

# Youth, Rights & Justice

ATTORNEYS AT LAW

To: Senate Committee on Judiciary, 2013 Oregon Legislature

From: Mark McKechnie, Executive Director

Date: May 21, 2013

Re: Support for HB3253-A Dash 4 and Dash 5 Amendments

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Chair Prozanski and Members of the Committee:

Youth, Rights & Justice, a 38 year-old not-for-profit law firm, represents children and youth in the juvenile dependency and delinquency systems. We have represented 50,000 clients since 1975.

## Summary of Amendments

The proposed Dash 5 amendments to HB 3253A contain provisions to clean up two omissions or oversights from SB 408, which was passed with overwhelming bipartisan support in 2011. One is to allow a juvenile registrant who has moved to another state to petition for relief in Oregon. The second allows someone who committed an act as a youth to apply for relief in the rare, but unfortunate cases, when delayed reporting has led to adult prosecution. Convictions under Measure 11 are specifically exempt from this provision.

In addition, the Dash 4 amendments would allow Oregon to join other states in limiting the registration requirement to older youth – those who are 15, 16 or 17 at the time of the offense. This provision also does not apply to youth who are automatically waived to adult court under Measure 11. A 14 year-old who committed an offense using force or incapacitation would also be required to register, which is consistent with federal law (SORNA).

## Recidivism is Low, and Registration Does Not Help

Most studies reviewing youth recidivism rates have found that youth adjudicated of a sex offense are the least likely to reoffend among all offenders, at rates ranging from 1%-12%. A statewide study in Wisconsin found youth offenders *unlikely* to commit future sex offenses regardless of the type of original charge. (See attached.) Whether or not they originally committed a sex-related offense, the rates of future offending in both groups were only 6%-7%. The difference was not statistically significant.

The Wisconsin study included 2,029 juvenile offenders. Of the 118 who committed new sex offenses within 5 years of release, only 17 (14.4%) were registered, while 101 (85.6%) were *not registered* because they had not committed such an offense previously.

A study in 2010 found that registration and notification laws have not reduced recidivism, a finding that was consistent with previous findings that registration policies have virtually no impact on sexual abuse recidivism.<sup>1</sup> Further, registration policies fail to recognize the simple fact that adjudicated youth and

victims often know one another and may live in the same household, which makes public registration a pointless requirement.

### **Problems with Automatic Youth Registration**

Lifetime registration is automatically imposed upon youth in Oregon, one of only a handful of states with this requirement. Unless or until they can successfully petition for relief, registration will be a burden youth carry for the remainder of their lives. Registration in Oregon has been imposed upon children as young as eight years of age.

Because we know that children and adolescents are not merely “small adults,” there is a wide range of approaches to youth registration across the country. There are 14 states with no registration requirements for youth, including states such as Alaska, Georgia, Kentucky, New York, Vermont, West Virginia and Wyoming. Roughly two-thirds of states with youth registries limit registration in a number of ways, including:

- Minimum ages (as proposed in Dash 5)
- Limited duration registry
- Automatic termination of registration, between the ages of 17 - 21
- Judicial discretion to impose or limit registration
- Juvenile registry not accessible to the public

***Registration exacerbates the very risk factors that treatment and rehabilitation seek to address:*** social isolation and education and social skills deficits. The good work done by the Oregon Youth Authority and by county juvenile departments and treatment providers across the state is undermined by the onerous burden placed upon youth and young adults by the registry. According to ATSA, a national organization of treatment providers who serve offenders, which is based in Beaverton, OR, multiple studies have shown that youth subject to the public exposure and limits that registration places upon housing:

“suffer from significant stress factors, such as the loss of a job or home, harassment, and physical assault. A majority of offenders experience chronic difficulty finding a place to live and are frequently forced to move far away from the support and resources that may keep them stable.”<sup>ii</sup>

