



**Report of the Sex Offender Policy Task Force**

**NATIONAL ASSOCIATION OF CRIMINAL DEFENSE  
LAWYERS**

**Adopted by the Board of Directors**

**February 24, 2007**

## Summary

The following sex offender policy statements were adopted by the Board of Directors of the National Association of Criminal Defense Lawyers by unanimous vote at the Association's Midwinter Meeting in San Diego, CA, February 24, 2007:

I. NACDL opposes the death penalty as a sanction for sex offenders.

II. NACDL opposes mandatory minimum sentences.

III. NACDL opposes sex offender registration and public notification laws. If employed at all, sex offender registries should classify sex offenders on the basis of risk, with full due process of law. Public/community notification provisions should be reserved for "High Risk" sex offenders.

IV. NACDL opposes civil commitment laws because they punish offenders who have paid their debt to society. If employed at all, sex offender civil commitment statutes should provide a full panoply of due process rights including the right to a jury trial, the right to confront adverse witnesses, the right to present evidence, rules of evidence, a high burden of proof on the government and a process for review and discharge which levels the burden squarely on the government.

V. NACDL opposes residence restrictions because such laws and ordinances do not provide effective community protection and threaten offender stability and reintegration into society.

VI. Sex offender treatment and rehabilitation programs should be adequately funded and available both in our prisons and in the community. Such programs should not include mandatory polygraph examinations and should respect Fifth Amendment rights.

VII. Children are different.

## **Introduction**

The National Association of Criminal Defense Lawyers (NACDL) recognizes that sex offenses and child sexual abuse cause great pain and suffering to victims and their families. NACDL defends the constitutional rights of the accused and former offenders, not the crime itself. We believe that sexual abuse of children and adults should be responsibly investigated and vigorously prosecuted when it is discovered. However, it is important that our society's vigor in this regard does not impair the need to make criminal justice policy decisions based upon facts, sound scientific research, and evidence, giving due consideration to the rights of both complainants and offenders.

NACDL also recognizes that accusations of child abuse and child sexual abuse may be used as weapons to further the goals of an accuser. In some cases, accusations of child abuse and sexual abuse have turned out to be simply false based upon unsupported theories such as repressed memory, poor interviewing techniques or the simple inability of a child to understand the accusation and its consequences. Thus, when sexual abuse allegations are made it is imperative that the accused have unfettered access to an impartial tribunal, a fair jury, and an error-free determination of the facts. Likewise, an individual who is convicted of a sex offense should not be deprived of his humanity. Reform and rehabilitation of the offender is the most efficient manner in which to ensure the protection of the public. Sex offender sentencing policies should be based upon solid research and evidence; not myth, emotions or public outcry.

In recent years there has been a proliferation of new sex offender laws. Unfortunately, these new laws are for the most part based upon myth and emotion. These laws include sex offender registration and public notification statutes, minimum mandatory sentences, civil commitment for offenders who have already served a sentence, and efforts to apply the death penalty against offenders who have not killed anyone. These laws differ from jurisdiction to jurisdiction but all of them extend unwise mandatory consequences to an entire "class" of offenders regardless of the details of the individual case or the circumstances of the individual defendant. We believe this proliferation of "one size fits all" laws to be unwise, contrary to our traditional notions of liberty and fairness, and ultimately detrimental to public safety.

### **I. NACDL Opposes the Death Penalty as a Sanction for Sex Offenders.**

NACDL supports the abolition of the death penalty.

Recently, several states have either adopted<sup>1</sup> or considered adopting the death penalty<sup>2</sup> as a sanction for non-homicide child sex offenses. The expansion of capital punishment to non-homicide offenses is particularly troubling and likely to be unconstitutional. In *Coker v. Georgia*<sup>3</sup> the United

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<sup>1</sup> In Montana, Florida and Louisiana, certain sex offenders are eligible for the death penalty. *See, eg.*, La.R.S. 14:42 (C); *State v. Wilson*, 685 So.2d 1063 (La., 1996) *cert. den. sub. nom. Bethley v. Louisiana*, 520 U.S. 1259 (1997). This year the South Carolina and Oklahoma have adopted legislation permitting the death penalty for serial child sex offenders. *See*, 2005 - 2006, Sb 997 (South Carolina.)

