## Widening the Net: The Effects of Transitioning to the Adam Walsh Act's Federally Mandated Sex Offender Classification System


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# WIDENING THE NET

# The Effects of Transitioning to the Adam Walsh Act's Federally Mandated Sex Offender Classification System

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With the 2006 passage of the Adam Walsh Child Protection and Safety Act (AWA), the U.S. Congress set forth a range of minimum standards governing the operation of sex offender registration and notification (SORN) systems throughout the nation. Many of these standards are based on the AWA's uniform system of registrant classification, which distinguishes registrants solely based on offense history and the nature of the conviction offense, without regard for additional risk factors. The current study evaluates the impact of the federal registration classification system on the distribution of individuals within state sex offender registries, specifically drawing on the experiences of Ohio and Oklahoma, two of the first states to undertake a reclassification of their registrant populations under the new federal guidelines. The findings indicate that the federal reclassification process produces a redistribution of registrants from lower SORN levels to higher ones and reveals statistically significant differences between newly reclassified "high-risk" individuals and those designated as high risk under prior registration classification systems. Findings also suggest that juveniles and those potentially subject to AWA's retroactivity provisions may be disproportionately placed into the highest SORN tiers. Implications of these findings for practice and public policy are discussed.

***Keywords:*** sex offenders; Adam Walsh Act; sex offender registration and notification

Since the mid-1990s, sex offender management policy—once predominantly the domain of state and local government—has come under increasing federal control, particularly regarding the design and operation of sex offender registration and notification (SORN) systems. Through a sequence of legislation over the past two decades, the U.S. Congress has set forth a steady progression of SORN-related mandates on states and has asserted growing federal jurisdiction over SORN practices across the United States (Logan, 2009). This increased federal role has placed SORN systems across the United States into transition. In particular, the Sex Offender Registration and Notification Act (SORNA), Title I of the

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2006 Adam Walsh Child Protection and Safety Act (AWA), called on states, territories, and tribal nations to significantly amend their SORN-related laws and policies. Virtually all covered jurisdictions are required to make some revisions to their existing laws pursuant to AWA, and a majority must make significant fundamental revisions to their SORN systems to meet federal requirements (Harris & Lobanov-Rostovsky, 2009; National Consortium for Justice Information and Statistics, 2009).

In 2008, the U.S. Department of Justice issued final guidelines to guide SORNA compliance efforts within covered jurisdictions (U.S. Department of Justice, 2008). Among its provisions, SORNA separated registrants into three tiers, based on the designated severity of their conviction offenses. These federally defined categories, in turn, formed the foundation for other SORNA minimum requirements, such as duration of registration, frequency of in-person verification updates, and public notification.

Data from a recently published state survey suggest that the federal classification requirements represent a major perceived hurdle for many states, with approximately one third of all states rating their existing registration systems as "highly inconsistent" with SORNA requirements. Regarding the potential implementation barriers to meeting the federal classification standards, respondents raised a range of potential legal, operational, and fiscal considerations, with many expressing concern over the potential public safety impacts of supplanting established risk-based classification systems with a less discriminating system linked exclusively to conviction offense (Harris & Lobanov-Rostovsky, 2009).

In the context of these issues, the present study examines the effects of transitioning to the SORNA-mandated classification system, drawing on the experiences of two of the first states to attempt a large-scale reclassification of their registrant populations—Ohio and Oklahoma. Through this examination, we aim to shed light on the likely impacts of the federally mandated system and on emergent legal, operational, fiscal, and public safety issues.

## BACKGROUND

### HISTORY OF SEX OFFENDER REGISTRATION AND CLASSIFICATION

Although local and state criminal registration laws date back to the 1930s (Logan, 2009), the federal role in state-based SORN dates to the passage of the Jacob Wetterling Crimes Against Children Act (1994), which required states to establish systems of sex offender registration. Over the next decade, a succession of amendments to the Wetterling Act introduced new federal SORN requirements, including measures stipulating community notification and public disclosure requirements (Megan's Law, 1996), expanding the act's jurisdictional purview (Jacob Wetterling Improvements Act, 1997), and establishing a national system integrating information from state registries (Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act, 2003).

In 2006, AWA ushered in a new era of federal involvement in state-based SORN systems, repealing previous federal registration law and setting forth a sweeping and comprehensive set of new requirements. A common thread running through SORNA involved expanding both the population of offenders subject to federal registration and notification requirements and the mandated terms and conditions placed on registrants. For example, SORNA extended federal mandates to tribal jurisdictions and foreign convictions, extended federal SORN

requirements to juveniles age 14 years and older who are adjudicated delinquent for certain offenses, expanded the range of covered offenses subject to mandatory registration, and established retroactivity provisions requiring registration of previously convicted or adjudicated sex offenders on conviction of a new crime, regardless of whether that new crime is of a sexual nature. SORNA also set forth minimum requirements relating to such matters as how offenders should be classified, how long they must remain on public Internet registries, the frequencies with which they must reregister, the data to be maintained, and methods of public notification (U.S. Department of Justice, 2008). In light of these provisions, federal policy has—by consequence or design—significantly "widened the net" of the nation's registration and notification systems, increasing the number of registrants and the extent of registration and notification requirements.

## THE ROLE OF CLASSIFICATION SYSTEMS

Since the emergence of contemporary SORN policies, states have developed varied methods of classifying registrants. Although the sources of variation are diverse, they may be viewed across three dimensions—the extent to which classes of registrants are distinguished from one another, the criteria used in the classification process, and the systems and processes by which classification decisions are made.