### **Children are Not Little Adults**

This is too heavy a burden for youth and adolescents who may be prosecuted for behavior that is developmentally normal or the result of childish curiosity, impulsivity or risk-taking. According to the Center on Early Adolescence at the Oregon Research Institute:

“[A]dolescents’ brains are undergoing massive growth and re-organization in the pre-frontal cortex, and this growth is not finished until the early 20’s. The pre-frontal cortex is where emotional regulation, impulse control, risk assessment, and rational decision-making happen. Until the pre-frontal cortex is fully developed, adolescents tend to be emotionally unpredictable, impulsive, risk taking, and to show poor judgment. In fact, sensation seeking and impulsivity peak during adolescence. In addition, during adolescence, levels of serotonin (an important

neurotransmitter) in the brain decline due to increases in sex hormones. With that decline in serotonin, irritability, aggression, and depression increase.”<sup>iii</sup>

We know that the vast majority of these young people grow up and grow out of this type of behavior. Youth who receive appropriate treatment rarely reoffend.

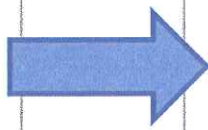
**Youth, Rights & Justice urges your support of The Dash 4 and Dash 5 amendments.** Children are different than adults. Promoting their success through treatment and rehabilitation, and removing barriers to education, employment and housing that result from registration, is good policy and a better use of scarce public resources.

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<sup>i</sup> Association for the Treatment of Sexual Abusers, A reasoned approach: Reshaping sex offender policy to prevent child sexual abuse.

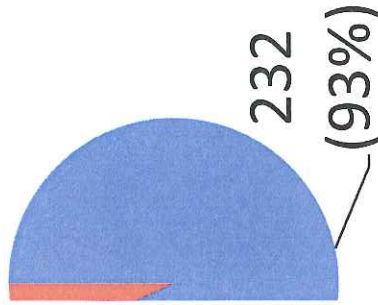
<sup>ii</sup> Association for the Treatment of Sexual Abusers, A reasoned approach: Reshaping sex offender policy to prevent child sexual abuse.

<sup>iii</sup> Metzler, C.W., Biglan, A., Embry, D.D., Sprague, J.R., Boles, S.M., & Kavanagh, K.A. (2008). Improving the well-being of adolescents in Oregon. Eugene, OR: Center on Early Adolescence, Oregon Research Institute.



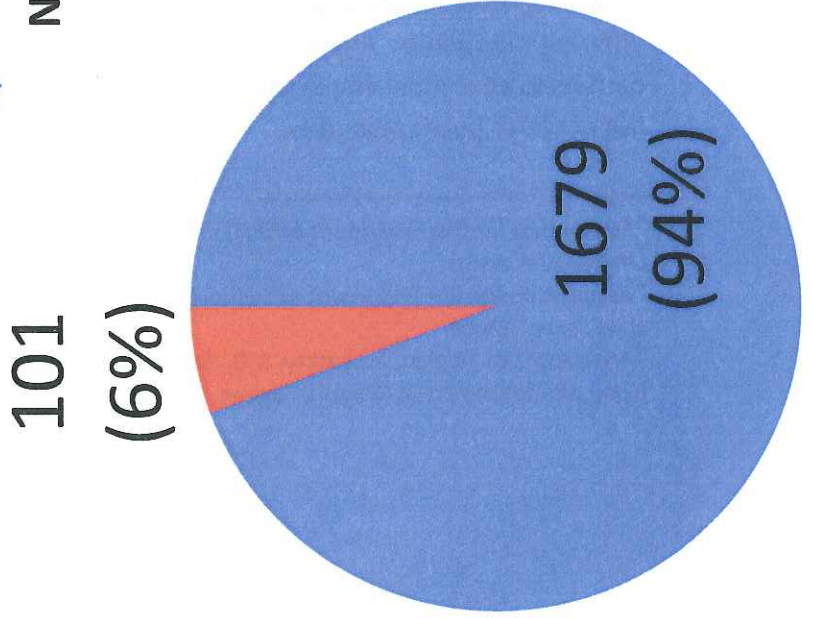
**Juvenile Sex Offenders --  
5 Years After Release**

