

The Budget Crisis and the Former Sex Offender Derek “The Fallen One” Logue Dec. 2, 2008, Edited Dec. 5, 2008

In the closing months of 2008, the nation turned its primary concerns to the looming recession; in one September poll, the economy was by far the top concern of voters for the 2008 Presidential elections [1]. In fact, recession fears were so bad, Republican Presidential candidate John McCain “postponed” his Presidential campaign to tackle the budget crisis [2]. During the fight to pass the infamous “\$700 Billion Bailout” plan (a.k.a. HR 1424), Congress added around \$150 billion in new spending or “pork” projects [3]. In an effort to alleviate any serious backlash in the controversial bill, the legislators passed the so-called “PROTECT Our Children Act of 2008” to a tune of \$300 million over the next five years [4]. In a previous hearing, Democratic Vice-President-Elect Joe Biden made the following statement:

“A very conservative estimate is that there are more than 400,000 people who we know who are trafficking child pornography on the Internet in the US right now. We can, with minimal effort, take these people down. But, due to lack of resources we are investigating less than 2 percent of these cases. Again, we are only investigating 2 percent of the known child pornography traffickers [5].” Ironically, the US Department of Justice Internet Crimes Against Children budget to combat child pornography was only \$15.95 million in 2008, a decrease of 26% from the previous year [6]. The 400,000 “known” child pornographers sounds like overestimation but assuming this estimation is correct, if the US DoJ is only handling 2% of cases at a cost of \$16 million, that department would need roughly \$800 million to process all those cases! However, not only does the Protect Act only earmark \$300 million to this worthy cause, it is stretched over 5 years and the grants are distributed among all qualifying Federal AND state agencies! It is a travesty that we are failing to investigate and prosecute crimes that are actually occurring while spending billions of dollars on assorted projects that have produced little to no results.

The Associated Press reported a budget deficit of \$455 billion for the fiscal year ending September 30, 2008 alone with a predicted \$1 trillion deficit for 2009. In response, President-Elect Barack Obama stated, “Budget reform is not an option. It is an imperative. We cannot sustain a system that bleeds billions of taxpayer dollars on programs that have outlived their usefulness, or exist solely because of the power of a politician, lobbyist or interest group [7].” Not surprising, many laws aimed at sex offenders meet this criteria quite perfectly. Some states are already second guessing many sex offender laws in light of the budget. In Iowa, where the state is looking to comply with the Adam Walsh Act, lawmakers are hoping to use the opportunity to replace an ineffective residency restriction law with a more sensible anti-loitering ordinance [8]. Regarding residency restrictions, an editorial in the Quad City (Iowa) Times stated, “We propose that lawmakers make a swap: Lose the perimeter that doesn’t work and direct the resources toward stepped-up Internet enforcement that does. In one bill, each state legislature could end a waste of taxpayer dollars and, at the same time, earn a valid reputation for cracking down on sex offenders [9].” Iowa had tried unsuccessfully once before to replace residency restrictions with smaller “safe zones” [10], so if they succeed, it would stand as a testament to the influence of the budget on these feel good laws. Iowa isn’t alone in seeing sex offender laws impacted by the recession. Florida has threatened to cut Amber Alerts and community notification if FDLE is forced to make \$18 million in cuts; interestingly, only 44,000 citizens out of a state of 16 million people signed up for the state’s email notification system [11]. Meanwhile 800,000 Floridian children lack health insurance [12]. In Utah, Corrections officials asked for \$1.27 million to cover the cost of incarcerating and treating sex

offenders, otherwise, offenders may be released without seeking treatment known to reduce recidivism [13]. And in New York, mental health advocates are lobbying to cut the state's civil commitment program, at a cost of \$48 million (or \$225,000 per bed per year), noting that mental health services are in greater need when the economy is poor [14]. As states look to cut costly provisions from their annual budgets, they may wish to reconsider keeping many existing laws or revising them for minimal cost. Below are a few examples of the fiscal impact of many popular sex offender laws:

