

*****THIS DRAFT DOES NOT INCLUDE APPENDICES, IS NOT FINAL AND IS PENDING A MEETING OF THE AD HOC COMMITTEE ON MARCH 14, 2016.*****

I. Executive Summary / Introduction?

The Ohio Criminal Sentencing Commission identified the administration and application of current sex offender registration laws as one of its priorities for 2015 and created an Ad Hoc Committee to address the topic. The Recodification Committee assigned workgroups to chapters 2907 and 2950 of the Ohio Revised Code and those groups are working in collaboration with the Sentencing Commission Ad Hoc committee. The combination of the groups include representation from sheriffs, prosecutors, defense, Department of Rehabilitation and Correction, victims, judges, the Judicial Conference and the Attorney General's Office.

The underlying questions are straightforward, does the current sex offender registration process fulfill its purpose to protect the public and reduce recidivism? Does the current sex offender registration law meet the spirit of how it was intended? There is no research that links registration and reduced recidivism. The front line implication of the laws, the difficulty in the implementation and administration validate the need for reform.

The current offense-based system is not a transparent, accountable risk-based system that allows judicial discretion in placement of an offender within a tier and/or to determine the offense is such that registration furthers the interest of justice. Movement toward a risk based system will create safer communities, protect the public, ensure effective offender management and punishment, advance criminal justice outcomes and ease administrative burden and conserve fiscal resources while improving efficiency, accuracy and efficacy of sex offender registration.

There is no clear evidence to support that SORNA implementation has made the public safer, deterred any sexual offenses, or contributed to the arrest or discovery of any sex offender. Many officials, nationally as well as in Ohio, conclude that the offense-based tier system "pulls too many offenders onto the registry" and overlooks others who are most at risk to reoffend. This costs taxpayers millions of dollars, compromises public safety and dilutes the validity of the registry to the point of ineffectiveness.

The mandates of the Adam Walsh Act (AWA) virtually eliminate the judiciary from exercising any discretion in controlling sex offenders. The AWA prohibits judges from considering each offender as an individual and de-emphasizes individualized risk assessments as a tool for managing and monitoring convicted offenders. Applying risk principles to individualized sentencing allows scant resources to be directed to those at greatest risk for re-offense¹

The importance of this moment cannot be understated:

For now the first alternative seems bizarrely risky; the second has a very strong element of *inertia* behind it. [Palestine Can Wait...For Now](#) Nathan J. Brown July 19, 2012

¹ Huffman p42, [footnote 181]. Huffman, p44 The California Sex Offender Management Board recently recommended that the sex offender registration system in California follow the risk principles of correction in order for resources to be directed to those who pose the highest risk of reoffending. See California Sex Offender Management Board 2014 Annual Report, *supra* note 118 .

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II. Ad Hoc Committee Members

Jill E. Beeler-Andrews, Ohio Public Defender's Office, Sentencing Commission Advisory Committee Member – Chair
Chrystal Alexander, Office of Victim Services – DRC, Sentencing Commission Member
Sara Andrews, Sentencing Commission
Kari Bloom, Ohio Public Defender's Office, Sentencing Commission Advisory Committee Member
Jo Ellen Cline, Sentencing Commission
Mark Denning, Defiance County Sheriff's Office
Derek DeVine, Seneca County Prosecutor, Sentencing Commission Member
Julie Doepke, Hamilton County Probation, Ohio Victim Witness Association
Judge Michael Donnelly, Cuyahoga County Court of Common Pleas
Judge Gary Dumm, Circleville Municipal Court, Sentencing Commission Member
Katie Hanna, Ohio Alliance to End Sexual Violence
Kelly Heile, Butler County Prosecutor's Office
Cyara Hotopp, OSU School of Law, Criminal Sentencing Commission intern
Judge Huffman, Montgomery County Court of Common Pleas
Matthew A. Kanai, Ohio Attorney General's Office
Brian Martin, Department of Rehabilitation and Correction (DRC), Sentencing Commission Advisory Committee Member
Charles McConville, Knox County Prosecutor
James McFarland, Knox County Sheriff's Office
Karhlton Moore, Office of Criminal Justice Services, Sentencing Commission Advisory Committee Member
Marta Mudri, Ohio Judicial Conference
Sheriff A. J. Rodenberg, Clermont County, Sentencing Commission Member
Judge Nick Selvaggio, Champaign County Court of Common Pleas, Sentencing Commission Member
Sheriff Shaffer, Knox County
Judge Jim Slagle, Marion County Court of Common Pleas
Judge Kenneth Spanagel, Parma Municipal Court, Sentencing Commission Member
Sheriff Larry Sims, Warren County
Erin Waltz, Supreme Court of Ohio Law Library

