

**REPORT OF
THE VIRGINIA STATE CRIME COMMISSION**

MEGAN'S LAW

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 29

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**

Megan's Law

Presented to the Virginia General Assembly

1999



COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

Senator Ken Stolle
Chairman

Rich Savage
Director

December 8, 1998

To: The Honorable James S. Gilmore III, and
Members of the Virginia General Assembly:

Senate Joint Resolution 68, agreed to by the 1998 General Assembly, directed the Virginia State Crime Commission to continue its study on "Megan's Law" or community notification for sex offenders and to submit its findings and recommendations to the Governor and 1999 session of the General Assembly.

In fulfilling this directive, a study was conducted by the Virginia State Crime Commission in 1998. I have the honor of submitting herewith the study report.

Respectively submitted,

A handwritten signature in black ink, appearing to read "K. Stolle".

Kenneth W. Stolle
Chairman

KWS:jrp

VIRGINIA STATE CRIME COMMISSION
MEMBERS

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Senator Kenneth W. Stolle

Vice-Chairman

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Senator Thomas K. Norment, Jr.

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Sheriff Terry W. Hawkins
The Honorable Robert J. Humphreys
The Honorable William G. Petty

Attorney General's Office

The Honorable Mark L. Earley

Executive Summary



Virginia State Crime Commission

Megan's Law

January 1999

In 1998, the Virginia General Assembly passed Senate Joint Resolution 68 (SJR 68/Howell) directing the Virginia State Crime Commission to continue its study of "Megan's Law" for the purpose of monitoring the implementation of the legislation which provides access to information on convicted sex offenders on the Virginia Sex Offender and Crimes Against Children Registry. The study further directs the Crime Commission, in collaboration with other criminal justice agencies, to develop educational materials for communities to enhance the public's awareness of the dynamics of sex offending and to provide safety strategies for improving personal safety against potential sex offenses. Finally, the study resolution directs the Crime Commission to seek federal grant funds to develop a database for the purpose of evaluating the community notification legislation.

Findings & Recommendations

The Crime Commission adopted a comprehensive package of recommendations to strengthen the registration of sex offenders, improve community supervision of sex offenders, and provide community education materials to the public on strategies to prevent the incidence of sexual offending. The recommendations included:

- Amendment of §18.2-472.1 to clarify the venue for prosecution for failure to register. Venue occurs where the offender last registered, was supposed to have registered, or was convicted.
- Clarification that the local law enforcement agency is responsible for obtaining fingerprints and photographs for the Sex Offender Registry.
- Inclusion of all aggravated sexual battery statutes in the "sexually violent offense" category.
- Amendment of the Code to require that persons living in Virginia for more than 30 days who are required to register must register with the Virginia Sex Offender Registry.

Executive Summary

- Amendment to allow a registrant to seek relief from registration requirements due to a physical disability that renders the registrant incapable of re-offending and incapable of re-registration. State Police will conduct an annual review to determine if circumstances have altered.
- Requirement that a sex offender risk assessment be applied to sex offenders under community supervision to determine the level of monitoring.
- Policy that all sex offenders are placed under intensive supervision.
- Provision of resources to community corrections for treatment and polygraph examinations.
- Fund recommended to implement 8 to 10 pilot sites for the implementation of the Community Containment Model for Sex Offenders. This will include:
 - limiting caseloads to 35 per probation and parole officer;
 - adequate resources for polygraph exams; and
 - adequate resources for sex offender treatment.
 - *Resources Needed: \$684,000*
- Request that the Department of State Police develop a brochure on mechanics of "Megan's Law" and do a series of press releases after January, 1999.

- Direct the Department of Criminal Justice Services to develop a training protocol and educational materials on sex offenders to be made available to local law enforcement agencies or appropriate agencies, upon request.
- *Resources Needed: \$101,505*

Conclusion

Initiating these proposals will help to assure that Virginia has a sound, local policy in place, a policy that reduces the incidence of sex offenses, thereby increasing the public's safety. These proposals look both to ensure that sex offenders are closely monitored, and to provide the public with the tools necessary to take responsible actions in personal safety efforts. In sum, the primary goal is to enhance both public safety and victim protection.

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Introduction

Authority for Study

The 1998 General Assembly approved Senate Joint Resolution 68 (SJR 68/Howell) directing the Virginia State Crime Commission to continue its study of “Megan’s Law” for the purpose of monitoring the implementation of the legislation which provides access to information on convicted sex offenders on the Virginia Sex Offender and Crimes Against Children Registry. The study further directs the Crime Commission, in collaboration with other criminal justice agencies, to develop educational materials for communities to enhance the public’s awareness of the dynamics of sex offending and to provide safety strategies for improving personal safety against potential sex offenses. Finally, the study resolution directs the Crime Commission to seek federal grant funds to develop a database for the purpose of evaluating the community notification legislation.

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission “to study, report, and make recommendations on all areas of public safety and protection.” Section 9-127 of the Code of Virginia provides that “the Commission shall have the duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in Section 9-125, and to formulate recommendations to the Governor and the General Assembly.” Section 9-134 authorizes the Commission to “conduct private and public hearings.” The Virginia State Crime Commission, in fulfilling its legislative mandate, continued its study of “Megan’s Law” to ensure that its implementation results in improved public access to sex offender information and, ultimately, that community safety is enhanced

Members Appointed to Serve

At the May 19, 1998 meeting of the Crime Commission, Chairman Kenneth W. Stolle selected Senator Thomas K. Norment to serve as Chairman of the Public Safety Subcommittee and Delegate Raymond R. Guest, Jr. to chair the Governmental Affairs Subcommittee. SJR 68 was assigned to the Public Safety Subcommittee. The following members of the Crime Commission were selected to serve on the respective subcommittees:

Public Safety Subcommittee

Senator Thomas K. Norment, Jr., Chair
Sheriff Terry W. Hawkins
Senator Janet D. Howell
The Honorable Robert J. Humphreys
Delegate Clifton A. Woodrum
Senator Kenneth W. Stolle, ex-officio

Governmental Affairs Subcommittee

Delegate Raymond R. Guest, Chair
Delegate R. Creigh Deeds
The Honorable Mark L. Earley
Delegate A. Donald McEachin
The Honorable William C. Petty
Senator Kenneth W. Stolle, ex-officio

Introduction

Report Organization

The remaining sections of this report present the results of the Virginia State Crime Commission's analysis of Megan's Law. Section II provides an overview of the report's study design. Section III presents background information concerning Megan's Law. Study objectives and issues are discussed in Section IV, rationale in Section V, the report's findings and recommendations are laid out in Section VI, and acknowledgements are contained in Section VII.

