

USING PERSONAL NARRATIVES & POLITICAL MOMENTUM TO BEAT BACK YOUTH SEX OFFENDER REGISTRATION

NJDC LEADERSHIP SUMMIT
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Monika Germono, Assistant Public Defender
Lisa Minutola, Chief of Legal Services
Delaware Office of Defense Services

“MEGAN’S LAW” IN DELAWARE

- 1994 - Legislation passed which required **ALL** sex offenders to register with the state

JUVENILES MUST REGISTER

- “[A]ny **juvenile** adjudicated of a “sexual offense” must register upon discharge from juvenile services
 - Destruction of record if the registered offender reached age 25 and had not been arrested for any like offense
 - The first youth was registered on November 13, 1995
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JUVENILE COMMUNITY NOTIFICATION

- 1999 - Community Notification Law was passed
 - “Any **juvenile** who is adjudicated delinquent after June 27, 1994, of any offense which would constitute any of the offenses ... if he or she had been charged as an adult.”
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MANDATORY REGISTRATION AND NOTIFICATION

- Tier designations (I-III) were based on the offense
- Relief from registration very limited

SORNA COMPLIANCE

- In 2007, Delaware passed legislation to “amend the existing Megan’s Laws to conform to recent federal legislative changes required under the ‘Adam Walsh Act’.”
- In 2009, more technical changes were made

TIER LEVELS INCREASED

- Tier III remained for life
- Tier II increased to 25 years
- Tier I offenders remained at 15 years
- The amended laws applied to all sex offenders who were declared a sex offender on or after June 27, 1994

RELIEF VERY LIMITED

- Tier III may petition for designation as Tier II after 25 years
 - Tier II may petition for designation as Tier I after 10 years but only if the victim was not under 18
 - Tier I may apply for relief from registration after 10 years
 - Only if certified sex offender treatment program completed, no new criminal convictions and no violations of probation
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LEGAL CHALLENGES

- In 2001, Delaware's Supreme Court upheld mandatory sex offender notification and registration requirements for juveniles
 - *Helman v. State*, 784 A.2d 1058 (Del. 2001)
- ODS began to challenge the statute. In 2009, a Family Court judge determined he could provide relief from registration or defer registration pending treatment
 - *State v. Becker*, 979 A.2d 1149 (Del. Fam. Ct. 2009)
 - *State v. Horton*, 980 A.2d 1039 (Del. Fam. Ct. 2009)
- Delaware's Supreme Court overruled this expansive interpretation in *Fox v. State*, 11 A.3d 226 (2010)

FAVORABLE COURT CASES

- *State v. Fletcher*, 974 A.2d 188 (Del. 2009) - juvenile expungement of sex offense removes information from the sex offender registry
- *Heath v. State*, 983 A.2d 77 (Del. 2009) - a governor's pardon removes information from the sex offender registry

SORNA COMPLIANCE

- Delaware was deemed to be in substantial compliance with SORNA on May 3, 2010 - Second state after Ohio

RESEARCH AGAINST SORNA

- Emerging research about best practices for treating juveniles adjudicated of sex offenses and the differences between juveniles and adults
 - DSCYF received several CASOM grants to train its divisions and juvenile justice partners
 - Delaware's Sex Offender Management Board began its task of drafting and implementing standards and guidelines for the management and treatment of sex offenders
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DELAWARE FIGHTS BACK IN 2009 – HB 182

- Family Court discretion to determine the registration for juveniles who did not fall under SORNA
 - Codified *Fletcher*
 - Conferred discretion upon the Family Court to determine whether consent occurred in certain offenses committed between offenders who were less than fourteen years old and victims less than 12 years old
 - Bill not released from committee amid opposition from DOJ
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SUPPORT GROWS

- During the recess, attempts to meet with DOJ were rebuffed
- HB 182 peaked the interests of many other juvenile justice and child welfare agencies
 - HS 1 for HB 182 drafted
- Eliminated controversial portions of HB 182 including *Fletcher* and determination of consent for victims under 12 if the offender was under 14

ADVOCACY RAMPS UP IN 2010

- On March 31, 2010, Nicole Pittman, Esq. and Dr. Tim Foley, presented to a joint session of the House and Senate Judiciary Committee
- On May 24, 2010, Nicole Pittman presented information to the Delaware Sex Offender Management Board
- Bill gained supporters such as the Delaware Center for Justice who lobbied Representatives and Senators to support the bill and drafted a white paper brief

ADVOCACY CONTINUES IN 2011

- Additional partners: Office of the Child Advocate, the Department of Services for Children, Youth and their Families and other youth serving organizations
- Letter of support was drafted by DCJ, signed by these agencies and sent to then Delaware Attorney General, Beau Biden
- Meeting held with the governor's office
 - Result state agencies affected by this bill were free to testify

