

# DOWN TO THE WIRE

As the deadline approaches to comply with federal rules on sex offenders, some states are saying “no thanks.”



*“Our system has been developed, refined and reworked over the course of more than a decade and a half.”*

REPRESENTATIVE PAT COLLOTON, KANSAS

BY DONNA LYONS

**W**hile some states scramble to comply with portions of the federal sex offender registration law by its July deadline, others think the law’s rewards are just not worth the costs.

The new requirements are extensive. The Sex Offender Registration and Notification Act (SORNA)—a portion of the Adam Walsh Act that passed in 2006—expands the categories of offenders that states and tribes must register to include juveniles who commit certain serious crimes and some adult offenders convicted before the law was enacted. Some consider the amount

*Donna Lyons directs NCSL’s Criminal Justice program.*

and kind of information that states must now collect, regularly verify and share as onerous.

The legislation sets requirements for which offenses and offenders must be classified, lengthens how long they must stay registered, adds a requirement for periodic appearances by offenders for verification, and sets the penalties states must impose on those who fail to register. States that don’t meet what the U.S. Department of Justice terms “substantial implementation” will lose 10 percent of their Byrne law enforcement assistance grants.

Some policymakers, however, question the value of all these requirements. State sex offender registries already contain names, addresses, photos, vehicle, job and other identifying information on hundreds of thousands of

convicted sex offenders. If public safety is the goal of maintaining all these public registries, it’s not clear if all the information makes communities safer or if the most dangerous predators become lost among a growing swell of electronic information.

State lawmakers have enacted some 250 bills related to SORNA since 2007, but to date only Delaware, Florida, Ohio, South Dakota and two tribes have met “substantial implementation” standards. Although it’s likely more states will comply by the July deadline, lawmakers in other states have studied SORNA and believe their current sex offender registration policies and processes best address the needs in their states.

“Our system has been developed, refined and reworked over the course of more than a decade

*“We had to balance the opportunity for rehabilitation with responsibility and culpability of offenders, including some juveniles, who commit certain forcible crimes.”*

SENATOR JONI CUTLER, SOUTH DAKOTA



REPRESENTATIVE  
PAT COLLOTON  
KANSAS

and a half,” Representative Pat Colloton of Kansas told members of a U.S. House subcommittee in February. “Legislative committees like mine have worked exhaustively with researchers, public safety professionals and community members to make our laws respond to the specific and unique needs of Kansas.”

Colloton also points out that states have not really had several years to implement the SORNA rules because final, supplemental federal guidelines were not issued until earlier this year.

#### STATE SYSTEMS ARE BETTER

A recent study by the Texas Senate Criminal Justice Committee found the loss of 10 percent of federal justice funding is an inadequate incentive to comply with SORNA. State officials estimated it would cost \$38.7 million to comply, but the state would lose only about \$1.4 million in Byrne funds if it refused. The costs would come from adding more offenders to the registry, some for longer periods of time, and needing more law enforcement personnel to verify information at required, frequent intervals.

Even so, the Senate recommendation in Texas not to comply was based on public safety, not cost. Senator John Whitmire, chairman of the Criminal Justice Committee, says the federal mandates are no better than Texas’ laws that restrict parole and commit or supervise offenders based on their dangerousness.

“No one needs to show Texas the way to deal with sex offenders,” he says.

Texas is one of the states that classify sex offenders and set their registration require-



SENATOR  
JOHN WHITMIRE  
TEXAS

The disagreement among states over whether to comply with the Sex Offender Registration and Notification Act (SORNA) or face a loss of some federal money is reflected in Congress.

At a hearing in February of the House Subcommittee on Crime, Terrorism, and Homeland Security to review the Adam Walsh Act, of which SORNA is a part, Chair James Sensenbrenner, a key backer of SORNA, expressed his displeasure with the vast majority of states that have not complied with the law so far.

Despite that, he and other subcommittee members said there might be room for change, including scaling the amount of federal money states will lose based on the degree to which they’ve complied with the law. If a state, for example, is 80 percent compliant with the law’s requirements, it wouldn’t incur the entire 10 percent reduction in Byrne law enforcement assistance grants.

U.S. Representative Bobby Scott offered a different perspective. SORNA is “unworkable in the vast majority of jurisdictions,” he said, “and even compliant states are having trouble with implementation.”

The obstacles include the cost to states to comply and issues over handling juvenile offenders, classification of offenders, retroactivity and tribal sovereignty.

A representative of the Sex Offender Monitoring, Apprehending, Registering and Tracking office refused to acknowledge any hurdles and insisted the issues Scott mentioned were only state “opposition to SORNA requirements.”

Subcommittee members discussed whether to extend the SORNA compliance deadline for two more years—since states have not had the full time intended by Congress to comply because it took so long for guidelines to be issued—or whether that would only give states an excuse to ignore the law entirely. Committee members did not make a decision on an extension.

Acknowledging studies that show juveniles respond better to treatment than incarceration, members questioned the benefit of requiring them to remain on a registry for a long time, concerned that may do more harm than good. Some members also argued SORNA does not provide enough flexibility for states that use risk assessment as a means of classifying offenders rather than the tier approach favored under SORNA.

