November 9, 2010 **SB1560 - Testimony**

Members of the Senate Judiciary Committee,

Thank you for holding this hearing and taking testimony on SB1560. For 17 years I have been a juvenile advocate. I am testifying today because I am gravely concerned about the over-inclusion of juveniles on Michigan's registry and what SB1560 would do to existing registrants as written. We all share a common concern for the prevention of sexual abuse. However, the more I learn about this issue, the more the wrongfulness of how we treat juvenile and low risk offenders enforced – and the growing body of research supports this[1]. The last thing we should be doing is treating existing registrants more harshly than we already are – further marginalizing these youth. Ideally, our registry laws should be based on research and evidence-based practice - increasing their efficacy, while using monetary and human resources more effectively.

It's critical that each legislator understands that the Adam Walsh Act (SORNA) Guidelines DO allow Michigan to correct our registry law regarding juveniles. Michigan has FAR more juvenile offender registrants than is required by the Adam Walsh Act.[2] Individuals can be removed from our registry without compromising public safety.

To help you understand this concern, I've attached a diagram showing the progression from 2005 to 2010 of how federal AWA policy has increasingly REDUCED which juveniles are required to register, and how we treat those juveniles that are required to register. This reduction sends a message that the rest of the United States has begun to understand, how wrong these policies are for juvenile offenders. It appears that research about juvenile sexual behavior may finally, in a small way, be informing federal policy - **something that will truly make all of us safer.** As you can see, Michigan is significantly out of line. I must also point out that even with the narrow class of juveniles that is required to register under the AWA, many states still have a fundamental issue with statutory labeling juveniles that is not based on risk to reoffend or allow judicial discretion. The Council of State Governments 2010 Report on *SORNA and Sex Offender Policy in the States* documents some of these concerns.[3]

Michigan should remove existing juvenile registrants that do not meet the federal definition of sex offender.[1] At minimum, remove those < 14 years old at the time of the offense, and those 14 to 16 with age-only or familial offenses. All other juveniles that do not meet the definition of sex offender should be a non-public Tier 1 offender, with the ability to petition for removal from the registry or register for 10 years – as many other states already do. Research supports that juveniles who've matured into adulthood, that have not reoffended sexually, are at even lower risk of reoffense than the already low rates for juvenile offenders.[1, 11 and others] Registration information for ALL juvenile offenders should be non-public – something that the 2010 Guideline Amendments allow for even juveniles that are defined in the AWA.[4] All of the above changes are allowed by the AWA Guidelines, and do not hinder achieving "substantial compliance". For example, it would be horrific to change a non-public, 25-year juvenile registrant, whose offense is 10 years old, to a public, lifetime registrant, subject to all the requirements of AWA (SORNA) when they do not even fit the definition of sex offender in the AWA, AND they're at lowest risk to reoffend, AND this is not supported by research. Further, that would be a waste of Michigan's money and law enforcement resources.

Some facts that may interest you:

- Michigan has over 3,650 juvenile offender registrants[5] - approximately 17% of all juvenile registrants nationwide[6] - yet Michigan has only 3% of the nation's population.[7]
- Ohio had approximately 900 juvenile registrants in 2008 when they implemented AWA legislation (SB10). Even with this narrow class of juvenile registrants, Ohio still removed some existing registrants when SB10 was implemented.[8]
- Ohio has only 10 Juvenile Offender Registrants on their public web-site.[8] They have already been approved as having "substantially implemented" AWA(SORNA).

- There were approximately 6,000 legal challenges filed in court when Ohio reclassified its registrants.[8]
- Maryland passed legislation in Oct. 2009 that excluded juveniles from their registry. Only when the individual turns 18 can a request be filed by the prosecutor to have a juvenile register, and only if the court determines that they are "at significant risk of committing an offense for which registration would be required" do they have to register. Doing so despite the Adam Walsh Act. Virginia passed legislation in 2005 that is very similar. Oregon passed legislation allowing all juvenile registrants the ability to be removed in 2008. Illinois passed similar legislation. And there are others.
- 55% of the public in a recent survey by the Center for Effective Public Policy indicated that research about "what works" should be the factor lawmakers rely upon most when making decisions about sex offender specific laws. Only 17% believed that this is what lawmakers currently rely upon most.[10]
- **"The long-term sex crime risk (2 – 3%) of appropriately treated children with sexual behavior problems was no different from that of children for whom we would never consider extraordinary and burdensome community protection measures.[11]**

Lastly, earlier this year at the request of a legislator, I compiled information about all 50 states' juvenile SOR laws. An Assistant Attorney General, in the Legal Office for the State Office of Juvenile Affairs, explained how Oklahoma handles their juvenile offenders. I then explained how Michigan statutorily places all juvenile sexual offenders the registry for virtually the same offenses if committed by an adult, without considering risk assessments - to which she replied, "Wow! Your state really has a lot of work to do"! (It should be noted that Oklahoma only has 3 juveniles on their registry. These registrants had to be "found by clear evidence that the juvenile represents an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age.")

Thank You.

