



Oregon Voices

February 26, 2013

Rep. Jeff Barker, Chair and Members of the House Judiciary Committee

Dear Chairman Barker and members of the committee,

My name is Ken Nolley. I am a professor of English and Film Studies at Willamette University across the street. For years my wife Jan worked as a clinical social worker with Children's Services Division. We have both spent our lives working for the rights of women and children, and we take very seriously any actions which impinge negatively on their lives.

In 2009, one of our sons was arrested for the possession of underage pornography. We were appalled and fearful. What would this mean for the future? Was he a danger to others? How would our Asperger's son survive prison? Would he ever be able again to resume a life of caring for others, of working with the homeless, of attending his Quaker meeting? To answer those questions, we began to do research and to find other people who were on the same road, and we have learned a great deal, much of it tragic.

Nearly four years later, I am writing in support of HB 2549 and HB 2552 for Oregon Voices, an organization of families like ours. Most of those families, however, live in an unending long shadow of fear and uncertainty. More than any other category, sex offenders have enormous difficulties finding housing and jobs. Their families know that both are at risk when they speak out publicly, which is why few of the people we have met who share our situation are here to testify today. Many of them already have had lives they had worked for years to rebuild shattered when they were outed as a sex offender, sometimes even after decades of exemplary behavior. One person we know personally had shots fired at his house. Other people have had cars keyed, things thrown through windows, children, spouses, relatives harassed. And things change qualitatively when sex offenders are listed on the internet. Last year, two sex offenders in Washington were identified online, hunted down and murdered by a vigilante, something that has happened in multiple other states as well.

Sex offenders and their entire families learn to live with fear as a constant companion. Fathers are separated from their families, grandparents take extra jobs to fill the financial gaps, the fabric of healthy families frays under the strain. Many people justify these things as a deterrent to future crime, but even were that so, the disproportionate costs born by whole families of

everyone on the registry would constitute a crude and indiscriminating corrective instrument at best.

Indisputably there are sexually dangerous people among us. But by any reasonable measure, many other sex offenders are not a threat to society. In the last four years, we have met innumerable families like ours—at meetings, visiting jails and prisons, people referred to us by friends and family—doctors, lawyers, school teachers, business owners, community volunteers, solid employees, good neighbors. They never start by volunteering their private trouble, but when they feel safe, their stories tumble out. We have heard hundreds of heart-wrenching stories—of children who engaged in bodily exploration at a very young age for which they were later charged with sex offenses that placed them on the registry for decades; of high school romances that culminated in consensual sex; of socially awkward young men who fantasized about the girls they wished had found them attractive in school—stories more varied and painful than we could ever have imagined. Although we recognize that not all stories we heard are likely to be fully accurate, the pattern is disturbingly similar and impossible to ignore.

More than one percent of the adult males in Oregon are now on the sex offender registry, and the number is growing rapidly; Vi Beaty says that the State Police office processes 150 new forms each month. Sex offenders now account for 25 % of the Asian prison population in Oregon, 27% of the white prison population, and almost 33% of the Hispanic prison population. Most of those people made at least some bad choices, but the accumulated research tells us that a significant of these offenders never did constitute a serious danger to society.

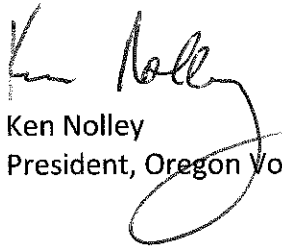
I am including with this letter some notes about the available research on sex offender recidivism. While there is legitimate debate about the exact meaning of such data, what seems beyond any serious question is that the majority of sex offenders will never reoffend, particularly not with another sex crime. By inadequately addressing that fact, society has been casually dismissing many offenders and their families as collateral damage.

We in Oregon Voices support HB 2549 and HB 2552 for two main reasons. First, these initiatives are risk-based and evidence-based, seeking to discriminate between offenders who pose little risk and those who pose higher risks. Taking this approach makes good social policy; certainly we should be allocating resources where the evidence suggests the danger is greatest. And second, both initiatives offer hope for a rational, earned and evidence-driven way off the sex offender registry. This is especially important for people who never should have been placed on the registry in the first place, particularly young people who did what some young people have always done—engaged in sexual activity much earlier age than most of us parents would have liked.

