

# **JUSTICE 2 SUB-COMMITTEE**

Monday 13 November 2006

Session 2

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## **JUSTICE 2 SUB-COMMITTEE** **5<sup>th</sup> Meeting 2006, Session 2**

### **CONVENER**

\*Jackie Baillie (Dumbarton) (Lab)

### **DEPUTY CONVENER**

\*Mr Kenny MacAskill (Lothians) (SNP)

### **COMMITTEE MEMBERS**

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

\*John Home Robertson (East Lothian) (Lab)

\*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

\*attended

### **THE FOLLOWING GAVE EVIDENCE:**

- ◊Detective Tom Breedlove (Hernando County Sheriff's Office)
- ◊Mary Coffee (Florida Department of Law Enforcement)
- ◊Bree Cunningham (Massachusetts Sex Offender Registry Board)
- ◊Jeremy Gordon (Florida Department of Law Enforcement)
- ◊Charles McDonald (Massachusetts Sex Offender Registry Board)
- ◊Dr Teion Harrison (Florida Department of Children and Families)
- ◊Alan Moses (Florida Department of Law Enforcement)
- ◊Sergeant Edward Sileo (Broward County Sheriff's Office)
- ◊Tanya Weldon (Florida Department of Law Enforcement)
- ◊Annamarie Whatley (Florida Department of Law Enforcement)

◊by telephone

### **CLERK TO THE COMMITTEE**

Jennifer Smart

### **SENIOR ASSISTANT CLERK**

Claire Menzies Smith

### **LOCATION**

Committee Room 1



## Scottish Parliament

### Justice 2 Sub-Committee

*Monday 13 November 2006*

[THE CONVENER *opened the meeting at 17:16*]

### Child Sex Offenders Inquiry

**The Convener (Jackie Baillie):** Good evening, everybody. Welcome to the fifth meeting of the Justice 2 Sub-Committee. We have received apologies from Alex Fergusson. We are undertaking a short parliamentary inquiry into child sex offenders and are particularly interested in registration and notification, of which our colleagues from Florida have experience.

I am the convener of the committee. On my left is Kenny MacAskill, the deputy convener. Also present are John Home Robertson and, last but not least, Jeremy Purvis. We are grateful for the opportunity to have this telephone conference with you. For the benefit of the *Official Report*, could you introduce yourselves? Furthermore, because we cannot see you, it would be helpful if, each time anyone speaks, they could identify themselves.

**Mary Coffee (Florida Department of Law Enforcement):** I am from the Florida Department of Law Enforcement in Tallahassee. I am the planning and policy administrator for Florida's registration programme, which covers sexual offenders and predators as well as career offenders.

**Jeremy Gordon (Florida Department of Law Enforcement):** I am from the sex offender and predator unit of the Florida Department of Law Enforcement.

**Dr Teion Harrison (Florida Department of Children and Families):** I am the director of the sexually violent predator programme for the state of Florida, which is operated by the Department of Children and Families.

**Annamarie Whatley (Florida Department of Law Enforcement):** I am with the Florida Department of Law Enforcement's sex offender and predator unit.

**Tanya Weldon (Florida Department of Law Enforcement):** I am from the Florida Department of Law Enforcement's sex offender and predator unit.

**Alan Moses (Florida Department of Law Enforcement):** I am from the Florida Department of Law Enforcement's sex offender and predator unit.

**The Convener:** Welcome to you all. Can we go to Hernando County?

**Detective Tom Breedlove (Hernando County Sheriff's Office):** Yes, ma'am. I am a detective with the Hernando County sheriff's office.

**The Convener:** And from Fort Lauderdale?

**Sergeant Edward Sileo (Broward County Sheriff's Office):** Good evening, ma'am. I am from the Broward County sheriff's office.

**The Convener:** If we are going to get on well, you must all call me Jackie. You make me feel incredibly old when you call me ma'am.

You have all been provided with the questions in advance, so you know what we are interested in. Rather than our rehearsing the questions, perhaps you could tell us a little about what goes on in Florida and what you do in terms of registration and notification. Mary Coffee could kick off.

**Mary Coffee:** In Florida, registration started in 1993 with a small group of a few hundred sexual predators, as they were all then called. Since then, there have been several changes to state and national law and we now have two categories of individuals who register for sexual offences: sexual predators and sexual offenders.