Jessica's Law -- Mandatory Minimums

According to the US Bureau of Prisons, the average annual cost to incarcerate an offender in prison is \$23,183.69, and \$3,506.53 to keep an offender on supervised probation [15]. Currently the average offender convicted of rape will serve 8 years in prison and 5 years probation; the average offender convicted of other sexual assaults will serve 5 years in prison and 3 years on probation [16]. Using this formula, the average inmate serving time for rape will cost the system \$203,050.17, while the average inmate serving time for other sexual assault will cost the system \$126,438.04. Under Jessica's Law, however, overall sentences will be exponentially longer-- 10 year, 25 year, and 30 year minimums are proposed, costing \$231,836.90 for 10 years, \$579,591.62 for 25 years, or \$695,510.07 for 30 years. Even without Jessica's law, states have reported significant increases on average sentence length in the past few years; in Florida, for example, sentences for sexual battery increased 125.9% between 1985-1986 and 2003-2004, while sentences for lewd acts on children increased 166.7% in the same period [17]. By comparison, one study in California found while the state spent \$216,081 per inmate of the Department of Juvenile Justice, the state spent between \$7,592 and \$9,460 per student in major cities in California, and per-inmate expenditures to the system have increased 80% between 2005-06 and 2007-08 [18]. Most of these numbers do not even take into account inflation or short-term cost expenditures. For example, California was paying upwards of \$1.2 million to private psychologists and psychiatrists to perform extra sex offender evaluations as a result of Jessica's Law; the number of monthly sex offender evaluations increased from 50 to 750 after the law took effect [19]. If recent studies are any indication, these numbers will only continue to increase exponentially in the coming years.

Civil Commitment

Civil commitment is an increasingly popular practice to extend the incarceration of many Former Offenders long past their release dates under the guise of dangerousness. Civil commitment is currently practiced in 20 states, and is required under the Adam Walsh Act (Title III). However, of all the provisions of the Adam Walsh Act, civil commitment is the most costly pill to swallow. Even the lowest state estimate (Texas, which did not include secondary costs) found that they will spend \$32,000 per year for civil commitment, compared to \$15,527 per year in prison. Pennsylvania estimated the yearly per-person cost in civil commitment to be \$180,000 per year, compared to \$30,000 per-person cost in prison [20]. Opponents of civil commitment lobby for keeping sex offenders in prison rather than in civil commitment centers. However, the 5th Amendment bans double jeopardy, so civil commitment has been increasingly used to circumvent this rule, and thanks to *Kansas v. Hendricks*, this abominable practice has been upheld by SCOTUS. However, not only are these programs expensive, many are ill-equipped to handle their clientele. The New York Times reported about half of the 250 of the civilly committed offenders released since 1990, half were released on legal grounds or issues "not related to treatment [21]."

Sex Offender Registration and Notification Act (SORNA)

Registration laws have been around since 1996, so there is a wealth of knowledge on the fiscal

impact of registration and notification. As part of the Adam Walsh Act, states are required to comply with the new SORNA registration rules or lose 10% in Byrne law enforcement grant funding. But studies of fiscal costs are finding the states are better off rejecting the Adam Walsh Act. For example, Virginia would shell out \$12.5 million to implement SORNA, while losing only \$1.5 million by 2009 estimates if they reject SORNA. To maintain the registry, the yearly cost before inflation would be \$8,887,000, or \$654.95 for each of the 13,569* Virginia registrants [22]. There are a number of other costs to factor in, including personnel, software installation and maintenance, jail space, court and administrative costs, and costs to law enforcement. Ohio paid almost a half million to install the updated registry software with an \$85,000 annual maintenance fee [23]. Law enforcement costs could also include such things as gas and overtime for compliance checkers and postage for notifications. Hamilton County, Ohio found they spend \$250,000 in postage alone to notify neighbors of the 447 “sexual predators” in the county 4 times per year. Under SORNA, with the number of people in “predator” category increasing to around 1100 of the county’s 1641 registrants now labeled a “Tier III/ Predator” under SB 10, that number increases to \$500,000 annually, or about \$454 per Tier III per year! [24]. It is interesting to note there has been virtually no evidence that registries are impacting sex crime rates, thus, most of the registry expenditures are unnecessary, only popular. While many point to decreasing sex crime rates since 1993, it corresponds to the decrease in the general crime rate with no special variation that can be attributed to the laws; in fact, studies suggest public registries actually increase recidivism [25]. Rape rates have largely held stable since about 2000 [26], while the number of sex crime laws have increased exponentially.

GPS

The Adam Walsh Act also includes provisions for GPS pilot programs, popular because they are marketed as an alternative to prison. According to one estimate, GPS devices cost roughly \$10 per day, or \$3650 per year per offender [27]. However, any expenditures should include false alarms given as a result of technological limitations of GPS; one Washington study found that out of 4000 violation notices, nearly all were false alarms [28]. Thus, you would also have to add in expenditures such as gas and overtime to check on those false alarms, as well as the software and manpower to watch those “blips on the screen.”

