
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1198 **Hearing Date:** April 10, 2018
Author: Wilk
Version: March 19, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Sex Offenders: Risk Assessment Research*

HISTORY

Source: State Authorized Risk Assessment Tools for Sex Offenders (SARATSO) Committee

Prior Legislation: AB 1844 (Fletcher), Ch. 219, Stats. of 2010

Support: California District Attorneys Association; Pacific Juvenile Defender Center; Riverside Sheriffs' Association

Opposition: None known

PURPOSE

The purpose of this bill is to 1) require the SARATSO Review Committee to sponsor research specific to California sex offenders relating to recidivism and desistance from offending, and require the committee to submit an annual report to the Legislature on its ongoing research and the final results of its research studies; 2) add 2 additional members with experience with juveniles, as specified, to the Sex Offender Management Board and 3) require the Attorney General to furnish state summary criminal history information to the SARATSO Review Committee and the Sex Offender Management Board to allow the entities to fulfill their statutory responsibilities, as specified.

Existing law provides that the sex offender risk assessment tools authorized by this section for use with selected populations shall be known, with respect to each population, as the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO). If a SARATSO has not been selected for a given population pursuant to this section, no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population. Every person required to register as a sex offender shall be subject to assessment with the SARATSO as set forth in this section and elsewhere in this code. (Pen. Code, § 290.04, subd. (a)(1).)

Existing law provides that a representative of the Department of Corrections and Rehabilitation, in consultation with a representative of the State Department of State Hospitals and a representative of the Attorney General's office, shall comprise the SARATSO Review Committee. The purpose of the committee, which shall be staffed by the Department of Corrections and Rehabilitation, shall be to ensure that the SARATSO reflects the most reliable,

objective, and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated and cross validated, and is, or is reasonably likely to be, widely accepted by the courts. The committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate. (Pen. Code, § 290.04, subd. (a)(2).)

Existing law provides that the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale, which shall be the SARATSO static tool for adult males. The SARATSO Review Committee shall determine whether the STATIC-99 should be supplemented with an empirically derived instrument that measures dynamic risk factors or whether the STATIC-99 should be replaced as the SARATSO with a different risk assessment tool. The SARATSO Review Committee shall select an empirically derived instrument that measures dynamic risk factors and an empirically derived instrument that measures risk of future violence. The selected instruments shall be the SARATSO dynamic tool for adult males and the SARATSO future violence tool for adult males. If the committee unanimously agrees on changes to be made to a designated SARATSO, it shall advise the Governor and the Legislature of the changes, and the Department of Corrections and Rehabilitation shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for adult males. (Pen. Code, § 290.04, subd. (b).)

Existing law provides that the SARATSO Review Committee shall research risk assessment tools for adult females required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for adult females. (Pen. Code, § 290.04, subd. (c).)

Existing law requires the SARATSO Review Committee research risk assessment tools for male juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for male juveniles. (Pen. Code, § 290.04, subd. (d).)

Existing law requires the SARATSO Review Committee research risk assessment tools for female juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for female juveniles. (Pen. Code, § 290.04, subd. (e).)

Existing law provides that the committee shall periodically evaluate the SARATSO static, dynamic, and risk of future violence tools for each specified population. If the committee unanimously agrees on a change to the SARATSO for any population, it shall advise the Governor and the Legislature of the selected tool, and the Department of Corrections and Rehabilitation shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for that population. (Pen. Code, § 290.04, subd. (f).)

Existing law provides that the committee shall perform other functions consistent with the provisions of this act or as may be otherwise required by law, including, but not limited to, defining tiers of risk based on the SARATSO. The committee shall be immune from liability for good faith conduct under this act. (Pen. Code, § 290.04, subd. (g).)

Existing law establishes the SARATSO Training Committee and provides that the Training Committee shall be comprised of a representative of the Department of State Hospitals, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General's Office, and a representative of the Chief Probation Officers of California. (Pen. Code, § 290.05, subd. (a).)

This bill requires the SARATSO Review Committee to sponsor research specific to California sex offenders relating to recidivism and desistance from offending, as specified, and require the committee to submit an annual report to the Legislature on its ongoing research and the final results of its research studies.

This bill would require the Attorney General to furnish state summary criminal history information to the SARATSO Review Committee and the Sex Offender Management Board to allow the entities to fulfill their statutory responsibilities, as specified.