The system operates electronically, primarily. There is a direct electronic connection between our agency, which maintains the registry for the state, and the Florida Department of Corrections and the Florida Department of Highway Safety and Motor Vehicles, which issues driver licences and identification cards. Offenders and predators are also required to update their address information through that entity. Beyond that, there is additional electronic connection to all the law enforcement agencies across the state, which allows them to enter information on their activities as well as to update information through the reregistration process from each of our 67 counties with sheriff's offices.

It is important to note that we in Florida do not perform a risk assessment to categorise registrants. They are administratively designated based on their individual convictions. As I said, the laws for sexual predators and offenders were not developed together—we dealt with predators prior to adding offenders in 1997. The level of an individual's conviction or their recidivist history determines whether they are required to register as an offender or a predator. Predators have committed a higher-degree felony or might have a recidivist history. If they are found by a court to be a predator, they are subject to stricter address verification frequency as well as to the mandatory community notification.

Community notification is authorised for sexual offenders but is not mandatory in the state.

However, all predators and offenders are posted on the state-wide internet site.

I know that the committee is particularly interested in community notification. All our predators and offenders are posted on the website—that has been done since 1995. We have close to 39,000 individuals on the registry and we add anywhere between 150 and 350 a month, based on new convictions, individuals being released from incarceration and individuals from other states moving to Florida and being required to register as sexual offenders.

Law enforcement agencies—representatives of two of which we have with us today—have differing methods of performing community notification, based on what works well for their communities and what resources they have. I will allow them to talk to you about how they perform that community notification and about their successes and challenges.

**Detective Breedlove:** In Hernando County, we have nowhere near the same number of people as Broward County or Fort Lauderdale has. However, we have 232 sexual offenders and 10 predators. Every time a predator moves into our county or moves from one location to another in our county, we do a community notification, which takes several forms. The most noticeable form consists of an initial address verification, which ensures that the person lives at the residence that we will be notifying people of. Following that, we go door-to-door and notify every house within approximately 1,000yd—I am sorry, but I do not know the metric equivalent of that—of the predator's property line.

We then alert all schools and day-care centres within a mile of the predator's residence and inform them of the predator's address and what he looks like. We hand out a flyer, which FDLE makes available on the website. After that we do a mail-out within that mile radius, which shows the same information as is on the FDLE flyer but on a smaller scale, on something about the size of a postcard. The mail-out gives people contact details about where they can get more information from us or from FDLE.

We also do an e-lert, which is an e-mail notification system for which people can sign up with the sheriff's office. Every time an offender or predator moves into Hernando County, we can shoot off an e-mail that gives people information about the new address and contains a hyperlink to the FDLE website, where they can find further information if they wish.

**The Convener:** That is interesting. How effective is the system in preventing reoffending?

**Detective Breedlove:** I looked at the material on the Justice 2 Sub-Committee's website and I

saw that like us, you do not have much information about the extent to which a person might be prevented from reoffending. The purpose of our system is more to get information out to people in the community. We feel that people are safer if they know who their neighbours are and whether they might be dangerous. In Hernando County, we think that information is powerful and that if we provide information we might have a chance of preventing a child from becoming another victim, because children will not go to a sex offender's house to trick or treat or to sell things for school-related activities. I do not know about reoffending, but we are better off if the information is out there.

**The Convener:** Have you ever received negative reactions from people whom you informed about a sex offender, whether they were the offender's immediate neighbours or lived within a mile of the offender's residence?

**Detective Breedlove:** We have had negative reactions only from family members of the predator. Sometimes people say, "Oh my gosh, that person is moving back into the neighbourhood", or, "I never knew they had left in the first place." The language that people use is usually not as nice as that, but reactions are much more often positive than negative.

**The Convener:** It is often suggested to the committee that such a system can lead to displacement of offenders. If I was an offender in Florida and was subject to such scrutiny, I might just move to another state. Are you aware that that is a problem?

**Detective Breedlove:** Is that question addressed to me?

**The Convener:** It is a shame that I am asking you all the questions. Do not worry, I will get to Ed Sileo in a second.

**Detective Breedlove:** Yes, ma'am.

We have not noticed any displacement. It seems that more people want to move to Florida than want to move out. We do not consider 242 offenders and predators to be outside the norm of how many offenders a county the size of ours would be expected to have. We are concerned that we do not get to all the sex offenders who move into Hernando County, but we do not think that we are displacing or kicking out offenders. If an offender leaves, they must tell us that they are leaving. If they do not tell us, they commit a felony and we issue an arrest warrant and bring them back to face charges.

