

THE WINSTON CHURCHILL MEMORIAL TRUST OF AUSTRALIA

Report by Sarma Rumbachs - 2013 Churchill Fellow

To study the effectiveness of public sex offender registers and the impact on the community and policing, incorporating best practice for the management of sex offenders in the community

United Kingdom, Germany, United States of America

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Signed Sarma Rumbachs

Dated 4. 07. 14

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## 2.0 Acknowledgements:

I am very thankful to the Winston Churchill Memorial Trust for enabling me to undertake this research, and experience first hand the practice of other countries in this extremely challenging area.

I would also like to express my appreciation to those people who provided their valuable time, knowledge and experience during the course of my research across three continents. The field of sex offender management is a very difficult and challenging area for both government and community based organisations. It is not a 'glamorous' field of policing, nor is it a topic that many people are comfortable talking about, for these reasons the men and women who face the challenges of managing a person deemed to be a sex offender should be extremely proud of the integral work they do in keeping our community safer on so many different levels. It is to these people (some whom I was privileged enough to meet on this journey and many who I work with every day) that I want to thank very sincerely.

I would also like to thank the New South Wales Police Force, and in particular the Police Prosecutions Command for allowing me to take this journey, and providing me with the time away from work to do so. I am also indebted to the Commanders of the Sex Crimes Squad, and the Child Abuse Squad for providing their support when I embarked on this project.

Finally I would like to thank my wonderful partner Wayne and my beautiful daughter Kaitlyn for accompanying me on this trip and providing me with a welcome distraction during the course of the journey.

### 3.0 EXECUTIVE SUMMARY

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**Position:** Police Officer- Lawyer/Legal Advisor to the Child Abuse Squad and Sex Crimes Squad/Child Protection Register

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#### Project Description

*To study the effectiveness of public sex offender registers and the impact on the community and policing, incorporating best practice for the management of sex offenders in the community.*

The aims of my project included:

- Looking at the various models of disclosure of sex offender information in the United Kingdom and the United States of America
- Examining and evaluating the effectiveness of allowing the public access (via various methods) to sex offender information
- Looking at examples of best practice by various agencies including law enforcement, government agencies and community based organisations in the management of sex offenders in the community
- To share my findings with the relevant agencies tasked with the protection of the community, and in particular with the most vulnerable in our community- our children
- To share relevant NSW Police Force policy and procedure regarding sex offender management with colleagues in law enforcement in other countries

#### Fellowship Highlights

The greatest highlight of my journey was to meet with like minded people, who face the same challenges in dealing with this difficult area of policing and the field of sex offender management. Every single person who I met with was so dedicated to the cause of protecting children and the community against those who want to bring them harm, and pose a significant threat. Being able to share my knowledge of the practices in sex offender management and law in this area from an Australian perspective, and compare our systems was an amazing experience. It is one thing to read about these matters, but the impact of meeting with, watching the work in progress, and conversing so openly with people in this field is something I will never forget. Being able to go into the field with the officers in the UK was a great experience, their professionalism and compassion was enlightening. *I am indebted to the Churchill Fellowship for giving me this wonderful opportunity.*

## Major Lessons Learned

This is a summary of the significant lessons learnt- this project will discuss these and other lessons more comprehensively.

- There is considerable merit in implementing a form of limited community notification/disclosure scheme similar to the very effective system in the United Kingdom.
- Centralised hubs of police sex offender managers would create consistency, specialization and more effective management of sex offenders in the community.
- Consideration should be given to taking a national approach to sex offender legislation as seen in the UK.
- Consideration should be given to tightening the existing structure of the multi agency Child Protection Watch Team that makes involvement and supervision of registered sex offenders more accountable .
- Consideration should be given to establishing better information sharing with key staff of other relevant agencies with view to better intelligence sharing and risk assessments. This may include improving the existing database used by NSW Police regarding sex offender data.
- Consideration should be given to broaden the existing disclosure of information contained in the Chapter 16A provisions<sup>1</sup> similar to MAPPA disclosure.
- Review the current risk assessment model used by NSW Police in preference to the ARMS model currently being implemented in the UK.
- Consideration should be given to the establishment of a police national database for intelligence holdings.
- Establishment of a dedicated training course/s and supervisor courses for police in the field of sex offender management.
- The proposal for the introduction of the Sex Offence Court based on the New York model should be revisited by the NSW government.
- Consideration should be given to the community based COSA program for relevant sex offenders.

## Dissemination

- Presenting findings and recommendations internally to the NSW Police Force through the various legal advising's undertaken in my role, significantly to the Child Protection Register Sex Crimes Squad, and the Child Abuse Squads.
- Presenting findings at relevant conferences and training sessions both internally and externally in my capacity as legal advisor to the Sex Crimes and Child Abuse Squads.
- Making relevant submissions to the NSW Attorney General's Department and NSW Ministry of Police and Emergency Services, regarding reforms to the current applicable sex offender legislation based on my findings.
- A written report on my findings and observations will be submitted to relevant organisations such as Australia New Zealand Policing Advisory Agency (ANZPAA). This organization has a number of community based stakeholders where my findings can be shared on a broader community level.
- I can be contacted by those who are interested in discussing any of the issues I have raised in this report, and will be happy to discuss and share my experiences with others.

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<sup>1</sup> Children and Young Persons (Care and Protection Act) 1998 sections 245C-D

## 4.0 Program Itinerary

April 25 2014 - 2 May 2014

### *London- United Kingdom*

DI Mark Clark

Met Police representative for the London Safeguarding Children Board

MASH (Multi Agency Safeguarding Hub)

Met Police Met Change - Pan London Strand

PC Ceri Norey

Central Jigsaw Team

Met Police

Heather Sutton-Head of Sex Offender Team

Offender Management Public Protection Group

National Offender Management Services

Becky Hart

Lead MAPPA (Multi-agency public protection arrangements)

National Offender Management Services

Caroline Hart

Head of Safeguarding/SVACV

Home Office

3 May 2014 - 6 May 2014

### *Frankfurt-Germany*

Jens Baumeister

K13 – Sex Offences Team

Kriminalkommissar- Frankfurt Police Headquarters

Gerd Nothacker

K13-Zurs Program (Sex Offender Management)

Frankfurt Police Headquarters

Sonja Vormann

Assistant to Head of K10 (Serious Crime)

Frankfurt Police Headquarters

7 May 2014 -10 May 2014

### *Cambridge*

Cambridgeshire Constabulary

Cambridge-Public Protection Unit

DI Ian Baillee

DC Paul Baysting

DC Richard Newman

11 May 2014-14 May 2014

### *North Yorkshire*

Cleveland Police- **Middlesbrough**

DI Kath Barber Public Protection Unit (Sex Offender Management)

DC Kay Richards CSOR Officer

DC Jane Laird Child Exploitation Online Prevention Team

15 May 2014 – 19 May 2014

### *Warwickshire*

Warwickshire Police – Leamington Spa (Warwick Justice Centre)

DS Gareth Jackson - Team Leader Sex Offender Management Unit

PSI Lorraine Hortshorn Sex Offender Officer

Debbie Gray ViSOR Central Officer

Derek Ridgway MAPPA Coordinator

20 May 2014 -23 May 2014

### *Hampshire*

Hampshire Police Public Protection Department

DI Steven Cook

Detective Sergeant Holden

24 May 2014– 31 May 2014

### *New York*

Lt. Brian J. Corrigan- Special Victims Division Sex Offender Monitoring Unit  
New York Police Dept (NYPD)

Michael Romani Senior Inspector- Sex Offender Investigations Branch  
United States Marshals Office U.S Department of Justice

Nicholas Ricigliano

Inspector

United States Marshals Office U.S Department of Justice

Judge Barbara Kahn

Sex Offender Court-Suffolk County Court

Maureen Hordy

Resource Coordinator Suffolk County Court

Asst District Attorney Kathleen Kearon Suffolk County District Attorneys Office

Snr Probation Officer Harry Mulhall Suffolk County Probation Department

Joanne Wohlleb Victims Advocate Suffolk County District Attorneys Office

Emily Chappell Sex Offender Clinician Probation Department

Douglas OConnor- Legal Aid Defence Attorney

1 June 2014 - 6 June 2014

***Washington DC and Alexandria Virginia***

Staca Shehan Director Case Analysis Division National Centre for Missing and Exploited Children

Dannah Vardaman Supervisor Sex Offender Tracking Team Special Analysis Unit (NCMEC)

Angela Aufmuth Program Manager Case Analysis Division (NCMEC)

Lori McPherson Senior Policy Advisor SMART Office

Derek Vanluchene (Fellow) US Department of Justice

7 June 2014 – 12 June 2014

***California  
Los Angeles and West Covina***

Detective Diane Webb – REACT LAPD

Detective Lauren Rauch- REACT LAPD

LA SAVES Meeting (various community members attended including LA City Attorney, law enforcement officers and school representatives)

***West Covina Sheriffs Department***

Detective Sergeant Pete Hahn

Detective Marlene Vega

Detective Sergeant Dan White

Don Busch

## 5.0 Current situation in Australia- Disclosure of sex offender information in NSW

NSW introduced a child sex offender register and accompanying offender notification and reporting requirements for child sex offenders in 2000, by virtue of the *Child Protection (Offenders Registration) Act 2000*. This Act has been somewhat of work in progress with a number of amendments being made over the years with the most recent amendments taking place in 2014. The original NSW child sex offender register and reporting requirements were modeled on the United Kingdom's sex offender legislation and procedures.

NSW was the first Australian state to introduce the child sex offender register, the remaining states implemented similar registers and accompanying legislation based significantly on the NSW legislation.

### 5.1 Western Australia Community Notification

In October 2012 Western Australia introduced a limited form of community notification that is freely accessible by the public via the 'Community Protection Website'. The public is given access to certain information consisting of<sup>2</sup>;

#### **Tier 1: Missing Sex Offenders Non Compliant Reportable Offenders**

The first tier of publication, the *missing offender* section, displays photographs and personal details of reportable offenders who have either failed to comply with their reporting obligations, provided false or misleading information to Police and whose location or whereabouts is not known to Police. The publication details include a photograph, the full name, known aliases, date of birth and a physical description of the reportable offender.

#### **Tier 2: Local Search for Dangerous and High Risk Offenders**

The second tier of public the local search displays photographs of certain *dangerous and high risk offenders* that reside within the same suburb and adjoining suburbs as the requester. These offenders are deemed to be dangerous sexual offenders, serious repeat reportable offenders and other persons whose details have been authorised for publication by the Minister for Police.

#### **Tier 3: Community Protection Disclosure Scheme**

The third tier of publication, the *Disclosure Scheme* allows a parent or guardian of a child or children to inquire with Police whether a specific person, who has regular unsupervised contact with their child or children, is a reportable offender. The parent or guardian making the application must provide their full details, the child or children's details, the identity of the person of interest and the level of contact that person has with the child or children. Police will assess the request and may disclose to the applicant whether or not the person of interest is a reportable offender. No other jurisdiction in Australia has the form of community notification regarding sex offender information that is available in Western Australia.

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<sup>2</sup> <https://www.communityprotection.wa.gov.au/About>

## 5.2 NSW position on community notification

In June 2000 the then Minister for Police Mr Whelan introduced the *Child Protection (Offenders Registration) Bill* into parliament, establishing the first sex offender register in Australia. During the parliamentary speech Mr Whelan made the government's position abundantly clear regarding community notification issues, indicating the following main points<sup>3</sup>;

- The Megan's Law approach adopted in the United States of America highlights the problems associated with community notification. A number of American States are now moving away from community notification.
- In some parts of the world local community groups may be given details on child sex offenders who live in their areas. Once information on child sex offenders is released to a small number of people it is difficult to prevent it being spread throughout the community. This is particularly the case in small or isolated communities. Available research suggests community notification does not reduce recidivism amongst child sex offenders. Indeed, there are strong concerns that community notification may increase the risks of recidivism, thereby exposing children to additional danger.
- Community notification is likely to create a false sense of security in the community, with the community focusing on the dangers posed by a specific offender, rather than the dangers posed by other offenders in the area of whom the community are unaware.
- Victims groups such as VOCAL oppose community notification for all of the above reasons. They, like this Government, want a scheme that will work. This will only work if convicted child sex offender's register. It is bad for victims, bad for offenders, bad for the community and bad for law enforcement and child protection agencies.

Since that time the issue of community notification has been raised in parliament, most recently by the Reverend Fred Nile. In 2009 Fred Nile put forward a private members bill '*Nicole's Law*' to Legislative Council. The Bill proposed community notification regarding certain sex offenders; Fred Nile explained the following during the introduction of his Bill<sup>4</sup>;

*'The bill seeks to put the safety and protection of children before that of convicted paedophiles. It empowers parents and carers to take additional appropriate precautions when there is an increased localised risk to the children in their care. The bill will also force paedophiles to choose carefully where they live, to choose to live in non-family environments where there are no children.'*

To date this Bill has not been supported by parliament. The tone of the NSW government in 2000, is somewhat reminiscent of the UK Government prior to the implementation of the Child Sex Offender Disclosure Scheme known as *Sarah's Law* in 2008 (described later in this report). The then UK Government was not initially in favour of Sarah's law, describing it as "unworkable":

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<sup>3</sup> Parliament of NSW Second Reading speech Minister for Police Paul Whelan - Child Protection (Offenders Registration) Bill, 1 June 2000

<sup>4</sup> Parliament of NSW Second Reading Speech, Fred Nile- Child Protection (Nicole's Law) Bill 22/10/2009

In 2000, Home Office minister Beverley Hughes said the Home Secretary had looked at the idea of Sarah's Law and had concluded that it would make protecting children even harder for the police.

