

**REPORT OF THE  
VIRGINIA STATE CRIME COMMISSION**

**Study of Sex Offender  
Registry Requirements  
(SJR 348, 2011)**

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



**SENATE DOCUMENT NO. 8**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2012**





Patrick Henry Building • 1111 East Broad Street, Suite B036 • Richmond, Virginia 23219  
804-225-4534 • Fax: 804-786-7872 • <http://vscc.virginia.gov>

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Delegate Robert B. Bell, *Chair*  
*Executive Director*  
Kristen J. Howard

Senator Janet D. Howell, *Vice-Chair*  
*Director of Legal Affairs*  
G. Stewart Petoe

January 11, 2012

TO: The Honorable Robert F. McDonnell, Governor of Virginia

And

Members of the Virginia General Assembly

The Code of Virginia § 30-156 authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Section 30-158(3) provides the Commission with the power to conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156...and formulate its recommendations to the Governor and the General Assembly.

Enclosed for your review and consideration is the final report of the study on Sex Offender Registry Requirements. The Commission received assistance from all affected agencies and gratefully acknowledges their input.

Respectfully,

A handwritten signature in black ink, appearing to be "R. Bell", written over a faint, larger version of the same signature.

Delegate Robert B. Bell  
Chair



# **MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION**

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G. Stewart Petoe, Director of Legal Affairs  
Christina Barnes Arrington, Ph.D., Senior Methodologist  
Holly B. Boyle, Policy Analyst  
Tracy L. Burnette, Intern  
Thomas E. Cleator, Senior Staff Attorney

*\*The Honorable Jim Plowman was appointed by the Governor to the Commission on October 14, 2011, replacing Glenn Croshaw.*

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**Attachment 1: Senate Joint Resolution 348**

## **I. AUTHORITY**

The Code of Virginia, § 30-156, authorizes the Virginia State Crime Commission (“Crime Commission”) to study, report, and make recommendations on all areas of public safety and protection. In so doing, the Crime Commission shall endeavor to ascertain the causes of crime and recommend ways to reduce and prevent it, explore and recommend methods of rehabilitation of convicted criminals, study compensation of persons in law enforcement and related fields and study other related matters including apprehension, trial and punishment of criminal offenders.<sup>1</sup> Section 30-158(3) empowers the Crime Commission to conduct studies and gather information and data in order to accomplish its purpose as set forth in § 30-156 ... and formulate its recommendations to the Governor and the General Assembly.

## **II. EXECUTIVE SUMMARY**

During the 2011 Regular Session of the Virginia General Assembly, Senate Joint Resolution 348 was enacted, which directed the Crime Commission to study and report on sex offender registry requirements. The resolution specifically directed the Crime Commission to focus on the requirements imposed by the federal government and the extent to which Virginia is currently in compliance with those requirements. The resolution also directed the Crime Commission to determine whether registration and notification laws are effective methods of reducing sexual victimizations.

Sex offender registry laws are a relatively new development in the field of public safety. To date, there have been only a few peer reviewed academic studies that have examined the effectiveness of registries in reducing sex crimes. Those that have been published have not reached a definitive conclusion on this issue. The different laws and registry schemes used in other states prevents generalizing the results of these studies to Virginia. While criminologists, sociologists, and other researchers will continue to study the effects of sex offender registries in the coming years, at this point, any attempt to derive a final conclusion from the available studies would be premature.

In 2006, Congress passed the Sex Offender Registration and Notification Act, or SORNA, requiring states to maintain sex offender registries and providing detailed requirements on how those registries must be maintained and updated, as well as which criminal convictions must result in registration, and for what lengths of time. SORNA categorizes all sex offenders into three “Tiers,” depending upon the seriousness of the crime for which the offender was convicted. States are free to develop their own systems of categorization, provided that all offenders are on the states’ registries for as long as they would be under the federal scheme. SORNA requires juvenile sex offenders, 14 years of age or older, who have been convicted of violent sex offenses to be registered. This requirement applies even if the juvenile was tried as a juvenile and did not receive an adult conviction.

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<sup>1</sup> VA. CODE ANN § 30-156 (2009).