<sup>2</sup> The Tennessee legislature also has considered such legislation but it failed in Committee. TN SB 2490 and TN HB 2924 (2006).

<sup>3</sup> 433 U.S. 584 (1977).

States Supreme Court recognized that the application of the death penalty in a case involving the rape of an adult woman violated the Eighth Amendment prohibition against cruel and unusual punishments. The reasoning of *Coker* applies equally to legislative attempts to sanction child sex offenses with the death penalty.<sup>4</sup> Society's evolving standards of decency as exhibited in recent death penalty decisions involving juveniles and the mentally disabled clearly render an expansion of capital punishment to non-homicide offenses unconstitutional.

NACDL recognizes that child sexual assault crimes are serious felonies which often cause irreparable damage to some of society's most vulnerable victims - children. Nonetheless, the sexual assault of a child should not be treated with the ultimate sanction which is reserved for those who commit the most heinous and atrocious homicides. Applying the death penalty to child sex offenses provides an inducement to the sex offender to do such harm to his victim because he will face the ultimate sanction whether his victim lives or dies.

## **II. NACDL Opposes Mandatory Minimum Sentences.**

Well publicized cases of abduction, rape and murder of children have spawned a wave of new sex offender legislation including minimum mandatory sentences for sex offenders. Because such cases sell newspapers and television programs, they receive prominent attention in the media. Criminal laws passed in response to such singular and tragic events often have regrettable and unanticipated consequences. It is these cases and the misconceptions that they create which drive the call for minimum mandatory sentences. A few of those misconceptions are:

1. The notion that most sex offenses are committed by strangers.
2. The notion that sex offenders have high rates of recidivism.
3. The notion that treatment for sex offenders is not effective.

These misconceptions are not supported by the extensive body of research that exists concerning sex offenders.

NACDL has traditionally opposed minimum mandatory sentences and has routinely aligned itself with Families Against Mandatory Minimums (FAMM). We believe that judges should have discretion to impose a sentence that takes into account the specific facts and circumstances of the case and the defendant. However there are additional reasons why minimum mandatories are not

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<sup>4</sup> Although the United States Supreme Court has found the application of the death penalty to the rape of an adult woman to violate the Eighth Amendment, *see, Coker v. Georgia*, 433 U.S. 584 (1977), the Louisiana Supreme Court has distinguished *Coker* and determined that it is not cruel and unusual to execute a child rapist. *State v. Wilson*, 685 So.2d 1063 (La., 1996) *cert. den. sub. nom. Bethley v. Louisiana*, 520 U.S. 1259 (1997). The United States Supreme Court denied review of *Williams*. However, three justices (Stevens, Ginsberg and Breyer) joined a statement asserting that the case was not ripe for review because the defendant had not been convicted or sentenced.

necessary in sex offender cases.

As criminal defense lawyers we recognize that the vast majority of child sex offenses are not committed by strangers but by individuals who are well known the victim and often times a family member or close friend of the victim or the victim's family. The stranger abduction and homicide cases, although heinous, are few and far between. Nonetheless, it is the stranger abduction cases which fuel the media and the drive for minimum mandatory sentences. The application of minimum mandatory sentences to the average sex offender prohibits a judge from considering issues such as the family relationship and circumstances when imposing a sentence. In essence the stranger abductor and incest are treated with the same broad brush which has significant impact on the future of both the victim and the offender.