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III. Background

Since 1963, Ohio has had a sex offender registration statute (former ORC §2950, 130 Ohio Laws 669). Since 1994, when seven year old Megan Kanka of Hamilton, New Jersey, was raped and murdered by a convicted sex offender who lived in her neighborhood, states throughout the United States have adopted “Megan’s Laws” that provide community notice about sex offenders. Ohio’s original SORN Law, House Bill 180, was adopted in 1996. Ohio’s Megan’s Law was then amended by Senate Bill 175 which became effective on May 7, 2002. The law authorized a judge to classify offenders based on their likelihood to commit a sexual offense again, a “risk-based classification.”

On June 30, 2007, Senate Bill 10 was signed into law in Ohio to implement the federal Adam Walsh Child and Safety Protection Act of 2006. The purpose of the Adam Walsh Act (AWA) is to create stricter requirements for SORN Law in hopes of preventing offenders from slipping through the cracks and hurting children. Senate Bill 10 created an “offense-based classification system”. The offense-based classification system turns on the tier of the offense committed ranging from least severe (Tier I) to most severe (Tier III) in determining an offender’s registration and notification requirements².

In January 2010, Ohio was the only state in compliance with the Sex Offender Registration and Notification Act (SORNA), the Title I portion of the Adam Walsh Child Protection and Safety Act of 2006. SORNA is a three-tiered system, ranking sex offenders based upon the severity of the committed offense. Each tier requires a different time span for which the sex offender must be registered and imposes distinct verification appearance requirements. While jurisdictions need not label their sex offenders according to SORNA’s three-tiered system, a jurisdiction must ensure that sex offenders who meet the substantive criteria for placement in a particular tier are, at a minimum, subject to “the duration of registration, frequency of in-person appearances for verification, and extent of website disclosure that SORNA requires for that tier.”³

The County Sheriff is responsible under Ohio law for the registration of sex offenders. Sex offenders must register with the County Sheriff on scheduled periodic basis, which is determined by their sex offender Tier classification. In addition, sex offenders must register with the County Sheriff any change of residential address, place of employment, or enrollment in a school or institution of higher education.

Tier sex offender classifications are determined based upon criminal conviction of offenses and criteria outlined in the table below.⁴

Tier 1 - Sex offenders must register with the County Sheriff at least once annually for a period of 15 years. In addition, must register any change of residential address, place of employment, or enrollment in a school or institution of higher education.

Tier I Offenses

1. Importuning 2907.07
2. Unlawful Sexual Conduct with a Minor 2907.04 (B)(2), unless consensual, case then not registration offense
3. Voyeurism 2907.08 (C) and (D) against a minor

² SORN Law after SB10 – Diroll’s docs

³ http://www.nylslawreview.com/wp-content/uploads/sites/16/2015/06/Volume-59-4.Wang_.pdf

⁴ Information from Franklin County Sheriff’s Office <https://sheriff.franklincountyohio.gov/services/sex-offender-registry/sex-offender-classification.cfm>

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4. Sexual Imposition 2907.06
5. Gross Sexual Imposition 2907.05 (A)(1)-(3) (5)
6. Illegal Use of a Minor in Nudity-oriented Material or Performance 2907.323 (A)(3) (AWA non-Ohio)
7. Voyeurism 2907.08 (A)(B) & (E) (Ohio, non-AWA)
8. Child Enticement 2905.05 (sexual motivation) (Ohio, non-AWA)

Tier 2 - Sex offenders must register with the County Sheriff every 180 days for a period of 25 years. In addition, must register any change of residential address, place of employment, or enrollment in a school or institution of higher education.