Virginia categorizes all sex offenders into two “Tiers”: registered sex offenders, and offenders who have been convicted of a “sexually violent offense.” Under Virginia law, juveniles who have been adjudicated delinquent of a sex offense may be required to register, if the prosecutor requests this, and the trial judge makes a specific determination that the circumstances of the offense require the juvenile to be registered. Registration of juveniles is not automatic, however. As of July 17, 2011, there were a total of 18,287 offenders in total on Virginia’s sex offender registry; 3,308 were convicted of a registerable sex offense, and 14,979 were convicted of a “sexually violent offense.”

States which fail to substantially comply with the requirements of SORNA are subject to a ten percent reduction in the amount of Byrne funding they receive. While the amount of Byrne funding Virginia has received has varied considerably over the years, in FY10, Virginia received approximately \$5,934,000, meaning that Virginia could lose approximately \$600,000 if it is determined that Virginia’s statutes do not substantially comply with SORNA. It has been preliminarily determined that Virginia’s laws do not meet the requirements of SORNA, due to the fact that juvenile offenders who have committed violent sex crimes are not automatically required to be registered. This determination by the federal government is currently under review. As of the end of 2011, a final determination on this point, and whether or not Virginia will be deemed to be in compliance, had not been issued.

As Virginia law already allows for the registration of juvenile offenders in cases where it is determined that the facts of the crime are particularly serious, the Crime Commission recommended that Virginia not amend its sex offender registry laws to require mandatory registration for juveniles. Doing so would interfere with the discretion of judges to limit registration of juveniles to those cases where it would be most appropriate.

### **III. BACKGROUND AND ANALYSIS**

During the 2011 Regular Session of the Virginia General Assembly, Senator Emmett Hanger introduced Senate Joint Resolution 348, which directed the Crime Commission to study and report on sex offender registry requirements, specifically focusing upon the requirements imposed by the federal government, the extent to which Virginia is in compliance with those requirements, and the penalties for Virginia if it is not in compliance.<sup>2</sup> The resolution also directed the Crime Commission to determine whether registration and notification laws are effective methods of reducing sexual victimizations. To comply with this study request, a literature review was conducted, examining the frequently cited scholarly articles on the effectiveness of sex offender registries that have appeared in peer reviewed journals. The relevant federal and Virginia statutes were also reviewed in detail. Additionally, data was collected from the Virginia State Police on the numbers of offenders who are currently on Virginia’s sex offender registry.

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<sup>2</sup> S.J.R. 348, 2011 Gen. Assemb., Reg. Sess. (Va. 2011).



## Literature Review

Because sex offender registry laws are a relatively new phenomenon, especially those that were created or modified to conform to the federal government's requirements that were set forth in 2006 in the Adam Walsh Act, serious academic inquiries into registry effectiveness are still in the early stages. To date, there are surprisingly few peer reviewed studies examining the effectiveness of sex offender registries in reducing sex crimes. Those that have been published do not reach a definitive conclusion on the topic, and the strengths and limitations of various articles do not permit the pronouncement of a final "answer" as to whether or not registries are effective in deterring sexual attacks or preventing recidivism. While criminologists, sociologists, and other public policy researchers will continue to study this issue in the coming years, and more definitive conclusions may be reached in the next decade, at this point in time, this area of study should be regarded as still in its infancy. Any attempt to point to one study as providing a definitive answer would be premature. As one researcher commented in a 2005 article:

[I]t is improper to make sweeping judgments based on two introductory studies. There is still much to learn from goal-oriented evaluations as well as other evaluations of Megan's law....Research has only begun on this topic, and there is significant ground left to cover...<sup>3</sup>

While a few more peer reviewed studies have been published since then, that basic observation still holds true today.

In addition to the inchoate nature of these studies, there are specific limitations with each of them, making applicability of their findings to Virginia problematic. First, different studies have utilized varying methodologies in attempting to ascertain the effectiveness of registration laws. Second, the sample size has varied greatly from study to study. Third, some studies have concentrated on only certain types of offenders, such as sexual predators, while other studies have focused on all sex offenders subject to the requirements of being placed on a registry. Finally, differences between the registry laws that were examined in some of the studies, and the registry laws of Virginia, make it difficult or inappropriate to generalize the final results of the studies to Virginia.