"It's unworkable," she told BBC Radio 4's Today programme. "There's nothing to stop an offender whose name has been disclosed in one area buying a van and driving 100 miles to another area. Parents themselves also move. They visit family, they go on holiday. The idea that you can give parents all the time the names of people who might be a threat is simply unworkable.

However in 2006 the Home Secretary John Reid indicated that the Government would look again at the issue of disclosing sex offenders' details to local communities.<sup>5</sup>

What is clear from these events is that governments change their views and their position on very delicate matters, and in fact what is unpopular or deemed unworkable, can in fact work effectively under the right circumstances.

## 6.0 Background to the United Kingdom Child Sex Offender Disclosure Scheme

The impetus for community notification of sex offender information in the United Kingdom (UK) was primarily as a result of a shocking sexually based crime committed against a child. In 2000 in the UK, Sarah Payne, an 8 year old girl, was abducted and murdered by Roy Whiting. Whiting had previously been convicted of abducting and indecently assaulting a young girl. At the time of the murder of Sarah Payne, Whiting was on the British sex offender register. Following the death of Sarah Payne, a campaign was launched (supported by Sarah's parents) petitioning for the introduction of *Sarah's Law*, a UK modified version of the United States community notification laws known as *Megan's Law*.

In June 2007, the UK Government published the *Review of the Protection of Children from Sex Offenders*. The Review considered the way in which the risks presented by child sex offenders in the community are managed, including the amount of information about child sex offenders that is disclosed to the public. The review set out a number of recommendations to strengthen efforts to keep children safe. Action four committed the Government to:

*'Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sex offences and is considered a risk, there will be a presumption that this information will be disclosed to the relevant member of the public<sup>6</sup>.'*

In February 2008 the Home Secretary announced that four police forces had been chosen to pilot the disclosure model as detailed in the Review. The 12-month pilot was launched on 15 September 2008 in Warwickshire, Hampshire, Cambridgeshire and Cleveland. In August 2010 the

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<sup>5</sup> Sarah's law: the child sex offender disclosure scheme SN/HA/1692 6 March 2012 Sally Lipscombe Home Affairs

<sup>6</sup> Child Sex Offender Review (CSOR) Public Disclosure Pilots: a process evaluation Research findings 32 Home Office March 2010

Home Secretary announced that the Child Sex Offender Disclosure Scheme (CSOD) would be rolled out across all police force areas in England and Wales, following the successful pilot. The government stated;

- The principal aim of this scheme is to provide parents, guardians and carers with information that will enable them to better safeguard their children's safety and welfare. It is not an aim of this scheme to introduce a US-style Megan's Law or automatic disclosure of child sexual offender details to the general public, which could encourage offenders to go missing and therefore put children at greater risk of harm<sup>7</sup>.

The scheme was rolled out across all police forces in England and Wales from 4 April 2011, and is now operational in all 43 police forces in England, Wales and also in Scotland. The CSOD scheme itself is tightly controlled and monitored by the various police forces across the United Kingdom. It is certainly not the open access to confidential information that takes place in many parts of the USA.

## 7.0 DISCUSSION

### United Kingdom Experience

I planned my itinerary in the United Kingdom (UK) primarily around the four areas that were used in the initial pilot program for *Sarah's Law* in 2008, namely Warwickshire, Hampshire, Cambridgeshire and Cleveland. In addition to this I spent time in the greater London area, which has in excess of 8,800 registered sex offenders, the highest number of registered sex offenders in the UK. I also used my time in London to make contact with the Home Office and the National Offender Management Service. The Home Office is a ministerial arm of the government of the United Kingdom and is responsible for law and order (policing), immigration and security matters. The National Offender Management Service (NOMS) falls under the umbrella of the Ministry of Justice. The main role of NOMS is to provide offender services in the community and custodial settings. NOMS is also responsible for the prison and probation services predominantly in England and Wales. One of my main aims in the UK was to study the policies and procedures that make the UK leaders in the field of sex offender management.

### 7.1 Framework of policing sex offenders in the UK

The framework for policing overall in the UK, is quite different to the Australian state and territory police forces. There are currently 43 territorial police forces in England and Wales that are independent of each other, and in addition to this there are a number of specialist police forces. In Australia there are six state and two territory police forces, with obviously a far less population to police. It is a fair assumption that due to the diverse range and sheer number of police forces in the UK, that a high degree of varying police practices and procedures would be seen. I travelled from the centre of London and surrounds, to the far north and south of England. During my travels

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<sup>7</sup> Child Sex Offender Disclosure Scheme guidance document published October 2010 Home Office

I observed a certain degree of variance in the management of sex offenders across the UK. To some degree the variance was related to the size of the police force itself, with London having a contingent of over 31,000 sworn police officers (almost twice the numbers in NSW Police Force) compared to Warwickshire Police with about 1000 sworn officers. Other differences were as a result of the geographical location in the UK, and the sheer number of sex offenders the particular force had to manage. The units tasked with the management of sex offenders across the vast majority of the UK are called *Public Protection Units* (PPU), or Sex Offender Management Units (SOMU). The registered sex offenders in the greater London area which is managed by the Metropolitan Police Service (the 'Met') in the 32 police boroughs, have individual borough *Jigsaw* teams.

The Cambridgeshire Constabulary has approximately 155 registered sexual offenders in their area. There are two officers in the Public Protection Unit who have the responsibility for managing these offenders within the community; both of these officers are experienced detectives. The Unit is managed by a Detective Sergeant, who is responsible for over sighting the cases, but does not have direct contact with the registered offenders. A Detective Inspector oversees the Public Protection Unit as a whole.

The Warwickshire Police have approximately 354 registered sex offenders in their area, and the sex offender management unit consists of a Detective Inspector as the overall Manager of the unit, and a Detective Sergeant who oversees the day to day operation of the unit. There are three detective constables (DC), two plain clothes constables (PC), and two civilian officers who are all directly responsible for the direct management of the registered offenders (known as sex offender managers or sex offender officers).

The Hampshire Police have approximately 650 registered sex offenders in their area. The Public Protection Unit is managed by a Detective Inspector, two detective sergeants, and an authorized strength of 11 sex offender managers (police officers) and one civilian sex offender manager.

The national guidelines indicate the sex offender managers should be responsible for approximately 40 registered sex offenders each, however as I observed across the UK, the various officers were managing between 40 to 80 offenders per offender manager. Despite the relatively large numbers of registered offenders being managed by individual managers the common thread was evident; that of cohesion, robust systems, accountability and consistency. The Public Protection Units (and similarly named units) were all *central hubs*. The geographical areas of some of the police forces were vast, with numerous small police stations scattered across the county. The Public Protection Unit within one central location, contained the sex offender managers, the supervisors, the MAPPA Coordinators, and in some instances the Probation Officers. The Cambridgeshire Public Protection Unit commented the significant benefit in having the dedicated officers to the role was the cooperation and compliance they received from the offenders. In many instances (the officers stated) the label of *sex offender* basically

separated and isolated the offender from the rest of the community. The offender managers were able to reach out to the offenders and say we are here to manage you but also to help you. In some instances the police officer was the only person the offender had to talk to, and to some extent confide in regarding any sexual fantasies they may be having or difficulties they had in mixing in with the community. The offenders realise the police officer is the person who knows all about the offenders past history but would still interact and engage with them (obviously it was part of the police officers job).

This centralisation has resulted in a number of benefits including;

- Staff who have a dedicated role of management of registered sex offenders and are not required to be deployed to other duties.
- Greater specialization and expertise in the field of sex offender management.
- Detective Inspectors attend the MAPPA meetings, relieving the front line offender managers from that responsibility.
- Promotes more intrusive supervision of the registered offenders within the community.
- Promotes greater consistency in managing the offenders.
- Speeds up decision making and therefore manages risks far more efficiently.
- Improves the multi agency relationships and efficiency of those relationships.

**Recommendation:** Consideration should be given to the implementation of 'central hubs' of police sex offender management units. These hubs would work most effectively in the Sydney Metropolitan area, but could also work on a smaller scale in the country regions. The hubs could be based on the existing Local Area Command arrangements whereby a number of police stations operate with 'shared' police officer roles such as Duty Officers. A hub for example could be based at Mt Druitt Police Station, whereby police sex offender management officers from Blacktown, Mt Druitt and Quakers Hill police stations would be centrally based at Mt Druitt police station. This hub would be responsible for managing the registered sex offenders in these three areas. The pooling of resources would enable greater coverage and consistency in the management of sex offenders, and would have a number of other benefits including having two officers at any one time to perform home visits.

## 7.2 Unified legislation across England and Wales

It was in London that I was able to initially familiarise myself with some general principles that founded the management of sex offenders in the UK and which were common to all areas of the UK, no matter what police force was responsible for that area. I soon realized that having legislation that was unified across the England and Wales for sex offender management resulted in a great level of consistency, namely the *Sexual Offences Act 2003*, and the *Criminal Justices Act 2003*. This was also the case in relation to the policies in this field that guided each of the 43 police forces in England and Wales. There were obvious differences as to how each PPU carried out their role, however the fundamental policies and laws were consistent. This unified legislation

in itself is integral to the maintenance of the robust framework established (and still evolving for the better) for the management of sex offenders in the UK, making them a world leader in this field. In Australia each state and territory has its own legislation and operational systems for the management of sex offenders, which often results in confusion for police, external agencies, and the sex offenders themselves.

**Recommendation:** There is considerable merit in streamlining the sex offender legislation across Australia so the jurisdictions have a consistent national approach to the management of sex offenders. This is certainly a long term consideration, and whilst it may seem a daunting task the previous occupational health and safety legislation that was once state based has now been unified across Australia.)

It is necessary to explain some of the key systems and frameworks that I researched and observed during my tour of England in order to better understand how sex offenders are managed in the UK.

### 7.3 MAPPA

In 1997 the UK introduced a system of notification for offenders who had been convicted of sexual offences. This system is applicable to *all* sex offenders who have been convicted of an offence set out in Schedule 3 of the *Sexual Offences Act 2003*<sup>8</sup>, and/or to those whose sentence terms met a certain threshold<sup>9</sup>. The UK system is distinguishable from the NSW sex offender registration system, which is applicable only to offenders who have committed certain offences against a child, and does not include offenders who have committed a sexual offence against an adult. The UK system became known as sex offender registration, with accompanying requirements for these offenders to notify police of certain matters such as their place of residence, national insurance details, and the address of any other premises in the United Kingdom at which, at the time the notification is given, he/she regularly resides or stays<sup>10</sup>. This registration system has evolved in the UK and the current notification requirements are contained in the *Sexual Offences Act 2003*<sup>11</sup>. As part of the governments framework for managing sexual and violent offenders MAPPA was created in 2001, but was significantly strengthened in 2003<sup>12</sup>. MAPPA represents Multi-Agency Public Protection Arrangements, and is a requirement for each of the 43 criminal justice areas in England and Wales. MAPPA is not a statutory body in itself but a mechanism through which agencies can better discharge their statutory responsibilities to protect the public in a coordinated and joined up way<sup>13</sup>.

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<sup>8</sup> Schedule 3 offences include sexual intercourse with child under 16, and indecent assault upon child under 18

<sup>9</sup> For example, indecent assault of a woman where the sentence was for a term of imprisonment of at least 30 months

<sup>10</sup> Sexual Offences Act 2003 section 83

<sup>11</sup> Sexual Offences Act 2003 section 83-section 86

<sup>12</sup> Criminal Justice Act 2003

<sup>13</sup> MAPPA Guidance 2012 Version 4

MAPPA is focused on three lead agencies (*Police, Probation and Prison Services*) working together to manage the risks posed by both violent and sexual offenders living in the community. There are a number of other agencies that have a duty to cooperate under MAPPA, including education, housing and social services. MAPPA is aimed at the protection of the public, however as an ancillary to this function it allows better management and consistency for the treatment of sex offenders.

MAPPA manages three categories of offenders:

- Registered sexual offenders (Category 1)
- Violent offenders (Category 2)
- Other dangerous offenders (Category 3)

Within each of these categories the offenders are given a further rating, which is a combination of the risk rating determined by MAPPA for each offender, but more significantly is based upon the level of multi agency cooperation required to manage each specific offender. Level 1 is the lowest level of multi agency management required, and often requires police management and/or probation management only. Level 2 offenders will require a number of agencies actively monitoring and assisting the offender management. Level 3 offenders are similar in the requirement for multi agency involvement but will also require the senior members of the relevant agencies to oversee the management of the offender. Level 2 and Level 3 offenders require ongoing MAPPA meetings to be held between the relevant agencies.

As was explained to me in London, it may be the case that a Level 3 offender may not pose a serious risk of reoffending but due to the intense media or public interest in the offender a multi agency approach at a senior level is required such as the recent case of the pop star Gary Glitter. It may also be the case however that a level 3 offender is a serial rapist and represents an extreme risk to the community and must be managed at the highest level. What was obvious in relation to MAPPA is that the arrangement provides consistency across the UK, with guidance provided to each police force and other relevant organisation of their *minimum* responsibilities when managing sexual offenders. MAPPA also provides ongoing management of the offenders who are managed at Level 2 and Level 3, by virtue of the MAPPA meetings. Significantly coordinated multi agency decisions and action plans tailored to manage the risk of individual offenders are created by virtue of MAPPA. On 31 March 2013 there were 60,193 MAPPA-eligible offenders in England and Wales. Of these, 73% were Category 1 (Registered Sexual Offenders), 27% were Category 2 (Violent Offenders) and the remaining 1% were Category 3 (Other Dangerous Offenders). The majority of cases (96%) were managed at Level 1 – ordinary agency management<sup>14</sup>.