The first point of divergence concerns the *extent* to which states distinguish among those contained within their registries. At one end of the spectrum are states operating single-tier systems that make no substantive distinctions among registrants for purposes of reporting, registration duration, notification, and related factors. Alternatively, other states operate multitier systems, typically involving two or three major categories that are (at least ostensibly) calibrated in accordance with presumed public safety risk and, in turn, with required levels of attention from law enforcement authorities and the general public (Matson & Lieb, 1996). Depending on the state, registration and notification systems may also include special designations and provisions for populations such as juveniles or those deemed "sexual predators" by virtue of certain standards.

The second dimension of state variation in SORN classification practice relates to the *criteria* employed in the classification decision. States operating offense-based systems utilize the nature and severity of the conviction offense and/or the number of prior offenses as the principal criteria for tier assignment. Other jurisdictions utilize various risk assessments that consider factors that have been empirically linked by research to sexual recidivism risk, such as age, number of prior sex offenses, victim gender, relationship to the victim, and indicators of psychopathy and deviant sexual arousal (Hanson & Morton-Bourgon, 2005). Some of these states, such as California and New York, use validated risk-assessment instruments such as the Static-99, whereas others have developed their own empirically guided tools to assess risk of their registrant population (Epperson et al., 2004; McGrath & Hoke, 2002). Finally, some states use a hybrid version of offense-based and risk-assessment-based systems for SORN classification. For example, Colorado law sets forth specified minimum terms of registration based on the type of offense for which the registrant was convicted or adjudicated but also utilizes a risk assessment for identifying and designating sexually violent predators—a limited population deemed to be at higher risk and subject to more extensive SORN requirements.

Third and finally, states distinguishing among registrants vary in terms of the *systems and processes* employed in establishing tier designations. In general, offense-based classification

systems have been adopted for their relative simplicity and uniformity, and they permit most classification decisions to be made via standardized administrative or judicial processes. Risk-assessment-based systems, which generally employ the use of actuarial risk assessment instruments and in some cases clinical assessments, require higher levels of personnel involvement in the classification process. Some states, such as Pennsylvania, Massachusetts, and Colorado, utilize multidisciplinary review boards or judicial discretion to establish registrant tiers and/or sexual predator status.

### FEDERAL CLASSIFICATION REQUIREMENTS

The interstate variation just described stems in part from the flexibility accorded by the Wetterling Act and its subsequent amendments, which gave states discretion in establishing their systems of registrant classification. The resulting inconsistencies among states, however, produced concern among federal policy makers seeking to establish uniform national standards governing SORN (Logan, 2008).

In response, the 2006 AWA/SORNA predicated its standards on a uniform three-tier classification scheme, benchmarked to federal criminal code and based on the presumptive severity of the governing offense and resulting possible criminal penalty. Tier 1 registrants, for whom SORNA mandated 15-year registration and annual in-person registration updates, includes those convicted of misdemeanors or sexual-related offenses that carry a penalty of less than 1 year in prison. Tier 2, which requires 25-year registration and semiannual in-person updates, includes those convicted of offenses involving sexual abuse or exploitation involving minors. Tier 3, mandating lifetime registration and quarterly in-person updates, applies to individuals convicted of aggravated sexual assault, contact offenses against children younger than 13 years, kidnapping of minors (unless committed by a parent or guardian), and attempts or conspiracies associated with any of these crimes (U.S. Department of Justice, 2008).

These new federal SORNA requirements present a particular challenge to states utilizing risk-assessment-based systems that consider variables beyond the offense in registrant classification. Although SORNA guidelines do not preclude consideration of supplemental risk factors for certain limited purposes (e.g., identifying those in lower offense tiers who might be candidates for more stringent or higher tier requirements), jurisdictions operating comprehensive risk-based models must make substantial modifications to their classification systems by supplanting their existing registrant categories with offense-based tiers.

Indeed, states utilizing risk-assessment classification systems report significant legal and operational concerns over transitioning to the new SORNA system as well as concerns over public safety impact because of reduced capacity for law enforcement and the public to distinguish risk levels of registered individuals (California Sex Offender Management Board, 2009). Concern over SORNA-based classification, however, is not limited to states operating risk-assessment-based systems. States already utilizing offense-based categories remain mandated to recalibrate their systems to align with the SORNA statutory benchmarks, requiring wholesale reclassification of all registrants, especially those currently assigned to lower tiers. Moreover, coupled with SORNA's expanded list of covered offenses, the new classification system has required states to apply their registration requirements to an expanded population of sex offenders, bringing new populations of registrants into their systems. For example, officials from states already utilizing offense-based classification

expressed specific concerns that SORNA may entail the expansion of covered offenses and the inclusion of juveniles, leading to an influx of previously uncovered classes of young registrants (Harris & Lobanov-Rostovsky, 2009).

Beyond the practical considerations regarding reclassification, an important question is whether the more inclusive system will enhance public safety. Freeman and Sandler (2009) reclassified more than 17,000 sex offenders in New York State into SORNA tiers and found no significant correlation between the tier level and sexual or nonsexual recidivism. In fact, Tier 1 offenders recidivated more frequently than did offenders who met criteria for the higher risk SORNA tiers. The authors found that several other risk factors, notably those found in actuarial risk assessment instruments commonly used to assess sex offender risk, did significantly predict recidivism. The authors concluded that their findings shed doubt on the public safety utility of the SORNA classification system, suggesting that resources might be better utilized by targeting high-risk offenders based on empirically derived risk assessment (Freeman & Sandler, 2009).