Study Design

A Crime Commission work group was convened to examine the issues identified in the study resolution. The task force was comprised of representatives from the Department of Corrections, Department of Criminal Justice Services, Department of Education, Department of Social Services, Department of State Police, Prevent Child Abuse Virginia, Governor's Advisory Board on Child Abuse and Neglect, local child advocacy groups, and local law enforcement. It was chaired by Senator Janet Howell, patron of the study resolution (SJR 68). The objectives of the work group were to:

- Monitor the implementation of the 1998 "Megan's Law" legislation to ensure that enhanced access to sex offender information is achieved; and
- Develop community educational materials on sex offending to promote public safety.

Given the substantial amount of disparate information to be considered, staff relied on well-thought out qualitative data collection methods in an effort to enhance both the reliability and validity of the findings and recommendations included herein. Summarizing, first staff conducted document/literature reviews of the following:

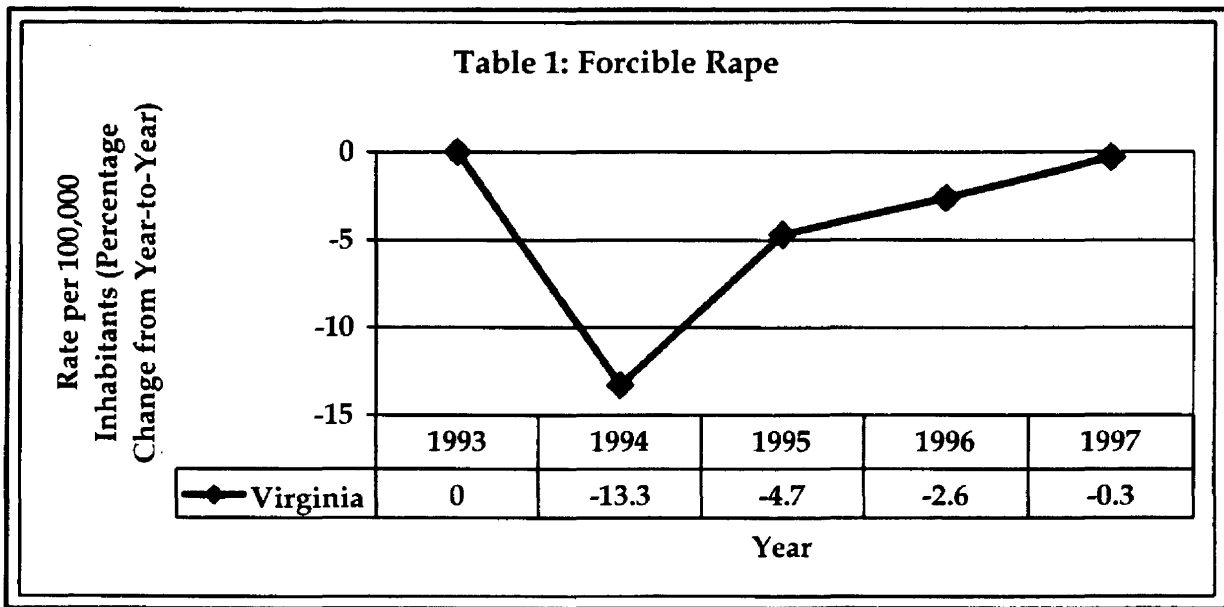
- Existing evaluations on other states' sex offender registration and community notification legislation;
- Sex offender typology; and
- Sexual abuse prevention programs already in place elsewhere.

These document reviews allowed staff to formulate questions and hypotheses, queries which served as the basis both for discussions and interviews with those parties able to comment knowledgeably about methods of improving public safety and victim protection. Those initially interviewed were chosen based on recommendations made by those individuals on the work group. This sample of interviewees was further developed via a "snowball" sampling technique, wherein those interviewed are asked to recommend others who should be consulted. Building on this foundation, first findings and then recommendations followed. These findings and recommendations were presented to the members of the Virginia State Crime Commission for consideration in the 1999 General Assembly.