**The Convener:** I want to move on, as I am conscious that I have monopolised Tom Breedlove's time.

**Detective Breedlove:** Not at all.

17:30

**The Convener:** To get a different perspective, let us move on to Ed Sileo in Fort Lauderdale.

I am told by Tom Breedlove that Broward County covers a much larger and more densely populated area. Will you explain for us how you go about community notification?

**Sergeant Sileo:** Certainly. Tom—it is good to talk to you again. It has been a little while.

We have approximately 1.6 million people in Broward County. Throughout the county, we have 1,300 sex offenders, of whom 97 are predators. As Mary Coffee explained, designation as an offender or predator comes directly from the sentencing court. Generally, a predator is someone who the court feels needs a little bit more attention, so to speak.

We do most of the community notification that Tom Breedlove spoke of. However, probably because we have more resources, we go a little bit further in some things. We produce newspaper advertisements to say that one of those folks has moved in. We also alert the general populace to the fact that they can come to a community meeting, where anyone who is interested can come and hear about the sex offender laws, what sex offenders may and may not do and what the public may and may not do. We also provide a package about anyone on the register who might be in the local area. Usually, the package encompasses the details of several hundred people because we have so many of them in this area.

We also use geo-mapping to pinpoint exactly where each of our sex offenders and predators are in relation to various landmarks throughout the county—schools, day care centres and public parks, for example. We know exactly how close they are to those facilities and the general public have access to that information on our website. People can see easily who is in a given neighbourhood.

For the community notification meetings that I mentioned, we send out advertisements to the local area through a system of automated telephone calls. Within a radius of about 1.5 miles of the predator's home, we notify the general populace that such a person has moved into the neighbourhood and that a general meeting will be held at a given date, time and place where they will be advised of exactly who is in their area.

Those community meetings have provided positive feedback and very minimal negative feedback—in fact, sex offenders or predators have sometimes asked to speak at the meetings to explain how and why they ended up on our website. As Mary Coffee said, many of them come

from other states and are required to register with us when they move to Florida. They simply want to be heard and we allow them to do that as long as the thing does not get out of hand—and it never has. The meeting seems to be a pretty good forum for that. The general populace goes away a bit more educated as to what the laws are about and what the people are about.

We have expanded the radius to 1.5 miles around the predator's home because we want to catch things such as schools and day-care centres that might be on the fringe of the mile that is required by law. In our county, every 30 days we check the sex offenders or predators within our servicing area to ensure that they are at the location where they are supposed to be. As a minimum, we check on them once a month. State law does not require that, but that is how our sheriff likes to do things here.

We also partner the probation and parole folks—I am sure that Tom Breedlove does this as well, although he did not mention it—and visit the homes of offenders who are on probation or parole to double-check that there is nothing fishy and to ensure that they are doing what they are supposed to do in accordance with their court-ordered sanctions.

**The Convener:** Thank you very much, Ed.

**John Home Robertson (East Lothian) (Lab):**

Tom told us a few minutes ago that there has been very little negative reaction in neighbourhoods when information has been given to the public. Is there a risk of vigilante action, harassment or attacks against offenders? Has that happened in your neighbourhood?

**Detective Breedlove:** We have not had any vigilante-type activity. As Ed Sileo does, we also try to encourage our predators to attend our community meetings when we make the notifications. In that way, we can quell any vigilante attitudes that people might have. Fortunately, that attitude has not been displayed. We come down hard on people who try to target our sex offenders or predators; the fact that those offenders are complying with the law does not give other people the opportunity to violate the law.

**The Convener:** My next question is to Ed Sileo first. The resource implications of what you do are obviously substantial—in your area, you check every 30 days whether sex offenders are at the listed addresses and that they have not absconded. I appreciate that your budget is in US dollars, but will you say how much you spend on that activity as a percentage of your budget?

**Sergeant Sileo:** I hate to tell you that I do not know whether I can put a number on that. You should understand the set-up of our agency: we service 17 city-sized districts—we are quite a large

agency. We have approximately 3,000 sworn officers and about 6,000 people in total in our agency. Being that we have that many folks out on the street, my unit is relatively small. We handle sexual predators and career offenders—I have only four detectives to do that. However, because our number of detectives is limited, we use other officers and deputies who are out on the street continually to do checks simply as one of the checks that they must do day to day. We do not have a specific budget for that.

The check is simply a five or 10-minute check that the officer who works in an area or zone can do daily, weekly or whenever they can. A check can be made more frequently than every 30 days, but that is the minimum. An officer goes by, does a double-check, ensures that everything is up to date and sends in a small report, which lets us know that they have made the check and that everything is current. To be honest, I cannot provide a budget for that, because we do everything internally—we do not have separate funding for that.