- No Sex Offense within 5 Years After Release
- Sex Offense within 5 Years after Release



**Non-Sex Juvenile C  
-- 5 Years After R**

- No Sex Offer Years After R
- Sex Offense ' Years after R



... the recidivism patterns of a cohort of 249 juvenile ... ,780 non-sexual offending delinquents who were released ... over a two and one half year period. The prevalence of sex ... (ual offense charges during the 5 year follow-up period was ... % for the non-sexual offenders, a non-significant difference.



**When the only difference is age:**

When one youth touches another in an intimate area and the contact is unwelcome (but not forcible), the severity of the charges can be very different based solely upon the ages of the youth involved.

Junior & Sophomore

If a 17 year-old makes unwanted contact with a 16 year-old, the charge is likely to be Sex Abuse III (1):

It is a *Class A Misdemeanor*.

The 17 year-old *will not have to register* as a sex offender.

The 17 year-old is unlikely to be committed to OYA, but if he is, the maximum disposition is one year.

7th grader & 8th grader

If a 14 year-old makes unwanted contact with a 13 year-old, the charge is likely to be Sex Abuse I (2):

It is a *Class B Felony*.

The 14 year-old is subject to automatic, lifetime sex offender registration.

The 14 year-old is more likely to be committed to the Oregon Youth Authority, and the commitment for a Class B Felony can be up to 10 years.

<sup>1</sup> 163.415 Sexual abuse in the third degree. (1) A person commits the crime of sexual abuse in the third degree if:

(a) The person subjects another person to sexual contact and:

(A) The victim does not consent to the sexual contact; or

(B) The victim is incapable of consent by reason of being under 18 years of age;

<sup>2</sup> 163.427 Sexual abuse in the first degree. (1) A person commits the crime of sexual abuse in the first degree when that person:

(a) Subjects another person to sexual contact and:

(A) The victim is less than 14 years of age;

Information submitted by:

Mark McKechnie, Youth, Rights & Justice  
Senate Committee on Judiciary  
May 21, 2013

# AP

Re: HB 3253-A  
Dash 4 & 5

## SEX-OFFENDER REGISTRIES: SHOULD KIDS BE LISTED?

By DAVID CRARY

— May. 1 12:08 AM EDT

NEW YORK (AP) — Government authorities should end the practice of placing juveniles' names on publicly accessible sex-offender registries, Human Rights Watch says in a report warning of lasting and unwarranted harm to some youths.

Some law enforcement officials and victims' rights advocates agree the current registry system is flawed and support steps to allow more discretion in juvenile offenders' cases. Offenses triggering inclusion on the registries can range widely — from rape to consensual sex between children to "sexting" of photos that depict nudity or sexual activity.

"You've got to create a system that keeps the public safe but does not stigmatize a young person for the rest of their life," said Mai Fernandez, a former prosecutor who is executive director of the National Center for Victims of Crime.

Human Rights Watch said its report, being released Wednesday, is the most comprehensive examination to date of the impact that registry laws have on juvenile sex offenders.

"Of course anyone responsible for a sexual assault should be held accountable," says lawyer Nicole Pittman, the report's author. "But punishment should fit both the offense and the offender, and placing children who commit sex offenses on a public registry — often for life — can cause more harm than good."

The report says the laws, which require placing offenders' photographs and personal information on online registries, often make them targets for harassment and violence.

In two cases cited in the report, youths were convicted of sex offenses at 12 and committed suicide at 17 due to what their mothers said was despair related to the registries. One of the boys, from Flint, Mich., killed himself even after being removed from the list.