Furthermore, states attempting to implement SORNA-related classification provisions have also faced legal barriers to the reclassification process. In Nevada, a federal court ruling enjoined the state's planned reclassification process, citing procedural due process, ex post facto, and double jeopardy violations inherent in Nevada's SORNA-enabling legislation (*ACLU of Nevada v. Masto*, *2008*). In Ohio—a state examined as part of the present study—the reclassification process has produced dozens of legal challenges working their way through lower courts, with a series of state constitutional challenges under review of the Ohio Supreme Court as of December 2009 (Office of the Ohio Public Defender, 2009).

In sum, jurisdictions face a range of legal, operational, and resource barriers to implementation. It is in this context that we now turn to a discussion of the present study.

## STUDY FOCUS STATES

This study examines the experiences of Ohio and Oklahoma, two of the first states undertaking the process of reclassifying offenders in accordance with the offense-based systems established by AWA.

*Ohio experience*. Ohio's sex offender registry was first established in 1997, with its publicly accessible electronic Internet registry initiated in 2003 (Ohio Office of Criminal Justice Services, 2006). As one of the later states to achieve compliance with early federal SORN mandates, Ohio had received a penalty reduction in federal law enforcement grant funding because of noncompliance with the terms of the Wetterling Act and Megan's Law. In part because of this experience, Ohio was among the first to commence a legislative initiative to bring its policies into full compliance with the AWA-SORNA (Ohio Department of Rehabilitation and Correction, 2007).

Following the passage of enabling legislation in fall 2007 (*Ohio Senate Bill 10*, 2007), the state began the process of reclassifying its registrant population in accordance with the SORNA tiers. Prior to this legislation, registrants in Ohio had been placed into three broad categories: sexually oriented offenders, generally deemed to be the lowest risk group; habitual sexual offenders, who were deemed to be at moderate to high risk of reoffense; and sexual predators, who were designated as the group presenting the highest risk of reoffense. Within these groups, additional distinctions were made for juveniles, community notification

requirements, public disclosure requirements, and those with child victims (Ohio Department of Rehabilitation and Correction, 2007).

Based on its interpretation of the SORNA tiers, Ohio's new system established three levels of registrants, tiered in accordance with the severity of the governing offense. The new system continued to distinguish juveniles as a special category within each of these tiers and further differentiated between juveniles with and without notification and with and without public Internet disclosure in each of these tiers.

In January 2009, the U.S. Department of Justice initially rejected Ohio's request to be certified as "substantially compliant" with SORNA, citing a range of concerns including the "under-classification" of certain offenses (e.g., placement of Tier 3 offenses into Tier 2) and the inconsistency of the state's approach to juvenile registration and notification with SORNA requirements (L. Rogers, letter to Ohio Attorney General Nancy Rogers, January 16, 2009). In September 2009, however, the Department of Justice reversed this decision, indicating that although Ohio was not necessarily fully compliant, it nonetheless met criteria for "substantial implementation." With this determination, Ohio became the first state to be certified by the U.S. Department of Justice as having substantially implemented SORNA requirements (U.S. Department of Justice, 2009).

*Oklahoma experience*. Oklahoma first established its sex offender registry in 1989 and its community notification law in 1999. Its laws were amended in 1999 to include two special designations that formed the basis for its pre-SORNA registration classification system—aggravated offenders (defined as individuals convicted of crimes involving aggravated assault), and habitual offenders (defined as those convicted of two or more registerable offenses). Based on this legislation, Oklahoma's registration and notification system prior to SORNA evolved into a two-tier system, with registrants deemed habitual and/or aggravated subject to lifetime registration and active verification every 90 days and all other registrants subject to 10-year registration and active verification every 6 months.

Following passage of SORNA-enabling legislation in 2007, the Oklahoma Department of Corrections reclassified all active registrants in accordance with the offense-based criteria stipulated by SORNA. By default, those with habitual and/or aggravated designations were placed in Tier 3 and—as previous lifetime registrants subject to 90-day verification—experienced no effective change in status. The remaining registrants were reclassified by the Oklahoma Department of Corrections into SORNA-stipulated tiers in accordance with their governing offense, as specified by the revised Oklahoma statutes.

## METHOD

### PURPOSE OF STUDY

The primary aim of this study is to evaluate the practical and operational impact of transitioning to the SORNA-mandated registrant tiering system, with an emphasis on the effects of SORNA-based classification on the profile of individuals contained within the registry. Specifically, the study addresses three primary research questions: (a) What is the aggregate impact of SORNA-based classification on the relative distribution of registrants? (b) Which individual-level factors differentiate those assigned to specific tiers? and (c) What

are the potential impacts of SORNA reclassification on juveniles and those potentially subject to SORNA's retroactivity provisions? This study was exploratory and made no a priori hypotheses.

## DATA

Detailed registry data were provided by the Oklahoma Department of Corrections based on the records contained in their registry as of March 2009. Two separate data files were provided—the first containing registrant-specific information and the second containing offense-based information referenced within the registry. These two files were merged to create one master data file containing both offense-based and registrant-specific information. Additional registrant-specific variables were derived from the offense-based data, including each individual's number of offenses within designated offense categories, years since the most recent conviction, and history of failure to register (FTR) convictions.

The Ohio data set, provided by the Ohio Office of the Attorney General, consisted of aggregate data depicting the number of registrants within each original registration classification category placed within each of the new SORNA classification categories. The data set also included cases that were not included in the prior registry but were retroactively included as new cases pursuant to reclassification. Separate data files were provided for incarcerated and nonincarcerated individuals. For purposes of the analysis, the pre-reclassification data were disaggregated to distinguish juveniles from adults.