In 2004, NSW introduced a multi agency approach to monitoring and managing sex offenders in the community that was modeled on the UK MAPPA. The NSW model termed the Child

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<sup>14</sup> Multi -Agency Public Protection Arrangements Annual Report 2012/2013, October 2013

Protection Watch Team (CPWT) relies predominantly on the cooperation of the relevant offender, many of whom refuse to cooperate with the relevant agencies. The CPWT is not a compulsory statutory body applicable to all sexual offenders.

**Recommendation:** Consideration should be given to tightening the existing CPWT in NSW to ensure greater accountability and more stringent supervision of sexual offenders in the community. The model would be more closely aligned to the MAPPA model.

#### 7.4 ViSOR

ViSOR represents the Violent and Sex Offender Register and is a national database, which was introduced in the UK in 2005. It is the single database that is used by police across the UK to manage sex offenders. Not all police have access to the ViSOR database due to the confidential nature and specific training required to manage the database. All police in the Public Protection Units and Jigsaw teams have access to ViSOR. If an operational police officer were to have contact with a registered sexual offender in the street, and they conducted a routine check the ViSOR warning would come up. The police officer would then be able to make further checks to see the specific warnings and associated orders that the offender may be subject to. What is significant about ViSOR is the information sharing capabilities with the other lead agencies. Since 2008 key staff in the other lead agencies, probation and the prison service also have access to ViSOR as part of the information sharing. The multi agency sharing of this database has resulted in improved quality of information regarding sex offenders, and significant improvements in the timeliness of making risk assessments of sex offenders. Overall a national database shared by the key agencies has considerably enhanced public protection measures.

I was shown various examples of the use of ViSOR during my tour of the UK. The operating system is extremely user friendly and captures a wealth of information about the offender that is very easy to access and update. It was obvious to see the sophisticated operating system aids the Public Protection officer with their every day duties by not being a cumbersome 'clunky' data entry tool. I was fortunate enough to talk to a former police officer whilst I was visiting the Warwickshire Police Force who was part of the team who originally devised the Visor program (he is now the Warwickshire Police MAPPA coordinator). The coordinator advised me that the ViSOR database was created in effect by a team of six police officers who were all operational police officers. The technical officers designed the database around what police required using operational systems police could easily manage, according to him it was not the *'techs telling us what we should have, it was the police telling them what we wanted'*.

**Recommendation:** Consideration should be given to establishing better information sharing with key staff of other relevant agencies with view to better intelligence sharing and risk assessments. This may include improving the existing database used by NSW Police regarding sex offender data.

## 7.5 Civil orders- prohibition orders for offenders

There are currently three civil orders in the United Kingdom that can be imposed on offenders who have been convicted, cautioned, warned or reprimanded for a specified sexual or violent offence namely:

- Sexual offences prevention orders (SOPO)
- Foreign travel orders or notification orders
- Risk of sexual harm order

After a review of the existing orders the government is in the process of repealing the existing orders in England and Wales and replacing them with two new orders: the *sexual harm prevention order (SHPO)* and the *sexual risk order (SRO)*. After an independent study on the use of the existing civil orders it was determined the current system was not effective. Police in some instances were being over conservative in applying for the orders partly because they did not understand the system and application of the orders.

Under the new legislation the grounds for making the order will be widened in order to better manage risk against adults as well as children. The threshold test for risk will be lowered to cover *any* case of sexual harm not just cases of *serious* sexual harm, which is the current test for the making of the orders.

The new legislation has not commenced as yet, however the Home Office is currently drafting guidelines for the implementation of the new orders, which should commence this year (2014). Part of the guidance provided would be far better training given to police regarding the purpose of these orders to ensure they are used more consistently and appropriately<sup>15</sup>. This training will be primarily delivered at the College of Policing. As was explained to me by a number of the Public Protection Unit supervisors, there is a significant cost in making the SOPO applications in the civil court. These applications (on behalf of the police) were usually handled by privately contracted barristers and the threshold for granting the applications often made them difficult to obtain. The best practice was for police to have the application for the SOPO heard at the time the offender was sentenced in relation to the relevant sexual offence. In those cases the Crown Prosecuting Service (CPS) handled the application on behalf of the police avoiding the costly civil applications. In addition to this it was far easier for police to obtain the SOPO at the time of sentence, as police did not have to offer any further evidence other than the relevant offence itself as the basis for the granting of the order. If however the police waited and made the application some time later in the civil court, it was often very difficult to obtain as the court required further offending behavior or serious risk of harm in addition to the relevant offence the offender was originally convicted of. I noticed across the UK the cost cutting measures taken by the government in many areas over the

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<sup>15</sup> Changes to sexual risk order system opportunity to 'empower parents' - <http://www.paceuk> (parents against child sexual exploitation) Interview with Hugh Davies, OBE QC, lead author original report and member of the ACPO child protection executive board, 14 May 2014

last few years have impacted heavily on the police forces across the country, and the decisions they make including making these types of civil order applications.

The new prohibition order legislation is intended to allow police and parents to respond to these patterns of behaviour by adults, and in effect say to a court, “We need an order to disrupt this behaviour and prevent the sexual abuse it will otherwise lead to”. In cases where the behaviour continues in breach of a prevention order, that will represent a criminal offence punishable by imprisonment. The new system will also allow the police to apply to prevent those representing a sexual risk to children from travelling abroad without the need for them already to have a qualifying conviction for sexual offending. This is a really important change<sup>16</sup>.

The main differences between the current sex offender prohibition order legislation in NSW<sup>17</sup>, and the UK prohibition orders are as follows;

- In NSW the sex offenders who may be subject to a prohibition order are *registrable persons*<sup>18</sup> only. Meaning they are offenders who have been **sentenced** in relation to a child sex offence or other relevant offence against a child<sup>19</sup>.
- In the UK the prohibition orders relate to offenders who have committed sexual offences against both adults and children, but they also relate to offenders who have not actually been convicted of an offence. The sexual risk order can be applied to any person who *poses a risk* of sexual harm in the UK or abroad, even if they have never been convicted.
- The UK prohibition orders have no maximum duration, whilst in NSW the maximum duration for the order is five years.

**Recommendation:** Consideration should be given to a similar order to the SRO due to the importance of prevention of offences (despite no recorded convictions) which is demonstrated by the grooming behavior for example exhibited by a suspect.

## 8.0 The Child Sex Offender Disclosure Scheme

In essence the Child Sex Offender Disclosure Scheme (CSOD scheme) allows any person to formally ask police if someone with access to a child has a record for child sexual offences<sup>20</sup>. After receiving an initial written application, police carry out a rigorous vetting process which includes making a determination as to whether the subject individual has any convictions for child sex offences, or in addition whether that individual represents a risk of serious harm to the child of interest or the member of the public who made the application. Importantly the scheme is not limited to sexual offences – it covers any offences that are deemed a risk to a child, or concerns held about the subject in relation to intelligence relevant to safeguarding children such as adult

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<sup>16</sup> *ibid*

<sup>17</sup> Child Protection (Offenders Prohibition Orders) Act 2004

<sup>18</sup> Section 5 Child Protection (Offenders Prohibition Orders) Act 2004

<sup>19</sup> Section 3A ‘registrable person’ of the Child Protection (Offenders Registration) Act 2000

<sup>20</sup> Section 237A Criminal Justice Act 2003

sex offences, violence, drugs or domestic abuse. If it is established the subject individual is considered to pose a risk, the presumption will be that the police will disclose that information to the member of the public.

If information is ultimately disclosed the relevant information will be given to the person most able to protect the child (in most cases this will be the parent, the carer or the guardian). It may be the case the person who made the original application is not the person who receives the information.

During my time in the UK I observed quite different approaches to the CSOD scheme in the police forces I visited. Of significance was the number of applications made to the Met Police since the scheme was rolled out in London in May 2011, compared to some of the other areas I visited. The number of applications under the scheme to the Met Police between the period of May 2011 to 30 November 2013 were **144**, resulting in 3 disclosures being made. Compare this to the **126** applications made to the Cleveland Police for the same period, with 38 disclosures made (for both sexual and non sexual related offences). This is a significant difference considering the Met Police are responsible for policing over 7 million people in the London area, of which there are over 8, 800 registered sex offenders (the highest number of sex offenders in the UK) compared to the Cleveland district with a population (city and district areas) of about 560,000 with 650 registered sex offenders in that area. I believe a lot can be said about the fact that Cleveland area was one of the pilot areas for the CSOD scheme in 2008. During the pilot period across the UK, there was considerable publicity given to the rolling out of *Sarah's Law*, as there was in the other three pilot areas. According to the relevant officers, this publicity included quite intensive television, radio and print advertising.

When I spoke with one of the representatives from the Met Police (in the sex offender management field), they openly stated it had been a decision of the Association of Chief of Police Officers (ACPO) to not widely publicise the CSOD scheme in London. That decision would explain to some extent the extremely low number of applications in such a hugely populated area with the highest number of registered sex offenders in the UK. Obviously the Met Police have an incredibly difficult task of policing the diverse cultural population of London, and without a doubt the process of each CSOD application and resulting vetting process in itself is an arduous and time consuming task.

The pilot areas for the original CSOD scheme in 2008 illustrated the *best practice* of the scheme in operation today. I can say that each of these areas operated on a similar basis with a permanent officer in charge of the management of the applications. This officer was typically based in either the Public Protection Units, or the Sex Offender Management Units. This in itself was invaluable as they had access to other colleagues (with vast experience and knowledge) and resources in the sex offender management field. The best practice guide for the operation of the disclosure scheme produced by the Home Office indicates that a person in the child protection or sex offender management field is best placed to handle the disclosure applications.

For the purpose of avoiding duplication in describing the process I have chosen to highlight Cleveland Police in this area of my project.

## 8.1 Cleveland Police and the Child Sex Offender Disclosure Scheme

### Sex Offender Management Unit

By way of background, Cleveland Police are responsible for policing a population of about 560,000 people. There are approximately 650 registered sex offenders in this area, and according to the Detective Inspector in charge of the Sex Offender Management Unit (SOMU) this number is growing each year. There have been considerable government monetary cut backs across the UK in the past few years, this was evident as I spoke to various government representatives. What was obvious however was that the number of sex offenders in each area I visited was growing at the rate of 7 to 10% per year. In most of the country police forces I visited the specialised sex offender management units had been expanded. This was certainly the case at Cleveland Police Headquarters, in Middlesbrough. In the Cleveland SOMU there are 3 sergeants who head a team of 6 officers in each team. The SOMU only received the third sergeants position in 2014, and his team is responsible solely for the registered sex offenders who have committed online sexually related offences, whether that be possession of child abuse material, or grooming children (for sexual purposes) via social media sites such as Facebook, or other social blogs. The Cleveland SOMU is also unique to some extent in that there are probation officers working in the same office as the police. There are numerous advantages in this model (operating since 2004) particularly relating to information sharing between the lead agencies and the ability to manage risks posed by the offenders on a multi agency level. In addition to this the probation officers and police officers regularly conduct home visits on sex offenders jointly, another example of multi agency cooperation. The probation officers have extensive powers in relation to the monitoring of sex offenders in the community. Some prisoners are released from prison 'on licence'. This means that although they are not serving their sentence in prison they are still required to adhere to certain conditions whilst serving the remaining part of their sentence in the community. Time spent 'on licence' in the community is supervised by the Probation Service. The police are able to benefit from the additional powers of the probation officers whilst they conduct home visits jointly. The SOMU were full of praise in relation to the presence of probation in the police workplace.

### Child Sex Offender Disclosure Scheme (CSOD) in Cleveland Police District

The scheme in the various police forces is commonly referred to as 'CSOR' rather than *Sarah's Law*. There is clear guidance given to the police forces by virtue of the Home Office documents produced when the CSOD was rolled out. In the Cleveland area when the initial application is received<sup>21</sup> it is originally assessed by the 'control room' of the police station, which is responsible

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<sup>21</sup> <https://www.gov.uk/government/publications/child-sex-offender-disclosure-scheme-guidance>

for assessing any immediate risk of danger to a child or children. This is particularly important if the application is received outside of normal business hours, measures can be immediately put in place for removing that child from harm. Once the application is received at the control room, a notification (usually by email or in the police email inbox) is immediately sent to the CSOR officer who is a team member of the SOMU. As the CSOR officer explained to me the SOMU has officers who are experienced in child protection and the safeguarding children framework as such they are best placed to deal with these applications. As I learnt during my travels across the UK the primary concern above all else is 'safeguarding children'. The current CSOR officer has over 30 years service in the police force, the majority of this in child protection. The CSOR officer also has 38 sex offenders to manage in the community as part of her duties within the SOMU and on average receives 2 applications for disclosure a week.