Existing law established the California Sex Offender Management Board under the jurisdiction of the Department of Corrections and Rehabilitation, to consist of 17 members. The membership of the board shall reflect, to the extent possible, representation of northern, central, and southern California as well as both urban and rural areas. Each appointee to the board, regardless of the appointing authority, shall have the following characteristics:

- Substantial prior knowledge of issues related to sex offenders, at least insofar as related to his or her own agency's practices.
- Decision-making authority for, or direct access to those who have decision-making authority for, the agency or constituency he or she represents.
- A willingness to serve on the board and a commitment to contribute to the board's work.

Existing law provides that the membership of the Sex Offender Management Board shall consist of the following persons:

- The Attorney General or his or her designee who shall be an authority in policy areas pertaining to sex offenders and shall have expertise in dealing with sex offender registration, notification, and enforcement.
- The Secretary of the Department of Corrections and Rehabilitation or his or her designee who has expertise in parole policies and practices.
- The Director of Adult Parole Services or his or her designee.
- One California state judge, appointed by the Judicial Council.

- The Director of State Hospitals or his or her designee who is a licensed mental health professional with recognized expertise in the treatment of sex offenders.
- Three members who represent law enforcement, appointed by the Governor. One member shall possess investigative expertise and one member shall have law enforcement duties that include registration and notification responsibilities, and one shall be a chief probation officer.
- One member who represents prosecuting attorneys, appointed by the Senate Committee on Rules. He or she shall have expertise in dealing with adult sex offenders.
- One member who represents probation officers, appointed by the Speaker of the Assembly.
- One member who represents criminal defense attorneys, appointed by the Speaker of the Assembly.
- One member who is a county administrator, appointed by the Governor.
- One member who is a city manager or his or her designee, appointed by the Speaker of the Assembly.
- Two members who are licensed mental health professionals with recognized experience in working with sex offenders and who can represent, through their established involvement in a formal statewide professional organization, those who provide evaluation and treatment for adult sex offenders, appointed by the Senate Committee on Rules.
- Two members who are recognized experts in the field of sexual assault and represent sexual assault victims, both adults and children, and rape crisis centers, appointed by the Governor.

This bill would also add 2 additional members with experience with juveniles, as specified, to the Sex Offender Management Board.

This bill finds and declares the following:

- In 2010, the Legislature honored the memory of Chelsea King by enacting Chelsea's Law, which established an evidence-based system, known as the containment model, for monitoring, containing, and supervising sexual offenders. Studying the impact of the current law in preventing sexual reoffending and creating measures for determining its effectiveness will allow supervising agencies and treatment providers to refine the model and standards used to monitor offenders in the sex offender management programs certified by the Sex Offender Management Board.
- In 2017, the Legislature expanded the scope of the Sex Offender Management Board's responsibility to address issues, concerns, and problems related to the community

management of sex offenders to include juvenile sex offenders in addition to adult sex offenders.

- The research studies voluntarily undertaken by the Department of Justice and the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee to evaluate the effectiveness of the state's risk assessment instruments have been a significant enhancement to public safety.
- In order to provide the best foundation for protecting families and children from victimization, continuing research is needed to deter future sexual reoffending. Recent research on recidivism rates of California offenders demonstrates that only a small percentage of sexual offenders will reoffend. Identifying that group is vital to the public interest.
- Further research on recidivism by California sex offenders should produce valuable information regarding the use of risk assessment instruments in determining which offenders should register for life as tier three sex offenders on the tiered sex offender registry commencing on January 1, 2021. Research should be used to identify factors common to sexual recidivists and to offenders who score at well above average risk to reoffend.

This bill states the intent of the Legislature that research, initially conducted through a partnership between the Department of Justice and the SARATSO Review Committee, will continue the vital work of assessing the effectiveness of the state's authorized risk assessment instruments.

COMMENTS

1. Need for This Bill

According to the author:

There is no statutory authority for the CA Sex Offender Management Board (CASOMB) to collect background information from DOJ for research on sex offenders.

This bill requires the Attorney General to furnish state summary criminal history information to members of the California Sex Offender Management Board (SOMB) and the State Authorized Risk Assessments Tools for Sex Offenders (SARATSO) Committee needed in the course of their duties.

SB 1198 will enable CASOMB to continue its work of analyzing and communicating to policymakers about the best policies for managing those who have sexually offended. CASOMB certifies treatment provider agencies which work with these offenders, and also sponsors research underlying policy recommendations. Criminal offender record information is critical both to the certification process and to research about this population.

