

# Sex Offender Law Strains States

State and federal officials are at odds over requirements of the Adam Walsh Act.

BY SARAH HAMMOND

**A**s a father of two girls ... I will see states get the support they need to implement the Adam Walsh law," President Obama told John Walsh, host of "America's Most Wanted," at a White House meeting on March 3.

The Adam Walsh Child Safety and Protection Act of 2006 is named after Walsh's son, Adam, who was kidnapped and murdered in Florida almost 30 years ago.

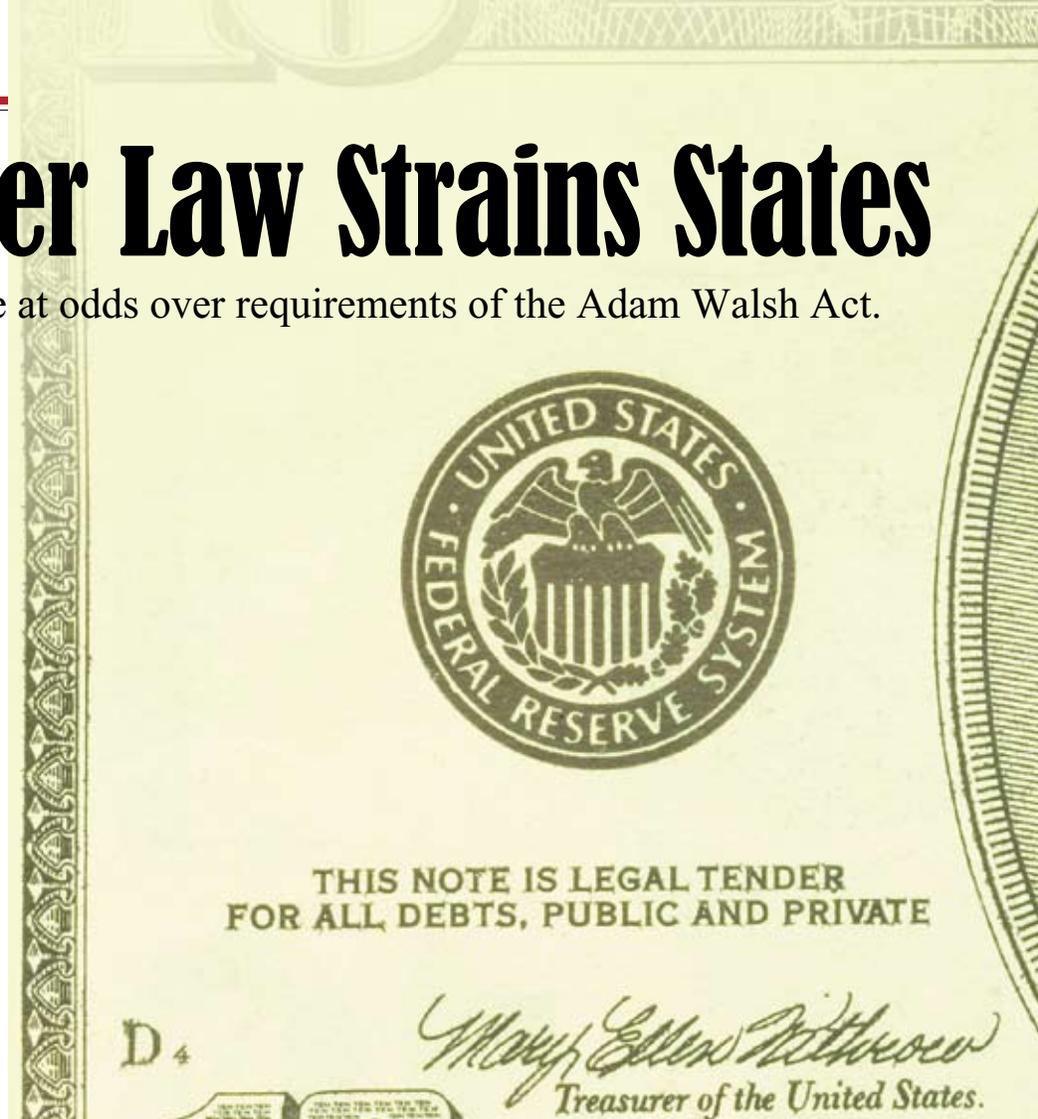
To comply with one portion of the law—the Sex Offender Registration and Notification Act or SORNA—states must collect the uniform and specific types of information on sex offenders; establish rules consistent from state to state for how long the person must be registered; comply with regulations on how information is verified; share the information with appropriate agencies; and impose penalties for failing to register.

Attorney General Eric Holder extended the original 2009 deadline until July 27 because no state had acted. States also can request a second, one-year extension.

The act was written to enhance sex offender tracking systems nationwide and link all states to one national sex offender registry. All states already have sex offender registries in place, but laws differ on many aspects of registration. The new law aims to bring uniformity to the registries.

Little of the money authorized in the act has been appropriated to states, however, to help meet the numerous requirements in the measure. States that don't comply risk losing 10 percent of the federal Byrne Justice Assistance Grant, which is the largest federal criminal justice funding stream to states. The grant is used to pay for many criminal justice system functions, including drug task forces and treatment, anti-gang units and other law enforcement activities. The 10 percent penalty is not a one-time hit. States will continue to incur the penalty each year until most of the requirements are met.

*Sarah Hammond tracks criminal justice issues for NCSL.*



Kansas Representative Jan Pauls, a member of Corrections and Juvenile Justice Committee, says coming into compliance with SORNA is complicated by the budget hole Kansas lawmakers must close.