The automated telephone calls that I mentioned, which go to all listed telephone numbers in a given area, are a separate measure. They are arranged through a non-profit corporation called A Child Is Missing, which will provide that service free of charge on behalf of any law enforcement agency throughout the country. We use such a service for several other situations, such as rapid community notification of any event such as a chemical spill, when people would have to be evacuated; that service has no cost, either.

As I said, we happen to have many internal resources, such as a geographic information system mapping department that maps crimes for any reason. That already exists and is budgeted for; we simply ask that department to do an additional duty for us. Unfortunately, I cannot give you a price tag.

**The Convener:** Your answer is helpful, because you showed how you use mainstream resources as well as focusing on predators.

Do you have evidence of predators or sex offenders going underground and disappearing?

**Sergeant Sileo:** Yes ma'am. Some of that happens but, to be honest, it is not frequent. Some people sort of disappear for a while, but they are eventually found. Some of that has to do with, for example, having not the greatest of communication networks throughout the governmental agencies in the United States. From time to time, we check on people whom we call absconders because they have left our area and we are not sure where they are. If our deputy goes out and checks on someone and they are not at the location at which they are listed, although they

were there two weeks ago, we must figure out where they have gone. Eventually, we end up finding some of those people. I have found a few in state penitentiaries in our western states—they have been picked up because they have moved out there and not registered. Sometimes, a bit of a communication gap exists.

As for anybody going completely underground and disappearing, that has happened. When we speak to people in the neighbourhoods of those offenders, the rumour will be that many of them have left the area. We are in south Florida; many people leave the area to return to their native countries—they go to islands around the Caribbean and to central America, for example. I am sure that some people are hiding out in the United States, but that happens fairly infrequently.

You asked about displacement from our area to others. That happens, but it is fairly infrequent. Most of our sex offenders know what the laws are: they know that people know they are here and they simply stay put.

**The Convener:** I hesitate to ask you to put a percentage figure on the problem, but we want to get an idea of its scale. You spoke about difficulties that arise when offenders move from state to state and you said that there is some displacement, although it is infrequent. Can you give us any idea of the frequency with which that happens?

**Mary Coffee:** I can answer the question, unless Ed Sileo has statistics of which I am not aware.

**Sergeant Sileo:** I defer to Mary Coffee. She handles the registry for the state, so she knows the numbers better than I do.

**Mary Coffee:** Close to five years ago, there was a lot of media coverage of the state of California, which has gone back further in time than any other state to gather information on and identify people who are sex offenders and to require them to register—I believe that it goes back to at least 1947. Because it has gone back so far and is such a large state, it has always had the largest number of individuals who require registration. There was a media blitz in which it was claimed that the state had misplaced up to 33,000 offenders, in large part because at the time many offenders did not know that they were required to register.

Because of the media inquiries at that time, Florida investigated how many of its offenders were missing. We discovered that the figure was about 5 per cent of the total. Since then, there has been a steady decrease in the figure. One reason for that is that our laws have been strengthened. Although they are still relatively new—about a decade old—there has been more investment and activity at state and local levels. The agencies from which the committee is taking evidence today



have a long history of involvement with sex offenders. Not all law enforcement agencies have that history, but today there is no agency that is not active on sex offender issues, because of the notoriety of several high-profile cases.

Currently the figure for known absconders is 2.8 per cent. By known absconders, I mean offenders whose location we know we do not know. Regardless of the frequency of checking by hard-working men and women at local law enforcement agencies, it is always possible that we only think that someone is where they have said they are. They may have been there when we last checked but are no longer there. There is always an unknown quantity on which we cannot put our finger. However, we know that we do not know where 2.8 per cent of the total population of 39,000 are.

The figure has gone down a great deal because last year, Florida's Jessica Lunsford Act, which strengthened sex offender laws in several areas, gave our department five analysts specifically to look for absconders, to assist local law enforcement agencies to identify who and where they are, and to provide courtroom testimony and documentation to ensure that they are prosecuted for failing to abide by the registration laws. In addition, there have been sweeps and operations at local and state level to identify where those folks are and to ensure that they are registered or prosecuted, as appropriate. Those efforts have brought the numbers down. I do not think that all states have had that luxury, because the necessary resources have not been assigned officially. Does that help?

**The Convener:** It helps enormously.

**Mr Kenny MacAskill (Lothians) (SNP):** I am wondering about predators who are released from penitentiaries. Are there difficulties in finding suitable accommodation for them? Do you give directions to them? For example, do you tell them where they can and cannot stay? Is it easy for them to obtain accommodation on the open market, whether in a caravan or trailer or in a house or flat?