Once the notification is received by the CSOR officer she conducts number of her own checks including;

- ViSOR
- IRIS (Cleveland Police computer checks)
- PNC (police national computer checks)
- PND (police national intelligence database checks)

A face to face visit with the applicant is arranged usually within a few days of receiving the original application. The face to face meeting provides further information to the CSOR officer about the applicant and importantly about the 'subject' person they are concerned about. This face to face usually takes between one and one and half hours, and often reveals additional information that was not disclosed in the original paper application form.

Following the face to face meet, the CSOR officer makes her recommendation as to whether a disclosure should or should not take place. This recommendation must be vetted and reviewed by the supervising sergeant and in some cases where there are concerns regarding disclosure the matter is referred to the legal services division of the police department for a final decision. Each step of the way is recorded on both paper file and also on the police internal computer system. Once the decision is made whether disclosure should take place the disclosure is delivered in person to the applicant or the carer of the child (depending on the situation). The original applicant as previously stated may not be the person best suited to receive the information (if any). The overall scheme was very aptly described to me by the CSOR officer as a '*safeguarding check*' rather than a 'disclosure scheme'. It was also regarded as a holistic approach to police safeguarding children. It is often the case that a referral is made to the children's social services department as in some cases a child or children are exposed in some way to a sex offender or a person who poses some form of risk to them. To this end the intervention of social services is required to assess the ability of the carer of the child to protect that child from harm.

If disclosure is made then it must be delivered in person with a warning that the information is not to be shared. The person to whom the disclosure is made will be asked to sign an undertaking agreeing to the confidentiality of the information released. The person is warned that any breach of the undertaking could result in legal action against them.

Whilst I was visiting the Cleveland Police I reviewed a particular CSOD file and then attended the home of that *applicant* under the CSOD scheme with the CSOR officer. The disclosure had previously been made to the applicant who was the father of two young children. The applicant had concerns about his ex wife's new partner, and as such had made a formal application to check on the past history of the new partner. The father (applicant) was informed of the past sexual offences of the new partner. There had been a number of further contacts between the CSOR officer and that particular applicant following the initial disclosure. As an ancillary matter to the disclosure under the scheme further intervention was required by police and children's social services, resulting in a child protection strategy meeting being arranged. The CSOR officer and myself attended the home of the applicant to inform him how the meeting would be conducted and some likely outcomes. The meeting was in essence to determine the best course of action in order to safeguard the two young children given the situation.

I spoke with the applicant father during the visit and asked him how he felt the process of the CSOD scheme had been handled and his satisfaction with the scheme in general. The applicant told me he was very happy with the professionalism of the police and how supportive and approachable they had been. He was disappointed to some extent that he was not told more about the past history of the 'subject male', although he was made aware that more information would be revealed to him at the strategy meeting.

What was clearly evident by reviewing the procedures used by the CSOR officer was the rigorous process involved in the operation of the scheme. Considerable time and resources are spent ensuring that information is only disclosed where the strict criteria and vetting process has been followed in each and every case. There are also 'gatekeepers' at virtually each stage of the scheme to ensure the decisions made are the right ones. I was certainly impressed with the management of such confidential information, the professionalism of those dealing with that information and their subsequent decisions to share that information. The CSOR officer also stated there had been no recorded vigilante attacks on any sex offenders since the introduction of the scheme in 2008 in the Cleveland area.

The tight scrutiny relating to police disclosure under the scheme is evident when the figures are observed. There have been approximately 358 applications made to the Cleveland Police under the CSOD scheme since the introduction of the scheme in 2008 to November 2013, with only 38 disclosures (10.6%) made pursuant to the scheme itself in that same time. A similar pattern was observed in the other areas I visited with very limited numbers of disclosures being made pursuant to the scheme. This was consistent with the picture across England, Wales and

Scotland, where police forces have received 4,754 applications under the CSOD scheme, from parents or guardians since 2011 – resulting in a total of **708** child sex offenders being disclosed (14.9%). Overall, applications have fallen across the UK since the scheme was launched, from 1,944 in 2011/2012 to 1,106 so far in 2013 to early 2014.<sup>22</sup>

Across the board with the UK police forces I attended, officers advised that the UK still had an approximate 97% compliance rate of sex offenders in the community regarding notification requirements under the sex offender registration scheme. This was despite having the disclosure scheme in place (see previous comments regarding fears in NSW paragraph 5.2). All officers I spoke with also indicated the intelligence received about offenders from members of the public making enquires and applications under the CSOD scheme were significant. This intelligence gathering in itself was a great benefit to police in the management of sex offenders in the community.

Fundamental elements of the CSOD scheme according to the Home Office are:<sup>23</sup>

- It Introduces a principle of “2-way” disclosure in that it invites people to ask about the history of a person who has some form of contact or connection to a child or children;
- It enhances the previous arrangements whereby disclosure occurred largely in a reactive way when agencies came into contact with information about an offender having contact with a child;
- Individual members of the public can now proactively seek information, with an expectation that the agencies responsible for safeguarding children will check to see whether relevant information exists and if it does, that consideration will be given to its disclosure where necessary to protect the child;
- Encourages individuals to take responsibility for safety of their children and provides a way of getting more information on registered sex offender (and other individuals who pose a risk to children) who are in contact with children;
- There does not need to be any form of concern or suspicion to request information, previously a member of the public may have been turned away by police if requesting conviction information without any child protection concerns being present.

**Recommendation:** There is considerable merit in the implementation of a Child Sex Offender Disclosure Scheme based on the UK model, and monitored by appropriately trained police officers.

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<sup>22</sup> <http://www.bbc.co.uk/news/uk-25489541>

<sup>23</sup> Home Office Child Sex Offender Guidance Document 29 October 2010

## 8.2 MAPPA disclosure

In place under the previously mentioned MAPPA arrangements and working in conjunction with the Child Sex Offender Disclosure Scheme are the disclosure principles under MAPPA relating to registered sex offenders and violent offenders.

There is a duty on each MAPPA authority in every case managed by it concerning a convicted child sexual offender, to consider disclosure to particular members of the public of those offenders convictions for child sexual offences<sup>24</sup>. There is a presumption that information about the offenders previous convictions will be disclosed where the responsible MAPPA authority has reason to believe that a child sexual offender poses a risk of causing serious harm to a particular child or children, and the disclosure of information to a particular member of the public is necessary for the purpose of protecting that child or children from serious harm caused by that offender. Under these MAPPA requirements, the police for example (if they are the disclosing authority) can disclose what information they consider appropriate to the relevant member of the public. Conditions can also be placed on the member of public regarding unlawful disclosure of the information to other person. The disclosing authority must also keep full records regarding whether a disclosure was made, or a reason as to why no disclosure was made<sup>25</sup>.

In relation to the practical operation of the MAPPA disclosures the Cleveland Sex Offender Management Unit (SOMU) advised me they often make disclosures under these arrangements. For example if an offender is moving into an apartment style residence where there are young children in the complex the SOMU may deem it necessary to inform certain persons in that complex of the offender's sexual offence convictions so they can properly safeguard their children. The SOMU in most cases will give the offender the opportunity to 'self disclose' where appropriate, and in some instances the offender will choose to move to another residence rather than disclose or have his/her information disclosed. The primary concern for police in these cases is the risk the offender may pose to the children who reside or visit the complex. The disclosure would be fully recorded, and may require the authority of the Detective Inspector if the offender manager is unsure as to whether the disclosure is justified. In NSW the current legislative provisions for exchange of information regarding risks to children are not nearly as broad as those in the UK legislation. The NSW disclosures are predominantly confined to disclosure of information to government and some non- government agencies who have the responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children. The disclosure to a relevant member of the public is not covered by existing legislation.

**Recommendation:** Consideration should be given to broaden the existing disclosure of

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<sup>24</sup> Section 327A Criminal Justice Act 2003

<sup>25</sup> Section 327A Criminal Justice Act 2003

information contained in the Chapter 16A provisions<sup>26</sup> similar to MAPPA disclosure in these terms; reason to believe that a child sexual offender poses a risk of causing serious harm to a particular child or children, and the disclosure of information to a particular member of the public is necessary for the purpose of protecting that child or children from serious harm caused by that offender.

### 8.3 Common law disclosure

In addition to the methods of disclosure of information mentioned above I was advised by the Hampshire Public Protection Unit that a number of disclosures have been made in their area pursuant to common law. This power is used across the UK in matters where the Child Sex Offender Disclosure Scheme or the MAPPA disclosure principles are not applicable. However if the common law power was the basis for police disclosing the otherwise confidential information It should be noted the decision making process under this power was as stringent and carefully vetted as the other methods of disclosure mentioned in this report.

A case of disclosure made in January 2014 by the Hampshire Public Protection Unit was detailed to me as follows:

A male subject was being investigated in relation to his sexual interest in young children. The decision had not been made regarding whether the subject would be charged<sup>27</sup>. In the interim the subject had joined a particular church where he had an active role in church events including a children's group. It was also revealed that members of the church had drawn their own conclusions in relation to the subject and the police held concerns for the safety of both the children in the church group and the offender himself. As such police deemed it necessary to implement some form of risk management plan for the protection of the community and the offender.

The Public Protection Unit sergeant prepared a detailed disclosure document outlining the circumstances of this case. This information and reasoning was then vetted by both the Detective Inspector and ultimately the Chief Inspector who was responsible for granting or refusal of the third party disclosure.

The legal basis for the disclosure provided by the supervising sergeant was as follows;

*'Every person is granted the right to respect for private and family life under the Human Rights Act 1998, however the protection of the public and in this case protection of children is paramount. We have a duty to protect children who may be at risk and under these circumstances the right that the subject has under this article is outweighed by the rights of the innocent and vulnerable children to be kept safe. Disclosure is necessary in this case even though a power does not exist.'*

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<sup>26</sup> Children and Young Persons (Care and Protection Act) 1998 sections 245C-D

<sup>27</sup> In the UK the decision to prosecute lays with the Crown Prosecuting Service for many 'complex cases'. This decision can often take a number of months.

*Common law supports the need to disclose when a policing purpose is established. The policing purpose is to safeguard children within the specified church community that the subject has supervisory control over'.*

The decision was ultimately made to disclose certain information regarding the subject to relevant members of the church. The exact details of the disclosure (time, date to whom and content of disclosure) were recorded on the disclosure form and then kept for future reference. In some instances the subject is advised if a disclosure will be made, this depends however on whether there will be a risk to the community if the subject is advised prior to the disclosure being made.

## **9.0 Best practice in the field of sex offender management United Kingdom**

I have already mentioned a number of areas I identified during my journey of England, which in my experience could be considered as best practice in the area of sex offender management.

In addition to these areas I will also mention a number of other examples of best practice I observed in the sex offender management field.

### **9.1 Risk Assessment tools /Risk Management – Risk Assessment**

It is well documented that the proportion of sexual offenders who are reconvicted of further offending is known to be low. Nevertheless, their subsequent crimes understandably cause considerable public concern<sup>28</sup>.

All of the police forces I visited in the UK are currently using the risk assessment method called *RM 2000*. In essence RM 2000 is an actuarial static risk assessment that acts as a screening tool used on all adult male sex offenders. It is based on static factors and predicts the likelihood of reconviction for a sexual offence. This 'static' risk assessment model is also the current method used by the NSW Police. Risk assessments of sex offenders are an invaluable tool in evaluating risks posed by offenders in the community, in conjunction with identifying factors that may lead to the offender reoffending and the accompanying rates of recidivism.

The risk assessment of offender's assists in the determination of the level of supervision, and monitoring an offender will receive whilst they are subject to notification requirements (on the sex offender register). The RM 2000 model is based on what is called '*static*' criteria, which in essence means that it does not take into account any '*dynamic*' or changing factors that may take place in the context of the life of the offender whilst they are living in the community. Further to this the RM 2000 model is not applicable to female sex offenders, so police in essence have to construct other methods for determining the risk rating for female offenders that in itself does not ensure consistency.

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<sup>28</sup> Criminal Justice Joint Inspection Report (UK) - An inspection of the management of sexual offenders in the community 2010 HMI Probation and HMI Constabulary

The dynamic factors may include a new relationship entered into by the offender, new employment, or access to children in a new relationship. Whilst an analysis of the risk management assessment tools is beyond the scope of this project I will mention the pilot of the ARMS model - **Active Risk Management System** (in paragraph 9.2) as this was highlighted to me by a number of the police forces. NOMS and the Warwickshire police are to some extent ahead of some of the other UK police forces, in that they currently use their own internal method of a combination of the RM 2000 and a dynamic risk assessment. The process involves the offender managers completing the RM 2000 on the relevant offender. The offender manager will then look at what they call 'stabilising factors' which may include;

- The housing situation of the offender
- Any new sexual relationships they have entered into
- Any access to children in their home or work life
- Whether they have been fantasizing about a sexual relationship with a child/adult

Once the dynamic factors have been assessed, the offender manager submits their risk rating for the relevant offender. The risk rating is then reviewed by the supervising sergeant and a risk management plan is devised for the particular offender. The current method used by Warwickshire Public Protection Unit according to the sergeant is based primarily on professional judgment of the offender manager. In this respect the sergeant commented he would be happy when the ARMS model is implemented as it will give more guidance to their officers in relation to how to risk assess using dynamic factors in a far more structured and consistent manner.