Tier II Offenses

1. Compelling Prostitution 2907.21
2. Pandering Obscenity Involving a Minor 2907.321
3. Pandering Sexually Oriented Material Involving a Minor 2907.322
4. Illegal Use of a Minor in Nudity-oriented Material or Performance 2907.323 (A)(1) & (2)
5. Child Endangering 2919.22 (B)(5)
6. Kidnapping with Sexual Motivation 2905.01 (A)(1)(3)(5)
7. Unlawful Sexual Conduct with a Minor 2907.04 (B)(1)(3)(4)
8. Any Sexual Offense that occurs after the offender has been classified as a Tier I sex offender

Tier 3 - Sex offenders must register with the County Sheriff every 90 days for life. In addition, must register any change of residential address, place of employment, or enrollment in a school or institution of higher education.

Tier III Offenses

1. Rape 2907.02
2. Sexual Battery 2907.03
3. Aggravated Murder with Sexual Motivation 2903.01
4. Murder with Sexual Motivation 2903.02
5. Unlawful Death or Termination of Pregnancy As A Result of Committing or Attempting to Commit a Felony with Sexual Motivation 2903.04
6. Kidnapping of Minor to Engage in Sexual Activity 2905.01(A)(4)
7. Kidnapping of Minor, Not By Parent 2905.01(B)
8. Gross Sexual Imposition 2907.05 (A)(4) (Under 13)*
9. Felonious Assault with Sexual Motivation 2903.11**
10. Any Sexual Offense that occurs after the offender has been classified as a Tier II sex offender

* Federal offense is victim under 16

Note: Tier III sex offenders are also subject to community notification, which means upon a change of residential address, the County Sheriff will provide notice to a neighborhood within 1,250 feet of the sex offenders residential address. The County Sheriff will also provide notice to schools, registered day-care providers, and law enforcement agencies within the 1,250 foot radius.

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IV. Data

The number of registered sex offenders in Ohio at any given time changes every day. On November 9, 2015 it was 18,690 actively registering offenders⁵. A breakdown with the numbers of offenders in each category is attached, [Appendix A](#). The number of sexually oriented offenders incarcerated in the Department of Rehabilitation and Correction (DRC) on November 1, 2015 was 10,141ⁱ. The number of offenders incarcerated with a 2907 sex offense as the current most serious was 7,233 and the number incarcerated with a 2907 or sex offender registration violation offense as the current most serious offense was 7,775.⁶

Furthermore, DRC trend data on prison commitments pre and post Adam Walsh shows 547 inmates incarcerated for violating sex offender registration laws. Inmates convicted of **2950.04 – Duty to Register**, **2950.05 – Notice of residence address change** and **2950.06 – Periodic verification of current residence address** offenses have increased from 318 inmates (4.3% of total sex offender population) in July 2006 to 547 inmates (7% of the total sex offender population) as of January 1, 2016, resulting in a prison bed impactⁱⁱ of about 250 beds. The overall population has since stabilized to about 550. The combination of 2950. 04, 05, 06 is third most frequently admitted sex offenses today– behind rape and sexual imposition. The trajectory over time and peak in 2008-2009 mirrors intake explosion in prison population in general and is consistent with broader pattern, however after 2008-2009 there has not been a subsequent decline like for other commitments.⁷ This information is further illustrated in the attached data brief [Appendix B](#).

Include DRC recidivism data pre and post adam walsh – Brian is working on this

V. Analysis

As noted, in January 2010, Ohio was the only state in compliance with the Sex Offender Registration and Notification Act (SORNA), the Title I portion of the Adam Walsh Child Protection and Safety Act of 2006. July 27, 2011 was the implementation deadline for the comprehensive national system for the registration of sex offenders. The Sex Offender Monitoring, Apprehending, Registering and Tracking (SMART) office that administers SORNA requirements identified the following jurisdictions as meeting the compliance deadline: States of Alabama, Colorado, Delaware, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee and Wyoming, and the United States territory of Guam, the Commonwealth of Northern Mariana Islands and the U.S. Virgin Islands⁸.

That list of compliant states remains unchanged as of today⁹.