The ostensible purpose of lengthy mandatory sentences is to ensure the incapacitation of the offender in an effort to protect the community. The call for such sentences is based upon the belief that sex offenders cannot be rehabilitated and will commit further sex crimes upon their release from incarceration or probationary sentences. It cannot be doubted that some sex offenders, just like some burglars, swindlers and robbers cannot or will not be rehabilitated and will commit subsequent crimes. However, the research demonstrates that sex offenders are far less likely to repeat their crimes once caught and punished. Recidivism rates for sex offenders are significantly lower than those for other offenses. A study conducted by the United States Justice Department revealed that only 5.3% of persons convicted of a sex crime will be arrested for another sex crime and that only 3.3% of persons convicted of child molestation crimes will be arrested for another sex crime against children.<sup>5</sup> These recidivism rates are substantially less than equivalent rates for other offenders. For instance people convicted of theft offenses were re-arrested the rate of 77% and motor vehicle thieves were re-arrested at the rate of 79 percent.<sup>6</sup> The overall re-arrest rate generally for all people released from prison was 68 percent.<sup>7</sup> The Canadian government has conducted more extensive studies which corroborate the finding that recidivism rates for sex offenders are far less than the recidivism rates for other convicts.<sup>8</sup> Individual states which have studied recidivism have reached similar results.<sup>9</sup>

Research also reveals that sex offenders who receive treatment, especially in a group setting are even less likely to re-offend than the general cohort of sex offenders.<sup>10</sup> As early as 1991 research indicates recidivism rates amongst sex offenders who engage in sex offender programming and treatment while incarcerated are lower than recidivism rates for the average convicted felon.<sup>11</sup> More

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<sup>5</sup> Bureau of Justice Statistics, *Recidivism of Sexual Offenders Released From Prison in 1994.*, November, 2003.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Hanson R.K. and Morton Bourgon, R.K., *Predictors of Sexual Recidivism: An Updated Meta-Analysis*, Public Safety and Emergency Preparedness Canada (2004); Harris and Hanson, *Sex Offender Recidivism: A Simple Question* (2004); Hanson, R.K. and Bussiere, M., *Predicting Relapse: A Meta-Analysis of Sex Offender Recidivism Studies*, Journal of Consulting and Clinical Psychology (1998).

<sup>9</sup> See, State of Washington Sentencing Guideline Commission, *Special Sex Offender Sentencing Alternative Report* (2004); State of Ohio, *Ten year recidivism Follow Up of 1989 Sex Offender Releases* (2001).

<sup>10</sup> Hanson *et al.*, *supra* n.8

<sup>11</sup> Berlin, Hunt, et. al., *A Five Year Plus Follow Up Survey of Criminal Recidivism within a Treated Cohort of 406 Pedophiles, 111 Exhibitionists and 109 Sexual Aggressives: Issues and Outcome.* (1991).

recent studies have confirmed these findings.

Finally, it must be recognized that lengthy minimum mandatory sentences often leave an offender, the prosecutor and the complainant with no choice but a public jury trial. The prospect of a jury trial creates the risk of re-victimization to the complainant. Minimum mandatory sentences also inhibit the exercise of prosecutorial discretion, in many cases, forcing prosecutors to trial with weak evidence or reluctant witnesses. In such cases the prosecutor may have no choice but to withdraw charges or face a certain acquittal.<sup>12</sup> Minimum mandatory sentences strip important discretion from both courts and prosecutors. They remove the “balancing” of legislative theory and election year political expediency with sound prosecutorial judgment and judicial independence that has sustained our democracy for more than 200 years. Judges and prosecutors are better equipped than legislators to evaluate an offender’s crimes and circumstances on a case by case basis.

In determining the need for costly lengthy minimum mandatory terms of imprisonment it is important for lawmakers to consider these facts. In short sex offenders are amenable to treatment and exhibit significantly low recidivism rates. Sex offenders can be treated and managed in the community. Lengthy mandatory sentences are not necessary and serve to do no more than drain the public treasury without a concomitant significant increase in public safety.