—Susan Parnas Frederick, NCSL

*“No one needs to show Texas the way to deal with sex offenders.”*

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ments based on a risk assessment. SORNA, instead, has states using a three-tier classification system based solely upon the offense. Experts in treating sex offenders expressed their concerns with categorizing sex offenders only by their offense. A scientific risk assessment, they argue, would more likely lead to both low- and high-risk offenders being properly categorized. They said work in Texas to narrow the sex offender registry to those who are most likely to be dangerous would be undone by SORNA’s rules.

Officials in the federal Sex Offender Monitoring, Apprehending, Registering and Tracking (SMART) office in the Justice Department told a U.S. House Judiciary subcommittee in Febru-

ary that SORNA’s tiered classification system is a barrier for at least 11 states.

One of those states is Kansas. Lawmakers are working to reclassify crimes, change notification practices, and improve the ability for electronic information sharing among law enforcement and other agencies.

Federally provided software—called SORT—is helping 105 counties in Kansas enter and update offender information. State officials also say the Justice Department’s national exchange portal is a valuable tool for exchanging information state-to-state about sex offenders.

Even so, Kansas’ Colloton says she can’t be sure these “Herculean efforts” will meet compliance requirements.

#### JUVENILE REGISTRATION

The most significant barrier, according to SMART officials, is the juvenile registration requirements. Juveniles involved in serious sex offenses must register and their information must be shared with the national database, law

enforcement, and in some circumstances with supervision agencies and registration authorities in other jurisdictions.

Many states exclude juveniles from registration requirements, particularly information that is made public, or allow a judge to decide whether a juvenile must register. Not only do SORNA provisions conflict with some state laws about confidentiality of juvenile records, they prompt concerns about whether registration requirements are in sync with the goals of rehabilitating juveniles.

Supplemental guidelines released in 2010 and made final by the SMART office in early

2011 provided states with discretion to exempt juvenile delinquency adjudications from public website postings and certain other disclosures.

Senator Joni Cutler of South Dakota, one of the four states to have complied so far with SORNA, said the Legislature had to make some difficult decisions around juvenile issues.

“Juvenile matters were the most sensitive,” she says, “and we had to balance the opportunity for rehabilitation



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with responsibility and culpability of offenders, including some juveniles, who commit certain forcible crimes.”

Lawmakers agreed to a petition process that allows some offenders to be removed from the registry after 10 years.

Cutler said the South Dakota attorney general’s office coordinated SORNA work across the state and with federal officials.

“From the start,” she says, “they approached this as: ‘We are going to find a way to comply.’”

#### **MONEY’S AN ISSUE, TOO**

Reviews in other states also have found the

# A Bad Trip

Lawmakers try to stay one step ahead of the chemists manufacturing dangerous synthetic drugs.

**BY ALISON LAWRENCE**

**S**pice and bath salts sound like something you might toss into a casserole or sprinkle in the bathtub. But they are not nearly so benign as that. Users can experience paranoia, severe anxiety, hallucinations, nausea, skyrocketing heart rates and some even die.

These products are part of a new wave of synthetic drugs widely available in convenience stores and head shops and over the Internet. They mimic the effects of marijuana, cocaine and ecstasy and up until recently have been totally legal.

“The presence of [these drugs] is extremely troubling for a number of reasons,” says Kansas Senator Vicki Schmidt. “These compounds have been linked to a number of health concerns. Hospitalizations, emergency room visits and calls to poison control centers have increased everywhere these products are sold.”



**SENATOR**  
**VICKI SCHMIDT**  
**KANSAS**

#### **USE RISING QUICKLY**

Spice is a common brand name for a synthetic cannabinoid, a chemically engineered version of THC, which is the active ingredient in marijuana. Synthetic cannabinoids have been linked to more than 1,600 calls to poison control centers in the first four months of this year, according to the American Association of Poison Control Centers.

“The products are meant to create a similar reaction to marijuana,” says Dr. Anthony J. Scalzo, medical director of the Missouri Poison Control Center. “But in fact, patients often report the opposite—a fast, racing heartbeat, elevated blood pressure and nausea.”

In some instances, Schmidt says, the effects are even worse. “Sadly, a number of deaths have been reported across the country.”

Idaho Senator Denton Darrington thinks the rise of synthetic cannabinoids has, at least partially, been a result of successfully controlling other illicit drugs in his state. “We have tackled meth and other drugs, so users are finding other ways to get high.”

Use nationwide has drastically increased over the past three years. Poison control centers, which received 14



**SENATOR**  
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calls about the drugs in 2009, received 2,874 calls in 2010. If the calls continue at the current pace, there could be as many as 5,600 this year.

State lawmakers are acting quickly to curb the availability of these drugs. As of April 15, at least 24 states had banned synthetic cannabinoids. Kansas was the first to outlaw the use, possession or sale of synthetic cannabinoids. Schmidt said local law enforcement officials contacted her before the 2010 session with significant concerns about the new drug, which was being sprayed onto dried herbs and sold legally throughout the state. The 2010 law banned three chemical compounds, which are specific types of synthetic cannabinoids known to be in Spice.