## **9.2 Active Risk Management System (ARMS)**

Whilst I was in London I discussed the ARMS model with members of the National Offender Management Services (NOMS). The ARMS model is being developed by staff from NOMS Public Protection Group, The Association of Chief Police Officers (ACPO), Staffordshire and West Midlands Probation Trust in consultation with Dr Ruth Mann and Dr David Thornton (author of RM2000). ARMS allows a framework to structure professional judgment by assessing the extent that the dynamic factors associated with sexual offending recidivism and desistance are evident. It ensures a balanced approach to the assessment of all the factors in the tool leading to risk management strategies based on professional judgment about the priorities for action having considered the information gathered about current behaviour. It seeks to provide a consistent approach in conducting 'dynamic' risk assessments of sexual offenders and can be used in isolation or in combination with an actuarial (static) assessment.

### **ARMS in a police context**

For the Police who rely on a single actuarial approach to the assessment of risk, the framework offers an opportunity for a more consistent approach to the assessment of dynamic risk factors and introduces a more structured and consistent approach to risk management planning. Best practice that is recommend by NOMS is for ARMS to be jointly agreed when more than one agency is involved, the agency having the most frequent contact being the one to "own" the

assessment. Therefore, if use of ARMS becomes well established, in time the police will “inherit” ARMS documentation from Probation for those cases that end statutory probation supervision but continue to be registered sex offenders. This gives further opportunity for police and probation to model a seamless approach to managing sex offenders and for the offender not to have to “start all over again” in recounting his circumstances<sup>29</sup>.

**Recommendation:** To review the current risk assessment model used by NSW Police in preference to the ARMS model.

### 9.3 Police National Database

As a result of the *Bichard Inquiry* in 2004, the United Kingdom introduced the police national database (PND). This database enables the police forces across England and Wales to access information about intelligence reports regarding offenders on a national level.

Sir Michael Bichard was asked to look at the actions of the police in Humberside and Cambridgeshire in the light of the conviction of Ian Huntley for the Soham murders. There had been intelligence reports regarding Huntley being involved in sexually related incidents that were held on police databases in different jurisdictions of the UK. In particular Sir Bichard was asked to assess the effectiveness of:

- the relevant intelligence-based record keeping
- the vetting practices of those forces since 1995, and
- information-sharing with other agencies.

The report was presented to the Home Secretary on 14<sup>th</sup> June 2004. It was strongly critical of the Humberside police about their handling of intelligence and data protection, but also commented on deficiencies of other agencies.

The Bishard report concluded;

The failings of all agencies are categorised in the following way:

- Failure to identify IH's behaviour pattern (police and social services)
- Failure to take under-age sex sufficiently seriously (police and social services)
- Flaws in the recruitment process (Soham Village College)
- Lack of national IT system for recording police intelligence (Home Office)
- Lack of national code of practice to cover record creation, retention, deletion and information-sharing (Home Office)

Sir Michael in the Bishard findings, significantly stated;

"As a result intelligence haemorrhaged in an alarming way: the pattern of Huntley's criminal behaviour was not identified soon enough and the various investigations of Huntley might well have been handled differently if officers had known about past incidents. Whether that would have affected the

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<sup>29</sup> Briefing Document ARMS Pilot - Phil Jarvis Sex Offender Management Unit (NOMS) February 2014

disposal of any of these incidents will never be known. But such opportunity as there was, was missed."

Whilst in Middlesbrough I observed the use of the national database, and noted it was a very valuable source of information and information sharing tool amongst police across the country.

**Recommendation:** Consideration should be given to the establishment of a police national database for intelligence holdings. This task would involve multi jurisdictional cooperation and is certainly a long term objective that has considerable merit.

#### 9.4 Training of Sex Offender Managers/Public Protection Officers

The training given to the members of the Public Protection Units (and similar units) was quite consistent across the UK. For example the Met police Jigsaw teams undertake a two week full time course at the Crime Academy called MOSOVO (Management of Sexual Offenders and Violent Offenders). This course is offered to those officers who have been vetted as suitable to undertake the role as a Jigsaw officer. In addition to this course the Jigsaw officer also completes a separate three day course on using the ViSOR program. The courses designed for the sex offender managers are also focused on the legislation that is commonly used by the sex offender managers/officers including the MAPPA guidelines, and the use of civil prohibition/restrictive orders. In some of the police forces there are additional training courses provided to the supervisors to assist with the extra duties, decision making roles and administrative tasks required in the role. I also noted the units consistently paired up experienced sex offender officers with less experienced more junior officers. This ensured the appropriate training and supervision was given to the junior officers in the field.

In NSW there is no dedicated training course specifically designed for officers who have the responsibility for managing sex offenders at the Local Area Commands. As such there is a level of inconsistency in the management of sex offenders and the degree of expertise of the individual officers tasked with this role. This is certainly no reflection on those NSW police officers who are in those particular roles, their dedication or the quality of their work. What can be said however is that we can do more to assist those officers in doing this difficult job and thereby generally improve the way we police sex offenders, and protect the community.

**Recommendation:** Establishment of a dedicated training course/s and supervisor courses for police in the field of sex offender management.

#### 9.5 Security monitoring software

##### Securus Program

Whilst I attended the Cambridgeshire Public Protection Unit I observed the officers using a security software program called 'Securus'. This particular program involves remote live

monitoring of the home or perhaps office computer of a sex offender. The software is installed on the offender's computer with their full knowledge, and may be as a result of the offender agreeing to the installation or as part of a licence condition when the offender is released from custody, or as part of their sentence. The program allows the police officer to remotely monitor the usage and Internet sites used by the offender. I was shown the program in operation from the computer of the police officer who was in effect watching the Internet site that the relevant offender was watching in real time. The site in this particular instance was a pornographic Internet site. The securus program allows the police officer to capture and record the data of what sites are visited, timing, etc. This information can be very useful for a number of reasons including being used as risk assessment tool, and as additional evidence when police apply for a prohibition order restricting behavior of the offender.

The following example was given by the Cambridgeshire Public Protection Unit;

The computer of a high risk sexual offender was being monitored by virtue of the Securus Program. The police noted that when they initially began monitoring the offender he was visiting the Internet sites of what could be classed as 'soft pornography', which was reasonably 'mild' in nature. Over the course of a number of months they noticed degeneration in the level of both the violent nature of the Internet sites visited and the level of the pornography being watched. The offender had a steady girlfriend and a steady reliable job, however over the months there was a noticeable change in the behavior of the offender (noted on home visits). The added tool of the securus program allowed the police to see some behavioural traits that were of concern with this particular offender, who appeared to be travelling down the slippery slope of reoffending. The police assisted the offender to get back on track and advised him that he was bordering on going back to prison if he continued down this path. The offender was extremely grateful for the assistance police provided him to this extent.

**Recommendation:** Consideration should be given on a case by case basis for the use of this type of software installation.

## **9.6 Circles of Support and Accountability (COSA)**

There are multitudes of treatment programs run in the community across the United Kingdom to assist sex offenders to reintegrate into the community. The majority of these programs are lead by the Probation Services. The COSA program is worthy of note due to the innovative community based model it represents. The program originated in Canada in 1994 and is now being used very successfully across the United Kingdom. COSA works closely in partnership with criminal justice agencies and relies on funding from the statutory and MAPPA agencies as well as charitable donations. Circles UK is a national body with an aim of assisting the offender to successfully rehabilitate and reintegrate back into society. The main group of sex offenders in COSA programs are those who are particularly isolated and lonely with very little support networks in the community. Social isolation and loneliness are proven factors in the increased rate of recidivism

of sexual offenders in the community. COSA identifies suitable members of the public who will monitor and support a core member in the community. The Circles program has at its heart the aim to prevent further sexual abuse working with the objective of no more victims.<sup>30</sup>

Whilst I was in the Warwickshire area I spoke to the MAPPA coordinator about the Warwickshire COSA program. The sex offenders in the program are called 'core members', and each individual circle program costs about 6000 pound per year per offender and runs for 12 months. The core member must be someone who has completed certain sex offender treatment programs, and accepts they are in fact a sex offender. The volunteers who are involved in the Warwickshire program come from various sections of the community, including psychologists, former law enforcement officers and probation officers. The program is not about addressing reoffending it is about social integration. The fortunate ancillary to this is that the core member is far less likely to reoffend. The program consists of weekly individual meetings for each core member with the relevant support volunteer. The particular emphasis is also on placing the core member into social situations such as going out for coffee, or to the movies with the volunteer. Bringing the offender out of their isolation into ordinary social situations has proven to successfully aid in the reintegration process. Every three months a review is conducted by the MAPPA and Circles Coordinator as to the success of the offender in the program. As the MAPPA coordinator pointed out to me, it is as much about accountability as it is support.

**Recommendation:** Consideration should be given to the COSA model in NSW.

## 9.7 National Offender Management Services Polygraph Testing

During my meeting with representatives from the NOMS I was informed of the recent introduction of polygraph testing of offenders as provided in legislative reforms to the *Offender Management Act 2007*<sup>31</sup>. I was advised that about 10 probation officers were selected across England and Wales to undertake the rigorous 12 week training course in order to become accredited polygraph examiners for the probation service. The polygraph testing would commence in October 2014.

The introduction of polygraph testing followed a very successful pilot program in the East and West Midland area between 2009 and 2011. An evaluation of the pilot concluded that offenders who took the test made twice as many disclosures to probation staff regarding matters such as admitting to contacting a victim, or entering an exclusion zone, or thoughts that could suggest a higher risk of reoffending. The evaluation concluded;

'Polygraph testing has increased the chances that a sexual offender under supervision in the community will reveal information relevant to their management, supervision, treatment, or risk

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<sup>30</sup> <http://www.circles-uk.org.uk/about-circles/what-is-a-circle-of-support-and-accountability>

<sup>31</sup> Sections 28-30 Offender Management Act 2007 UK

assessment. It has also increased the likelihood of preventative actions being taken by offender managers to protect the public from harm<sup>32</sup>.

The polygraph is often mistakenly described as a 'lie detector', when in effect the polygraph measures physiological changes of the nervous system. The polygraph measures physiological arousal, which is hypothesized to be the product of deception – i.e. respiration, cardiovascular and sweat responses. These results are then used to assess the probable truthfulness of statements an individual makes<sup>33</sup>. Although not a 'lie detector test' interestingly the Minister for Justice stated the following regarding the implementation of the testing<sup>34</sup>;

*This government is introducing lie detector tests for high risk sexual offenders, as well as satellite tagging to track their movements.*

*We are determined that the UK has one of the toughest regimes in the world for managing sex offenders, to stop reoffending and to protect victims.*

The legislation states<sup>35</sup>;

The Secretary of State may include a polygraph condition in the licence of a person to whom this section applies.

This section applies to a person serving a relevant custodial sentence in respect of a relevant sexual offence who—

- is released on licence by the Secretary of State under any enactment; and
- is not aged under 18 on the day on which he is released

The imposition of the polygraph condition requires the offender to participate in polygraph sessions as and when required by the appropriate officer (a suitably trained probation officer), with a view to;

- Monitoring his compliance with the other conditions of his licence;
- Or improving the way in which he is managed during his release on licence<sup>36</sup>.

Evidence of the following matters are inadmissible in any proceedings against the relevant offender<sup>37</sup>;

- any statement made by the released person while participating in a polygraph session; and
- any physiological reactions of the released person while being questioned in the course of a polygraph examination.

**Recommendation:** The use of polygraph testing in the context such as the UK model is worthy of consideration in NSW.

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<sup>32</sup> The evaluation of the mandatory polygraph pilot Ministry of Justice Research Series 14/12 July 2012

<sup>33</sup> The evaluation of the mandatory polygraph pilot Ministry of Justice Research Series 14/12 July 2012

<sup>34</sup> Press Release - Compulsory lie detector tests for serious sex offenders Ministry of Justice (UK Government) 27 May 2014 Jeremy Wright MP

<sup>35</sup> Section 28 Offender Management Act 2007 UK

<sup>36</sup> Section 29 Offender Management Act 2007

<sup>37</sup> Section 30 Offender Management Act 2007

## 10.0 Germany- ZÜRS Program

Germany does not have a nationwide sex offender registration system. Some states have developed a *sex offender file* that enables law enforcement to better track sex offenders following their release into the community. There is no public notification system in Germany or other European nations.

I visited the Frankfurt police whilst on the fellowship. Frankfurt in the state of Hesse has a population of over 684,000 making it the largest city in Hesse. In 2008 Hesse introduced the ZÜRS program in part following an extensive eight year study of criminology in Wiesbaden into sex offender behavior and risks of reoffending. The impressive part of the program is the extensive research into offending behavior that founded the basis for the ZURS program. The emphasis was given to analyzing risk assessments and individual cases of offending behavior before making the recommendations of how the program should be implemented and maintained.

ZURS is the central point for monitoring relapse risk sex offenders. The concept of the program involved intensive supervision and monitoring of the high risk sex offenders, explained by the Justice Minister Jürgen Banzer<sup>38</sup>;

*'From relapse risk sex offenders is a high risk to our citizens; we must meet with all constitutionally permissible means. We have developed the hessen -wide security management, establishing close and intensive monitoring and supervision of sex offenders by the security manager. This is unique in Germany. For acting as a security manager already 23 new jobs for probation officers were created in 2008. Hesse so tightened the control and raises service levels to enhance the protection of the public from sex offenders. This is just for offenders who are released after serving their full prison sentence and for which no preventive detention can be arranged'.*

The key to the success of the ZURS program are the key stakeholders who run the program; justice, police and forensic psychiatry. The safety management role is performed by specialised probation officers who are specifically trained for the care and supervision of sex offenders. The success of this special unit is separately evaluated and optimized continuously. On average the sex offender stays in the ZURS program for five years, this may be extended if the offender reoffends during this time (which is rare). I was informed that since the introduction of ZURS in 2008, the recidivism rate of the offenders in the program was almost zero.