MOVEMENT FORWARD IN 2011

- On May 26, 2011, HB 137 was introduced - bill was identical to HS 1 for HB 182
 - On June 1, 2011, the bill was debated in the House Judiciary Committee
 - The Attorney General's Office again actively opposed the bill but hinted at the possibility of compromise
 - The bill was released from committee with 8 votes on the merits and 2 abstentions
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MOVEMENT STALLS

- The bill was not debated on the House floor prior to the recess in July as sponsor sought to reach a compromise with DOJ prior to debate on the floor
 - Since 2012 was again an election year, bill not introduced but advocacy efforts remained
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SUCCESS IN 2013!

- In 2013, House Bill 182 with HA 1, HA 2, SA 1, and SA 2 passed
 - Created 11 Del. C. § 4123
 - DCJ headed the lobbying efforts with letters of support, white papers and outreach
 - Letter of support read into record on floor
 - Testimony by ODS, YRS, OCA and private attorneys
 - Powerful impact
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11 DEL. C. § 4123

- Discretion at the time of sentencing whether to register and what level for all non-SORNA youth
- Discretion to remove registered youth
- Effective date 10/16/13
- Retroactive

SENTENCING

- “Prior to sentencing,...the Court shall order and receive a comprehensive evaluation, risk assessment and treatment recommendations for said juvenile by a certified mental health professional who specializes in the evaluation and/or treatment of juvenile sex offenders”

COURT'S AUTHORITY

- After hearing, Court may relieve juvenile from registration or assign juvenile to a lower tier if Court finds by a preponderance that the juvenile does not pose a threat to public safety

RELEVANT FACTORS

- Risk the juvenile poses to the victim, the community and to other potential victims;
 - Nature and circumstances of the offense;
 - Impact on the victim including the effects of registration and community notification;
 - Comprehensive evaluation, risk assessment and treatment recommendations or outcomes for the juvenile required by subsection (b) of this section;
 - Likelihood of successful rehabilitation, if known; and
 - Adverse impact of public registration on the juvenile and the rehabilitative process
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EVIDENCE/WITNESSES

- Experts
- Probation Officers
- Treatment Providers
- Teachers
- Clergy
- Coaches
- Family members
- Specific examples of harm to the juvenile if registered

REGISTRY REMOVAL

- Any non-SORNA youth may petition for removal after:
 - Two years have passed since date of adjudication or completion of treatment **WHICHEVER IS EARLIER**
- Statute is retroactive so any eligible youth placed on registry before October 13, 2013 may petition for relief

JSO GRANT

- In 2014, ODS was awarded Byrne Grant funding to establish a JSO removal attorney
 - Contract position
 - Salary
 - Expert fees
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WHAT WE ARE UP AGAINST....



BUT.....

JUVENILE SEX OFFENDERS = LOW RECIDIVISM RATES

- **Studies**

- Michael F. Caldwell, Sexual Offense Adjudication and Sexual Recidivism among Juvenile Offenders, *Sex Abuse* (2007)

- **Case law**

- 4.3% noted as “extremely low” in *State v. N-T-*, 2014 Del. Fam. Ct. LEXIS 11, at*16 (Jan. 30, 2014 Del. Fam. Ct.)

- **Application**

- Motion/Petition for Relief from SOR
- Opening & Closing Remarks
- Elicit through expert testimony

CHILDREN ARE NOT SIMPLY “LITTLE VERSIONS” OF ADULTS

- **Supreme Court**
 - *Graham v. Fla.*, 130 S.Ct. 2011 (2010),
 - *Roper v. Simmons*, 543 U.S. 551 (2005),
 - *J.D.B. v. North Carolina*, 180 L.Ed. 2d 310 (2011),
 - *Miller v. Ala.*, 132 S.Ct. 2455 (2012),
- **DE decisions**
 - See handout

THREE CRITICAL DIFFERENCES

- Juveniles “lack of maturity” and are impulsive,
 - Juveniles are vulnerable to external influences and have a limited ability to control their environment, and
 - Their still-developing characters make their actions less indicative of “irretrievable depravity” (less culpable)
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MYTHBUSTERS

ADULT OFFENDER BEHAVIOR VS. INAPPROPRIATE ADOLESCENT BEHAVIOR

- Letourneau, E. & Miner, M., Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo, *Sexual Abuse*, Vol. 17, No. 3, 293-312 (2005),
- Halbrook, A., Juvenile Pariahs, 65 *Hastings L.J.* 1, (2013),
- Human Rights Watch, No Easy Answers: Sex Offender Laws in the U.S., (September 2007), *available at* <http://www.hrw.org/reports/2007/09/11/no-easy-answers>,
- Raised on the Registry, The Irreparable Harm of Placing Children on Sex Offender Registries in the US, (May 2013), *available at* http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf

EVIDENCE REGARDING GENERALLY ACCEPTED ASSUMPTIONS ABOUT JUVENILE SEX OFFENDERS

MYTH

There is an Epidemic of Juvenile Sexual
Offending

MYTH

Juvenile Sex Offenders are Different from
Other Juvenile Offenders and Similar to Adult
Sex Offenders

MYTH

Juvenile Sex Offenders are at High Risk of
Reoffending

MYTH

SOR Prevents Re-offending & Deters Sexual
Offending

SOR GOAL ACCOMPLISHED:

BANNING A TWENTY-SEVEN-YEAR-OLD FATHER FROM HIS SIX-YEAR OLD SON'S SCHOOL ACTIVITIES

- Client's wife wrote: *"This year, I attended our son's Halloween Party and Parade and my son looked at me and said, "Mommy, how come Daddy never comes to my school." How do I as a mother answer that question? Our son is only in the first grade, that leaves 11 more years of schooling and events my husband will not be able to attend."*

SOR GOAL ACCOMPLISHED:
*KEEPING YOUTH UNEDUCATED &
UNEMPLOYED*

SOR GOAL ACCOMPLISHED:
*YOUTH ENGAGING IN SELF-HARM,
DEPRESSED, AND BULLIED*

- Juvenile client expressed “*feeling horrible*” about all the lives that his actions affected and “*wished there was a reset button*” to change everything..... psychologist reported “*at this time he stopped talking and began to weep heavily.*”

SOR GOAL ACCOMPLISHED:
MAKING KIDS CRY

- Confused police officer.....who's supposed to register, not this kid?

SOR GOAL ACCOMPLISHED:

NO TRICK AND NO TREAT

- ANY sexual offender:
 - Cannot distribute candy,
 - Cannot wear a costume,
 - Cannot exhibit exterior holiday decorations,
 - Must avoid all Halloween related contact with children,
 - Must post a sign at his/her residence stating, “No candy or treats at this residence.”
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SOR GOAL ACCOMPLISHED: *“TORTURE CHAMBER”*

- *Despite having “the qualities of a natural leader: he was confident, articulate, and passionate about helping communities overcome the challenges that he knew first-hand,” a passionate leader, and being our “first choice match,” he was disqualified due his listing on the sex offender registry.*
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SOR GOAL ACCOMPLISHED:
PREVENTING CHILD PORNOGRAPHY

SOR GOAL ACCOMPLISHED:
YOU ARE A CRIMINAL, SO ACT LIKE IT

- Client felt like his “*life was over*” as he could no longer attend his school and knew that being on the registry would impact his ability to have a normal adult life.
- “*He came to perceive himself as a ‘bad kid’ and thus begun acting the part.*”

SOR GOAL ACCOMPLISHED:
*SETTING CLEAR & FAIR GUIDELINES AND
EXPECTATIONS, NOT*

- **1995 – 10 year registration:** client is 15 (off when 25)
- **Then 4 years later in 1999 – 15 year registration:** client is 19 (off when 30)
- **AND THEN 8 years later in 2007 – 25 year registration:** client is 27 (off when 40)

RECAP

- Case Evaluation

- One attorney handles all retroactive juvenile relief from SOR matters,
 - Utilize Psycho-forensic Evaluators (invaluable),
 - Gather necessary records,
 - Character letters,
 - Victim's position on client's relief from SOR,
 - Statutory factors, case law vs. client's case.
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RECAP

- Persuasive Arguments

- Detailed motion includes all (most) character letters, exhibits, and references to research,
 - Expert's testimony, including low recidivism rates
 - "Isolated offense,"
 - Time: "decade-old offense,"
 - Contrast client's age at the time of offending (12) and number of years on the registry (15),
 - Low recidivism rates,
 - Children are not "little versions" of adults,
 - Rehabilitation & future-oriented goals,
 - Personal & passionate stories.
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STATISTICS

Since the Office began handling cases in 2014:

- Identified over 300 potential cases,
 - Obtained records and evaluated over 100 cases,
 - Hired experts in close to 50 cases,
 - All 17 filed Motions for Relief granted,
 - Approximately 11 cases are currently pending with Family Court (filed),
 - Assisted with expungements,
 - Assisted with pardons,
 - Assisted with removals from “private sex offender” websites.
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WRAP UP

- Questions
 - Contact info
 - Lisa.Minutola@state.de.us – 302 577 5118
 - Monika.Germono@state.de.us – 302 577 5117
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