Even with these limitations, though, it is interesting to review what different studies on the topic have found. In an early study, Schram and Milloy studied recidivism rates amongst sex offenders subject to registration and notification requirements in Washington state.<sup>4</sup> They prospectively followed 125 offenders for 54 months, and matched this group with a control group of offenders not subject to notification requirements. The study did not find any statistically significant difference in recidivism between the two groups; however, perpetrators subject to notification requirements were

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<sup>3</sup> Sarah Welchans, *Megan's Law: Evaluations of Sexual Offender Registries*, Vol. 16, No. 2 CRIMINAL JUSTICE POLICY REVIEW 123, 135 (2005).

<sup>4</sup> Donna. D. Schram & Cheryl Darling Milloy, COMMUNITY NOTIFICATION: A STUDY OF OFFENDER CHARACTERISTICS AND RECIDIVISM (Washington State Institute for Public Policy, 1995).

arrested for new crimes more quickly.<sup>5</sup> It was not ascertained in the study how many of the arrests were substantiated. Therefore, it is unclear from the study if these arrests were due to members of the community keeping a close watch upon the offenders and reporting any infractions of the law that were observed. Also undetermined in the study is whether the registration and notification laws were an effective tool for law enforcement in quickly arresting offenders who committed new crimes.<sup>6</sup>

A study in 1999, based in Massachusetts, used a retrospective design to attempt to see how many sex offenses would have been prevented if the convicted offender had been subject to a registration and notification law at the time when he committed his most recent offense.<sup>7</sup> The study focused on a group of 136 diagnosed sexual psychopaths. The authors concluded that six offenses might have been prevented if the offenders had been subject to a public notification law.<sup>8</sup> However, this study involved a small sample size, and only focused on sexual psychopaths. The conclusions of the study might have been different if a larger group of offenders, or a group of offenders that included non-psychopaths, had been examined. The study also made the assumption that notifications, by themselves, might have prevented the victims from being subjected to the psychopaths' crimes, which is perhaps over-optimistic.

Prescott and Rockoff examined whether the inconsistent results obtained in earlier studies on sexual offender registries and recidivism might be due to the fact that two separate factors, registration requirements and notification requirements, were being co-mingled, instead of being examined separately.<sup>9</sup> Their study examined data from a number of states, and found that the effects of registration and notification were, in fact, different.<sup>10</sup> While registration did not deter offenders from committing their first offense, it did significantly reduce registrants' subsequent recidivism rates, particularly for offenses involving acquaintances.<sup>11</sup> However, there was no evidence that notification laws reduced offender recidivism.<sup>12</sup>

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<sup>5</sup> Id.

<sup>6</sup> They would not be an effective tool if the majority of the arrests were not substantiated, and were due to false reports being vindictively called in against these known sex offenders. Because the validity of the arrests was not examined in this study, it is difficult to draw any conclusions beyond the ascertained facts.

<sup>7</sup> Anthony J. Petrosino & Carolyn Petrosino, *The public safety potential of Megan's Law in Massachusetts: An assessment from a sample of criminal sexual psychopaths*, Vol. 45, No. 1 CRIME & DELINQUENCY 140 (1999).

<sup>8</sup> Id.

<sup>9</sup> This is an important distinction. A registration law requires a sexual offender to provide his current address and other pertinent information to a state authority, usually law enforcement. This does not necessarily mean that the general public is informed of the offender's criminal history, address, recent changes in residence, or other information, which is the purpose of notification laws.

<sup>10</sup> J. J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?* NAT. BUREAU OF ECON. RESEARCH, WORKING PAPER NO. 13803, 3RD ANNUAL CONFERENCE ON EMPIRICAL LEGAL STUDIES PAPERS; UNIV. OF MICHIGAN LAW & ECONOMICS, OLIN WORKING PAPER NO. 08-006 (2008).

<sup>11</sup> Id.

<sup>12</sup> Id.