Is HB2549 everything that families like ours would wish? Quite honestly, no, it is not. To take one example, we think that there are better assessment instruments than the Static-99, but it is currently trusted in Oregon, and it is economical to administer as a changeover tool. We have other concerns as well, but we recognize that expanding our use of evidence-based practices needs to start somewhere, and these bills do that.

The current system is supposed to protect women and children, as it should. But when policies are insufficiently informed by the available evidence (as many are now), the sex offender laws themselves actually become an instrument that needlessly and cruelly blights the futures of thousands of people's children. Everyone in this room is concerned for and connected to children just like ours—children just as vulnerable as many of ours to making a bad choice. They don't know or understand the weight and power of current law as it is exercised in practice. For the sake of all our children, we who are already caught up in this nightmare ask you to begin to change the direction of a sex offender system that is still far too reliant on one-size-fits-all policies. HB2549 and HB 2552 offer a rational, defensible place to start that process.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Nolley". The signature is fluid and cursive, with a large loop at the end of the last name.

Ken Nolley  
President, Oregon Voices

## A Perspective on Recidivism

Most studies of recidivism begin with the statistics gathered on re-offending. Typically, these figures are assembled by states over three year periods, and this data is appropriately criticized for two principle reasons—that these figures do not reflect accurately what happens over a longer period of time, and that they cannot reflect crimes that are not prosecuted. But these studies do provide a tool by which to compare sex offender recidivism to recidivism for other crimes. And the recent sex offender recidivism numbers (which are included further down here) are lower than any other category of crime.

Persons working in the field—treatment providers and parole officers particularly—tend to rely more heavily on actuarial tools developed that provide predictions about the likelihood of reoffending. Not surprisingly, these tools yield higher rates than the three-year recidivism studies, but rates are often quoted in the 20% range

The myth of very high recidivism seems to rest on a handful of poorly designed studies. I include them here.

Year	Study	Rate	Comments
2004	Ron Langevin—Canada “Lifetime Sex Offender Recidivism: A 25 year Follow-Up Study” 320 sex offenders referred to a single clinic for eval between 1966 and 1974	<b>61.1%</b> sex crime recidivism <b>88.3%</b> including confessions in counseling and new arrests that did not result in conviction; another measure that only included offenders outside their own family yielded a <b>94.1%</b> rate	Criticized as a non-random sample limited to a group who were referred for major prosecutions (“the worst of the worst”). The sample only dealt with period before prisons included a vastly wider range of offenders now arguably less prone to recidivism. Study eliminated everyone whose records were lost or purged from system after 15 years because of no new crimes or charges, eliminating most non-recidivists from the study Since at least 50% of the sample were already recidivists by Langevin’s definition, obviously he would dramatically inflate his figures, since the commonly accepted definition of recidivism is a new crime committed <u>after</u> release In response to his critics, Langevin himself has cautioned against making claims about all sex offenders based on his data.
1997	Robert Prentky Study of 136 rapists and 115 child molesters released from Bridgewater civil commitment center in Mass. 1959-1986.	<b>32%</b> sex crime recidivism for molesters; <b>25%</b> for rapists (over widely varied periods). Over 25 years, he estimated rates of <b>52%</b> and <b>39%</b>	Covers approximately the same period as Langevin study Also only considers narrow range of offenders; average child molesters had 3.6 offenses already and average rapist had 2.5 offenses. By Langevin’s definition, the recidivism rate would have been almost 100% Even the Prentky team said, “The obvious marked homogeneity of sexual offenders [in this sample] precludes automatic generalization of the rates reported here to other samples.”

2000 and 2009	Andres Hernandez study at Butner FCI – sample of 155 child porn offenders in treatment	85% admitted in treatment to a previous hands-on offense, suggesting that child porn users overwhelmingly are also hands-on abusers	The methods of the study are widely criticized for its poor research model. Confessions were coerced by the threat of dismissal from the program with resultant return to the general population bearing the stamp of sex offender. Like the Langevin study, this study also raises serious questions about definitions of recidivism. The study has been dismissed by judges as lacking credibility on multiple grounds. The 2000 study was never accepted for publication; although the 2009 article was accepted for publication by <i>The Journal of Family Violence</i> , the BOP requested that the article be withdrawn (it was not), and a bureau official wrote: “We believe it unwise to generalize from limited observations gained in treatment or in records review to the broader population of persons who engage in such behavior.” The journal’s peer review process has also been criticized as remarkably lax—it is alleged that the journal allows authors to suggest their peer reviewers and to blackball reviewers they wish to avoid. Thus far, we have not confirmed that charge.
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**Comparisons of who actually commits new sex crimes**