*"You've got to create a system that keeps the public safe but does not stigmatize a young person for the rest of their life," said Mai Fernandez, a former prosecutor who is executive director of the National Center for Victims of Crime.*

Submitted by Mark McKechnie  
Youth, Rights & Justice  
Senate Judiciary Committee, May 21, 2013

# AP

"Everyone in the community knew he was on the sex offender registry; it didn't matter to them that he was removed," his mother, identified only as Elizabeth M., was quoted as saying. "The damage was already done."

The registry laws generally include restrictions that prohibit offenders from living within a designated distance of places where children gather, such as schools and playgrounds.

"They often struggle to continue their education," Human Rights Watch said. "Many have a hard time finding — and keeping — a job, or a home."

According to Human Rights Watch, 747,000 adult and youth sex offenders were registered nationwide as of 2011. The organization said it was unable to quantify how many were juveniles, but it interviewed 281 youth sex offenders while preparing the report, as well as defense attorneys, prosecutors, judges, law enforcement officials and victims of child-on-child sexual assault.

Among those interviewed was a former offender from Louisiana, identified only as Austin, who was placed on a registry at age 14. According to Pittman, Austin was found to have had sex with a 12-year-old, which was under the age of consent.

"Our mistake is forever available to the world to see," Austin is quoted as saying. "You are never done serving your time. There is never a chance for a fresh start. You are finished. I wish I was executed, because my life is basically over."

Under a federal law, the Adam Walsh Act, states are required to include certain juvenile sex offenders as young as 14 on their registries.

Some states have balked at complying with this requirement, even at the price of losing some federal criminal-justice funding. Other states have provisions tougher than the federal act, subjecting children younger than 14 to the possibility of 25-year or lifetime listings on public registries.

"Everyone in the community knew he was on the sex offender registry; it didn't matter to them that he was removed," his mother, identified only as Elizabeth M., was quoted as saying. "The damage was already done."

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According to Pittman, it's fairly common in about 35 states for juveniles to be placed on public sex-offender registries. Other states take that step only for juveniles convicted of sex offenses in adult court, she said, while a few place juvenile sex offenders only on registries that are not accessible by the public.

The report recommends that all juveniles be exempted from the public registration laws, citing research suggesting they are less likely to reoffend than adult sex offenders.

Short of a full exemption, the report says, registration policies for juveniles should be tailored to account for the nature of their offense, the risk they pose to public safety and their potential for rehabilitation.

"Painting all sex offenders with the same broad brush stymies law enforcement's attempts to focus on the most dangerous offenders," Pittman said.

Scott Burns, executive director of the National District Attorneys Association, said his organization would not support a blanket exemption of juveniles from the sex-offender registries. But he said prosecutors should have the discretion to require registration or not, based upon each case.

"If a 15-year-old 'sexted' a picture of him or herself, it is safe to say that prosecutors would take appropriate steps to ensure that person isn't required to become a registered sex offender for life," Burns said in an e-mail. "If a 17-year-old had committed multiple violent sex offenses against children, registration as a sex offender would most likely be recommended."

Problems with registry policies have attracted attention across the political spectrum, including at the Texas Public Policy Foundation, a conservative think tank in Austin.

Marc Levin, director of the foundation's Center for Effective Justice, said Congress should provide for greater flexibility in the Adam Walsh Act so states can choose to place certain youths in a non-public registry that would be accessible to law enforcement.

Levin said Texas has only a public registry, and children as young as 10 can be placed on it. He said lawmakers should rethink this policy, given that inclusion in the registry "has many serious repercussions for a child's future."

Mai Fernandez, of the center for victims of crime, said the entire sex-offender system — covering both juveniles and adults — is flawed and needs an overhaul.

"If you know a young person living in your neighborhood has raped someone, there are things that should kick in — tighter supervision, more services — to be sure that child doesn't commit that crime again," Fernandez said. "That's more important than the registry."