### **III. NACDL Opposes Sex Offender Registration and Public Notification Laws. If Employed at All, Sex Offender Registries Should Classify Sex Offenders on the Basis of Risk, Using Appropriate Due Process. Public/Community Notification Provisions Should Be Reserved for High Risk Sex Offenders.**

Sex Offender Registry and Community Notification laws have become pervasive. Every state legislature and the federal congress have passed laws requiring the registration of sex offenders and in many cases require community notification.<sup>13</sup> Although registration and community notification have different purposes they have become interchangeable in the lexicon of sex offender issues. Sex offender registries were originally designed as tools for law enforcement investigation. Community notification statutes are not designed for investigative purposes but for educational purposes allowing members of the public to protect themselves and their families. These laws promote vigilantism and have not proven to be effective. Sex offender registries, if utilized at all, should be categorized on the basis of offender risk and community notification should be reserved only for the objectively proven, dangerous, high risk sex offender.

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<sup>12</sup> See, e.g. Iowa County Attorneys Association, *Statement on Minimum Mandatory Sentences in SF 2094*, March 21, 2006, <http://www.iowa-icaa.com/>.

<sup>13</sup> See, generally, Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Public Law 103-322 (1994), 42 U.S.C. §14071; Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 42 U.S.C. § 16901 *et. seq.*

Sex offenders are not a homogenous group.<sup>14</sup> Research demonstrates that there is a wide range of offenders. Although recidivism amongst sex offenders is generally low<sup>15</sup> (compared to other type of offenders) it does vary amongst different types of sex offenders. The spectrum includes the rare, but highly dangerous, treatment resistant, recidivist, as well as the more common offender who is unlikely to commit additional sexual offenses and can be managed with community supervision.<sup>16</sup> A “one size fits all approach to sex offenders,” as a group, is irrational. Requiring the same registration and community notification requirements of all sex offenders diminishes the ability of the public to ascertain the truly dangerous sex offender in the community.<sup>17</sup> It also undermines the ability of the non-dangerous sex offender to maintain employment, family relationships and treatment programs. Many registered sex offenders report negative consequences, including physical assaults, resulting from registration and community notification.<sup>18</sup>

The determination of offender risk should be based upon the individual characteristics of the offender and not solely upon the offense of conviction. Research demonstrates that there are methods that can be used to determine individual risk.<sup>19</sup> Such determinations should be made based upon studies and examinations conducted by mental health professionals who are properly trained and specialize in the assessment and treatment of sex offenders, not by law enforcement authorities. Classification of sex offenders should be based upon individual risk. It is also important for the offender to have the opportunity to contest his risk classification through an appropriate hearing with due process protections. If the classification is based upon established risk assessment methods then the application of due process protections should not be an onerous burden.

Community notification, if used at all, should be reserved only for those sex offenders who create the highest level of risk to the community. As indicated above sex offenders, as a class, exhibit low recidivism rates and are less likely to re-offend than other convicted criminals. Additionally, research suggests that community notification laws do little to reduce recidivism.<sup>20</sup> One study found that “the passage of sex offender registration and notification laws have had no systematic influence on the number of rapes committed” in the jurisdictions which were studied.<sup>21</sup>

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<sup>14</sup>See, Lisa L. Sample and Timothy M. Bray, *Are Sex Offenders Different? An Examination of Re-Arrest Patterns*, 17 *Crim. Justice Policy Rev.* 83 (2006).

<sup>15</sup>See note 5, *supra*.

<sup>16</sup>Sample and Bray, at p. 97 - 98.

<sup>17</sup>Citation needed (Levenson ?)

<sup>18</sup>See, Jill S. Levenson and L. Cotter, *The Impact of Megan's Law on Sex Offender Reintegration*, 21 *Journal of Contemporary Criminal Justice* 49 (2005); Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 *Journal of Contemporary Criminal Justice* 67 (2005).