Kentucky Representative John Tilley says in 2010 he made it a priority to get a ban passed. He wanted “to get it off the shelves as quickly as possible—it was a major concern that kids could walk up to the counter and buy it. It just wasn’t acceptable.”



**REPRESENTATIVE**  
**JOHN TILLEY**  
**KENTUCKY**

The drugs did not vanish so quickly in Kansas. After passing a law in 2010, numerous other compounds began appearing.

“The manufacturers of these compounds understand the laws,” Schmidt says, “and have demonstrated their ability and determination to stay several steps ahead of the law by transitioning away from scheduled compounds to uncontrolled compounds.”

Because these drugs are chemically engineered, the drug makers need only change one molecule to create a new compound that’s not covered by statute. Scientists have found at least a dozen synthetic cannabinoid compounds in various spice products and estimate there could

*Alison Lawrence tracks drug legislation for NCSL.*

benefits of the federal approach don't outweigh the drawbacks. California's Sex Offender Management Board advised the state not to comply. Created by the Legislature, the board was charged with guiding policymakers on the best ways to manage adult sex offenders living in the community. In a 2009 report, it found that existing state policies related to risk assessment, juvenile registration and monitoring of sex offenders were more consistent with proven, effective practices and more likely to result in greater public safety. The board also cited an assessment by the state attorney general's office that the costs to implement SORNA provisions

far exceeded the penalty of reduced justice assistance funds.

The California report also criticized the inadequate federal funding accompanying the requirements. The Justice Department's SMART office says that to date only about \$39 million has been given to 43 states for SORNA compliance.

While Kansas strives to meet the federal requirements, Colloton sees a disturbing disconnect in withholding funds that support services for victims of domestic violence and sexual assaults and help community corrections agencies collaborate.

"It is troubling that states that don't have the resources to accommodate what is a tremendously costly unfunded mandate will have to watch as the very services our criminal justice systems rely upon are cut even further," she says.

"Particularly in this economy, no state can afford a significant new unfunded mandate to change public safety approaches already undertaken."

#### SL ONLINE

Learn more about state laws regarding on juvenile sex offender registration at [www.ncsl.org/magazine](http://www.ncsl.org/magazine).

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be hundreds more.

The complexity of the chemical compounds makes it difficult to enact a broad ban on these substances, Darrington says. Experts from Idaho's board of pharmacy worked with the state's Criminal Justice Commission to design the statutory language. The 2011 law, which Darrington sponsored, passed unanimously in both the House and Senate.

This year, lawmakers in Kansas, Idaho and half a dozen other states have taken this approach, writing laws that ban the general chemical classes associated with synthetic cannabinoids, instead of individually listing specific compounds.

#### NEW YEAR, NEW DRUG

Other synthetic drugs drew the attention of lawmakers this year. Known on the street as bath salts, these chemically engineered substances are really just chemical cousins to the illicit drugs meth and ecstasy. When smoked or inhaled, they produce similar effects. Poison control centers documented 300 calls in 2010 and more than 1,800 calls in the first four months of this year.

States lawmakers have been quick to ban these substances. As of April 15, 12 states had outlawed one or more of the different types of these substituted cathinones.

"We have been successful at snuffing out

[substituted cathinones] before they become as serious a problem as synthetic cannabinoids had become," says Kentucky's Tilley.

Like synthetic cannabinoids, these products are manufactured and marketed using sophisticated strategies. "They are labeled 'not for human consumption' which is just a way to evade scrutiny of law enforcement," says Schmidt.

Many states are using the same general strategy of broadly banning entire classes of chemicals and any related substances, even those not yet detected by scientists and law enforcement agencies.

#### FEDERAL ATTENTION

The escalating use of these drugs has not gone unnoticed by federal drug enforcement officials. On March 1, the U.S. Drug Enforcement Agency placed five synthetic cannabinoids on the list of Schedule I controlled substances for up to 18 months while the agency determines if they should be banned permanently. U.S. Senator Charles Grassley also has introduced legislation to ban permanently the five substances identified by the DEA, plus additional synthetic

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cannabinoid substances.

Although the drug agency has yet to take action on any chemicals in bath salts, the director of the White House Office of National Drug Control Policy has expressed concern over them. "Although we lack sufficient data to understand exactly how prevalent the use of these stimulants is," R. Gil Kerlikowske said earlier this year, "we know they pose a serious threat to the health and well-being of young people and anyone who may use them."

U.S. Senator Charles Schumer introduced legislation in mid-February to add specific types of substituted cathinones to the list of federally controlled substances.

The health and safety risks posed by chemically engineered drugs are not new to state legislatures. Lysergic acid diethylamide (LSD) and phencyclidine (PCP) have been outlawed for more than 30 years. More recently, the health risks of meth use and production have been addressed by state lawmakers.

"We will remain adamant against this stuff," Tilley says. "We are watching out for the next designer drug; I am sure a chemist is out there now creating the next drug, and we will be ready to tackle it."

#### SL ONLINE

Learn more about state actions to regulate synthetic drugs at [www.ncsl.org/magazine](http://www.ncsl.org/magazine).