# Youth, Rights & Justice

ATTORNEYS AT LAW

**Lifetime registry for younger children and youth just doesn't add up:**

**Remove children and youth 14 and younger from registration requirement (HB 3253-A4)**

## **Debunking the Myths Underlying the Youth Registry**

Q: *Don't most states require youth to register the same way Oregon does?*

A: **NO.** Unlike Oregon, eight states limit youth registration with a minimum age, ten states have a maximum age and eight more states have no registry at all. Twenty-four states give the court some degree of discretion to impose registration on a juvenile.

Q: *Doesn't the registry act as a deterrent and cause youth to think twice?*

A: **NO.** The idea that registration is a deterrent to youth offenses or prevents re-offenses in the future *has been thoroughly debunked* through a number of studies. There is *no evidence that states with more strict registry laws deter youth offenses*. Youth who are adjudicated typically receive years of treatment and supervision, and it works.

Q: *Aren't youth who commit a sex offense especially dangerous?*

A: **NO.** Re-offense rates are extremely low across states with a wide variety of registry statutes. Re-offense rates typically range from 1%-12% for youth offenders – the lowest re-offense rates among any type of juvenile or adult offender. Put another way: the severity of offense does not predict future risk.

Q: *Doesn't the registry protect the public?*

A: **NO.** Requiring low-risk youth to register interferes with family relationships and places barriers to housing, education, employment and self-sufficiency – the factors that *reduce* risk. Youth who are registered are more likely to be arrested, *but not convicted*, of new offenses, meaning that *law enforcement is more likely to focus on those who are registered than on the real perpetrators. This does not improve public safety.*

Q: *Aren't most offenses committed by registered offenders?*

A: **NO.** A major study in New York found that *95.8% of new offenses were committed by people who were NOT on the state's registry.*

### ***The Bottom Line:***

Registration for youth is an unnecessary barrier and a distraction from more effective public safety practices.

## Notes and references:

### Offenses

95.88% of all arrests for registerable sex crimes are of persons not previously convicted. (New York State study: Sandler, Jeffrey, et. al., 2008)

### Recidivism

Youth who receive treatment recidivate at low rates. Juvenile sex offenders leaving OYA recidivate with a new sex offense at a rate of **less than 4%**. (OYA Director Collette Peters testimony to Senate Judiciary, 6/14/11)

A study of 2,029 youth offenders in Wisconsin found that the recidivism rates of juvenile sex offenders was **7%** and the rate of sex offenses among offenders who had not previously committed a sex offense, and were, therefore, not registered, was 6%. There was no statistically significant difference in future offense rates between registered and non-registered youth offenders. (Caldwell, 2007)

Recidivism rates of all male juveniles with sex crime convictions (N = 1,275) were examined across an average 9-year follow-up. The sexual offense reconviction rate was **less than 3%** for this study. (Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. 2009)

A review of 25 studies concerning juvenile sex offense recidivism rates reveals that youth who commit sex offenses have a **1.8 – 12.8% chance of rearrest** for another sex offense. (Caldwell, 2002)

### Impact of Registration

Letourneau and Armstrong (2008) found no significant differences in rates of new convictions between a group of 111 registered

juvenile sex offenders and a matched group of 111 nonregistered delinquents.

No significant differences in new arrests for crimes against persons in a group of 574 registered juvenile sex offenders compared to 701 non-registered juveniles (Letourneau, Bandyopadhyay, Sinha, & Armstrong, unpublished manuscript).

Several studies have found that unregistered juvenile sex offenders are not at higher risk for recidivism than non-sex-offending delinquents (Caldwell, 2007; Kahn & Chambers, 1991; Zimring, Piquero, & Jennings, 2007).

A 72-month follow up study found that conviction-based tier designations failed to distinguish higher and lower risk youth. There was no significant difference in recidivism rates of juvenile sex offenders assigned to Tier I, II or III. (Caldwell, M. F., Zemke, M. H., & Vittacco, M. J., 2008)

### Sexual Behavior and Experiences in Childhood

Over half (56%) of adults surveyed reported engaging in sexual activities with other children prior to age 12. More than three-quarters (77.4%) said they were never caught. (Ryan, 2000)