## SAMPLE

The Oklahoma sample consisted of a total of 10,187 individuals maintained on the state's registry. Of these, 6,044 were designated as "active" cases residing within the state, 1,085 were designated as being under the custody of state or county correctional institutions, 2,145 were listed as "out of state," and 913 were designated as having completed their registration requirements. This latter category was considered a particularly important group for analysis, considering that these individuals represent a category of registrants that could potentially be subject to future reregistration under the SORNA retroactivity requirement. Omitted from the analysis were cases marked as deleted, deceased, or otherwise inactive status. Descriptive data regarding the sample are provided in Table 1.

The Ohio data set contained frequency data for each preclassification and postclassification pairing. The data accounted for a total of 28,334 cases, including 18,455 residing in the community and 9,889 who were incarcerated. In 2,285 cases, reclassification had been stayed by the court or was otherwise under administrative appeal. Because of their pending status, these cases were excluded from the analyses, leaving a total of 24,994 adult registrants (15,828 in community and 9,166 incarcerated) and 1,055 (911 in community and 144 incarcerated) juvenile registrants.

## PROCEDURES AND ANALYSIS

The analyses were conducted in two phases. The first, drawing on data from both Ohio and Oklahoma, assessed the aggregate shift from the old pre-SORNA to the new SORNA classification systems by generating relevant descriptive measures. The second analysis

**TABLE 1: Characteristics of Oklahoma Registrant Population (Percentage Distribution)**

| | *Active (n = 6,044)* | *Incarcerated (n = 1,085)* | *Out of State (n = 2,145)* | *Completed (n = 913)* | *All (N = 10,187)* |
|---|---|---|---|---|---|
| Gender | | | | | |
| Male | 96.0 | 98.5 | 97.3 | 97.2 | 96.7 |
| Female | 4.0 | 1.5 | 2.7 | 2.8 | 3.3 |
| Race | | | | | |
| White | 76.9 | 65.3 | 75.9 | 75.0 | 75.3 |
| Black | 11.4 | 21.6 | 11.4 | 15.1 | 12.8 |
| Hispanic | 3.5 | 3.1 | 8.9 | 3.0 | 4.6 |
| American Indian | 7.6 | 9.7 | 2.9 | 6.7 | 6.8 |
| Other or unknown | 0.6 | 0.3 | 0.9 | 0.2 | 0.6 |
| Age, years | | | | | |
| 19 and younger | 0.1 | 0.0 | 0.7 | 0.0 | 0.2 |
| 20–29 | 13.4 | 23.7 | 10.6 | 0.0 | 12.7 |
| 30–39 | 24.6 | 32.4 | 30.4 | 17.9 | 26.1 |
| 40–49 | 28.5 | 28.4 | 31.3 | 32.4 | 29.4 |
| 50–59 | 20.0 | 11.1 | 17.8 | 27.6 | 19.2 |
| 60 and older | 13.3 | 4.3 | 9.3 | 22.1 | 12.3 |

utilized the case-level data provided by Oklahoma to compare the characteristics and distribution of individuals placed within the state's newly established tiers with those classified under the previous scheme. Particular emphasis was placed on examining those who were reclassified from lower to higher tier levels. This latter analysis included analyses of variance and associated pairwise comparisons examining differences in age, elapsed years since the most recent conviction, and number of offenses across the post-reclassification categories.

## RESULTS

The Ohio data presented in Table 2 summarize the pre-reclassification and post-reclassification status of 24,994 adults and 1,055 juveniles contained within the state registry as of November 2008. The data indicate that, prior to reclassification, the majority of Ohio's registrants (76% of adults and 88% of juveniles) were either not registered at all or were registered as "sexually oriented offenders" (the least restrictive management category) prior to reclassification. About 20% of adults and 5% of juveniles were classified as "sexual predators." Following reclassification, this basic pattern was essentially reversed, with 13% of adults and 22% of juveniles placed in Tier 1, 31% of adults and 32% of juveniles placed in Tier 2, and 55% of adults and 46% of juveniles placed in the highest and most restrictive tier (Tier 3).

Table 3 depicts the effects of reclassification within each of the designated categories. These data indicate, for example, that 59% of the 3,689 adults and 45% of the 271 juveniles who were not previously registered were placed into Tier 3 following the reclassification process. For those previously classified as "sexually oriented offenders," 41% of adults and 43% of juveniles were assigned to Tier 3. Finally, 49% of adults and 36% of those previously classified as "habitual sexual offenders" were placed into Tier 3. Not surprisingly, more than 99% of adults and 98% of juveniles previously designated as "sexual predators" were placed into Tier 3.

**TABLE 2: Distribution of Registrants Pre– and Post–Ohio Reclassification**

| | *Adults* | | *Juveniles* | |
|---|---|---|---|---|
| | n | % | n | % |
| Pre-reclassification | | | | |
| Not previously registered | 3,689 | 14.9 | 271 | 25.8 |
| Sexually oriented offender | 15,237 | 61.4 | 658 | 62.5 |
| Habitual sexual offender | 844 | 3.4 | 33 | 3.3 |
| Sexual predator | 5,041 | 20.3 | 56 | 5.3 |
| Other categories | 183 | 0.7 | 36 | 3.8 |
| Total | 24,994 | 100 | 1,054 | 100 |
| Post-reclassification | | | | |
| Tier I | 3,258 | 13.0 | 236 | 22.4 |
| Tier II | 7,815 | 31.3 | 334 | 31.7 |
| Tier III | 13,921 | 55.7 | 485 | 46.0 |
| Total | 24,994 | 100.0 | 1,055 | 100 |