<sup>19</sup>See, Hanson, R. K., & Morton-Bourgon, K., *Predictors of Sexual Recidivism: an Updated Meta-analysis*. Ottawa, CA: Public Works and Government Services (2004); Barbaree, H. E., Seto, M. C., Langton, C. M., & Peacock, E. J., *Evaluating the Predictive Accuracy of Six Risk Assessment Instruments for Adult Sex Offenders*, 28, *Criminal Justice and Behavior*, 490-521 (2001); Harris, G. T., Rice, M. E., Quinsey, V. L., Lalumiere, M. L., Boer, D. P., & Lang, C., *A Multi-site Comparison of Actuarial Risk Instruments for Sex Offenders*, 15 *Psychological Assessment*, 413-426 (2003).

<sup>20</sup>Welchans, S., *Megan's Law: Evaluations of Sexual Offender Registries*, 16 *Criminal Justice Policy Review*, 123-140 (2005).

<sup>21</sup>Jeffrey T. Walker, et. al., *The Influence of Sex Offender Registration and Notification Laws in the United States*,

Registration and notification laws do result in significant disruption in the life of an offender and the offender's family.<sup>22</sup> Lawmakers should reserve community notification requirements only to those who pose a real and present danger to the community. Due process provisions should be available to the offender to contest his classification based upon accepted risk assessment models.

**IV. NACDL Opposes Civil Commitment Statutes Because They Punish Offenders Who Have Paid their Debt to Society. If Employed At All, Sex Offender Civil Commitment Statutes Should Provide a Full Panoply of Due Process Rights Including the Right to a Jury Trial, the Right to Confront Adverse Witnesses, the Right to Present Evidence, Rules of Evidence, a High Burden of Proof on the Government and a Process for Review and Discharge Which Levels the Burden of Proof Squarely on the Government.**

Another facet of the new wave of sex offender legislation which is sweeping the country is the use of civil commitment legislation to lock up sex offenders who have completed their sentences and "paid their debt to society." NACDL opposes these statutes.

The law will generally allow civil commitment when a person suffers from a mental disease or illness, cannot control his actions, and poses a danger to the community.<sup>23</sup> It is extremely important that civil commitment proceedings do not become a method to simply extend the sentences of incarcerated sex offenders. The following safeguards must be provided in every civil commitment statute:

1. The criteria to be committed must, at a minimum, include: a) prior conviction or convictions for sex offenses, b) a mental illness or disease which causes an offender to lack control over his actions, and c) proof that the offender poses a danger to the community because he is likely to re-offend.
2. The burden of proof must rest upon the committing authority. That burden must be carried beyond a reasonable doubt.
3. The offender must have the option to be tried by a jury.
4. The offender must have the right to counsel and to have counsel appointed and paid for by the state if he is indigent.
5. The offender must have the right to confront and cross examine witnesses supporting commitment.
6. The offender must have the right to present favorable evidence.
7. The offender must have the right to be heard and testify on his own behalf if he so chooses.
8. The offender must have the right to remain silent if he so chooses without any adverse inference drawn from his silence.
9. The proceeding must ensure that only reliable evidence is considered and therefore

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[http://www.acic.org/statistics/Research/SO\\_Report\\_Final.pdf#search=%22Walker%2C%20J.T.%20AND%20sex%20offender%20registration%22](http://www.acic.org/statistics/Research/SO_Report_Final.pdf#search=%22Walker%2C%20J.T.%20AND%20sex%20offender%20registration%22)

<sup>22</sup>See, note 6, *supra*.

<sup>23</sup>See, *Kansas v. Crane*, 534 U.S. 407, 122 S.Ct. 867 (2002); *Kansas v. Hendricks*, 521 U.S. 346, 117 S.Ct. 2072 (1997).



- the rules of evidence should apply at all commitment proceedings.
10. Civil commitment of offenders may not be indefinite.
  11. The offender must be discharged from commitment once he no longer satisfies the commitment criteria.
  12. The burden of proof must remain upon the committing authority if it opposes discharge of the offender.