Court costs

Actual court cost are difficult to determine because fees vary greatly by state, but in defending sex offender laws, the state will always have legal representation even in cases where the opposition is forced to represent himself. In Ohio, public defenders were representing sex offenders in fighting that state’s Walsh Act changes [29]. Estimations of per-offender cost could range between \$1000 to \$5000 per offender, judging by the felony offense fees as noted by the Ohio Public Defender’s Office [30].

Other costs of sex offender laws

Sex offender laws have other indirect costs resulting from Predator Panic. Such costs listed below are just a few of the “X” factors that must be considered as well in propagating these laws: Property values: Thanks in large part to Predator Panic, homes within 1/10th of a mile from the residence of a registrant suffered decreases in property values, with an average decrease of \$5000 for properties next door to the registrant [31]. Vigilantism: One study by Dr. Jill Levenson has noted 10% of registrants have been physically assaulted, 18% have experienced property damage, and 16% of people who live with the offender have been assaulted or had their property damage [32]. Added costs would include insurance and liability rates, law enforcement expenses, and treatment for physical and/ or mental trauma Welfare/ Social Services: The Levenson study found that 21% of registrants lost jobs over the

registry

[*ibid.*]. Recent surveys of employers have determined less than 1% would ever consider hiring a “violent” felon [33]. Thus, the probability of a registrant dependant on the state welfare system could be fairly deduced as reasonably high. As a consequence, registrants are less likely to pay taxes, court costs associated with litigation, and add to the support of a household, including child support, leaving the welfare system to pick up the slack. Thus, each offender would be allotted \$82 monthly (\$984 annually) on average for food stamps or \$1 per meal [34]. The cost of each eligible person collecting Supplemental Security Income (SSI) will be \$674 per month in 2009 (\$8136 for 2009), a 5.8% increase from 2008 [35]. Thus, the annual cost per offender (or affected family member) in the welfare system is at least \$9120, not even counting other subsidies the offender or family may qualify for!

Cost effective strategies: Treatment and Intervention Programs

Treatment of sex offenders is found to be cost effective largely because treatment is an effective tool in reducing recidivism rates. Separate studies have found every dollar spent on treatment of sex offenders saves up to \$5.27 in victim and taxpayer benefits [36]. A RAND Corporation study on youth crime also suggests certain intervention programs are far more efficient than many after-the-fact methods like mandatory minimums [37]. I had stated in my [Prevention 101](#) article, there are many barriers to instituting prevention, education, and rehabilitation strategies, but in this time of economic uncertainty, perhaps now legislators may finally take interest in promoting cost-effective strategies that actually work!

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Addendum

<http://www.thebostonchannel.com/news/17925840/detail.html> -- WCVB Channel 5 Boston reports that Massachusetts spent \$6 million to track 359 convicted offenders and 250 individuals awaiting trial, including the amounts used to check false alarms. that's an average cost of \$9,852.22 per offender. The program found a 60% recidivism rate for all offenders in general, suggesting the devices are not deterring crimes[NOTE: This study was on general/overall crime rates, NOT on specific sex offender recidivism. For some reason the article focused on sex offenders, while the article listed a general statistic on the effectiveness of GPS in deterring crimes]

Addendum Feb. 5, 2009

Kristen Zgoba, Ph.D.; Philip Witt, Ph.D.; Melissa Dalessandro, M.S.W.; Bonita Veysey, Ph.D., Megan's Law: Assessing the Practical and Monetary Efficacy (2008) -- <http://www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf> --

- Megan's Law has no effect on community tenure (i.e., time to first re-arrest).
- Megan's Law showed no demonstrable effect in reducing sexual re-offenses.
- Megan's Law has no effect on the type of sexual re-offense or first time sexual offense (still largely child molestation/incest).
- Megan's Law has no effect on reducing the number of victims involved in sexual offenses.
- Costs associated with the initial implementation as well as ongoing expenditures continue to grow over time. Start up costs totaled \$555,565 and current costs (in 2007) totaled approximately 3.9 million dollars for the responding counties.
- Given the lack of demonstrated effect of Megan's Law on sexual offenses, the growing costs may not be justifiable.