"SORNA would require more funding, but we are trying to make a good faith effort," she says. "But we need to be realistic about the resources we have available to try to come into compliance."

Pauls added, however, that whatever concerns lawmakers may have with SORNA, Walsh should be praised for his efforts to help kids.

"I recently visited the National Center for Missing and Exploited Children and was impressed with all of the good things that have come out of the horrific tragedy of Adam Walsh's murder," she says. "The center provides training, assistance and has established many successful programs, such as the Amber Alert program to help find missing children."

Since the original deadline, just Ohio, Delaware and two tribes in Oregon have com-

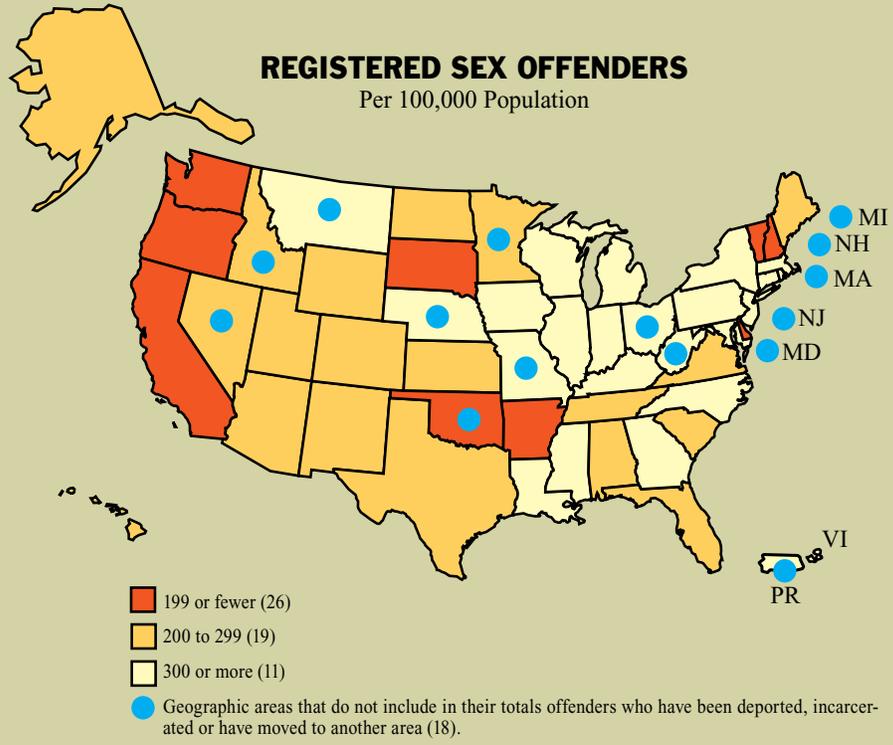
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KANSAS REPRESENTATIVE JAN PAULS

plied, while others struggle with the costly and complex requirements of SORNA.

The Sex Offender, Monitoring, Apprehending, Registering and Tracking, or SMART, office in the Justice Department was created under the act to determine state compliance and provide guidance to states along the way.

State legislation related to sex offender registration and notification continues to be plentiful, even in the absence of compliance. From 2007-2009, at least 35 states passed new laws related to various provisions of the act. At least seven of these states specifically mention attempting to comply with SORNA,



Sources: State or territory sex offender registries; U.S. Census Bureau, Central Intelligence Agency, World Fact Book, July 2009 Estimates, National Center for Missing & Exploited Children, Environmental Systems Research Institute.

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**REPRESENTATIVE**  
**JAN PAULS**  
**KANSAS**

while the others make related registration changes without reference to the act. States have been especially active in using the Internet to register and track sex offenders, including their Instant Messaging addresses, chat screen names, blogs and more. Other laws address how long offenders must remain on the list, requiring registered offenders to report in person, penalties for not registering and creating different levels of offenders.

The most troublesome provision in the act for state lawmakers requires juveniles age 14 and older guilty of sexual acts involving aggravated sexual abuse to register on a public list. Critics believe this will work against efforts to rehabilitate these young offenders,

an emphasis of the juvenile justice system.

The measure also requires states to retroactively apply the act’s provisions to criminal defendants who re-enter the criminal justice system for any offense, even when the prior offense predated the enactment of the 2006 law. In February 2010, the U.S. Supreme Court heard oral arguments in cases from Indiana and New York questioning whether the failure to register provision of the law can be applied retroactively. The high court will rule on these cases in the coming months.

The biggest challenge states face is the cost of implementing the provisions during these fiscally tight times.

“Arizona already has put millions of dollars toward tracking sex offenders,” says Arizona Senator Linda Gray, chairwoman of the Public Safety and Human Services Committee. “Law enforcement has and is still doing everything possible to assist with community notification, but what is required under the law is a very heavy burden, time and cost wise.”

Many other state lawmakers are also

weighing the costs of complying against the loss of the federal funds if they don’t. Arizona, California, Colorado, Florida and Virginia have conducted cost-benefit analyses, but over the past four years the Justice Department grants have fluctuated dramatically, making it difficult to determine what a 10 percent loss really means.

“We are hurting financially and consistently cutting important programs across the board in our state,” Gray says. “Now is an inopportune time for funding penalties.”

Nonetheless, complying with the Adam Walsh Act will remain a challenging issue for states.

“We remain committed to making sure the public is safe and already have substantial notification and registration requirements in place,” says Gray. “We hope the federal government revisits the issue and looks at the real effect it’s having on states.”

**CHECK OUT** additional resources related to sex offender legislation at [www.ncsl.org/magazine](http://www.ncsl.org/magazine).