

## A Scarlet Letter for Texas Employers

by Marc Levin, director of the Center for Effective Justice

Those who commit sex offenses in Texas rightfully suffer serious consequences, most notably long prison terms in many cases. However, the Texas Legislature is now considering a different question. What, if any consequences, should employers face who hire individuals who are on the state's sex offender registry? Specifically, should an employer's name and address be listed on the registry?

In an attempt to comply with one provision of the federal Adam Walsh Act (Sex Offender Registration and Notification Act or SORNA), the Texas Department of Public Safety unilaterally decided several years ago to require that the name and address of the employer appear in the state's sex offender registry. Since that time, Texas and many other states have opted not to comply with this unfunded federal mandate that holds some state criminal justice grants hostage if states do not revise their registries to comply with federal standards, which preclude risk-based classifications and require lifetime registration for certain offenses.

Now, legislation pending in the Texas Senate (SB 369) and House (HB 879) would remove the employer's name and address from the registry. Regardless, Texas is not seriously considering complying with many of the other federal requirements in SORNA due to the cost involved. The Justice Policy Institute estimated that it would cost Texas \$38.8 million to come into compliance, but that it only stands to lose \$1.4 million in federal Byrne criminal justice grants by not complying,<sup>1</sup> a finding mirrored by a report of the Texas Senate Committee on Criminal Justice.<sup>2</sup>

Since Texas has no plans to incur the costs of broadly refashioning its registry to comply with SORNA that has become yet another example of federal overreach and the coercion associated with federal funding, policymakers can focus on whether this is good policy. For several reasons, spotlighting employers in the registry is counterproductive.

First, there is no evidence that including employers enhances public safety. It is rare to read of a sex offense that occurred on the floor of a factory. While it is possible that an employee or customer may seek to befriend a co-worker who is on the registry outside of the workplace, the registry cannot currently be searched by employer and, even with this legislation, interested individuals can still find the person on the registry by name or zip code.

Second, sex offenders who are employed are less likely to re-offend.<sup>3</sup> Another study found that those sex offenders who are employed are "significantly less likely" to fail while on community supervision.<sup>4</sup> The Legislative Budget Board noted in 2011, "Sex offenders are less likely to re-offend when they reconnect with family and the community, find jobs, and live with a support network."<sup>5</sup> Yet, one federal court concluded that Alaska's system of putting offenders' employment information on the Internet is likely to make registrants "completely unemployable" and "creates a substantial probability that registrants will not be able to find work, because employers will not want to risk loss of business when the public learns that they have hired sex offenders."<sup>6</sup>

Finally, some may argue that transparency demands that the employer's name and address be in the registry. However, there are countless pieces of information in every probationer and parolee's files that are not posted online or even publicly available upon request. Under the proposed legislation, the name and address of the

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employer would continue to be visible to law enforcement and probation and parole officers. The reality is that, unlike truly public government information such as agency budgets, knowledge of a person's legal employment relationship with a private business does not make the functioning of government more transparent. Though it is true that it is up to employers to decide whether or not to hire a sex offender, the contractual relationship between an employer and employee does not involve the government as a party.

In sum, there is no evidence that including an employer's name and address in the registry advances public safety. There is, on the other hand, some evidence it is counterproductive. Texas must continue to take tough measures to hold sex offenders accountable and protect the public, but stigmatizing employers shifts the focus away from personal responsibility and extends government too far into private professional relationships. ★

<sup>1</sup> What will it cost states to comply with the Sex Offender Registration and Notification Act? Offender Registration and Notification Act?" Justice Policy Institute (Aug. 2008).

<sup>2</sup> Criminal Justice Committee's Interim Report to the 82nd Legislature (Dec. 2010).

<sup>3</sup> B.M. Maletzky, "Factors associated with success and failure in the behavioral and cognitive treatment of sexual offenders," *Annals of Sex Research*, 6, 241-258 (2003).

<sup>4</sup> John Hepburn and Marie Griffin, "An Analysis of Risk Factors Contributing to the Recidivism of Sex Offenders on Probation" (Jan. 2004).

<sup>5</sup> "Texas State Government Effectiveness and Efficiency," Legislative Budget Board (Jan. 2011).

<sup>6</sup> Deborah Periman, J.D., "Revisiting Alaska's Sex Offender Statute," University of Alaska Anchorage Justice Center (2008).