The success of the program according to the police officers from Frankfurt ZURS, was primarily based on the ability to integrate the offender into the community with the assistance of the security managers. The information received by police and other stakeholders based on the extensive risk analysis and risk assessments performed by the forensic psychiatrists provides

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<sup>38</sup> Press release from the Hessian Minister of Justice 23.01.2008

invaluable information to the supervisors of the sex offenders in ZURS. I was once again shown the benefits of thinking outside the square when it comes to risk assessment tools for sex offenders.

## 11.0 Background to the United States community notification laws and registration process

*Megan's Law* was introduced in the USA in 1996 in the wake of the murder of seven-year-old Megan Kanka, a New Jersey girl who was raped and killed by a known registered sex offender who had moved across the street from the family without their knowledge. All 50 states, the District of Columbia, four of the principal U.S Territories, as well as over 70 federally recognized Indian Tribes have a form of *Megan's Law* that requires the state to make publically available certain information about registered sex offenders. This is commonly referred to as community notification. The amount of information available about the offender and the public access to that information varies considerably from state to state in the USA. The majority of public access takes place via public websites that are free to access, and commonly includes information such as the name, address and photograph of the sex offender. Some states have 'community meetings' to inform the public about the presence of sex offenders in their community, whilst others have letter box drops and posters distributed around the neighbourhood.

In addition to the public websites in each individual jurisdiction, there is a public website that is *nationally* available across the USA. This website is called the *Dru Sjodin National Sex Offender Public Website (NSOPW)*, named in honour of a young woman from North Dakota who was kidnapped and murdered by a sex offender who crossed over state borders to commit his crime.

This site links the states, territories and tribal sex offender registries from one national search site. The site commenced in 2005, and allows searches to be conducted on a name, state, county, city or postcode, allowing access to all jurisdictions. The site is maintained by the US Department of Justice SMART office, and is publically available 24 hours a day, seven days a week. The site also provides information to the community regarding education on sexual abuse, ways to protect yourself from becoming a victim and a number of resources in this area.

The laws relating to sex offender registration and management in the United States is quite complex due to the variations in relevant legislation across the states and territories. Each jurisdiction has a specific state or territory penal code (or similar) that is applicable to that whole area, however the individual counties and districts within that state can also implement additional local ordinances. Quite often (as I observed in the areas I visited) the counties have implemented more stringent legislation pertaining to the management of sex offenders than the penal code provides, particularly the area of *residency restrictions*.

## 11.1 The Adam Walsh Act

In 2006 a Federal Law was passed with the aim of providing a certain level of consistency across the 50 States, five principal territories the District of Columbia and some federally recognized Indian tribes, in relation to the management and notification requirements of sex offenders. First, the *Sex Offender Registration Act* (known as SORNA or the 'Adam Walsh Act') created a new federal felony offence for failing to register as a sex offender as required by SORNA. Other provisions of the SORNA included:

- Increasing the length of time sex offenders were required to remain on the sex offender register
- Increasing the amount of times sex offenders were required to attend a local police station to verify personal information
- Required certain juveniles to register as a sex offender

The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (*SMART*) was created under the provisions of the Adam Walsh Act.

## 11.2 Implementation of the Adam Walsh Act across the USA

As I travelled across the USA, I became aware the implementation of SORNA across the states and territories fell far short of the original aspirations of the legislators. SORNA generally established minimum national standards that set a *floor* not a *ceiling* for jurisdictions sex offender registration and notification programs. This left individual jurisdictions free to develop more stringent requirements such as the classes of people who would be required to register, the types of registrable offences, the duration of registration, and the types of information available on the public sex offender websites, whilst still adopting the minimum standards of the provisions contained in SORNA.<sup>39</sup> When SORNA was introduced the jurisdictions were advised that failure to come into '*substantial compliance*' with SORNA requirements in a timely manner (a deadline was set for substantial compliance which was 27 July 2011) would result in an annual reduction of 10% the jurisdiction would receive via the *Byrne Jag* funding. These Byrne grants were for the jurisdictions criminal justice programs such as law enforcement purposes, and similar. It was the role of the *SMART* office to determine if the jurisdiction had in fact met the substantial compliance thresholds.

I was informed during my meeting with the *SMART* representatives that as of April 2014, 17 states, three territories and 63 tribes had substantially implemented SORNA (Sex Offender Registration and Notification Act) requirements of the federal Adam Walsh Act. These jurisdictions are the States of Alabama, Colorado, Delaware, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota,

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<sup>39</sup> 2014 SORNA Workshop SORNA Reference Handbook Department of Justice

Tennessee and Wyoming, and the United States territory of Guam, the Commonwealth of Northern Mariana Islands and the U.S. Virgin Islands.

The two main reasons for the other jurisdictions not reaching substantial compliance according to the *SMART* office was the cost and resources required to adopt the provisions of SORNA. The larger states in particular such as California and Texas have indicated they are prepared to forgo the Byrne grant each year in order to avoid the costs associated with the implementation of SORNA. These states also believe they have very workable and efficient existing systems of sex offender registration and notification provisions without overhauling their systems to meet the provisions of SORNA. The feedback I received from the Californian stakeholders was that very little consultation took place with the states and territories, prior to the introduction of SORNA. California in particular has been conducting registration of sex offenders since 1947 and has what they believe to be a very robust sex offender management system, one that did not need improving by the implementation of the Federal measures under SORNA.

## **12.0 National agencies for sex offender management**

As a result of the Adam Walsh Act a number of agencies were mandated with specific roles within the sex offender management field, these included the *SMART* office, the National Centre for Missing and Exploited Children, and the US Marshals.

### **12.1 SMART- Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering & Tracking**

The office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (*SMART*) was established under the auspices of the *Adam Walsh Act* in 2006. The office of *SMART* is authorised to administer the standards for sex offender notification and registration, administer the grant programs authorized by SORNA and coordinate related training and technical assistance. The *SMART* office provides ongoing assistance to those states who have substantially complied with the implementation of SORNA. Despite a large number of the USA states not implementing SORNA, the *SMART* office still continues to work with these states in any way they can to assist with various aspects of sex offender management including training and best practice in this field.

The *SMART* office is integral in developing best practices on a national level, in relation to the management of sex offenders. I was informed about the *SMART* office initiative launched in 2011 titled, *SOMAPI- Sex Offender Management Assessment and Planning Initiative*. This project involved assessing the various bodies of research conducted by the individual states and territories in the USA regarding sex offender management, including promising and effective sex offender management programs. In 2012 as part of this project a national forum was held in Washington involving over 50 national experts in this field. The *SOMAPI* findings were unfortunately not released at the time I completed this report, however they are due to be released later in 2014. These findings (regarding best practice) will certainly be of interest to

those in Australia in the field of sex offender management, and will be available on the SMART office website <http://www.smart.gov> late 2014.

## 12.2 National Centre for Missing and Exploited Children (NCMEC)

I was fortunate enough to meet with members of the inspiring and dedicated team attached to the National Centre for Missing and Exploited Children based in Alexandria, Virginia. As the team pointed out to me, thirty years ago police could enter information about stolen cars, and stolen guns into the FBI crime database, but not stolen children. A number of tragic and disturbing child abductions and murders over the years, prompted significant changes in this field, culminating in the creation of the National Centre for Missing and Exploited Children (NCMEC) in 1984. NCMEC began as a private, non profit organization. NCMEC now works in conjunction with the US Department of Justice to assist various law enforcement agencies on a national level to find missing children, eliminate child sexual exploitation and prevent child victimization. The NCMEC advised me there have been over 205,000 missing children reported since 1984 and NCMEC has a 97% case resolution rate for missing children.

NCMEC also maintains a national map on the numbers of registered sex offenders across the USA. NCMEC liaises with sex offender registries across the USA to gather this information twice a year, and also provides information to the state registries regarding pertinent issues shared with them by the various sex offender registries regarding sex offender management. Various state sex offender registries also contact NCMEC for information and assistance, and NCMEC ensures they foster good relationships with the various state agencies. With tens of thousands of registered sex offenders in the United States whose whereabouts are unknown, expanding our ability to link open and unsolved missing/exploited child cases to these offenders is of great potential benefit<sup>40</sup>.

As part of the *Adam Walsh Act* in 2006 NCMEC received Congressional authorization (and funding) to perform 22 specific tasks. Some of these tasks include;

- To operate the official national resource centre and information clearinghouse for missing and exploited children.
- Operate a national 24 hour toll free telephone line for reporting information regarding the location of any missing child.
- Coordinate public and private programs that locate, recover, or reunite missing children with their families.
- Provide assistance to families and law enforcement agencies through searching public records databases in locating and recovering missing and exploited children and helping to locate and identify abductors.

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<sup>40</sup> National Centre for Missing and Exploited Children Resource Material

- Provide training and assistance to law enforcement agencies in identifying and locating non-compliant sex offenders.
- Develop and disseminate programs and information to the general public, schools, public officials, youth serving organisations, and other non profit organisations, on the prevention of child abduction and sexual exploitation and internet safety.

## Case Analysis Unit

As part of the task of assisting law enforcement agencies in the field of child abduction and non compliant sex offenders, NCMEC established the Case Analysis Unit (CAU) and the Special Analysis Unit (SAU). Both units operate standard business hours, however they also provide an 'on call' service for after hours emergencies. Both units draw on a wealth of national resources and database information not readily available to the individual state law enforcement agencies.

The SAU is comprised of three teams, Sex Offender Tracking, Child Sex Trafficking and Research. The SAU has established a Sex Offender Case Management System on a national level, which has been invaluable in comparing data relating to abductions, and potential linkages with non compliant sex offenders. The SAU can perform short and long term analytical research reports on specific offenders. For example, the New York Police Department may request a detailed report on a specific sex offender who is linked to the abduction of a child in New York. The SAU can provide the NYPD with a detailed report regarding the background of the offender including all social network sites related to him, any relevant newspaper articles, various aliases used across the USA, financial history, phone records, driving records etc. The package created by SAU can provide a timeline regarding the offender to assist in the investigation of the abduction. The information package prepared by the SAU would in all reality not be easily accessible or available to the NYPD officers investigating the case on a local level. The short reports prepared by the SAU could include the NYPD running a compliance operation for example on 1200 non compliant offenders. The SAU can perform 'batch checks' on the offenders, which have a turn around of 24 hours. These short reports provide local authorities with a basic overview of the offender regarding their addresses, aliases, and other similar information.

## 12.3 US Marshals

The Sex Offender Investigations Branch (SOIB) and the National Sex Offender Targeting Centre (NSOTC) both within the United States Marshals Service were created with the passage of the Adam Walsh Act in 2006. *'The mission of the United States Marshals Service Sex Offender Investigations Branch is to protect the public from sex offenders through the coordinated enforcement of sex offender registration laws.'*<sup>41</sup>

Although each individual state in the USA is responsible for the monitoring and compliance of those registered sex offenders within their jurisdiction, the US Marshals in this field are mandated to perform the following three principal roles;

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<sup>41</sup> United States Marshals Service Sex Offender Investigations Branch resource material

- Assist state, local, tribal and territorial authorities in the location and apprehension of non compliant and fugitive sex offenders.
- Investigate violations of the Adam Walsh Act for federal prosecution.
- Assist in the identification and location of sex offenders relocated as a result of a major disaster.

When I met with the US Marshals from the SOIB in New York, it was clear they had a very good working relationship with the NYPD Sex Offender Management Unit (SOMU). As detailed in paragraph 15.2 the limited number of police officers in the NYPD (SOMU) has resulted in the NYPD calling on the assistance of the US Marshals on a regular basis particularly regarding locating non compliant sex offenders. Particularly in the last five years it appears the Marshals have been working closely with the NYPD in relation to non compliance issues in New York City, resulting in a vast improvement with compliance rates of offenders in this area.

The US Marshals also openly and graciously offer their services to the local law enforcement officers when they conduct compliance operations on registered sex offenders. I found this to be the case when discussing this issue in both New York and in Los Angeles. The Marshals particularly via the National Sex Offender Targeting Centre, offer the States support by assisting with the prosecution of sex offender registration violations in addition to the violation of local registration laws.

The resources available via the US Marshals are also an extremely valuable tool for local authorities given the Marshals national organizational structure. This is particularly evident when non compliant and offending sex offenders cross state boundaries requiring a coordinated law enforcement assistance and intervention on a national level. The US Marshals also provide two full time criminal investigators to NCMEC to oversee the investigations involving abducted children.

### **13.0 Risk levels/risk assessments of sex offenders**

Many jurisdictions in the USA use risk assessment processes for a number of reasons including:

- Determining the level of community notification
- Treatment programs for the offender
- Making decisions regarding the release of an offender following a term of imprisonment
- Determining supervision intensity in the community

The type of risk assessment tool used and risk category applied to sex offenders varies across the USA. In some jurisdictions (such as New York) in order to determine the level of community notification and duration of registration, a hearing is held by the sentencing court regarding the relevant offender. The court can take into account many matters when determining the risk level including:

- Whether the offence involved force and/or violence

- The age of the victim
- The relationship of the victim to the offender

The court assesses the overall risk the offender poses to the community, and the likelihood the offender will commit the same or similar registrable offence. The court is also guided by the risk level the 'Board' (which is a panel of experts usually administered by the Division of Criminal Justice and similar) assesses the offender at. The risk level is done on a case by case basis, not on the specific offence committed.