Further research on recidivism by CA sex offenders is necessary to provide continuing validations of the risk assessment instruments that support placement of California registered offenders on the tiered sex offender registry. Ongoing research should also produce valuable information regarding the use of risk assessment instruments in determining which offenders should register for lifetime as tier three offenders.

SB 1198 helps ensure that CA continues to obtain the very best information on sexual recidivism rates by various populations, e.g., parole, probation, female and juvenile offenders. Research is essential to ensure that the risk instruments selected by the SARATSO Committee are effectively and accurately measuring the risk of recidivism posed by convicted offenders.

SB 384, Chp. 541 (2017-Wiener), added juveniles to the purview of the SOMB. Therefore, the SOMB should have members that have experience with juvenile sex offenders in order to provide the best foundation for protecting families and children from victimization. This bill would also add 2 additional members with experience with juveniles.

It should be noted that any material information identifying individual offenders shall not be disclosed to Board members who are not otherwise authorized to receive criminal offender record information, or to the public.

2. The Sex Offender Registration Act

California has required sex offender registration since 1947. The purpose for sex offender registration is to deter offenders from committing future crimes, provide law enforcement with an additional investigative tool, and increase public protection. (*Wright vs. Superior Court* (1997) 15 Cal.4th 521, 526; Alissa Pleau (2007) *Review of Selected 2007 California Legislation: Closing a Loophole in California's Sex Offender Registration Laws*, 38 McGeorge L. Rev. 276, 278.)

In enacting the Sex Offender Registration Act in 2006 (P.C. 290 et seq.), the Legislature expressly declared its intent to establish a comprehensive and standardized system for regulating sex offenders. (9 Witkin Cal. Crim. Law, *supra*, § 136.) The Act included a lifetime registration requirement for persons convicted of or adjudicated for specified sex offenses. (See Pen. Code, § 290 et seq.) It also created a “standardized, statewide system” and a “comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities.” (*People v. Nguyen* (2014) 222 Cal.App.4th 1168, 1179.) These statutes regulate numerous aspects of a sex offender’s life including restricting the places a sex offender may visit and the people with whom he or she may interact. (*Ibid.*)

SB 384 (Wiener), Chapter 541, Statutes of 2017 modified California’s sex registration system from lifetime registration to a tiered registry. Under the provisions of SB 384, the static risk assessment for sex offenders (SARATSO) is used to assist in the placement of any sex offender into a particularized tier requiring 10-years of registration, 20-years, or lifetime registration.

3. California's Sex Offender Management Board's Background

On September 20, 2006, Governor Arnold Schwarzenegger signed Assembly Bill 1015, which created the California Sex Offender Management Board. AB 1015 had been introduced by Assembly Members Judy Chu and Todd Spitzer and passed the California Legislature with nearly unanimous bipartisan support.

Because California is the most populated state in the Union and has had lifetime registration for its convicted sex offenders since 1947, California has more registered sex offenders than any other state with about 88,000 identified sex offenders (per DOJ, August 2007). Currently, the California Department of Corrections and Rehabilitation (CDCR) supervises about 10,000 of those 88,000 sex offenders, of which about 3,200 have been designated as "high-risk sex offenders". (CDCR Housing Summit, March 2007). Additionally, there are about 22,500 adult sex offenders serving time in one of 32 state prisons operated by CDCR (California Sex Offender Management Task Force Report, July 2007).

CASOMB's vision is accomplished by addressing issues, concerns and problems related to community management of adult sex offenders by identifying and developing recommendations to improve policies and practices. A number of changes have taken place with respect to sex offender management laws, policies, and practices in California. Most of these changes have resulted in adoption and implementation of more effective approaches to sex offender management. At its inception, CASOMB members agreed to be guided by evidence-based practices and proven effective policies in carrying out its duties and making policy recommendations to the Legislature. Through CASOMB's efforts and commitment to a safer California and more effective approach to managing sex offenders in our communities, policymakers have become more aware of and responsive to the growing body of knowledge based on scientific research. This awareness has influenced and informed the development of new policies replacing the uninformed, emotion-driven responses that once supported previously enacted laws.