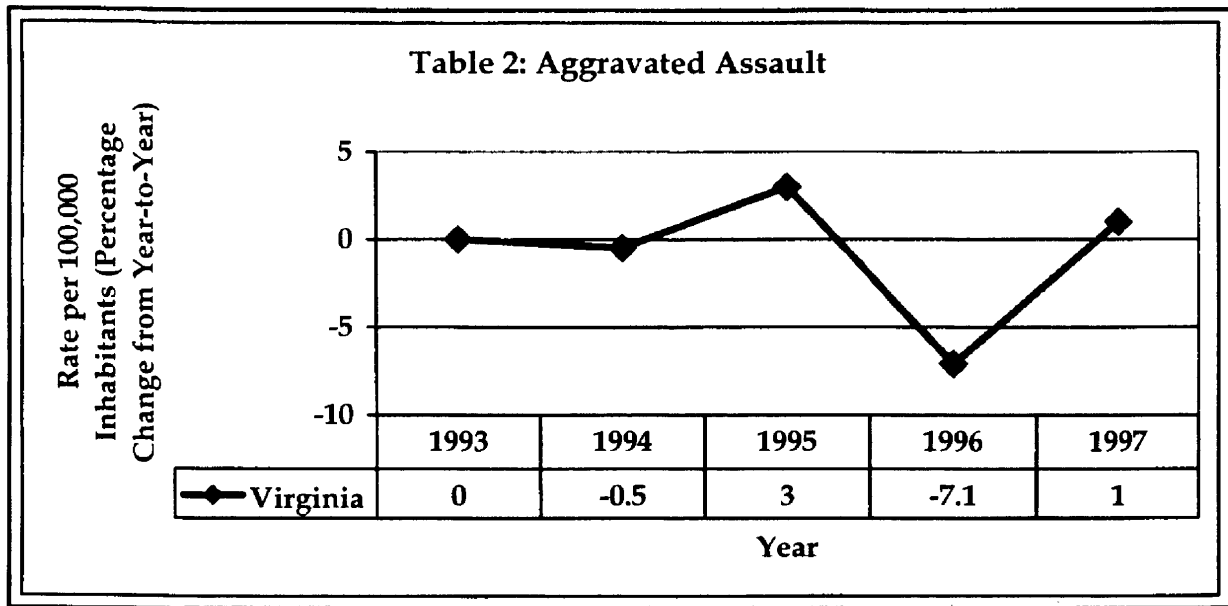
Background

The Crime Commission's initial two year study on "Megan's Law" resulted in many changes to state policy. The Commission worked closely with the state agencies responsible for the implementation and with other interested parties - such as victim organizations - to determine if further modifications to the community notification legislation were needed.

Recently *GOVERNING* magazine surveyed inmate populations in the 50 states. The results showed that the national average for the proportion of the prison population serving time for a sexual offense was one in seven.¹ According to the Virginia Department of Corrections, sex offenders comprise approximately 16 percent of the State's inmate population, which is just above the national average. Though the number of forcible rapes and aggravated assaults reported to the Virginia State Police - crimes often associated with sexual offenses - has declined in recent years (see **Table 1** and **Table 2** below), this decline has not been dramatic. Additionally, anecdotal evidence exists suggesting that if we more broadly define sexual crimes, there has actually been a small increase in the number of sexual crimes perpetrated over this same period. One reason offered for this phenomena is the increasing public consciousness on the subject of sexual offending. Summarizing, both print and broadcast media have focused significant attention on the issue of sexual offenders in the last ten years. Some argued that one result of this focus has been more victims of sexual abuse coming forward and more subsequent convictions of perpetrators.



¹ Henderson, Andre, "The Scariest Criminal", *GOVERNING*, August 1995, pg. 35.



Largely due to the demographic characteristics of their victims (women and children) sex offenders are today among the most vilified of all offender groups. This sentiment has helped to drive calls for stiffer punishment of sexual predators. The well-documented “Willy Horton” and “Polly Klass” stories contribute to this public sentiment. To date, each of the fifty states have passed a central registry law which requires convicted sex offenders to register with local authorities when moving into a community. Many states have also moved to include a special designation on the offender’s driver’s license to indicate that the offender been convicted of a felony sex offense. Similar to these efforts, Virginia adopted a sex offender registry in the 1994 General Assembly. The Registry was expanded in both 1997 and 1998. In 1998 legislation was enacted to allow public access to the Registry and to provide for automatic notice to schools and daycare facilities when a sex offender moves into an area.

Who are convicted sex offenders? Surveys conducted by the Virginia Department of Criminal Justice Service’s Criminal Justice Research Center show that while sex offenders may differ as much as their individual crimes, there are some similarities.² The typical sex offender in Virginia can be described as a young white male adult with less than a high school education. He usually has between 40-60 victims prior to his first conviction. Over one-fourth of Virginia’s sex offenders were unemployed when they committed their offense, and 43 percent of convicted sex offenders had previously undergone some form of mental health treatment. One in four convicted sex offenders had a family member with a felony conviction, and 32 percent of offenders convicted of rape or forcible sodomy had no prior convictions.

The Research Center report cited above also includes some data on the victims of sexual offenses. According to the report, eighty percent of all victims of convicted sex offenders were children and over half of the child victims were under the age of 13 years. Children accounted for

² Criminal Justice Research Center, Convicted Sex Offenders, August 1994, pp. 10-11.

Background

94 percent of all victims of aggravated sexual battery convictions, and 62 percent of all victims of rape/sodomy. The largest proportion of sexual offenses were perpetrated by a male offender against a female victim (85%).³ Child victims are more likely to be sexually assaulted by someone they know while at least half of the assaults on adult victims are perpetrated by strangers. These statistics - especially those concerning child victims - speak towards the predatory nature of sexual offenses.

Due to the oftentimes predatory nature of sexual crimes, the work group concluded that it is important to educate the public on the dynamics of sex crimes. Those interviewed reinforced the following conclusions forwarded by the work group:

- There is a need for a well-maintained (in terms of accurate data) sex offender registry; and
- When convicted sex offenders move into a community, it is advisable to notify those living in that community.

Moving beyond these measures, the work group also cited as critical public education and public awareness. The work group concluded that efforts aimed in this direction have the potential to not only better protect the public from possibly being victimized by a sexual predator, but also to enhance the beneficial effects of sex offender registration and public notification. With these premises serving as the foundation for further examination, staff - together with the work group - moved into the specific directives of SJR 68. These directives include:

- The monitoring of the implementation of community notification legislation;
- Developing appropriate community education materials to improve the public's knowledge and awareness of the dynamics of sex offending; and
- Crafting appropriate personal safety strategy materials to better enable the public to avoid being victimized by sexual offenders.

³ Ibid.