**TABLE 3: Redistribution of Ohio Registrants From Pre- to Post-reclassification Categories**

| | | *Percentage of Category Assigned to Each Tier* | | |
|---|---|---|---|---|
| *Pre-reclassification Category* | N | *Tier 1* | *Tier 2* | *Tier 3* |
| Adults | | | | |
| Not previously registered | 3,689 | 15.0 | 25.7 | 59.4 |
| Sexually oriented offender | 15,237 | 17.3 | 42.0 | 40.7 |
| Habitual sexual offender | 844 | 2.4 | 48.2 | 49.4 |
| Sexual predator | 5,041 | 0.2 | 0.3 | 99.5 |
| Other categories | 183 | 20.2 | 28.4 | 51.4 |
| Total | 24,994 | | | |
| Juveniles | | | | |
| Not previously registered | 271 | 20.7 | 34.3 | 45.0 |
| Sexually oriented offender | 658 | 24.8 | 32.4 | 42.9 |
| Habitual sexual offender | 33 | 9.1 | 54.5 | 36.4 |
| Sexual predator | 56 | 1.8 | 0.0 | 98.2 |
| Other categories | 36 | 36.1 | 27.8 | 36.1 |
| Total | 1,054 | | | |

Table 4 presents data depicting the aggregate effects of reclassification on the distribution of Oklahoma registrants. As noted earlier, those who were previously classified as "habitual" and/or "aggravated" (34% of all cases and 39% of active cases) were automatically placed in Tier 3 and experienced no substantive change in status. The remaining registrants (66% of all cases and 61% of active cases) were reclassified into SORNA-stipulated tiers in accordance with their governing offense. Among the group of 6,721 previously designated nonaggravated and nonhabitual registrants, 19% were classified as Tier 1, 5% as Tier 2, and 76% as Tier 3. Among active registrants only, these percentages were 23%, 6%, and 71%, respectively.

Of the 913 individuals listed in the Oklahoma registry as "completed" cases (i.e., those who have completed their terms of registration and been placed into inactive status), a substantial majority (93%) received a Tier 3 designation. These findings suggest that a substantial proportion of those potentially subject to SORNA's retroactivity provisions may face lifetime registration should their cases be reactivated for any reason.

**TABLE 4: Distribution of Registrants Pre– and Post–Oklahoma Reclassification**

| | *All Cases*[a] | | *Active* | | *Completed* | |
|---|---|---|---|---|---|---|
| | n | % | n | % | n | % |
| Pre-reclassification | | | | | | |
| Nonaggravated, nonhabitual | 6,721 | 66.0 | 3,673 | 60.8 | 913 | 100.0 |
| Aggravated, habitual | 3,466 | 34.0 | 2,371 | 39.2 | — | — |
| Total | 10,187 | 100.0 | 6,044 | 100.0 | 913 | 100.0 |
| Post-reclassification (total sample) | | | | | | |
| Tier I | 1,303 | 12.8 | 844 | 14.0 | 44 | 4.8 |
| Tier II | 336 | 3.3 | 229 | 3.8 | 17 | 1.9 |
| Tier III | 8,548 | 83.9 | 4,971 | 82.2 | 852 | 93.3 |
| Total | 10,187 | 100.0 | 6,044 | 100.0 | 913 | 100.0 |
| Post-reclassification (excluding aggravated, habitual) | | | | | | |
| Tier I | 1,303 | 19.4 | 844 | 23.0 | 44 | 4.8 |
| Tier II | 336 | 5.0 | 229 | 6.2 | 17 | 1.9 |
| Tier III | 5,082 | 75.6 | 2,600 | 70.8 | 852 | 93.3 |
| Total | 6,721 | 100.0 | 3,673 | 100.0 | 913 | 100.0 |

a. All cases category includes active, completed, incarcerated, and out of state.

## CHARACTERISTICS OF RECLASSIFIED REGISTRANTS

Beyond allowing examination of aggregate shifts in registrant categories, the case-level data from Oklahoma permitted a comparison of individuals assigned to various levels through the reclassification process. For purposes of comparative analysis, Oklahoma registrants were divided into four post-reclassification categories: Tier 1 registrants, Tier 2 registrants, Tier 3 registrants not previously designated as aggravated or habitual (hereafter referred to as new Tier 3 registrants), and Tier 3 registrants who were previously designated as aggravated or habitual (hereafter referred to as legacy Tier 3 registrants).[1]

A series of analyses of variance compared the four level designations across a series of variables—current age, years since prior conviction, and number of offenses (excluding FTR violations). Post hoc Tukey's honestly significant difference (HSD) tests were conducted to evaluate pairwise differences. Two analyses were conducted for each variable, the first utilizing all observed cases ($N = 10{,}187$), and the second examining only the subset of active cases ($n = 6{,}044$). The results of these tests are summarized in Tables 5 and 6.

Current age differed significantly across groups ($F = 294.97$, $p < .001$) for all cases and for active cases only ($F = 132.78$, $p < .001$). Post hoc HSD comparisons indicated that the mean age difference between Tier 3 and Tier 2 registrants was not significant but demonstrated a discernible and statistically significant pattern across all other group pairings. Specifically, legacy Tier 3 registrants ($M = 39.55$, $SD = 13.1$) were significantly younger than other groups, and new Tier 3 registrants ($M = 47.56$, $SD = 11.7$) were significantly older. The Tier 1 and Tier 2 registrants were significantly older than the legacy Tier 3 group and significantly younger than the new Tier 3 group. Hence, the two Tier 3 groups were found at to be at polar ends of the spectrum, with the newly reclassified Tier 3 registrants on the average 8 years older than the "legacy" group of Tier 3 registrants. Similar, although somewhat moderated, age effects were observed in the subset of active cases only.