Because the liberty interest implicated by a civil commitment statutes is similar to the liberty interest effected in criminal trials the person facing civil commitment should be afforded all of the same rights afforded to a criminal defendant.

## **V. NACDL Opposes Residence Restrictions Because Such Laws Do Not Provide Effective Community Protection and Threaten Offender Stability.**

New sex offender legislation often includes restrictions on the areas in which a sex offender may reside. NACDL opposes residence restrictions. Such restrictions have not been shown to have any effect on sex offender recidivism and serve only to de-stabilize the offender, putting him at a higher risk to re-offend. The states of Minnesota<sup>24</sup> and Colorado<sup>25</sup> have conducted studies considering whether residency restrictions have any effect on recidivism. Both studies concluded that such restrictions had no effect on recidivism and therefore did not provide added protection to the community. The Colorado study finds that residency restrictions “should not be considered as a method to control sexual offending recidivism.”<sup>26</sup>

In fact, residency restrictions may cause higher rates of re-offense amongst sexual offenders. Residency restrictions increase the chance of transiency and homelessness amongst sex offenders thereby decreasing the ability of law enforcement authorities to keep track of offenders and probation officers to supervise offenders. Such restrictions can prohibit the ability of offenders to reside with supportive family members or force an entire family to re-locate. Likewise, residency restrictions diminish the ability of sex offenders to maintain employment and comply with treatment requirements. Research demonstrates that sex offenders are , in fact more likely to re-offend in the absence of such stabilizing influences.<sup>27</sup> The detrimental community impacts of residency restrictions have recently been highlighted by the Iowa County Attorneys Association. In a forceful statement the prosecutor group argued against residency restrictions for many of the same reasons.

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<sup>24</sup>Minnesota Department of Corrections, *Level Three Sex Offenders Residential Placement Issues, 2003 Report to the Legislature*. Revised, February 2004.  
<http://www.doc.state.mn.us/publications/legislative-reports/default.htm>.

<sup>25</sup>Colorado Department of Public Safety, *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community*, 2004, <http://dcj.state.co.us/odvsom>.

<sup>26</sup>*Id.* at 5. The Minnesota study came to similar conclusions at p. 11.

<sup>27</sup>Colorado Department of Public Safety, *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community*, 2004, <http://dcj.state.co.us/odvsom> ; Kruttschnitt, C., et. al., *Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls*, 17 Justice Quarterly 61 (2000); Levenson, J. And Cotter, L., *The Impact of Sex Offender Residence Restrictions: 1000 Feet from Danger or One Step From the Absurd?*, 49 International Journal of Offender Therapy and Comparative Criminology 168 (2005).

However, they also noted that the residency restriction law inhibited their ability to obtain convictions by plea of guilty because of the onerous effects.<sup>28</sup> Thus, residency restrictions actually increase the risk of recidivism in the community and should be avoided in the crafting of new legislation and repealed where already enacted.

## **VI. Sex Offender Treatment and Rehabilitation Programs Should Be Adequately Funded and Available Both in Our Prisons and in the Community. Such Programs Should Not Include Mandatory Polygraph Examinations and Should Respect Fifth Amendment Rights.**

As indicated previously, one myth surrounding sex offenders is that they do not respond to treatment therapies. This myth is the result of some early research in the area. Recent research regarding more contemporary modes of treatment demonstrates that sex offenders are amenable to treatment.<sup>29</sup> A study of an incarcerated sex offender population in Colorado found that participation in treatment significantly reduced re-arrest rates.<sup>30</sup>

The research also suggests that cognitive behavioral therapies are the most effective methods of sex offender treatment. Similar to an alcohol or drug addicted person sex offenders can learn through cognitive behavioral therapies ways to avoid relapse. Using this relapse prevention model of therapy, offenders are trained to identify and avoid the types of thought patterns and behaviors which lead to re-offending. Treatment can occur both in prisons and in the community.<sup>31</sup> When considered in the light of the overall low recidivism rates for sex offenders, treatment becomes a powerful tool in the protection of the community. Legislatures should augment any sex offender statute with treatment programs both in prisons and in the community. Such programs should be generously funded and staffed.