Vasquez *et al.* studied the general deterrent effects of sex offender registration laws, examining ten states, using a time series analysis to see if there was an increase or decrease in the number of rapes as a result of such laws.<sup>13</sup> Their conclusions were mixed. Six states—Arkansas, Connecticut, Nebraska, Nevada, Oklahoma, and West Virginia—did not show any statistically significant change in the number of rapes associated with the passage of a registration and notification law.<sup>14</sup> Three states—Hawaii, Idaho, and Ohio—showed a statistically significant decrease in the number of reported rapes associated with the passage of such a law.<sup>15</sup> One state, California, showed a statistically significant increase in the number of rapes reported.<sup>16</sup>

## Federal Sex Offender Registry Requirements

The Adam Walsh Act, 42 U.S.C. 16901 et seq., was enacted by Congress in 2006.<sup>17</sup> It contains seven Titles, the first of which is known as the Sex Offender Registration and Notification Act, or SORNA.<sup>18</sup> SORNA requires that all fifty states maintain sex offender registries, and provides detailed requirements as to who must register, how long they must remain on the registry, and what verification processes must be used to ensure the registry information is accurate. SORNA requires every adult who has been convicted of any sex offense, even a misdemeanor, to be registered.<sup>19</sup> An exception is provided for crimes that involve consensual behavior if the victim is an adult and not under the custodial authority of the offender, or if the victim is a minor, at least 13 years old, and the offender is not more than four years older.<sup>20</sup>

SORNA also requires registration for all juveniles, 14 years of age or older, who have been convicted or adjudicated delinquent of an offense involving a sexual act that was carried out through force, threat of serious violence, or rendering the victim unconscious.<sup>21</sup> There is no requirement that the juveniles have been tried and convicted as adults; even a juvenile adjudication of delinquency for these serious offenses requires registration.<sup>22</sup>

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<sup>13</sup> Bob E. Vasquez et al., *The influence of sex offender registration and notification laws in the United States*, Vol. 54, No. 2 CRIME & DELINQUENCY 175 (2008).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587-650.

<sup>18</sup> 42 U.S.C. §§ 16901-16962 (2011).

<sup>19</sup> 42 U.S.C. § 16913 (2011). A sex offender is defined by SORNA as “an individual who was convicted of a sex offense,” and a “sex offense” is defined as “a criminal offense that has an element involving a sexual act or sexual contact with another. 42 U.S.C. § 16911 (2011).

<sup>20</sup> 42 U.S.C. § 16911(5)(C) (2011).

<sup>21</sup> 42 U.S.C. § 16911(8) (2011). The statute requires that the sexual offense be comparable to, or more severe than, aggravated sexual abuse, as defined in 18 U.S.C. § 2241. While aggravated sexual abuse, under federal law, also includes consensual sex acts with a minor under the age of 12, the United States Attorney General has decided that adjudications for such offenses do not have to result in registration. National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,029 (Jun. 2008). The term “sexual act,” under federal law, requires genital or anal penetration or oral contact. 18 U.S.C. § 2246(2).

<sup>22</sup> 42 U.S.C. § 16911(8) (2011).

SORNA categorizes all sex offenders into three “Tiers,” depending upon the seriousness of the crime.<sup>23</sup> Tier I represents the least serious level of offender, and includes all sex offenders who do not meet the requirements of Tier II or Tier III.<sup>24</sup> Someone who is a Tier I sex offender must remain on the registry for at least 15 years, with the possibility of being relieved from registry requirements after 10 years if certain conditions, such as keeping a clean record and completion of a sex offender treatment program, are met.<sup>25</sup>

Tier II represents the intermediate level of offender; those whose offense is punishable by more than one year imprisonment, involves a minor, and is comparable to, or more severe than: sex trafficking, as defined by 18 U.S.C. § 1591; coercion and enticement, as defined by 18 U.S.C. § 2422(b); transportation with intent to engage in criminal sexual activity, as defined by 18 U.S.C. § 2423(a); abusive sexual contact, as defined by 18 U.S.C. § 2244; use of a minor in a sexual performance; solicitation of a minor to practice prostitution; or the production or distribution of child pornography.<sup>26</sup> A person also becomes a Tier II sex offender if they are already a Tier I sex offender and are subsequently convicted of a sex offense that carries more than one year imprisonment, but is not a Tier III offense.<sup>27</sup> Someone who is a Tier II sex offender must remain on the registry for at least 25 years, with no possibility for early relief.<sup>28</sup>