Analysis of group differences in the years elapsed since the most recent conviction revealed significant variation ($F = 2679$, $p < .001$) for all observed cases and for active cases only

**TABLE 5: Analysis of Variance for Selected Characteristics of Reassigned Oklahoma Registrants**

| | *Tier I* | | *Tier II* | | *Tier III (New)* | | *Tier III (Legacy)* | | F *Value (Sig. Level)* |
|---|---|---|---|---|---|---|---|---|---|
| | M | SD | M | SD | M | SD | M | SD | |
| All cases ($N$ = 10,187) | | | | | | | | | |
| Age, years | 43.25 | 12.3 | 44.58 | 12.4 | 47.56 | 11.7 | 39.55 | 13.1 | 294.98* |
| Years since last conviction | 8.7 | 5.6 | 6.8 | 4.4 | 13.4 | 4.6 | 5.3 | 2.7 | 2679.4* |
| No. of convictions (non–failure to register) | 1.04 | 0.23 | 1.07 | 0.29 | 1.24 | 0.60 | 1.20 | 0.52 | 57.49* |
| Active cases only ($n$ = 6,044) | | | | | | | | | |
| Age, years | 44.22 | 13.7 | 44.91 | 12.4 | 48.12 | 11.6 | 40.48 | 13.5 | 132.78* |
| Years since last conviction | 8.1 | 5.5 | 6.1 | 3.8 | 12.8 | 4.7 | 5.1 | 2.7 | 1463* |
| No. of convictions (non–failure to register) | 1.03 | 0.20 | 1.03 | 0.21 | 1.27 | 0.65 | 1.19 | 0.50 | 50.92* |

*$p$ < .001.

**TABLE 6: Differences in Mean Values for Selected Characteristics of Reassigned Oklahoma Registrants (Tukey Pairwise Comparisons)**

| | *Tier 1–Tier 2* | *Tier 1–Tier 3 (New)* | *Tier 1–Tier 3 (Legacy)* | *Tier 2–Tier 3 (New)* | *Tier 2–Tier 3 (Legacy)* | *Tier 3 (New)–Tier 3 (Legacy)* |
|---|---|---|---|---|---|---|
| All cases ($N$ = 10,187) | | | | | | |
| Age, years | –1.3 | –4.3*** | 3.7*** | –2.9*** | 5.0*** | 8.7*** |
| Years since last conviction | 1.9*** | –4.7*** | 3.5*** | –6.7*** | 1.5*** | 8.2*** |
| No. of convictions (non–failure to register) | –0.03 | –0.2*** | –0.17*** | –0.17*** | –0.14*** | 0.04* |
| Active cases only ($n$ = 6,044) | | | | | | |
| Age, years | 0.7 | –3.9*** | 3.7*** | –3.2*** | 4.4** | 7.6*** |
| Years since last conviction | 2.1*** | –4.7*** | 3.04*** | –6.7*** | 0.99** | 7.7*** |
| No. of convictions (non–failure to register) | –0.01 | –0.24*** | –0.16*** | –0.23*** | –0.16*** | 0.08** |

*$p$ < .05. **$p$ < .01. ***$p$ < .001.

($F$ = 1463.72, $p$ < .001). Post hoc HSD analyses indicated a statistically significant progression across this variable, with new Tier 3 registrants ($M$ = 13.43, $SD$ = 4.6) demonstrating the highest mean value, followed by Tier 1 registrants ($M$ = 8.7, $SD$ = 5.6), Tier 2 registrants ($M$ = 6.8, $SD$ = 4.4), and the legacy Tier 3 group ($M$ = 5.25, $SD$ = 2.7).

The analysis of variance (ANOVA) indicated significant between-group differences in the number of prior convictions for all cases ($F$ = 57.49, $p$ < .001) and for active cases only ($F$ = 50.92, $p$ < .001). Not surprisingly, the two Tier 3 categories demonstrated the highest mean number of convictions, with pairwise analyses revealing no significant differences between the Tier 1 and Tier 2 groups. The new Tier 3 group showed a modest but statistically significantly higher mean number of past offenses than the legacy Tier 3 group.

Further analysis of the differences between the legacy and new Tier 3 groups revealed that 83.8% of the legacy Tier 3 group had only one sex crime conviction, compared to 82.2% of the new Tier 3 group—a difference that, while statistically significant at the .05 level, may be considered substantively unremarkable in terms of practical significance.

## DISCUSSION

This study's findings illuminate three major themes—a significant upward realignment of the registered population from lower into higher tiers, substantive differences between registrants previously classified "high risk" and those newly classified into the upper tier, and differential impact on adjudicated juveniles and those who may be subject to SORNA's retroactivity provisions.

Data from both states examined in this study suggest a substantial aggregate shift in the tiers of registered offenders as a result of SORNA. Prior to reclassification, the registrants in both Ohio and Oklahoma were concentrated in lower tier levels, with upper levels reserved for a smaller portion of individuals who were presumed to pose the greatest risk to public safety. After reclassification the majority of registrants in both states—56% of active adult cases in Ohio and 82% of active adult cases in Oklahoma—had shifted to the upper tiers, representing a significant redistribution of individuals in both registries.

It should be noted that the inversion effect of Ohio's reclassification process is likely a conservative estimate because of two factors. First, the analysis excluded cases that were pending appeal—cases that are most likely weighted toward those assigned to higher tiers. Second, despite the Department of Justice's September 2009 determination that Ohio had substantially implemented SORNA requirements, the Department of Justice's earlier legal analysis suggested that some offenses classified by Ohio as Tier 1 or Tier 2 may have been "underclassified" and, according to SORNA guidelines, could be more appropriately classified into higher tiers. Another important point regarding the Ohio experience concerns the net-widening effect related to the inclusion of previously unregistered offenders in the new classification schemes. Although this expanded reach appears fully consistent with the general intent of the SORNA legislation and subsequent Department of Justice guidelines, the matter of whether the placement of these new registrants into the system is commensurate with their public safety risk remains open to critical evaluation.