In an April 2009 National Consortium for Justice Information and Statistics [survey on State Compliance](#) with the Sex Offender Registration and Notification Act, eight states (California, Florida, Iowa, Maine, Nevada, Oregon, Vermont, and West Virginia) responded that they were concerned with implementation costs or restricted by their state budget.¹⁰ Five states – Arizona, Arkansas, California, Texas and Nebraska – have neither complied with SORNA nor applied to use JAG funds to come into compliance. Arizona, made a states’ rights argument against implementation as an unfunded federal

⁵ Information provided from the Ohio Attorney General’s Office.

⁶ Information provided from the Ohio Department of Rehabilitation and Correction

⁷ Department of Rehabilitation and Correction data

⁸ <http://www.ncsl.org/research/civil-and-criminal-justice/adam-walsh-child-protection-and-safety-act.aspx>

⁹ <http://www.smart.gov/sorna.htm>

¹⁰ <http://www.search.org/files/pdf/SORNA-StateComplianceSurvey2009.pdf>

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mandate and expressed the state's sex offender registry does a better job of protecting the public than a system imposed by the federal government. California and Texas referenced economic reasons for their refusal to comply. Nebraska attempted to comply with SORNA in 2010 by changing its sex offender registry to categorize offenders by their convictions rather than by the individualized risk assessments previously used.¹¹

Many states found not complying was less costly, like the state of New York. In a [letter](#) to Linda Baldwin, director of the U.S. Justice Department's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, Risa Sugarman, director of the state's Office of Sex Offender Management, said: "The costs would be far greater than the loss" of federal funding. Officials also purported that the state's current policies for sex offender registration were sufficient for maintaining public safety. "New York believes that our present laws and risk assessment method provide our citizens with effective protection against sexual predators," Sugarman said. The state "will continue its commitment to ensuring that our citizens are protected from sexual predators by the enforcement of all of our laws and the continued cooperation with your office."¹²

The SMART Office is responsible for determining, on a case-by-case basis, whether a jurisdiction has substantially implemented SORNA's baseline requirements. In assessing compliance, the SMART Office considers the totality of a jurisdiction's rules governing the operation of its registration and notification program, including statutes and administrative policies and procedures.¹³ Failure to substantially implement SORNA results in a 10 percent reduction in a state's allotted Byrne Memorial Justice Assistance Grant (JAG) funding. Notably, in 2006, it was determined to be more costly – in every state – to implement SORNA than to lose 10 percent of [JAG funding](#)¹⁴.

The Office of Criminal Justice Services, Department of Public Safety maintains the JAG funding for Ohio. Funded JAG applications for CY2016 include 186 unique projects in 63 counties for a total amount of \$4,418,731.30¹⁵. The request for proposal illustrating the program areas funded and the specific programs by county by dollar amount are noted in [Appendix E](#).

Ohio remains in substantial compliance and, in fact, often exceeds the baseline SORNA requirements. See charts [Appendix C and D](#).

In 2011, SMART Office officials told a U.S. House Judiciary Subcommittee "that SORNA's tiered classification system [was] a barrier for at least 11 states."¹⁶ Currently, at least half of the fifty states use risk-based assessment systems to classify sexual offenders (rather than the SORNA three-tier system).¹⁷ Moreover, comprehensive studies have shown that actuarial risk assessment scores consistently outperform the SORNA tier system in accurately predicting sexual re-offending.¹⁸ Some states—for example, Montana and New York—have explained that their refusal to comply with SORNA is based on SORNA's mandate to adopt the federal three-tier system.¹⁹

¹¹ <https://www.prisonlegalnews.org/news/2014/sep/19/some-states-refuse-implement-sorna-lose-federal-grants/>

¹² <http://www.governing.com/blogs/fedwatch/States-Find-SORNA-Non-Compliance-Cheaper.html>

¹³ http://www.smart.gov/sorna_tools.htm#sornaguidelines

¹⁴ <http://www.ncsl.org/research/civil-and-criminal-justice/adam-walsh-child-protection-and-safety-act.aspx>

¹⁵ Data from the Office of Criminal Justices Services, Department of Public Safety