Study Objectives & Issues

The work group identified the following key issues as those requiring specific attention as the study progressed:

- Identify the number of arrests for failure to register and the impact of this on the correctional system.
- Identify if local law enforcement is cooperating with the State Police in the registration of sex offenders. If an offender is arrested, the local law enforcement should check his criminal history to determine if he has a prior offense requiring registration. If so, local law enforcement should notify the State Police.
- Identify the number of requests for information on the Sex Offender Registry, types of requests, and the amount of time it takes to process the request. Also determine the amount of money collected on request fees and the cost of maintenance of the Registry and response costs.
- Work with the State Police on the guidelines for school and daycare registration for automatic notice.
- Determine the feasibility of establishing local multi-disciplinary teams to conduct educational meetings on community notification, sex offending dynamics, etc.
- Work with a multi-agency team to develop educational materials on sex offender dynamics and determine the method of distribution.
- Determine if there are grant funds available to fund an evaluation of the sex offender notification process.
- Work with State Police and other criminal justice agencies to determine if adjustments are needed to the sex offender registration and notification legislation.

The Sex Offender and Crimes Against Children Registry

Since Virginia initiated a Sex Offender Registry in 1994, the Registry has undergone several expansions of the included offenses as well as changes in registration requirements (see **Appendix B**). Federal legislation (*Jacob Wetterling Crimes Against Children Act* and *Pam Lynchner Tracking and Identification Act*) required that states establish a registry, include certain offenses in that registry, include fingerprints and photographs as a part of the registration process, and to establish a “sexually violent offense” category within the Registry with more stringent registration requirements. Virginia has passed legislation in compliance with these requirements.

In 1997, the General Assembly expanded the Registry to include additional sex offenses and certain other crimes against children. A “sexually violent offense” category on the Registry was also established which required offenders convicted of these crimes to register every ninety days for life. These offenders may petition the court after three years without an additional offense for relief from the ninety days registration requirement. The penalty for failure to register was raised to a Class 6 felony for “sexually violent offenders”.

The 1998 General Assembly added three additional crimes to the Registry as well as one additional “sexually violent offense”. Offenders who are convicted of a second or subsequent registry offense not in the “sexually violent” category now are reclassified as “sexually violent offenders”. Further, enforcement of registration requirements was clarified in statute. The State Police were charged with assuming the lead responsibility for notifying local law enforcement when an offender fails to comply with registration requirements. Earlier changes in the law also required the State Police to obtain photographs and fingerprints for all registrants since 1994. As of July 16, 1998 there were approximately 7000 registered sex offenders on the Virginia Sex Offenders and Crimes Against Children Registry. Of these, 2777 or 40% are registered as “sexually violent offenders” and subject to the ninety day re-registration requirements.

Since October, 1997 the Department of State Police has verified approximately 275 violent offenders each month. As of July, 1998 approximately 740 “sexually violent offenders” had violated the re-registration provisions enacted in 1997. After the State Police initiated a criminal investigation on each of those registrants in violation of the re-registration requirements, roughly 150 arrest warrants were issued for those violations. As part of their investigation, the State Police determined the following:

- Many of those failing to re-register were currently incarcerated;
- Some of the addresses on file were incorrect, resulting in the notice to re-register not reaching the registrant in the required time frame; and
- Some of the registrants had moved out of state.

After careful consideration of the information gathered, the work group first agreed that current registration legislation could benefit from several clarifying amendments. Currently, statute states that prosecution for failure to register should occur wherever the offender is found. Because

Rationale

of venue considerations, this provision has vexed law enforcement officials. As such, the following “venue clarification” amendment is recommended by the work group:

- Prosecution for failure to register should occur *where the offender last registered, was supposed to have register, or was convicted.*

Secondly, some local law enforcement agencies are today charging sex offender registrants a fee for the photograph and fingerprints needed for the Registry. Recognizing the importance of having this information on hand, the work group recommended that local law enforcement agencies provide fingerprinting and photography services of sex offender registrants free of charge. This recommendation keeps the offender’s duty to register in place, only removing cost as a cause for failure to provide the fingerprint and photography information needed for the registry.

Third, looking to clarify existing statutory language, the work group recommended some modification of the crimes included in the Registry. §18.2-67.5:1 of the Code of Virginia states that the third conviction of a misdemeanor sex offense (such as sexual battery or indecent exposure) automatically becomes a Class 6 felony. The work group recommended here to include third misdemeanor convictions on the Sex Offender Registry.

Similarly, last year the Sex Offender Registry legislation established a “sexually violent offense” category, including in this category aggravated sexual battery against a minor. The work group recommended amending this to include all aggravated sexual battery statutes in the “sexually violent offense” category.

Fourth, the work group recommended that the Code of Virginia be amended to include a duty to register for those out-of-state persons required by the nature of their offense and subsequent conviction to register. This suggested amendment requires those persons living in Virginia for more than 30 days to - again because of the nature of their offense and subsequent conviction - register with the Virginia Sex Offender Registry.

Finally, the work group recommended a procedure for relief from registration requirements for registrants whose physical disability renders them incapable of re-offending and incapable of re-registration. In support of this suggested amendment, the State Police is asked to conduct an annual review of these cases to determine if those circumstances excluding the sex offender from registering have been altered, thereby allowing the registrant to register.

Community Notification

Prior to July 1, 1998 authorization for release of information from the Sex Offender Registry was restricted to entities providing child minding and day care services, school boards and law enforcement agencies for criminal justice purposes. The individual in question was required to sign

Rationale

a release for the information. Pursuant to the “Megan’s Law” or community notification amendments of the 1998 General Assembly, access to information on the Registry is now available without authorization for release (See **Appendix B**). The legislation establishes a system of information access wherein information is released upon request.