Regarding differences between reclassified groups, Oklahoma's experience suggests that implementing the SORNA tier system produces a significant qualitative change in the profile of those registrants assigned to the upper tiers. Specifically, those newly reassigned to the upper level were shown to be older and to have more elapsed time since their most recent conviction than those previously designated as aggravated or habitual offenders. This result is not surprising because retroactivity captures those whose offenses occurred long ago and did not have to register because they completed their sentence prior to the implementation of registration and notification policies in the mid-1990s. These characteristics are incongruent, however, with research on risk for recidivism, which consistently finds that younger offenders are at higher risk and that risk declines with age and with longer periods offense free in the community (Hanson, Morton, & Harris, 2003; Harris & Hanson, 2004). Regarding those subject to SORNA's retroactivity provisions, the Oklahoma analysis indicates that the vast majority of sex offenders who previously completed their registration requirements would be designated as lifetime registrants should they reenter the justice system for any reason.

The impact of SORNA reclassification on adjudicated juveniles remains an important area for future empirical study, but Ohio data suggest that a SORNA-based system will place nearly half of juvenile registrants into the highest tier, potentially subjecting these youth to lifetime registration. Although in some respects this finding may be easily explained—particularly

given that SORNA guidelines were designed to place the greatest restrictions on those who sexually offend against children and most youthful sexual offenders generally victimize younger juveniles—it raises broader questions about SORNA's incongruence with research. A recent report published by the Office of Juvenile Justice and Delinquency Prevention states,

> Juveniles who commit sexual offenses tend to do so against their age mates or somewhat younger children. In fact, offenses against young children actually decline across offender age, as offenders move from early to middle adolescence. This contradicts an assumption behind some sex offender treatment that a fixed attraction to young children (i.e., pedophilia) is the sole or even predominant motivation for juvenile sex offenses. (Finkelhor, Ormrod, & Chaffin, 2009, p. 9)

## POLICY AND PRACTICE IMPLICATIONS

The experience of Ohio and Oklahoma indicates a substantial upward drift of registrants from lower to higher tiers. We propose a range of significant implications for policy and practice. First, from an operational and fiscal perspective, this study's findings raise questions regarding the efficient deployment of criminal justice resources. Extrapolating from the estimated 705,000 registered sex offenders nationwide as of December 2009 (National Center for Missing and Exploited Children, 2009), the data presented here suggest that one half to three fourths (between 352,500 and 529,000 registrants across the United States) could potentially be subject to lifetime registration and quarterly in-person reporting—a number that can be expected to grow incrementally as new lifetime registrants are added to the equation. The SORNA tiers appear to classify a disproportionate number of offenders as high risk, placing increasing burdens—perhaps unnecessarily—on law enforcement personnel and fiscal appropriations.

Second, from a public safety perspective, the observed net-widening effect compromises the capacity of registration and notification systems to effectively discriminate between those who pose a substantial risk to society and those who pose minimal risk. Net widening might ultimately compromise the efficacy of SORN as a viable tool in our efforts to prevent sexual violence by diverting attention and resources away from managing truly high-risk sex offenders in favor of capturing a larger pool of registrants (National Alliance to End Sexual Violence, 2007). To this point, Freeman and Sandler (2009) demonstrated that the SORNA tiers did a poor job of predicting future recidivism in New York, calling into question the utility of expanded monitoring of a large portion of offenders who are unlikely to commit new sexually violent crimes.

Third, as a practical matter, the concentration of registrants in the highest tiers contradicts existing evidence regarding recidivism risk among both adult sex offenders and juveniles adjudicated for a sexual offense. A well-calibrated registration system should be one in which tier assignments approximate overall risks of recidivism within the sex offender population. For instance, sexual recidivism rates of large samples of sex offenders tracked over 15 and 20 years were found to be 24% and 27%, respectively (Hanson et al., 2003; Harris & Hanson, 2004). Although the research has made it clear that a limited group of sex offenders is at high risk of reoffense (e.g., those with multiple offenses, unrelated victims, deviant sexual preferences, and antisocial tendencies), it also suggests that the significant majority of those convicted of sexual offenses do not go on to be arrested for a subsequent sex crime (Hanson & Morton-Bourgon, 2005). Accordingly, our finding that SORNA-mandated

classification places between 55% and 85% into the highest level—one requiring lifetime registration, active public notification, and quarterly updates—suggests a general inconsistency between policy and available evidence.

Furthermore, the findings from Oklahoma indicate that higher tier offenders had more distant rather than recent prior offenses. Harris and Hanson (2004) reported that although the cumulative number of recidivists increases as time goes on, individuals are at reduced risk for recidivism as they spend more time in the community offense free. The Static-99 scoring guidelines state that "the expected offense recidivism rate should be reduced by about half if the offender has five to ten years of offense-free behavior in the community. . . . As offenders successfully live in the community without incurring new offenses, their recidivism risk declines" (Harris & Hanson, 2004, p. 63). Therefore, the inclusion of so many offenders in Tier 3 with distant offenses may misrepresent their risk. At the same time, Tier 1 and Tier 2 SORNA classification may underestimate risk for some offenders who pleaded down to lesser offenses.