According to a recent New York study:

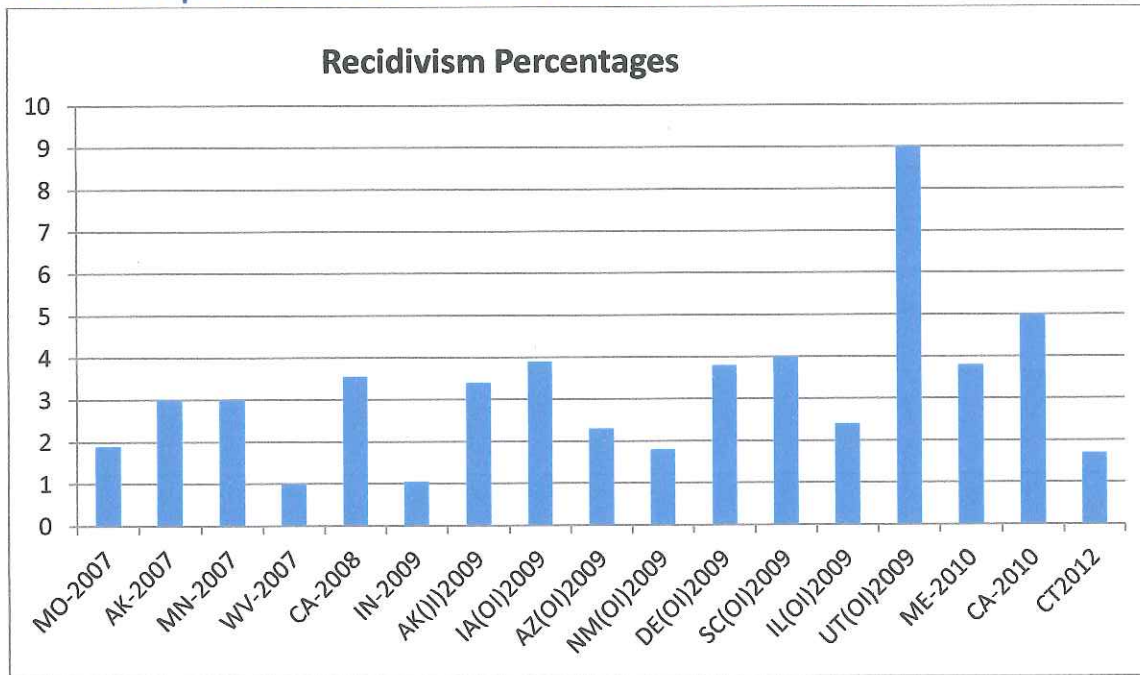
- 95.88% of arrests for all registerable sex crimes are of persons previously non-convicted of a sex offense.
- 95.94% of arrests for rape are of previous non sex-offenders.
- 94.12% of arrests for child molestation are of previous non sex-offenders.

(Sandler, Jeffrey C, et. Al., *Does a Watched Pot Boil? A Time-Series Analysis of New York State’s Sex Offender Registration and Notification Law*. Psychology, Public Policy, and Law, 2008 Vol. 14, No. 4, 290)

These results are closely parallel to figures compiled by the US Department of Justice that show that 93% of child sex abuse is committed by a person whom the child knows. In 47% of the cases, the perpetrator is a member of the family. Only 7% of offenses are committed by strangers.

If sex offender recidivism were not exceptionally low, these figures could not be this high. The hugely disproportionate number of sex offenses committed by previously non-convicted persons raises questions about the utility and justice of an undifferentiated registry which at its best still does not appear to address the source of more than 90% of documented sexual abuse.

## Recent Reported Rates of Sex Offender Recidivism\*



Most of these studies are based on the standard 3 year reporting system. More details are provided on the next page, including exceptions to the 3 year period. These recent rates are noticeably lower than reported rates a decade ago. This difference probably reflects at least two factors:

- 1) crime rates in general have been falling during this period, and sex offender recidivism seems to reflect that trend;
- 2) current studies appear to include a larger and different demographic than a decade or so earlier when both statutes and enforcement procedures were substantially different.