Tier III represents the most serious level of sexual offender. It consists of those whose offense is punishable by more than one year imprisonment, and is comparable to: aggravated sexual abuse, as defined by 18 U.S.C. § 2241; sexual abuse, as defined by 18 U.S.C. § 2242; any kind of abusive sexual contact, as defined by 18 U.S.C. § 2244, if the victim is under the age of 13; or the kidnapping of a minor, unless committed by a parent or guardian.<sup>29</sup> A person also becomes a Tier III offender if they are already a Tier II sex offender and are subsequently convicted of a sex offense that carries more than one year imprisonment.<sup>30</sup> Someone who is a Tier III sex offender must remain on the registry for life.<sup>31</sup> There is no possibility for an adult to ever be relieved from Tier III registry requirements, although a juvenile who was adjudicated delinquent of a Tier III offense may be relieved from registry requirements after 25 years, if he keeps a clean record and completes a sex offender treatment program.<sup>32</sup> If the juvenile was convicted as an adult, he must remain on the registry for life.<sup>33</sup>

SORNA requires that states verify the accuracy of the registry information with periodic in-person visits of all registered sex offenders. Tier I sex offenders must have an

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<sup>23</sup> 42 U.S.C. § 16911 (2011).

<sup>24</sup> 42 U.S.C. § 16911(2) (2011).

<sup>25</sup> 42 U.S.C. § 16915 (2011).

<sup>26</sup> 42 U.S.C. § 16911(3) (2011).

<sup>27</sup> *Id.*

<sup>28</sup> 42 U.S.C. § 16915 (2011).

<sup>29</sup> 42 U.S.C. § 16911(4) (2011).

<sup>30</sup> *Id.*

<sup>31</sup> 42 U.S.C. § 16915 (2011).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

in-person visit at least once a year; Tier II sex offenders must have an in-person visit at least every six months; and Tier III sex offenders must have an in-person visit at least every three months.<sup>34</sup>

## Virginia's Sex Offender Registry Requirements

Virginia's sex offender registry requirements are found in Chapter 9 of Title 9.1 of the Code of Virginia.<sup>35</sup> Under Virginia law, a conviction for practically any sex offense results in a requirement to register as a sex offender.<sup>36</sup> Juveniles who are transferred and convicted as an adult of a sex offense are also required to register.<sup>37</sup> Juveniles over the age of 13 at the time of the offense who are adjudicated delinquent of a sex offense may be required to register, if the prosecutor requests this and the court determines that the circumstances of the offense require the juvenile to be registered.<sup>38</sup>

Similar to the requirements of SORNA, Virginia also "tiers" sex offenders, though it uses a two tiered, rather than a three tiered, approach. Virginia classifies sex offenders as either a "registered sex offender," or someone who has been convicted of a "sexually violent offense."<sup>39</sup> A person convicted of a sexually violent offense, or a murder that requires registration, must remain on Virginia's sex offender registry for life, with no possibility of removal.<sup>40</sup> A person convicted of any other sexual offense, or a manslaughter that requires registration, can petition to be removed from the registry after 15 years.<sup>41</sup> If the offense was a violation of Va. Code §§ 18.2-64.1,<sup>42</sup> 18.2-374.1:1(C),<sup>43</sup> or 18.2-374.3(C)(D) or (E),<sup>44</sup> then the person must wait 25 years before petitioning to be removed from the registry.<sup>45</sup> If a person has been convicted of two or more offenses

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<sup>34</sup> 42 U.S.C. § 16916 (2011).

<sup>35</sup> VA. CODE ANN. §§ 9.1-900 to 9.1-922 (2011).

<sup>36</sup> VA. CODE ANN. §§ 9.1-902 (2011).

<sup>37</sup> VA. CODE ANN. §§ 9.1-901(A)-(F) (2011).

<sup>38</sup> VA. CODE ANN. §§ 9.1-902(G) (2011).