¹⁶ Wang note 142

¹⁷ Wang note 146

¹⁸ Wang note 147

¹⁹ Wang note 148

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This phenomenon is demonstrated every day in Ohio court rooms. For example, consider the data collected in Courtroom 19-A, Judge Michael P. Donnelly, Cuyahoga County Court of Common Pleas that suggests legislative intent is frustrated and circumvented in the administration of cases because between the years 2008 and 2014 more than 236 defendants, many of whom were indicted with multiple offenses, and all of whom, if convicted of the indicted offense(s) would have been subject to some level of registration. None of the defendants pled to the indictment and only four pled to offenses that required Tier 1 reporting. 41 offenders were imprisoned in DRC facilities; some were jailed-most with suspended sentences; most were placed on community control sanction. In other words, an offense based registry invites a bargained plea to avoid registration and thwarts public policy with an outcome that the purposes and principles of sentencing, punishing the offender and protecting the public, are lost.

At the same time, there are many less egregious cases subjected to long registration periods like the case of Travis Blankenship, *State v. Blankenship*, Slip Opinion No. 2015-Ohio-4624. Blankenship, 21, and a 15-year-old girl identified as M.H. started talking online in 2011 through the social media site PhoneZoo.com. During one conversation, they shared their ages. The two met and became involved sexually. M.H. stated that their sexual relationship was consensual. Blankenship was charged with unlawful sexual conduct with a minor. He pled guilty, and was sentenced to five years of community control.²⁰ Current law requires him to be classified as a Tier II sex offender and to register for 25 years, or until he is 46 years old.

Despite the various efforts to precisely define the term, there is no distinct cohort of sex offenders. Sex offenders and sexual crimes vary widely. The crimes encompassing sex offenses range from misdemeanors, such as urinating in public, to horrific and brutal crimes, such as sexually motivated murder. Crimes falling within the definition of sexual offenses may be forced or consensual, contact or non-contact, violent or passive. Victims may be known to the aggressor or strangers, and include children and adults.²¹

The AWA virtually eliminates any potential for judicial discretion in the management of convicted sex offenders. Instead, the AWA imposes registration and notification obligations based strictly upon offense type, ignoring individual offender characteristics and circumstances. The AWA also establishes mandatory sanctions for an offender’s failure to register or to notify authorities of changes in the offender’s information. Even though the federal legislation now mandates specific sex offender regulations, the financial and physical burden of sex offender registration and monitoring falls on local jurisdictions.²²

²⁰ Court News Ohio <http://www.courtnewsOhio.gov/cases/2015/SCO/1112/140363.asp#.VroZ-Z0o6Uk>

²¹ Huffman moral panic, p 10

²² Huffman, p 30

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VI. Operational Impact, Cost to Administer

In attempting to comply with SORNA, states and local sheriff departments incur significant costs in various areas, including: additional personnel; software installation and maintenance; additional jail and prison space; increased court and administrative needs; law enforcement, including the need to verify information at more frequent intervals; staff overtime and legislative costs associated with adopting and monitoring state laws. Some sheriff offices have dedicated deputies for sex offender registration, compliance and monitoring. Other departments incur the incidental costs/marginal of equipment, vehicles, and the verification, compliance monitoring during the normal course of patrol and other duties, similar to civil process duties.

	County pop	Registered sex offenders	salary	Uniform /equip	Vehicle includes equip & maintenance	overtime	Supplies (office, postage)	Total annual cost
Defiance County			Includes benefits \$94,094	\$2,000	\$32,500	\$10,000	\$4,000	\$142,594.00
Warren County ⁱⁱⁱ			\$57,230.10	----	----	----	----	\$57,230.10

Other? Impact on registrants – need to explain the practical problem of defining residence for people who move around a lot, the limited hours Sheriffs Offices are open for registration.

VII. Recommendations

The Adam Walsh Act (AWA) legislation represents an important step in closing gaps through which dangerous sex offenders could slip prior to the federalization of sex offender management. Federal registration mandates can provide for consistency in obligations, management and enforcement of restrictions on sex offenders, but only if all states adopt uniform policies. At some point however, legislative strategies must overcome the moral panic that has overshadowed legislative regulations for the last quarter of a century. The AWA must be amended to reflect what empirical research has revealed about sex offenders and sexual offending. Simply put, no panacea exists to assuage communal anxiety surrounding sex offenders. No all-encompassing strategy will address the unique concerns of specific offenders²³.