The Adam Walsh Act in contrast, uses a 'tier system' to categorise sex offenders;

Tier I sex offenders, convicted of the "least serious" offences in this statutory scheme, are required to register for 15 years, renewing their registration in person once annually

Tier II sex offenders are required to register for 25 years, renewing their registration in person every six months

Tier III sex offenders are required to register for life, renewing their registration every three months.

### **13.1 New York Model**

In New York the risk rating system for sex offenders is structured in levels rather than in tiers.

Level 1 – which means there is a low risk of repeating the offence

Level 2- moderate risk of repeating the offence

Level 3- high risk of repeating the offence and a threat to public safety

By law, only Level 2 and Level 3 sex offenders information are made available to the public. The law allows the offender or the District Attorney to make application to have the risk level modified Upon release to the community following a conviction for a registerable offense, a sex offender is required to register with the Division of Criminal Justice Services.

### **13.2 Designation of sex offenders**

In addition to the risk level in New York, the court also determines whether a sex offender should be designated a sexual predator, a sexually violent offender or a predicate sex offender. This designation, along with the risk level, governs the duration of the registration. Level 1 sex offenders must register for 20 years unless they have been given one of the above designations. Level 2 and Level 3 sex offenders are required to be registered for life. If the sex offender has been designated a sexual predator, a sexually violent offender or a predicate sex offender, he or she must register for life regardless of risk level.

### 13.3 Californian model

In California since 2012 Chelsea's Law requires that sex offenders be assessed for dynamic risk and risk of future violence. The score from the dynamic factors is used in conjunction with the Static 99R risk assessment tool. Probation services administers the Static-99R pre-sentencing and while the offender is on probation. Parole administers the Static-99R on the offender, prior to release on parole and the relevant treatment provider administers the SRA-FV (dynamic tool) and the LSCMI (violence tool) as part of the treatment program. The categories of sex offenders in California and the subsequent level of community notification is based on the specific offence committed. In essence the more serious the offence committed, the more information is made publically available on the website.

### 14.0 Is 'open' community notification effective in the United States

As previously stated in this report there is considerable variance in the legislation that governs community notification across the USA, particularly in relation to those convicted sex offenders (level or risk, type of offence committed, etc) who have their information made public, and what information is made public. The general sentiment amongst the stakeholders I spoke with in the USA was that an '*educated community is a safer community*'. They all agreed that community notification is not the 'catchall' when managing sex offenders, or in fact making the community safer, but it was a *valuable tool* amongst others in managing sex offenders and associated risks. The public websites in many jurisdictions also contained educative information about sex offenders, and measures the public could take to be more vigilant when protecting their children against sex offenders. Some of the websites also contained 'tip lines' where members of the public could post information about sex offenders that may assist law enforcement in many ways. The tips I observed whilst at LAPD included information about a registered sex offender peeping through residential windows in a local neighbourhood (this offender was later charged with this offence), and another offender actively 'grooming' children in the local neighbourhood.

Whilst I was in Washington I met and spoke with Derek VanLuchene (attached to the US Department of Justice SMART Office). In August 1987, Derek's 8 year old brother Ryan was playing in his own back yard in the rural town of Montana. Ryan was kidnapped from his backyard, sexually assaulted and murdered by a repeat sex offender. This offender was serving a prison sentence for having previously sexually assaulting another child. The offender was granted early release from custody and with minimal supervision in the community. Within a few weeks of being released from prison the offender kidnapped and murdered Ryan. Derek VanLuchene served many years as a police officer and other law enforcement roles following the murder of his younger brother. Derek is often asked whether his brother's murder may have been prevented if Montana had community notification laws in place in 1987. Derek advised me he did not think it would have made a difference specifically to his brother's death. However Derek is a staunch advocate of community notification in the sense that it provides the community with education about sex offenders, and who and what they are and in fact are not. Community notification

(according to Derek) attempts to dispel some of the commonly held myths about sex offenders, so the community can be more alert and aware of the actual dangers and ways to minimize risks that certain offenders may pose. Again Derek stated an educated community is a safer community.

Keeping in mind that one of the main arguments against community notification in NSW has been the issue of the offender going 'underground' as indicated by the NSW parliamentary speech when the sex offender registration scheme was introduced. (Detailed in paragraph 5.2 of this report)

'Community notification reduces compliance with registration schemes as child sex offenders will avoid registering if they believe information about them will be made public.'

When I spoke with the National Centre for Missing and Exploited Children (NCMEC) regarding the issue of community notification they had the following views;

- The need for public notification outweighs the risk of the offender going 'underground'.
- The non compliant sex offenders who will disappear will do so even without public notification being in place.

In the experience of the NCMEC team, there are three groups of sex offenders who do not register and therefore become non compliant;

- The group who are so 'hopeless' in the organisation of their life in general they just do not bother to register.
- The 'smart' ones who do not want to register as it will affect their everyday life regarding employment, and being subject to supervision and extra regimented ways of life that go with the registration process.
- The group who do everything they can to avoid detection including getting false passports and driving licenses, as their main aim is to reoffend.

#### **14.1 Community Notification in the State of New York**

The New York State Division of Criminal Justice Services is the organization responsible for maintaining the sex offender register in New York.

As mentioned only Level 2 and Level 3 sex offenders are listed on the public directory (via the internet). The public site commonly lists the following information;

- Photograph of offender
- Names and any aliases an offender has
- Home and/or work addresses
- Conviction charge
- Sentence details

- Parole/Probation conditions
- Vehicle registration details

### Sex Offender Email Alerts

In addition to the public website the 'NY-ALERT' is an initiative between DCJS (New York State Division of Criminal Justice Services) and a private company to allow people to sign up to receive free alerts – via e-mail, text message or fax – whenever a Level 2 or Level 3 sex offender listed on the DCJS website moves into or out of a community or location of interest to the applicant or their family.

Other jurisdictions have similar phone applications (apps) that can be used to alert people. I met several people (members of the public) during my trip across the USA that utilized these types of apps.

### 14.2 Sex Offender Management Unit- New York City

New York State has in excess of 37,000 registered sex offenders. New York city (five boroughs) has approximately 7,300 registered sex offenders. The Sex Offender Management Unit (SOMU) is part of the New York Police Department Special Victims Division. SOMU has an official staff level of 6 full time field officers who are responsible for the 7,300 registered sex offenders. Some assistance is given by the local borough police officers, however it is fair to say the SOMU is the lead agency in relation to the management and compliance of these sex offenders. Given the ratio of police officers to sex offenders, the enormity of this task is daunting to say the least. When I explained to the SOMU about the ratio of police officers to sex offenders (in general) in the UK PPU police forces I had visited, they were astonished. It is a fair assumption after talking with the NYPD (SOMU) that the police rely quite heavily on the public for assistance in relation to intelligence and other *tips* about activities regarding sex offenders, particularly given the low numbers of police tasked with sex offender management. This assistance is largely given by virtue of the community notification laws in New York.

### 14.3 California on community notification

California is recorded as having 74, 857 registered sex offenders in the state, in a population of in excess of 35 million people<sup>42</sup>. This is the second highest number of registered sex offenders in the USA, with Texas recording the highest at over 78,000 registered offenders. As stated previously California was the first state in the USA, and in fact the world to have a form of registration for sex offenders from 1947 onwards. California is one of the only states left in the USA to currently have lifetime registration requirements for sex offenders. California's *Megan's Law* was enacted in 1996.

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<sup>42</sup> National Centre for Missing and Exploited Children (NCMEC) December 6 2013 data

## 14.4 REACT (Registration Enforcement and Compliance Team) Los Angeles Police Department (LAPD)

The REACT is responsible for all facets of management of the 5,800 registered sex offenders in LA, including:

- Tracking and investigating non compliant offenders
- Collection of DNA samples from registered offenders
- Community notifications and presentations
- Arrest and charging non compliant offenders

There are seven separate REACTS across LA comprising of 35 officers in total (the majority are police officers who are not designated detectives). The numbers equate to an onerous load of offenders for each individual officer to effectively manage (particularly in comparison to the UK). Of assistance in managing the case load are a number of other agencies that REACT are closely aligned with including;

- Department of Corrections, and Parole Operations
- United States Marshals
- Immigration and Customs Enforcement

LAPD is also the largest law enforcement sex offender registration agency in California, and the REACT is the only full time fully staffed investigative body in California dedicated to sex offender tracking and registration enforcement.

Of particular interest regarding best practice of REACT was the *LAPD 290 database*, which was established in 2004. This database was expanded in 2008 to include Modus Operandi (MO) information to enhance matching registered sex offender data to unsolved sex crimes. The REACT personnel are required to collect this information from crime/arrest reports, and court documents at a rate of 20 MO's per month for Bureau REACT units. I saw the operation of this database, where the input data was as follows;

Description of offender from recent rape case;

*Male, 35-40, Hispanic, rose tattoo on shoulder, target young women aged 15-20 years of age.*

This information was fed into the database that resulted in a list of possible suspects who fitted these criteria in descending order of set criteria.

The REACT units are also involved in a particular initiative worthy of note, the Los Angeles Strategy against Violent Environments near Schools (**LA SAVES**). The aim of LA SAVES is to ensure that the children of LA City have a safe and peaceful environment so they are able to focus on their school activities. LA SAVES is a coordinated effort by the LA City Attorneys office to conduct probation, parole and sex offender checks of offenders residing near schools. The

coordinated operations involve multi agencies including (REACT, LAPD Gangs Division, LAPD School Police, Department of Corrections, and the City Attorneys Department). Between June 2005 and 2012, the LA SAVES project has conducted 58 operations, arrested over 300 convicted felons for various breaches of parole, and recovered numerous weapons. The LA SAVES project is a great community initiative on a multi agency level that is aimed at protecting children on a number of levels.

#### **14.5 West Covina Sheriffs Department**

In the 'Valley' District of Los Angeles the Sheriffs Department (in some instances) is tasked with the management of registered sex offenders in specific areas of the Valley. The operation of the local Sheriffs is an unusual arrangement given my policing background. The West Covina Sheriffs for instance are responsible for 26 of the 'incorporated' cities out of the 80 incorporated cities in the LA County area. It is basically a 'user pays' system, where the individual city pays for the services of the local sheriff that are required for that area (determined by the county council members). It may consist of two sheriff's cars and three or four officers for that area. The city is spared the expense of having a full time city police department to pay for and maintain. The West Covina area has approximately 4,500 registered sex offenders living in the community. The ratio in this area equates to about 265 registered sex offenders per specialist officer. Some assistance is provided by the US Marshalls, and the local probation and parole officers, however as in other USA states, the bulk of the management and compliance is done by the small number of specialist police officers. The lifetime registration provisions applicable to Californian sex offenders make the role of the Californian police very difficult. As the sheriffs advised me, they feel their job is about maintaining the 'data' rather than managing the sex offenders. The numbers of offenders are far too great to be able to effectively manage the offenders. If the lifetime registration was removed they believed about 25% of the offenders would be removed from the register and not subject to monitoring and compliance. The quantity of sex offenders was in fact a restriction to effective management. *This is an important lesson to be learnt if consideration is given in the future to making lifetime registration requirements in Australia.*

#### **14.6 Additional means of disclosing information to the public**

In addition to the *Megan's Law* public website California has methods of public notification authorised by the penal code<sup>43</sup>. This allows law enforcement to disclose the information on any category of sex registrant based on the agencies assessment of the offenders risk to the community by whatever means the agency deems appropriate, when necessary to ensure the public safety. The decision to make a public notification is made after an examination of the current behavior of the offender as well as the severity of their past crimes and the likelihood of the offender committing another crime. The method of release of information must be reasonable related to the threat posed by the sex offender and the likely proximity to potential victims. The notification can take place via various methods such as community meetings, personal delivery to

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<sup>43</sup> California Penal Code section 290.45

individuals, door to door at residences or businesses, and distribution at schools, playgrounds and parks.

The approval of the Area Commanding Officer must be obtained prior to any information about the sex offender being released, and the appropriate Registered Sex Offender Advisory Form is to be completed. The REACT Coordinator stated this type of notification is used rarely and sparingly, and cited examples where he had used it. In a particular case a convicted sex offender had moved into a community and began openly 'grooming' children and their families that he befriended in a school community. Police in this case advised the school and neighbouring schools about the sex offender and his past history. This notification was to provide the public with the necessary information to put safeguards in place in order to protect their children against the offender and the possible commission of further offences.

Whilst I was visiting the LAPD REACT a local television network interviewed the REACT Coordinator regarding a recent spate of serious sexual offences in a Los Angeles community. The offender in question had recently moved into a particular community, and he was a convicted sex offender. This offender after a short time of moving into his residence committed a number of sexual offences close to his residence, upon young children. The community was aghast that police had not notified them of the offender moving into the area, given his sex offender status. During the interview the television reporter stated to the REACT officer that upon interviewing various community members after the commission of the sexual offences, the members of the public stated they were not aware they were able to access information about sex offenders in their area via the *Megan's Law* website. Further to this the general public in this residential area were of the opinion they would always be told by police if sex offenders had moved into their community. The reporter pointed out this particular geographical area, was a low income area and many of the residents did not have access to technology to assist with accessing the website, nor perhaps the requisite ability to do so. In this particular case there were considerable anomalies in relation to the offending behavior, namely the offender committed crimes that were outside his usual 'MO' by targeting children of this young age group, and victims that lived close by to him. The REACT Coordinator stated this was not a case where release of information above and beyond the Megans Law website would have been justified given the offenders past history.