In all cases but two here, the rates are 4% or lower. In more than half, they are 3% or lower. Taken together, these figures seem to underline the reason that the researchers in the last study (Connecticut) wrote:

These low re-offense rates appear to contradict a conventional wisdom that sex offenders have very high sexual re-offense rates. The real challenge for public agencies is to determine the level of risk which **specific** offenders pose the public. [*emphasis added*]

\* All rates come from studies explained with references on the following pages.

## Studies since 2007

2007	Missouri DOC study of 2,777 offenders released from 1998-2007	1.9% after 3 yrs.; 3.5% after 5 yrs.	These rates were 1.1% and 2.7% for offenders who completed MOSOP, a mandated treatment program.
2007	Alaska Judicial Council report	3% in 3 yrs.	Sex offenders had the lowest rate of reconviction for category of offense
2007	Minnesota DOC study 3,166 offenders released between 1990 and 2002	3% in 3 yrs. in 2002	10% av. rate over 8.4 yrs; in 1990, rate was 17% in 3 yrs. This might suggest that rates are falling substantially in recent decades.
2007	Jared Bauer of West Virginia DOC 325 offenders tracked for 3 years from 2001, 2002 and 2003	1% for sex crime w/ victim	This rate might be inaccurate, since victimless crimes are not included, although there is little evidence to suggest that the other cohort would have a higher rate. 9.5% of sample returned to prison for other reasons.
2008	California SOMB report	3.55% in 3 years	Cites figures from CDCR for prisoners released in 2003
2009	Endrass et al—Swiss study of 431 users of underage porn	.8% w/ hands-on sex offense; 3.9% w/ hands-off sex offense	Study covered 6 years; concluded that child pornography alone is not a risk factor for hands-on offenses.
2009	Orchowski and Iwama study of offenders released in 2001 for US Justice and Research Association	AK – 3.4% IA-3.9% AZ – 2.3% NM—1.8% DE – 3.8% SC – 4.0% IL – 2.4% UT – 9.0%	Comparison national 3 yr. rate was 5.3% for offenders released in 1994
2010	Maine study tracked releases for 2004-2006	3.8% in 3 yrs.	
2010	California CDCR report	5% in 3 yrs.	
2012	Connecticut Criminal Justice and Planning Division Study of 746 offenders released in 2005	1.7% returned to prison	Study covered 5 years, not 3. It showed 3.6% arrests; 2.7% convictions.

## Links:

2007 Missouri Study

<http://doc.mo.gov/documents/publications/Offender%20Profile%20FY07.pdf>

2007 Alaska Study

<http://www.ajc.state.ak.us/reports/1-07CriminalRecidivism.pdf>

2007 Minnesota Study

<http://www.doc.state.mn.us/documents/04-07SexOffenderReport-Recidivism.pdf>

2007 Jared Bauer West Virginia study

<http://www.wvdoc.com/wvdoc/Portals/0/documents/recidivism2001-2003.pdf>

2008 California SOMB study

<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cts=1331229638097&sqi=2&ved=0CDOQFjAB&url=http%3A%2F>

2009 Indiana study

<http://www.in.gov/idoc/files/IDOCRecidivism.pdf>

2009 Endrass et al study

<http://www.biomedcentral.com/1471-244X/9/43>

2009 Orchowski and Iwama study

<http://www.jrsa.org/programs/sex-offender-final-report.pdf>

2010 California CDCR report

[http://www.cdcr.ca.gov/Adult\\_Research\\_Branch/Research\\_Documents/ARB\\_FY0506\\_Outcome\\_Evaluation\\_Report.pdf](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY0506_Outcome_Evaluation_Report.pdf)

2010 Maine study

[http://muskie.usm.maine.edu/justiceresearch/Publications/Adult/Sexual\\_Assault\\_Trends\\_and\\_Sex\\_Offender\\_Recidivism\\_in\\_Maine\\_2010.pdf](http://muskie.usm.maine.edu/justiceresearch/Publications/Adult/Sexual_Assault_Trends_and_Sex_Offender_Recidivism_in_Maine_2010.pdf)

2012 Connecticut study

[http://www.ct.gov/opm/lib/opm/cjppd/cjresearch/recidivismstudy/sex\\_offender\\_recidivism\\_2012\\_final.pdf](http://www.ct.gov/opm/lib/opm/cjppd/cjresearch/recidivismstudy/sex_offender_recidivism_2012_final.pdf)

New York offender study

<http://www.rethinking.org.nz/images/newsletter%20PDF/Issue%2078/C%2002%20watchedpot.pdf>