However, one treatment component often utilized is the polygraph. Mandatory polygraph testing violates the Fifth Amendment prohibition against compelled self incrimination. Additionally, polygraphy has never been generally accepted as a reliable method of determining deception. Eight of nine Supreme Court justices have recognized that “the scientific community remains extremely polarized about the reliability of polygraph techniques.”<sup>32</sup> The revocation of liberty interests should not be conditioned upon such a controversial and unreliable method.

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<sup>28</sup>Iowa County Attorneys Association, *Statement on Sex Offender Residency Restrictions in Iowa*, February 14, 2006. <http://www.iowa-icaa.com>

<sup>29</sup>Losel, F., & Schmucker, M., *The Effectiveness of Treatment for Sexual Offenders: a Comprehensive Meta-Analysis*. 1 *Journal of Experimental Criminology*, 117 (2005); Hanson, R. K., Gordon, A., Harris, A. J. R., Marques, J. K., Murphy, W., Quinsey, V. L., & Seto, M. C. , *First Report of the Collaborative Outcome Data Project on the Effectiveness of Treatment for Sex Offenders*. 14 *Sexual Abuse: A Journal of Research and Treatment* 169 (2002); Polizzi, D. M., MacKenzie, D. L., & Hickman, L. J., *What Works in Adult Sex Offender Treatment? A Review of Prison- and Non-prison Based Treatment Programs*. 43 *International Journal of Offender Therapy and Comparative Criminology*, 357 (1999).

<sup>30</sup>Lowden, K., Hetz, N., Patrick, D., Pasini-Hill, D., & English, K., *Evaluation of Colorado's Prison Therapeutic Community for Sex Offenders: A Report of Findings*. Denver, CO: Colorado Department of Public Safety, Division of Criminal Justice, Office of Research and Statistics (2003). <http://dcj.state.co.us/ors/> .

<sup>31</sup>Association for the Treatment of Sexual Abusers, *Reducing Sexual Abuse Through Treatment and Intervention with Abusers*, (ATSA Position Paper, 1996). <http://www.atsa.com/pptreatment.html>.

<sup>32</sup>*United States v. Scheffer*, 523 U.S. 303, 118 S.Ct. 1261 (1998)

## **VII. Children Are Different**

A regrettable consequence of the proliferation of new draconian sex offender legislation is that the new laws are applied “across the board” to all offenders including juveniles. NACDL opposes the application of these laws to juveniles. Our juvenile justice system is rightly premised on the notion that children can and do change as they develop. They are extremely amenable to reform and rehabilitation efforts. Research demonstrates that a child’s brain is more impulsive and inclined toward poor decision making.

The NACDL believes that public registration is inconsistent with the goal of rehabilitating offenders. Permanently exposing childhood misdeeds to public shame and disgrace harms the child, and eventually may harm society. Many acts which would qualify as “sex crimes,” if committed by adults, are often the result of immature curiosity and non-malicious exploration between adolescents and teens who did not have appropriate adult supervision. Children should be educated, loved, and supervised, and enter adult life free from an internet listing of the bad things they did when they were young. Juvenile offenders should continue to receive exceptional care and treatment, even if their delinquency involves sexual conduct.

## **Conclusion**

The recent wave of sex offender legislation is based upon emotion and myths about sex offenders which are not supported by valid research or evidence. Legislation in this area should be based upon facts and valid evidence. The NACDL encourages criminal defense lawyers, prosecutors and legislators to oppose legislation based upon myth and public emotion. In doing so we can ensure both public safety and due process.