<sup>39</sup> VA. CODE ANN. §§ 9.1-902 (2011). The category of registered sex offenders also includes, for all practical purposes, those who have been convicted of manslaughter, if the death arose out of contributing to the delinquency of a minor, or the abuse and neglect of a child. The category of sex offenders convicted of a "sexually violent offense" includes, for all practical purposes, those who have been convicted of murder, if the murder victim was under the age of 15, or was under the age of 18 and the murder was related to a sexual offense. While Va. Code § 9.1-902 lists "criminal homicide" and "murder" separately from the registerable sex offenses and the sexually violent offenses, the registration requirements for each of these is the same as for registerable sex offenses and sexually violent offenses, respectively.

<sup>40</sup> VA. CODE ANN. §§ 9.1-908, 9.1-910(A) (2011).

<sup>41</sup> *Id.*

<sup>42</sup> Virginia Code § 18.2-64.1 is carnal knowledge of a detained juvenile by someone who provides services to juveniles under the purview of either a juvenile and domestic relations district court or the Virginia Department of Juvenile Justice.

<sup>43</sup> Virginia Code § 18.2-374.1:1(C) is the reproduction or distribution of child pornography.

<sup>44</sup> Virginia Code § 18.2-374.3, subsections (C), (D), and (E) all involve an adult using a communications system to solicit a juvenile for a sexual purpose.

<sup>45</sup> VA. CODE ANN. §§ 9.1-910 (2011).

requiring registration, then he must remain on Virginia's sex offender registry for life, with no possibility of removal.<sup>46</sup>

The Virginia State Police conducts an in-person verification of registry information twice year for every person on the registry who is not under the control of the Virginia Department of Corrections (DOC) or is on probation or parole.<sup>47</sup> For those registered offenders who are incarcerated or are on probation or parole, DOC or Community Supervision conducts the in-person verification, and forwards this information to the Virginia State Police.<sup>48</sup> In addition, the Virginia State Police requires every person on the registry to periodically verify their residency information with a mailed registration card; those who have been convicted of a sexually violent offense, or a murder that requires registration, must re-register every 90 days, while all other registered sex offenders must re-register once a year.<sup>49</sup> As of July 17, 2011, there were a total of 18,287 offenders on Virginia's sex offender registry; 14,979 were offenders who had been convicted of a sexually violent offense, while 3,308 were people who had been convicted of a registerable sex offense.<sup>50</sup>

### **Areas Where Virginia is Not in Compliance with Federal Requirements**

The Attorney General of the United States is given the authority to make the determinations as to which states have substantially implemented the requirements of SORNA, and which have not.<sup>51</sup> These determinations are handled, in particular, through the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (the SMART Office), which is part of the United States Department of Justice. Under the provisions of SORNA, states that do not comply with the federal requirements are subject to a ten percent reduction in the amount of Byrne funding they receive.<sup>52</sup> Although the amount of Byrne funding Virginia receives each year varies, sometimes considerably, in Fiscal Year 2010 (FY10), Virginia received approximately \$5,934,000.<sup>53</sup>

Last autumn, the SMART Office notified Virginia that a preliminary determination had been made that Virginia's sex offender registry laws were not in substantial compliance with requirements of SORNA.<sup>54</sup> Three broad areas were

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<sup>46</sup> *Id.*

<sup>47</sup> VA. CODE ANN. §§ 9.1-907(C) (2011).

<sup>48</sup> VA. CODE ANN. §§ 9.1-907(D) (2011).

<sup>49</sup> VA. CODE ANN. §§ 9.1-904 (2011). After three years, a person convicted of a sexually violent offense or a murder requiring registration may petition to reduce the frequency of his re-registration requirements from every 90 days to once a year. VA. CODE ANN. §§ 9.1-909(A) (2011).

<sup>50</sup> Information provided by the Virginia State Police. Of the 14,979 offenders who had been convicted of a sexually violent offense, 4,170 had been convicted of rape, 1,970 had been convicted of forcible sodomy, 631 had been convicted of sexual object penetration, and 4,281 had been convicted of aggravated sexual battery.

<sup>51</sup> 42 U.S.C. § 16925 (2011).

<sup>52</sup> 42 U.S.C. § 16925 (2011).

<sup>53</sup> Information provided by the Virginia Department of Criminal Justice Services.