Summarizing, the legislation establishes a progressive system of access to information on the Sex Offender and Crimes Against Minors Registry which includes:

- Class I: Creation of a web site with a directory of sex offenders convicted of “sexually violent crimes”. The web page became available on January 1, 1999.
- Class II: Making information on the Sex Offender Registry available upon request to the State Police. Request forms developed by the Department of State Police are available through local law enforcement offices as well as other sites. This information became available July 1, 1998.

Information may be disseminated in the Class II category for the purpose of enhancing public safety. Requests should include a name, address, and purpose for the request. There are specific prohibitions against acts of intimidation or harassment.

The legislation also requires that all schools and licensed daycare facilities receive automatic notice when a registered sex offender moves into a community. Other agencies or organizations serving vulnerable populations can register to receive the information automatically. The automatic notification will be done electronically to those facilities with such capacity; others will receive the notice by mail. This provision went into effect on January 1, 1999.

The legislation further requires that a sex offender convicted of a second or subsequent non “sexually violent offense” automatically be reclassified as a “sexually violent offender” with the more stringent registration requirements and entered on the web page. The offender can petition the court for relief on this classification after three years without a subsequent offense.

Finally, information on sex offenders who are on the Registry but are not convicted of “sexually violent offenses” can now be obtained through a request to the State Police. Request forms are available through the offices of local law enforcement. This practice represents a two year study by the Crime Commission in which judges, commonwealth attorneys, a parole board member, adult and juvenile correctional officials and mental health clinicians worked closely with Commission members to craft a proposal to allow the public to find out at any time if there is a sexual predator living in their neighborhood. This year’s study focused on determining the impact of the notification legislation:

Community Supervision and Containment

As more information about the nature of sex crimes becomes available, methods for managing adult sex offenders in community settings are changing to reflect this new information.

Rationale

The new strategies are focused on improving the system-wide management of sex offenders by holding them accountable for the damage caused by their abuse and reducing further victimization.

One integrated approach aimed at improving the system-wide management of sex offenders which has recently received a great deal of attention looks to coordinate monitoring, supervision, and treatment of sex offenders. Evidence collected shows that these holistic approaches may be the most effective method of managing sex offenders in the community. Summarizing, collaboration between law enforcement, prosecutors, courts, institutional and community corrections, child protective services, treatment providers and polygraph examiners, is combined with intensive monitoring, surveillance and treatment, so as to best manage individual offenders based on their unique offending patterns.

This integrated approach has been given the moniker “containment model”. A containment model seeks to hold sex offenders accountable through the combined use of both the offenders’ internal controls and external criminal justice control measures, and the use of the polygraph to monitor internal controls and compliance with external controls.⁴⁵ The model relies on a philosophy that places public safety and victim protection as paramount goals. The model requires agency coordination, multidisciplinary partnerships, and job specialization. Public policies must create and support consistent practices among jurisdictions and quality control measures must be in place to ensure these policies are implemented as planned.

The containment approach is a specialized method of case management of sex offenders in the criminal justice system. It is predicated on the premise that sex offenders are totally responsible for the damage they inflict on others and must be continually held accountable for their “inappropriate thoughts and illegal actions”.⁶

Sex offenders are managed or “contained” through three main approaches which function in concert:

- *Internal control.* Sex offenders are taught to control their inappropriate sexual impulses, feelings, and behaviors through offense-specific treatment and through cognitive-behavioral techniques. The treatment of sex offenders should be undertaken by skilled therapists who are trained in specialized techniques to teach offenders to identify events which trigger deviant thoughts and subsequent actions. The Virginia General Assembly approved a certification program for sex offender treatment providers in 1994. The program will sunset in July, 1999 unless re-authorized by the legislature. It is critical to continue to have such a certification process in place to assure that therapists are trained appropriately in the field of sex offender treatment.

⁵ English, Kim et al, A Model Process: A Containment Approach, NIJ, pp. 2-4.

⁶ Ibid.

Rationale

- The containment model requires that the treatment provider work in concert with the criminal justice system to integrate the treatment tools into the offender's daily life.⁷
- *External control.* External control is provided by the criminal justice system through supervision, the threat of sanctions for noncompliance to ensure that the offender complies with the terms and conditions of his or her supervision. External can include probation or parole supervision, intermediate sanctions or, even, incarceration.⁸
- *Polygraph examinations.* ATSA (Association for the Treatment of Sexual Abusers) stated in 1993 that therapists should not rely solely on self-report of offenders to determine if they are complying with treatment requirements. Sex offenders are frequently in denial that they have a problem. The use of polygraph examinations will assist in overcoming an offender's reluctance to both acknowledge his or her offenses and to facilitate disclosure of information critical to effective monitoring. Several probation and parole officers with specialized sex offender caseloads in Virginia currently use the polygraph as a tool to monitor compliance. Other officers have expressed interest in this approach as well. Resources and identification of qualified examiners are needed to expand the use of this method. Deviant thoughts and fantasies, frequently precursors to committing a sexual offense, can be identified early through the polygraph exam and preventive measures taken.⁹

Information collected showed that sexual offenders oftentimes deliberately craft opportunities for assault. This heightened degree of planning contributes to their high success rate in carrying out their crimes. Fortunately, this planning and patterning - while contributing to the success of sex offenders in carrying out their crimes - also affords law enforcement an opportunity to interrupt the crime before it is perpetrated. Information collected showed that using information gathered from polygraph examinations and treatment providers, criminal justice officials can develop specific monitoring and surveillance plans for an offender aimed at disrupting their patterned behavior. The goal is to - via the systematic utilization of this approach - to contain the would-be sex offender.

For the containment model to succeed, constant information sharing and communication on the part of law enforcement and treatment officials is required. As such, offenders must agree to waive confidentiality among supervision, treatment and other supervision team participants before the containment model can be implemented.

Recognizing the value of the above described containment model, the work group recommended that a sex offender risk assessment be applied to all sex offenders under community supervision to better determine the required level of monitoring. A policy for intensive supervision

⁷ Ibid.

