically, expressed her dislike with the sex offender registry. As a spouse of a registrant, she asked why the State does not have a DUI registry as they tend to reoffend. The sex offender registry has a negative impact on families and creates hurdles for those seeking employment and housing.

**Mr. Merlyn Schutterle**, Gettysburg, testified that the registry causes paranoia and phobias and is totally worthless.

**Lori**, Pierre, testified that as a victim, she believes that the registry needs to be changed from a lifetime registry to one that is tiered and has limited time frames.

**Mr. Schroeder**, appearing telephonically, spoke about the Citizens United to Rehabilitate Parolees, an international organization located in Washington D.C., which assists parolees so they can find work and learn what they can and cannot do.

Mrs. Eileen Thomas, Belle Fourche, read written testimony from **Toby**, a victim of rape, stating that in some cases, after a reasonable amount of time, an offender should be able to "earn" his/her way off the sex offender registry (**Document 7**).

Mrs. Thomas also read written testimony from her husband, **Mr. Marvin Thomas**, stating that not all sex crimes should be treated the same. He believes that after fifteen years, an offender should be able to apply to be removed from the list (**Document 8**).

**Mrs. Eileen Thomas**, testifying as a spouse of a registrant, explained how the sex offender registry has affected their lives. She stated that the psycho-sexual analysis, which costs \$1100, could be used as a basis to determine whether a registrant was a risk to the public.

**Mr. Randy Chrispen** and **Ms. Tacy Chrispen**, Spearfish, testified that there is a need to educate our children about the laws of statutory rape. They told the story of how their son was convicted and sentenced to three years in the state penitentiary.

**Ms. Jody Delgado**, Huron, and her son, **Aaron**, testified how the sex offender registry has affected their lives. Ms. Delgado said it was time to allow their family to move on as her husband and family have served their time.

**Mr. Kyle Payne**, Sioux City, Iowa, Executive Director for the Midwest Coalition for Sex Offender Rehabilitation, testified that how the public uses the registry should be explored. Is it helpful and is it protecting the public safety as it was intended. He referenced a study done in Omaha that, while it gave peace of mind, rarely did citizens use the registry to take preventive action.

At Representative Gibson's request, Mr. Payne stated that he would provide the committee with his findings in writing.

**Josh**, testified as a registered sex offender, how his life has been affected. He believes the sex offender registry is an unfair process. He believes there needs to be information in the classrooms to make kids aware of the laws.

**Mr. Bert Lafferty**, Harrold, testified about the problems he had encountered with the registry because of the federal and state jurisdiction.

**Ms. Nancy Miklos**, appearing telephonically, asked that her husband be allowed to be removed from the sex offender registry as the incident occurred twenty years ago. She has started the paperwork process; however, because money is tight, must wait to have the psycho-sexual evaluation completed.

**Mr. David Plume**, Manderson, testified that the sex offender registry should allow a means for people to be removed from the list. He believes there is a greater need for the public to know the whereabouts of people convicted for crimes of embezzlement and theft.

### **Committee Discussion/Staff Directives**

Mr. Bezpaletz asked that the committee members contact him with any bill drafting ideas. Representative Gosch and Mr. Swier have offered their assistance. Mr. Bezpaletz will draft a list of about eight or nine major subject areas for the next meeting's agenda.

Representative Engels asked that the committee consider the justice compliance with SORNA.

### **Next Meeting Date**

Chair Abdallah set the next meeting for Monday, September 21, 2009.

### **Adjournment**

**Representative Gibson moved, seconded by Senator Jerstad, that the meeting be adjourned. Motion prevailed on a voice vote.**

The meeting was adjourned at 3:36 p.m.



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