<sup>54</sup> See Letter from Linda M. Baldwin, Director of the U.S. Dept. of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, to Col. W. Steven Flaherty (Aug. 2,

identified as not being in compliance: juveniles adjudicated delinquent of rape, forcible sodomy, and sexual object penetration are not automatically required to be registered;<sup>55</sup> certain Virginia offenses are not tiered correctly and would need to be changed to sexually violent offenses; and the twice a year in-person verifications for people convicted of certain sexually violent offenses is too infrequent, as SORNA requires Tier III offenders to be subject to in-person verifications every three months.<sup>56</sup>

On August 2, 2011, the SMART Office provided Virginia with a revised determination.<sup>57</sup> The last two areas of concern were, upon review, deemed to not be significant enough to warrant a finding that Virginia's laws were not in substantial compliance with SORNA. However, Virginia's failure to mandate registration for all juveniles adjudicated delinquent of rape, forcible sodomy, and sexual object penetration was not in keeping with the requirements of SORNA; thus, Virginia was determined to be out of compliance. Virginia would have to change its current policy of not automatically requiring the registration of juveniles convicted of serious sex offenses if it wished to be found as substantially implementing the requirements of SORNA. Virginia requested a review of this determination; on December 6, 2011, the SMART Office formally re-affirmed its determination that Virginia is not in compliance with SORNA due to this issue.<sup>58</sup>

#### **IV. CONCLUSION**

The Crime Commission discussed the advisability of modifying Va. Code § 9.1-902(G), to require juveniles adjudicated delinquent of rape, forcible sodomy, or sexual object penetration to register as sex offenders. After voting on the issue, the Crime Commission recommended that Virginia continue its current policy and not require automatic registration for juveniles adjudicated delinquent of sex offenses. Juvenile and domestic relations district court judges already have the discretion, in appropriate cases, to require juveniles to be registered.

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2011) (on file with the Virginia State Crime Commission).

<sup>55</sup> VA. CODE ANN. §§ 9.1-902(G) (2011).

<sup>56</sup> 42 U.S.C. § 16916 (2011).

<sup>57</sup> See Letter from Linda M. Baldwin, Director of the U.S. Dept. of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, to Col. W. Steven Flaherty (Aug. 2, 2011) (on file with the Virginia State Crime Commission).

<sup>58</sup> Information provided by the Office of the Attorney General of Virginia.





## **Attachment 1**

### **Senate Joint Resolution 348**

SENATE JOINT RESOLUTION NO. 348

*Directing the Virginia State Crime Commission to study sex offender registry requirements. Report.*

Agreed to by the Senate, February 2, 2011  
Agreed to by the House of Delegates, February 22, 2011

WHEREAS, it is important that citizens feel safe from crime in their homes and communities, and in addition to assisting law-enforcement, an important purpose of Virginia's sex offender registry is to provide the public with the necessary information to take appropriate safety measures; and

WHEREAS, since 1994 three federal laws have encouraged states to establish sex offender registries or risk the loss of federal funding: the Jacob Wetterling Act, Megan's Law and the Pam Lyncher Act; and

WHEREAS, since 1994 the number of crimes for which registration is required has increased, the information that is required at registration has grown substantially, and public access to information on individual sex offenders has expanded; and

WHEREAS, concerns have been raised about the breadth of registration and whether the breadth of registration makes it difficult to distinguish predatory behavior and whether citizen reliance on the sex offender registry can be misplaced in certain instances; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission be directed to study sex offender registry requirements. The study shall identify those requirements imposed by the federal government, the extent to which Virginia is in compliance with those requirements, the penalties if Virginia is not in compliance, and the fiscal and human costs of being in compliance.

In conducting its study, the Virginia State Crime Commission shall determine the feasibility of implementing a tiered system and whether a tiered system would better inform the public, whether scarce resources could be better used by concentrating on those who have the greatest risk of reoffending, and whether registration and notification laws are effective methods of reducing sexual victimizations.

Technical assistance shall be provided to the Virginia State Crime Commission by the Department of State Police and the Virginia Criminal Sentencing Commission. All agencies of the Commonwealth shall provide assistance to the Virginia State Crime Commission for this study, upon request.

The Virginia State Crime Commission shall complete its meetings by November 30, 2011, and the Chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2012 Regular Session of the General Assembly. The executive summary shall state whether the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

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