What this situation does highlight however, is that despite community notification laws being freely available and accessible, that not all community members use the service, or know about the service. One could also question as to whether knowledge of the offender being present in the community would have prevented the sexual offences taking place?

## 14.7 Immediate release of information

Community notification that can take place *immediately* by virtue of the Californian Penal Code, and specifically mandated <sup>44</sup>in the LA area is in a situation for example when an officer during a temporary field stop such as a traffic stop, or while conducting an investigation in the field has reasonable suspicion that a person is at risk of becoming a victim of a sex offender. In this case the officer may verbally release the information to the potential victim who is 18 years of older, and in the case of a minor to the minors parent or guardian. Two scenarios that illustrate a justified basis for making this immediate disclosure are as follows;

- Officers conduct a traffic stop and discover via radio checks that the driver is a registered sex offender, who was previously convicted of forcible rape. Officers determine that the offender's passenger is an adult female hitchhiker. The officer may make a disclosure to the passenger.
- Officers respond to a disturbance call at a residence. The male at the location was checked via police radio, which indicated he was a registered sex offender. His previous convictions included, child sexual assault. There are numerous neighbourhood children at the residence, including the children of the offender's girlfriend. Officers could make the immediate release of information of the sex offender's registrant status to the parent/guardian of the minor children.

If the officer makes this immediate disclosure, they are then required to complete a *sex offender registrant incident* form detailing the time, date, location and potential victim details. The purpose for the disclosure is recorded as;

*'The purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders'.*

**Recommendation:** This type of release of information is worthy of consideration, in very limited circumstances. This release follows to some extent the MAPPA disclosure and common law disclosure principles I observed in the UK.

## 15.0 Have some measures for sex offender management gone too far?

### Suffolk County Victims Advocacy Group monitors sex offenders

In 2013, in Suffolk County on Long Island New York a victims advocacy group, *Parents of Megans Law* was given legislative power by the Suffolk County Legislature<sup>45</sup> to monitor sex offenders in the community. I spoke to a number of stakeholders in the sex offender management field in Suffolk County who held the view this move had taken monitoring and public notification regarding sex offenders too far. The victims group (comprised of civilians who are former law

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<sup>44</sup> Special Order No 6, March 12 2007 Office of the Chief Of Police

<sup>45</sup> The local law for the Suffolk County is known as the *Community Protection Act* 2013

enforcement employees) receives \$900,000 per fiscal County year (for three years) to perform a number of roles including<sup>46</sup>;

- Verification of residency reporting of all registered sex offenders
- Monitoring of social media for address verification and to ensure registered sex offenders are not using social media in violation of applicable laws
- Development of a system of community reporting for violations of registration requirements
- Development of community email alert and website enhancements to provide notification of registered sex offenders

The group has on a number of occasions attended the address of a registered sex offender and asked for proof of residency at the location. On other occasions I was informed, members of the group have followed registered sex offenders around in their car to see if they breach any of their registration requirements. What appears to be a real concern is the issue of blurring the lines between what is monitoring of sex offenders, and what constitutes harassment or vigilantism. Also the concern was the ability of this victims group to maintain professionalism towards sex offenders in the way that police perform their duties in this area.

### 15.1 Residency restrictions

Residency restrictions are a hot topic across the USA at the moment. Sex offender residency restrictions are a specific form of specialised sex offender legislation that prohibits registered sex offenders from residing within a certain distance from places where children congregate, such as schools or daycare centres. Residency restrictions were originally designed to enhance public safety by neutralising the risk of recidivism posed by registered sex offenders released into the community (Levenson & Cotter, 2005; Sample, Evans, & Anderson, 2011; Simon, 1998; Socia, 2011). The assumption behind this legislation is that sex offenders choose their victims from the available population of the area in which they reside, crimes of convenience to some extent. Thus, attempts by the criminal justice system to increase the distance between registered sex offenders and potential targets should correspond to a decrease in recidivism among this group (Kang, 2012). Statewide residency restrictions have been adopted in some form by at least thirty states and at the municipal level in several others (Meloy, Miller, & Curtis, 2008).<sup>47</sup>

In California for instance the introduction of 'Jessica's Law' in 2006 prohibited all sex offenders who were released from prison to live within 2,000 feet of parks and schools, as well as other

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<sup>46</sup> Section 745-34 *Community Protection Act 2013*

<sup>47</sup> An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri 7/1/2013 Beth M. Huebner Timothy S. Bynum Jason Rydberg Kimberly Kras Eric Grommon Breanne Pleggenkuhle (report submitted to the National Institute of Justice Department of Justice (partly funded by NIJ)

restrictions. The requirement applies to all sex offender registrants; regardless of whether the *qualifying* offence was a felony or misdemeanor, or involved victims who were children or adults, and regardless of whether the sex offender is on or off parole. In addition to the state based law the local jurisdictions were also able to pass more stringent residence restrictions, which many local communities in fact did.

Since the introduction of Jessica's Law in California there have been a number of negative flow on effects, which has prompted the Californian Sex Offender Management Board (CASOMB) to call for a rethink on the tough residence restrictions.

*'A 2009 report prepared by CASOMB, recommends "Community sex offender management strategies should promote proven public safety strategies Residency restrictions that preclude or eliminate appropriate offender housing can threaten public safety instead of enhancing it.'* <sup>48</sup>

The issue of homelessness in Californian communities due to the residency restrictions has resulted in a dramatic escalation in the numbers of homeless sex offenders. Local police officials say monitoring homeless sex offenders is more difficult and requires additional resources. While offenders with housing must register with police annually, transients must register every 30 days.

According to the CASOMB Residence restrictions dramatically increase the number of transient registrants. Since the passage of Jessica's Law, the number of California transient registrants increased 217%: (approximately 6,500 statewide)<sup>49</sup>.

Furthermore the CASOMB advocates that various studies have shown there is no correlation between reduced recidivism rates and residency restrictions. The board noted<sup>50</sup>,

*'A Colorado study documented that sex offenders who received positive support (i.e. family, friends, treatment, Shared Living Arrangements and employers who were aware of the sex offender's issues and held the offender accountable in a supportive fashion) had significantly lower numbers of probation violations and re offences than those with no support. Other states have implemented, and then abandoned, residency restrictions. Noting that Iowa, Georgia and Oklahoma either rescinded or curtailed residency restrictions, oftentimes tailoring restrictions to the particular registrant'.*

Interestingly when I discussed the residency restrictions with the LAPD REACT members, they advised me of a judicial 'stay' that was in place in the city of Los Angeles regarding the restrictions. The stay had been effective since 2011, when a local court judge determined the residency laws were too limiting and the homeless issue was out of control. The judge stated the laws were in effect not applicable to the city of LA. This 'stay' has not been challenged in the city

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<sup>48</sup> CASOMB 'Homelessness Among California's Registered Sex Offenders- August 2011' Report

<sup>49</sup> CASOMB 'Homelessness Among California's Registered Sex Offenders- August 2011' Report

<sup>50</sup> CASOMB 'Homelessness Among California's Registered Sex Offenders- August 2011' Report

as at the date of this report. *The experience of the United States in relation to a general residency restriction for all sex offenders is a lesson well learnt for Australian jurisdictions contemplating this measure. The issue of residency restrictions should always be done on a case by case basis, determined by the individual offender, and the risk they pose to any given community.*

## 16.0 Sex Offence Courts

In 2004 the Centre for Court Innovation in partnership with the Unified Court System began looking at a model for the already established problem solving court in the form of a sex offence court. Various stakeholders and national experts working in the front lines of sex offender management were consulted in the process including, the District Attorney, the Defence Bar, Probation and Parole, and victim agencies. The formation of the sex offence courts in New York was certainly a collaborative effort of these stakeholders. There are now eight specific sex offence courts across the state of New York. During my fellowship I spent the day at the Suffolk County Sex Offence Court. I was fortunate enough to spend most of this time in the company of the Judge Barbara Kahn, who has been the sex offence court judge in Suffolk County since its inception in 2007. Judge Kahn generously provided me with time to sit and talk to her about the benefits of the sex offence court model, and I was able to observe the court sitting during the day.

In principal the sex offence court model aims (amongst other things) to do the following;

- Provide consistency with the disposition of sex offence cases
- Increase sex offender accountability
- Promote best practices in the resolution of sex offence cases
- Promote training and education for judges and non judicial personnel in the field of sex offence cases
- Facilitate and enhance coordination and communication among relevant stakeholders
- Improve victim satisfaction with the court process, and overall enhance community safety

I had heard of the sex offence court model prior to going to the USA and I was fortunate enough to see one in practice and also talk to the relevant stakeholders about how effective they are. Judge Kahn told me that originally the stakeholders (including her) were very skeptical of the concept of a dedicated sex offence court. This was partly due to the idea of change, and the need to reform a significant part of the well established court regime. Seven years on, and Judge Kahn could not have praised the sex offence court more highly. Judge Kahn has adapted the original sex offence court model to suit her individual court, as some of the other County court judges appear to have done.

For instance Judge Kahn requires all of the sex offenders who are on probation to appear in court before her every two months for 'compliance checks'. Judge Kahn currently supervises over 230 sex offender cases. The compliance checks in essence give the judge the opportunity to see how the offender is going in their life, including employment, home life, probation compliance and

alike. They also indicate if the offender is on track and if not how this can be corrected. These compliance checks are a large part of the increased accountability for the offenders that are not experienced in the court system in NSW, or Australia for that matter. This oversight role of the Judge plays a significant role in the reduction of reoffending by the sex offenders.

It is also a large part of Judge Kahn's role to deal with her offenders on a case by case basis, particularly given the large numbers of mentally ill sex offenders. In the typical court system, these offenders tend to get lost in the system and are not dealt with as individuals. They can (Judge Kahn noted) often go on to reoffend due to their inability to reintegrate into the community. It was evident the sex offence court in Suffolk County took great pains to ensure the coordination of services of the relevant stakeholders for ongoing treatment of sex offenders.

What was also impressive was the cooperation between the relevant stakeholders in the sex offence court. During the morning tea adjournment the Judge held her 'in chamber' meeting with various defence attorneys, the district attorney representatives, probation officers and police officers. This meeting was regularly held to discuss several of the cases on a more informal basis out of the public court arena. Matters were resolved, and delicate issues were debated in a very friendly atmosphere. As a lawyer I was very impressed with the informality of the meeting that still managed to get the job done in a professional manner. The concept of the sex offence court model (adapted by Judge Kahn) allows this type of process to take place because the key stakeholders all know each other well, and are the same people dealing with these matters day in day out.

The feedback I received from the relevant stakeholders regarding the sex offence court model was overwhelmingly positive and supportive. The defence attorney's and probation officers alike stated the intrusive supervision by Judge Kahn prevented in many cases, breaches of probation conditions and reoffending behavior. The supervision also gave the offenders a form of structure in their life. The defence also found great value in the consistency of treatment, determination and sentencing in sex offence cases that was not previously found under the traditional court system. The probation officers also felt the court was far more accessible to them under the sex offence court model, with the added benefit of the level of expertise within the court not previously experienced. From the victim services point of view, they believed the sex offence court enabled the service providers to reassure the victim about a process that was consistent and specialized. The victims were also very happy with the intrusive supervision of offenders provided by the court and the probation officers, and the consistency with sentencing of offenders. The district attorney representative also described the specialized training she received prior to handling the sex offence cases, and the ongoing training she receives. This type of training was certainly not provided under the traditional court system.

Overall I found the sex offence court model an overwhelming example of problem solving courts at their best, in a field where specialization, consistency and accountability are paramount for both offender and victim alike.

**Recommendation:** The merit in the sex offence court model cannot be overstated.

## 17.0 Sex Offender Management Boards

The California Sex Offender Management Board (CASOMB) was established in 2006 with the original vision of decreasing sexual victimization and increasing community safety. CASOMB seeks to accomplish its mission by addressing issues, concerns and problems related to community management of adult sex offenders by identifying and developing recommendations to improve policies and practices<sup>51</sup>. There are a number of other states in the USA that have Sex Offender Management Boards, including Colorado, Illinois, and Delaware.

The major benefit in having a structured organisation to deal with these issues is the coordinated consistent effort and vast pool of resources and experience within the board itself. The boards also regularly publish reports regarding best practice and relevant findings in the sex offender management field, and keep abreast of legislative changes in the field. They are also often the platform for legislative reform and a catalyst for change if existing laws are proving to be ineffectual and too restrictive. The board invariably consists of experts in their field who are drawn from various sections of the community across the particular state. In California for example the board members include, a judge, district attorneys, the coordinator of the sex offender team LAPD, public defenders, a family and marriage therapist, a Consulting Psychologist from the Department of State Hospitals, and probation and parole officers. The boards also provide training and assistance to law enforcement agencies on the state level in the sex offender management field.

**Recommendation:** There is merit in considering a Board that is specifically tasked with an oversight role in the management of sex offenders, as seen in California. This Board to some extent has parallels to the MAPPA arrangements in the UK. A combined model of the Sex Offender Management Board and the MAPPA model are worthy of consideration in NSW.

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<sup>51</sup> [www.casomb.org](http://www.casomb.org)