According to the CASOMB's most recent report¹, the CASOMB wants to expand its scope in order to include juvenile registrants. The report states that in 2016 there were 1,645 juveniles on the state's registry. This number is believed to represent only a small percentage of the total number of juveniles who have sexually offended and does not include those who are under probation supervision in the communities. In order to include juvenile registrants in its purview, state legislation is required.

This bill would add two additional members to the CASOMB in the area of juvenile registration. Specifically, this bill would add:

- "One member who is a probation officer with experience working with juveniles, appointed by the Speaker of the Assembly." and;
- "One member who is a treatment provider with experience treating juvenile sexual offenders, appointed by the Senate Committee on Rules.

¹ http://www.casomb.org/docs/2016_CASOMB_Annual_Report-FINAL.PDF

4. SARATSO

The term SARATSO refers to evidence-based, state authorized risk assessment tools used for evaluating sex offenders.

State law established the SARATSO (State Authorized Risk Assessment Tools for Sex Offenders) Review Committee, to consider the selection of the risk assessment tools for California. Research shows that the most accurate way of predicting whether a sex offender will reoffend is by utilizing a validated risk assessment instrument.

A collaborative approach to sex offender management, known as the Containment Model, is used in California. Communication and collaboration among the supervising officer, treatment provider, and polygraph examiner are the heart of this model, which relies on ongoing communication about risk.

New names have been announced for the risk categories on the Static-99R. A Five-Level Risk and Needs System: Maximizing Assessment Results in Corrections through the Development of a Common Language

- Very Low Risk, Category I, scores -3, -2
- Below Average Risk, Category II, scores -1, 0
- Average Risk, Category III, scores 1, 2, 3
- Above Average Risk, Category IV-a, scores 4,5
- Above Average Risk, Category IV-a, scores 4,5
- Well Above Average Risk, Category IV-b, scores 6+

A 2016 study sponsored by SARATSO examined sexual re-offense rates of sex offenders on parole or probation, five years after release from custody.² (The Predictive Validity of Static-99R for Sexual Offenders in California (2016 Update)). The 2016 study concluded that the Static-99R is an effective measure of the risk of sexual re-offense used with the ethnically diverse California sex offender population. The 2016 study also found that transient offenders reoffended sexually at a higher rate than non-transient offenders. The study concluded that transient status among both probation and parolee offenders seems to be associated with higher sexual recidivism rates.³

5. Summary Criminal History Information

This bill provides that the Attorney General shall furnish state summary criminal history information to The Sex Offender Management Board and the SARATSO Review Committee in order to allow these entities to fulfill their statutory mandates to address issues, concerns, and problems related to the community management of sex offenders, conduct certification of standardized sex offender-specific treatment programs, maintain standards for certification of polygraph examiners, and conduct research to facilitate the selection and use of the most reliable, objective, and well-established protocols and instruments for predicting sex offender risk of recidivism. These entities may use the state summary criminal history information for other purposes related to sex offender recidivism, including, but not limited to, research, certification of sex offender treatment programs and treatment providers, and oversight of the containment

² http://saratso.org/pdf/ThePredictiveValidity_of_Static_99R_forSexualOffenders_inCalifornia_2016v1.pdf

³ <http://saratso.org/>

model system in California. Any material information identifying individual offenders shall not be disclosed to board members who are not otherwise authorized to receive criminal offender record information, or to the public.

6. Argument in Support

According to the SARATSO Review Committee:

The state committee in charge of risk assessments of those who have committed sexual offenses is the SARATSO Committee. SARATSO strongly supports S.B. 1198. California has been a national leader in research that provides a factual basis for evidence-based sex offender risk assessment. The SARATSO Committee has sponsored studies which validate the use of the state's risk assessment instruments on a diverse California population. Such studies have provided necessary information about sexual recidivism and are the foundation for the selection of appropriate risk assessment instruments.

This bill helps ensure that California continues to obtain the very best information on sexual recidivism rates by various populations, e.g. parole, probation, female and juvenile offenders. Research is essential to ensure that the risk instruments selected by the SARATSO Committee are effectively and accurately measuring the risk of recidivism posed by convicted offenders.

Additionally, this bill enables the California Sex Offender Management Board (CASOMB) to continue its work of analyzing and communicating to policymakers about the best policies for managing those who have sexually offended. CASOMB certifies treatment provider agencies which work with these offenders, and also sponsors research underlying policy recommendations. Criminal offender record information is critical both to the certification process and to research about this population.

-- END --