1 Chaffin, M. (May 2008). Our Minds Are Made Up – Don't Confuse Us With the Facts: Commentary on Policies Concerning Children with Sexual Behavior Problems and Juvenile Sex Offenders. *Child Maltreatment Journal of the American Professional Society on the Abuse of Children,* 13:2, 110-121.

2 National Guidelines For Sex Offender Registration and Notification. S.M.A.R.T. Office. p 16. and USDOJ Juvenile Offenders Required to Register Under SORNA: A Fact Sheet. http://www.ojp.usdoj.gov/smart/pdfs/factsheet_sorna_juvenile.pdf.

3 The Council of State Governments. SORNA and Sex Offender Policy in the States. 2010. http://www.csg.org/policy/documents/SORNABriefFINAL.pdf.

4 National Guidelines for Sex Offender Registration and Notification. July 2008. http://www.ojp.gov/smart/pdfs/final_sornaguidelines.pdf

5 Michigan State Police, Feb. 2010.

6 There are estimated to be 21,500 juveniles on registries nationwide. 3% of all registrations are estimated to be juveniles (Letourneau, 2010). Registry Count = 716,750; (Registered Sex Offenders in the United States, National Center for Missing and Exploited Children. 14 June 2010). http://www.missingkids.com/en_US/documents/sex-offender-map.pdf.

7 U.S. Census Bureau, July 2009, (Michigan Population – 9,969,727, US Population – 307,006,550)

8 Kehl, Kim. Assistant to the Deputy Director at Ohio Department of Youth Department of Youth Services. Phone Conversation. 8 Nov. 2010.

9 Ohio Attorney General's Office. Guide to Ohio's Sex Offender Registration and Notification Laws "SORN". p 24. http://www.opd.ohio.gov/AWA_Information/AWA_2009GuideOhioSORNLaws.pdf

10 National Public Opinion Survey on Sex Offender Management. Center for Effective Public Policy. 2010.

11 Carpentier, M., Silovsky, J. F., & Chaffin, M. (2006). Randomized trial of treatment for children with sexual behavior problems: Ten-year follow-up. *Journal of Consulting and Clinical Psychology,74,* 482-488.

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Key Juvenile Changes Needed to SB1560:

1. **Juveniles < 14 that are already on the registry should be retroactively removed.** If there are any other existing registrants that do not meet the new definition of sex offender in the bill should be retroactively removed. AWA/SORNA Guidelines allow this (p 16 and USDOJ SORNA Proposed Guideline Amendments). The bill indicates that only certain offenses for juveniles 14 – 17 years of age are required to register. Does this mean that those that were <14 at the time of the offense that are already on the registry will be removed? The bill needs to do this.

2. **Correct Over-Inclusion of Juveniles on the Registry in SB1560.** Two models of how this should be corrected are below.

   A. **Adam Walsh Act Requirement Model** (p 16 and USDOJ Guidelines for Juvenile Offender Fact Sheet). Include only the following juveniles:
      (i) Juveniles 14 years of age or older, **AND**
      (ii) Committed 750.520b(1)(b)(iii) through (h), 750.520d(1)(b), (c), (e), (f), or 750.520g(1)

      - Offenders in B(ii) register in accordance with the AWA/SORNA Guidelines, as non-public registrants
      - All juvenile offenders required to register are allowed to petition for removal from the registry
      - All other juveniles are not required to register and are removed from the registry

   B. **Adam Walsh Act Extended Requirement Model** (More Inclusive)
      Include only the following juveniles:
      (i) Juveniles 14 years of age or older, **AND**
      (ii) Committed 750.520b(1)(b)(iii) through (h), 750.520d(1)(b), (c), (e), (f), 750.520g(1), **OR**
      (iii) Any registerable offense other than those found in B(ii), but excluding. 750.520b(1)(a), 750.520c(1)(a), 750.520d(1)(a), 750.520e(1)(a), or 750.388

      - Offenders in B(ii) register in accordance with the AWA/SORNA Guidelines as non-public registrants
      - Offenders in B(iii) register as a Tier 1 offender that is non-public; These are not defined as sex offenders in the Adam Walsh Act/SORNA
      - 750.520b(1)(a), 750.520c(1)(a), 750.520d(1)(a), 750.520e(1)(a), or 750.388 are not required to register and are removed from the registry; These are not defined as sex offenders in the Adam Walsh Act/SORNA Guidelines
      - All juvenile offenders required to register in B(ii) are allowed to petition for removal
      - All juvenile offenders required to register in B(iii) are allowed to petition for removal, and/or limit registration to 10 years.

3. **The factors specified that need to be considered when granting a petition for removal need to be corrected/changed** and should be based on whether the individual has been rehabilitated and are not at risk to reoffend. A list of factors that the courts should consider when removing a juvenile from the registry was documented for Sen. Kuipers in 2008 by the 17th Circuit Court, include a prosecutor.

Textual Fixes Needed:

1. **Temporarily reside** - should be for 7 days consistently throughout SB1560 as defined in the AWA Guidelines.
2. **Vehicle Information** - should be required only for vehicles "regularly driven" or "regularly operated"; and where they are "habitually stored", as defined in the AWA Guidelines.
3. **Definition of Student** – Should indicate "an individual who enrolls in or attends an educational institution where they **will have a physical presence**", as defined in the AWA Guidelines.