⁸ Ibid.

Rationale

and specialized caseloads for sex offenders was also recommended. The work group recommended that Virginia adopt a containment model for those sex offenders currently under supervision. The recommendation was to pilot this model in 8 to 10 jurisdictions. The proposal will include:

- Limiting caseloads to 35 per probation and parole officer;
- Adequate resources for polygraph examinations; and
- Adequate resources for community-based treatment.

Resources which will be needed implement this recommendation in the Department of Corrections are \$684,000.

Community Awareness and Education

Some of the information collected in support of this study discussed the pros and cons of community notification. Summarizing, it has been suggested that community notification may incite excessive fear or anger, resulting in acts of violence against the offender. At the same time, notification can create a false sense of complacency in communities by leading residents to conclude they know about the sex offenders in their midst and therefore have no need to worry further about the problem. The work group concluded that both of these potential negative effects can be minimized through the use of community meetings, door-to-door discussions, and the media to educate the public on the dynamics of sex offending. In furtherance of this view, the task force recommends that local probation and parole district offices, working with local law enforcement and the commonwealth attorney, actively try to prevent harassment. In this vein, it should be made clear that such acts of harassment may threaten the legality of notification and result in the law being repealed. Also acts of harassment should be vigorously prosecuted.

The creation of an interagency, interdisciplinary approach to educating the community on the issue of sex offending rounds out the comprehensive and unified approach to sex offender management discussed here. Through systematic cooperation and collaboration, a multidisciplinary team can help to remediate otherwise fragmented intervention efforts. Possible benefits include:

- Facilitating interagency communication with case-specific information sharing;
- The breaking down of barriers and minimization of turf battles through the exchange of expertise; and
- Minimizing the duplication of effort while maximizing resources through sharing of responsibility.

It should be noted that some states have linked their notification process to community meetings. While well-intentioned, a significant drawback to this approach include its personnel intensive nature. Further, there is also no guarantee that all the members of a community will attend. Recognizing the need to incorporate a public education component into the community notification process that could be provided on a regular basis while adopting a community

⁹ Ibid.

Rationale

notification process that can be immediately accessed and is readily available, the work group recommended that the Department of State Police develop a brochure for public distribution on the mechanics of "Megan's Law" and do a series of press releases after January, 1999. A related recommendation was to direct the Department of Criminal Justice Services to develop a training protocol and educational materials on sex offenders for local law enforcement agencies. The resources needed for this project are \$101,505.

Proposed Findings & Recommendations

Building on the background, study objectives and issues, and rationale discussed above, resulting findings and recommendations follow.

Finding A

There are several technical amendments needed in the registration and notification statutes to clarify the intent of the legislation. Also the crimes included in the Registry need to be modified.

- Amend §18.2-472.1 to clarify the venue for prosecution for failure to register. Venue occurs where the offender last registered, was supposed to have registered, or was convicted.
- Clarify that the local law enforcement agency is responsible for obtaining fingerprints and photographs for the Sex Offender Registry.
- Include all aggravated sexual battery statutes in the “sexually violent offense” category.
- Amend the Code to require that persons living in Virginia for more than 30 days who are required to register must register with the Virginia Sex Offender Registry.
- Allow registrant to seek relief from registration requirements due to a physical disability that renders him incapable of re-offending and incapable of re-registration. State Police will conduct an annual review to determine if circumstances have altered.

Finding B

A containment approach for managing sex offenders under community supervision which includes intensive supervision, intensive treatment and relapse prevention, and polygraphing to monitor the activities of the sex offender significantly reduces the incidence of re-offense.

- Apply a sex offender risk assessment to sex offenders under community supervision to determine the level of monitoring.
- Ensure that all sex offenders are placed under intensive supervision.
- Provide resources to community corrections for treatment and polygraph examinations.
- Funds should be sought to fully fund 8 to 10 pilot sites for the implementation of the Community Containment Model for Sex Offenders. This will include:
 - ◇ Limiting caseloads to 35 per probation and parole officer;
 - ◇ Adequate resources for polygraph exams; and
 - ◇ Adequate resources for sex offender treatment.
 - ◇ **Resources Needed: \$684,000**

Proposed Findings & Recommendations

Finding C

Communities need information on the appropriate use of information now available through access to the Sex Offender Registry. Statistics also show that a significant number of crimes are perpetrated before a sex offender is first apprehended. It is important to provide the public with information to identify sexually deviant behaviors in order to prevent sex offenses and to protect vulnerable populations.

- Request that the Department of State Police develop a brochure on mechanics of “Megan’s Law” and do a series of press releases after January, 1999.
- Direct the Department of Criminal Justice Services to develop a training protocol and educational materials on sex offenders to be made available to local law enforcement agencies or appropriate agencies, upon request.

◊ *Resources Needed: \$101,505*

Acknowledgements

The Virginia State Crime Commission extends its appreciation to the following individuals for their participation and assistance to staff on the SJR 68 study on “Megan’s Law”:

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Rita Katzman
Department of Social Services

Lt. Thomas Turner
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Winchester

Dennis Waite, Ph.D.
Department of Juvenile Justice

Appendix A

SENATE JOINT RESOLUTION NO. 68

Directing the Virginia State Crime Commission to continue its study of "Megan's Law".