There are four strategies which can incorporate scholarly findings into sex offender management practices, all of which necessitate restoring some discretion to the judiciary in sanctioning sex offenders. First, legislation should be modified to authorize judges to determine when individual low-level sex offenders will be subject to registration duties. Second, laws should permit judges to consider risk assessments in managing sex offenders. Third, legislation should enable judges to deregister first time sex offenders after a reasonable period of full compliance with registration obligations. Finally, sex offender management should incorporate the proven practices associated with problem-solving courts²⁴.

²³ Huffman, p40

²⁴ Huffman, p44-45

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The essential elements of implementing a risk-based system include:

1. Trial courts need discretion to determine and identify those offenders who pose the most risk and that should be subject to registration. The explanation of the registration requirement should be part of colloquy [advise of potential penalties i.e. up to life] and sentencing, thereby providing meaningful notice to the offender. The requirement to read the form on the record should be eliminated, the form should be signed and reviewed by defendant and counsel. The construct of the AWA impinges on the role of the judge in effective offender management by limiting consideration to offense type only. Consistent with the principles of correctional intervention, the dossier of information the judiciary may consider in fashioning individualized sanctioning should be multi-dimensional, whereas the mandates of the AWA rely on a single, static factor, offense type. Judges must weigh the competing purposes of sentencing, which include rehabilitation, incapacitation, deterrence and retribution²⁵.

Discussion: Should the summary include a suggestion that certain offenses, primarily the Tier III offenses should be mandatory registration, without judicial discretion. Some of the literature suggests that violent and the more serious offenses may be appropriate for mandatory registration but the lower level offenses should involve judicial discretion. (added 02-25-16)

what, if any, burden of proof should attach to the judicial classification? Under Megan's Law, the trial court had to find by clear and convincing evidence that the offender was a sexual predator. Should it be a preponderance of the evidence?

if the trial judge is permitted the exercise of discretion in making a classification, then abuse of discretion should be the standard of review which grants the court broad latitude in analyzing the risk factors and applying them to a particular offender and offense.

2. Empower the trial court Judge, at the time of sentence, to determine the start and end date of the registration period, eliminating the need for subsequent tolling i.e. the Judge imposes a ten year prison sentence with a 20 year registration period, recognizing the ten years in prison. Additionally, provide the trial court authority to modify the period of registration imposed and require training on appropriate risk assessment tools. Administering an appropriate risk assessment, combined with other tools, creates the greatest potential for risk determination, consistency and limitations i.e. level of risk = judicial discretion = period of registration.
3. Impose the duty to register upon a finding of guilt (only if civil sanction) to account for time between plea and sentence and make it a condition of bond.

Discussion: is imposition of a duty to register upon a finding of guilty and before sentence dubious? Any concern about imposition of interlocutory orders in criminal cases? Should explain the rationale for change, and why include it in bond? If an offender poses a risk pendente lite, revoke the bond.

4. Allow the Judge discretion to impose GPS on high risk offenders and consider supervision or other contact to supplement registration. This can be funded through cost savings from modification of current law.

²⁵ Huffman, p43

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5. Redefine jurisdiction to state and require in person annual registration on the offender's date of birth unless there is a significant change status. Clarify days – business, consecutive and allow electronic/on-line updates for routine changes.
6. Allow for a modification of the registration requirement for *all* offenders upon motion of offender or prosecutor.
7. Permit the Judge to impose residency restrictions based upon risk and fact pattern of offense. Consider 'in the vicinity of' or 'on the property' v. residence restriction. Define residence, temporarily domiciled.
8. Eliminate dual registration requirements for subsequent offenses – i.e. 2950.07(C) and specify the default registration period is to the longer period.
9. Community notification – clarify and define who and how often. *Needs discussion*
10. FTR – require knowingly; revisit penalties; account for or toll time incarcerated. *Needs discussion*
11. Recommend and implement a forum for ongoing public education.
12. Clearly articulate policy and specify impact of statutory revision(s) to current registrants.

ⁱ includes inmates with both 2907 offenses and a small number of non-2907 offenses with motivation present, or those with a prior sexually oriented offense.

ⁱⁱ Bed impact = admissions and length of stay

ⁱⁱⁱ Do not track some costs such as, fuel, time in court, vehicle maintenance, supplies