Fourth, the findings call for closer attention to the collateral consequences of registration on the community reintegration of lower risk individuals, especially juveniles. In particular, SORNA's lifetime registration requirements and enhanced community notification mandates increase the likelihood of social isolation, unemployment, and housing disruption (Burchfield & Mingus, 2008; Levenson & Cotter, 2005; Levenson, D'Amora, & Hern, 2007; Mercado, Alvarez, & Levenson, 2008; Tewksbury, 2005), which are all factors associated with recidivism risk (Hanson & Harris, 2001; Kruttschnitt, Uggen, & Shelton, 2000; Willis & Grace, 2008, 2009). Placing increasing numbers of otherwise low-risk registrants into the higher tiers may thus inadvertently elevate—rather than mitigate—the aggregate public safety risks within communities. For juveniles, the stigma attached to sex offender status and the resulting limitations on academic opportunities, employment, and civic engagement have been noted to bode poorly for a successful transition to successful, law-abiding adulthood (Chaffin, 2008; Letourneau & Miner, 2005; Prescott & Levenson, 2007).

Fifth, from a legal vantage, the enhanced prospects of lifetime registration may carry significant effects on the course of criminal proceedings, expanding the pressure for plea deals or, conversely, requiring significant additional prosecution resources to manage an increasing number of cases going to trial (Letourneau, Levenson, Bandyopadhyay, Armstrong, & Sinha, in press). Moreover, the increased stakes associated with upward reclassification are likely to bring significant costs associated with litigation and requests for administrative reviews related to classification. The specific experience of Ohio—in which nearly 3,000 cases remain pending as of mid-2009—suggests significant hidden costs linked to the reclassification process.

## LIMITATIONS OF STUDY

Prior to presenting our conclusions, certain caveats should be noted. First, both Oklahoma and Ohio registration systems contain certain idiosyncrasies that should be considered when evaluating the data presented. In the case of Oklahoma, any interpretation of the pre–post analyses should consider the effects of the state's 1999 statutory revisions on the population of those with prior "habitual" or "aggravated" designations. Specifically, because these designations applied only to those who committed offenses after the 1999 law was passed, many of those included in the "new" Tier 3 category might have been designated as aggravated or habitual had the 1999 law been passed at an earlier date.

In the case of Ohio, the previously described January 2009 ruling from the Department of Justice suggests that although the state has now been deemed to be in "substantial compliance" with SORNA, its Tier 3 designation and its juvenile inclusion criteria may fall short of that contemplated by the SORNA guidelines. Accordingly, the proportion of Ohio cases identified in the results as Tier 3 (56% for adults, 46% for juveniles) may represent an underestimate of the likely impact of SORNA-based reclassification in other states. This potential underestimation is consistent with the significantly higher proportion of cases identified by Oklahoma as Tier 3. In addition, because SORNA-mandated inclusion of juveniles on state registries is generally limited to those adjudicated for more serious offenses, it is possible that a more rigid interpretation of SORNA criteria may produce a proportionally higher impact on juveniles than that seen in Ohio.

A second series of limitations pertains to the applicability of the Oklahoma and Ohio experiences to the potential experiences in other states. For example, it is likely that states utilizing single tier systems that apply lifetime registration for all registrants would experience comparatively less change than that described for Ohio or Oklahoma. Conversely, because neither of this study's focus states operated pure risk-based classification systems, it is likely that the redistributive impacts of implementing SORNA classification in states utilizing formalized, structured risk assessments would be significantly greater. Additional research investigating the practical impact of shifting from a formal and comprehensive risk-assessment-based classification system to a SORNA-compliant offense-based system is certainly warranted.

Third and finally, neither state's information permitted comprehensive evaluation of the effects of SORNA's retroactivity provisions on the overall registry caseloads. Although the Oklahoma analysis provides some perspective in this regard, future research should investigate the classification dispositions of individuals subject to registration pursuant to retroactive application, particularly those who are ultimately placed in the higher tiers.

## CONCLUSIONS

The potential results of the net-widening phenomenon illustrated through this study—operational and resource demands, public safety impacts, inconsistency with empirical estimates of risk, collateral consequences related to registrant integration, and legal ramifications—suggest a need for renewed focus and attention at both the state and federal levels. At the state level, policy makers and practitioners must continue to weigh the practical and public safety impacts of complying with SORNA's classification provisions. States facing significant implementation obstacles in this area include many of those that have long been acknowledged within the field as leaders in sex offender management practice, including Washington and Colorado (Center for Sex Offender Management, 2008). Experience in these states and others suggests that the classification of sex offender registrants based on empirically derived risk assessment may represent a desirable alternative to the offense-based categorization systems set forth by SORNA. Should states continue to be impelled to live with the relative imprecision of SORNA's classification system, mechanisms might be sought to provide both law enforcement and the public with an additional layer of risk-based information designed to identify those within the registries that present the greatest recidivism risk.

At the federal level, policy makers in both Congress and the U.S. Department of Justice face a difficult balancing act that preserves the integrity of the nation's registration and notification systems, responds to political imperatives, and integrates the growing body of empirical evidence that suggests support for a more discriminating approach to registration and notification. Although the uniformity of registration categories contemplated by SORNA remains a laudable policy goal, federal policy makers should consider whether this goal might be met through alternatives to an overly inclusive offense-based system. In turn, the need for such alternatives presents a challenge to the research and practice community to set forth a valid, reliable, consistent, cost-effective, and efficiently administered risk classification system that might achieve common acceptance.

## NOTE

1. The official designations within the Oklahoma classification system utilize the term "Level" rather than "Tier." For current purposes, however, we use the term "Tier" to maintain consistent terminology.

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