Agreed to by the Senate, February 13, 1998

Agreed to by the House of Delegates, March 12, 1998

WHEREAS, Congress passed an amendment to the Jacob Wetterling Crimes Against Children Act, known as "Megan's Law," in April 1996; and

WHEREAS, the Virginia State Crime Commission undertook a study to formulate Virginia's response to the federal legislation; and

WHEREAS, the Commission made a number of recommendations for legislative measures to improve the registration and tracking of sex offenders to the 1997 Session of the General Assembly; and

WHEREAS, the Commission continued its study of "Megan's Law" in 1997 to develop legislation which enhances public access to information on sex offenders living in the community; and

WHEREAS, the Commission has adopted a recommendation for legislation which will provide a Virginia web site on "sexually violent offenders" on the Internet and allow public access to information on sex offenders registered on the Virginia Sex Offender and Crimes Against Children Registry for introduction to the 1998 Session of the General Assembly; and

WHEREAS, the proposed legislation will make major policy changes on the release of information on certain convicted sex offenders in Virginia; and

WHEREAS, the methodology for access to sex offender information will be utilizing the latest technology to improve the time and accuracy of providing the information; and

WHEREAS, it is critical that the implementation of the legislation be monitored closely to insure that the goal of enhanced and more expedient availability of sex offender information is achieved; and

WHEREAS, it is important to promote public safety and provide the public with the necessary information to take appropriate safety measures; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission be directed to continue its study of "Megan's Law" to provide oversight on the implementation of notification legislation and to develop appropriate community education materials to further enhance the public's knowledge and information on the dynamics of sex offending for development of personal safety strategies; and, be it

RESOLVED FURTHER, That the Commission be directed to seek Edward G. Byrne grant funds through the Department of Criminal Justice Services to assist in the oversight process and to develop a database for the evaluation of the community notification legislation.

All agencies of the Commonwealth shall provide assistance to the Commission, upon request..

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Appendix B

Applicable Virginia Code sections:

§ 19.2-390.1. Sex Offender and Crimes Against Minors Registry; maintenance; access.

- A. The Department of State Police shall keep and maintain a Sex Offender and Crimes Against Minors Registry, separate and apart from all other records maintained by it. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their communities from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being hired or allowed to volunteer to work directly with children.

The Registry shall include conviction data received from the courts, including the disposition records for juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, on convictions for offenses for which registration is required as defined in § 19.2-298.1 and registrations and reregistrations received from persons required to do so by § 19.2-298.1, whether such requirement arose before, on, or after July 1, 1997.

The Registry shall also include a separate indication that a person has been convicted of a sexually violent offense.

Upon receipt of a registration or reregistration pursuant to § 19.2-298.1 the State Police shall forthwith notify the chief law-enforcement officer of the county, city or town of the locality listed as the person's address on the registration or reregistration and any person who has requested automatic notification pursuant to § 19.2-390.2. The State Police shall forthwith transmit the appropriate information as required by the Federal Bureau of Investigation for inclusion in the National Sex Offender Registry. The State Police shall promulgate regulations governing the giving of notice to the chief local law-enforcement officer, the operation and maintenance of the Registry and the expungement of records on persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of expungement or relief from frequent registration has been entered pursuant to §§ 19.2-298.3, 19.2-298.4 or § 19.2-392.1.

- B. Except as provided in subsection A, C or D, Registry information shall be disseminated upon request made directly to the Department of State Police or to the State Police through a local law-enforcement agency. Such information may be disclosed to any person requesting information on a specific individual in accordance with subsection C. The Department of State Police shall make Registry information available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN). Registry information provided under this section shall be used for the purposes of the administration of criminal justice, for the screening of current or prospective employees or volunteers or otherwise for the protection of the public in general and children in particular. Use of the information for purposes not authorized by this section is prohibited and a willful violation of this section with the intent to harass or intimidate another shall be punished as a Class 1 misdemeanor.

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The VCIN and any form or document used by the Department of State Police to disseminate information from the Registry shall provide notice that any unauthorized use of the information with the intent to harass or intimidate another is a crime punishable as a Class 1 misdemeanor. The Department of State Police may by regulation establish a fee not to exceed fifteen dollars for responding to requests for information from the Registry pursuant to this subsection. Any fees collected shall be deposited in a special account to be used to offset the costs of administering the Registry.

- C. Information regarding a specific person requested pursuant to subsection B shall be disseminated upon receipt of an official request form which may be submitted directly to the Department of State Police or to the State Police through a local law-enforcement agency. The official request form shall include a statement of the reason for the request; the name and address of the person requesting the information; the name, address and, if known, the social security number of the person about whom information is sought; and such other information as the State Police may require to ensure reliable identification. Unlawful use of the information for purposes of intimidating or harassing another is prohibited and a willful violation of this section shall be punished as a Class 1 misdemeanor.
- D. On or before January 1, 1999, the State Police shall develop and maintain a system for making certain Registry information on violent sex offenders publicly available by means of the Internet. The information to be made available shall include the offender's name; all aliases which he has used or under which he may have been known; the date and locality of the conviction and a brief description of the offense; his date of birth, current address and photograph; and such other information as the State Police may from time to time determine is necessary to preserve public safety. The system shall be secure and not capable of being altered except by or through the State Police. The system shall be updated each business day with newly received registrations and reregistrations.
- E. No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this section, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.

History

(1994, c. 362; 1996, cc. 418, 542, 880; 1997, cc. 670, 672, 747; 1998, cc. 785, 834.)

Annotations

Cross references. - As to punishment for Class 1 misdemeanors, see § 18.2-11.

Editor's note. - Acts 1997, cc. 670 and 672, cl. 2, provides: "That the Department of State Police shall develop, prior to July 1, 1997, policies and procedures consistent with and necessary to implementing the requirements of this act, including but not limited to (i) the creation of a reliable identification form to be mailed or sent by facsimile transmission to the Department from a person seeking child-minding or day-care services and (ii) ensuring that such forms shall be provided to local law-enforcement agencies throughout the Commonwealth."

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Acts 1997, c. 747, cl. 2, provided: "That, prior to July 1, 1997, or as soon thereafter as is reasonably practicable, the Department of State Police shall promulgate regulations consistent with and necessary for implementation of the requirements of this act and 42 U.S.C. § 14071."

The 1996 amendments. - The 1996 amendments by cc. 418 and 880 are identical, and in subsection B, added the present second sentence and inserted "The VCIN and" preceding "any form or document" in the present fifth sentence.

The 1996 amendment by c. 542, in subsection A, added the present fourth sentence and inserted "the giving of notice to the chief local law-enforcement officer" following "regulations governing" in the present fifth sentence, and inserted "Except as provided in subsection A" preceding "Sex Offender Registry information shall be disseminated" at the beginning of the first sentence of subsection B.

The 1997 amendments. - The 1997 amendments by cc. 670 and 672 are identical, and substituted "subsections A and C" for "subsection A" near the beginning of subsection B; and added subsection C.

The 1997 amendment by ch. 747, in the first paragraph, in the first sentence, inserted "and Crimes Against Minors" preceding "Registry," in the second sentence, deleted "Sex Offender" preceding "Registry," substituted "becoming victims of criminal offenders" for "becoming the victims of repeat sex offenders," in the third sentence, deleted "Sex Offender" preceding "Registry," deleted "pursuant to § 19.2-390 for felony violations of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366" preceding "including the disposition," inserted "on convictions for offenses for which registration is required as defined in § 19.2-298.1" preceding "and registrations," inserted "and reregistrations" preceding "received from persons," divided the former fourth and fifth sentences into the present third paragraph; added the present second paragraph; in the present third paragraph, in the first sentence, substituted "Upon receipt" for "Promptly upon," inserted "forthwith" preceding "notify the chief," added "and forthwith transmit the appropriate information as required by the Federal Bureau of Investigation for the inclusion in the National Sex Offender Registry" at the end of the sentence, in the last sentence, deleted "Sex Offender" preceding "Registry," inserted "or relief from frequent registration" preceding "has been entered," substituted "19.2-298.3, 19.2-298.4" for "19.2-298.2"; in subsection B, in the first paragraph, deleted "Sex Offender" preceding "Registry" in four places; and added the final paragraph.

The 1998 amendments. - The 1998 amendments by cc. 785 and 834 are identical, and in subsection A, the former first paragraph was divided into the present first and second paragraphs by redesignating the former last sentence as the present second paragraph, and added the language beginning "whether such requirement," and in the present fourth paragraph, divided the former first sentence into the present first and second sentences by inserting the language beginning "any person who has" and ending "The State Police shall," and in the present second sentence, deleted "the" following "Federal Bureau of Investigation"; rewrote subsections B and C and added subsections D and E.

§ 19.2-390.2. Automatic notification of registration to certain entities.

On and after January 1, 1999, any public, parochial, denominational or private elementary or secondary school and any state-regulated or state-licensed child caring institution, child day center, child day program, family day home, foster home or group home may request from the State Police pursuant to this section and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration or reregistration of any sex offender registered pursuant to § 19.2-298.1. Agencies that request and are entitled to this notification, and which do not have the capability of receiving such electronic notice, may register with the Department of State Police to receive written notification of sex offender registration or reregistration.

Within three business days of receipt by the State Police of registration or reregistration pursuant to § 19.2-298.1, the State Police shall electronically or in writing notify an entity which has requested such notification, has complied with the requirements therefor established by the State Police and is located in the same zip code area as the address of the offender as shown on the registration or any contiguous zip code area.

The State Police shall establish reasonable guidelines governing the automatic dissemination of Registry information pursuant to this section, which may include the payment of a fee, whether a one-time fee or a regular assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and maintaining the electronic notification system and notice by mail.

History
(1998, cc. 785, 834.)

§ 19.2-391. Records to be made available to Exchange by state officials and agencies; duplication of records.

Each state official and agency shall make available to the Central Criminal Records Exchange such of their records as are pertinent to its functions and shall cooperate with the Exchange in the development and use of equipment and facilities on a joint basis, where feasible. No state official or agency shall maintain records which are a duplication of the records on deposit in the Central Criminal Records Exchange, except to the extent necessary for efficient internal administration of such agency. Furthermore, the Virginia Parole Board may receive and use electronically disseminated criminal history record information from the Central Criminal Records Exchange as required to make parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136, provided the data is (i) temporarily stored with the Board solely for operational purposes, (ii) purged within thirty days of receipt of updated data by the Board, and (iii) accessed and viewed solely by Parole Board members and authorized staff pursuant to subdivision 6 of § 9-169 and § 9-191.

§ 19.2-392. Fingerprints and photographs by police authorities.

- A. All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of: (i) any person arrested by them and charged with a felony or a misdemeanor an arrest for which is to be reported by them to the Central Criminal Records Exchange, or (ii) any person who pleads guilty or is found guilty after being summoned in accordance with § 19.2-74. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records.
- B. Such police authorities may establish and collect a reasonable fee not to exceed five dollars for the taking of fingerprints when voluntarily requested by any person for purposes other than criminal violations.

History

(Code 1950, § 19.1-19.6; 1968, c. 722; 1975, c. 495; 1978, c. 825; 1985, c. 306.)

Annotations

Cross references. - For other provisions as to power of police authorities to take fingerprints and photographs, see § 15.1-135.

§ 19.2-392.01. Judges may require taking of fingerprints and photographs in certain misdemeanor cases.

The judge of a district court may, in his discretion, on motion of the attorney for the Commonwealth, require the duly constituted police officers of the county, city or town within the territorial jurisdiction of the court to take the fingerprints and photograph of any person who has been arrested and charged with a misdemeanor other than a misdemeanor which is a violation of any provision of Title 46.2.

History

(1995, c. 407; 1996, cc. 755, 914.)

Annotations

Editor's note. - Acts 1996, cc. 755 and 914, cls. 7 provide: "[t]hat the provisions of this act shall apply to offenses committed and to records created and proceedings held with respect to those offenses on or after July 1, 1996."

The 1996 amendments. - The 1996 amendments by cc. 755 and 914 are identical, and deleted "general" preceding "district court" near the beginning of the section.

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