17:45

**Mary Coffee:** That has been a hot-topic question here over the past year. We maintain a register of information and assist law enforcement, but we do not supervise the individuals in any way. However, our counterparts at Florida Department of Corrections have that role in relation to those who are released and still have probationary time to serve. I am sorry that we do not have anyone here to speak specifically about that. I can tell you anecdotally some of the things that that department has told us.

Although there is no restriction on where someone can live under the state laws for registration, there are restrictions on where certain sexual offenders may live that are based on their supervision, if they are on probation. There is a separate law that says that individuals who have committed certain specified offences on or after a specified date cannot live within a certain number of feet of a school, a day care centre, a park or a playground. That law is relatively new, and there is a question about whether it is constitutional. The individuals will have the same restrictions placed on them while they are on supervision; we have yet to see one who is free and has finished with all their sanctions challenge it. We are waiting to see what will happen.

In addition, several cities and counties have in the past year passed various ordinances in relation to where individuals live. Those are all based on sex offences, although some might be based on whether the person has to register and others may be based on particular offences of which the person may have been convicted. It varies greatly who is involved, but there has been a mushrooming of such residency restrictions throughout the state. Ed Sileo may be able to speak about that—there are some down in the south Florida area.

There has been a great deal of concern about whether sex offenders have a place to live. In some areas—especially affluent areas—rather broad residency restrictions have been passed so that, essentially, an offender would have to be a millionaire to live in those communities and live far enough away from the places where sex offenders are not allowed to live. It is a concern that has come up, and there are legal concerns about constitutionality as well as placement concerns.

There has recently also been concern about offenders being able to find affordable housing only in particular locations. Often, offenders share apartments or mobile homes—they live in the same place because it is the only place available to them that they can afford. That is particularly the case for those who are released from incarceration. Some communities are now saying that they do not like the idea of all those sex offenders living together because they perceive an enhanced risk in that. Although there is currently no legislation to address that, the issue has of late been popping up in the media.

I do not know whether that answers your question. Finding suitable accommodation for released sexual offenders is certainly a concern here. Ed—do you have anything to add to that?

**Sergeant Sileo:** I do not have much to add. Mary Coffee was correct in everything that she said.

Many of our municipalities have enacted local ordinances that prevent sexual offenders from living within, say, 2,500ft of a school or day-care centre, but some of those ordinances are now being challenged in court. The enforcement action takes place through the city attorney because they are city ordinances rather than state laws. Our sheriff's office does not take a position either way on whether the cities should be enacting such ordinances—they are sovereign cities that do as they please.

However, I have been dealing with the situation for the past eight or nine years and, in my opinion, a few more feet here or there would not make much difference to whether a child stays safe. It is more about the vigilance and education of the community and about ensuring that local law enforcement is doing what it is supposed to be doing.

The committee's question paper asked about homeless people. It is not a crime to be homeless—at least not in Florida—so such folks are allowed to register, even if they register a street address where they live in an alleyway. I do not believe that the restrictions from the state hinder where anybody may live, aside from, as Mary Coffee said, certain sex offenders who are on certain types of probation, which is decided by a sentencing court. There is no restriction at state level, but some cities are enacting local ordinances to make further restrictions.

**Mr MacAskill:** This is a question for Tom Breedlove and Ed Sileo. Do you believe that the system saves police resources or are these individuals so manipulative and devious that you cannot trust them anyway? Does public notification assist in any way, or does it simply satisfy the public desire to be forewarned? Does it help you to monitor sex offenders?

**Sergeant Sileo:** I believe that it greatly enhances what we do. An educated public is better for us. Believe me, we have little watchdogs in every neighbourhood—I am sure that you have them in your neighbourhoods, too. They know who the folks are and they make sure that they get the word out to their neighbours. I am more concerned about those whom we do not know about than about the ones who are on our register—we keep close tabs on them. We do not have a high recidivism rate, particularly in my county. I cannot speak for the other 66 counties in Florida, but in Broward County, the recidivism rate is incredibly low. As far as vigilantism goes, in my eight or nine years I know of one incident of a rock being thrown through a window, but I know of no other such action whatever.

Community education and notification are vital. Once the community knows what is going on, people are not left in the dark and they feel a bit

more—I hate to use the word—cosy. They understand that these folks are in their neighbourhood and they do not have such a bleak outlook on why they are there.

**The Convener:** That is interesting.

**John Home Robertson:** Thank you for that helpful reply on recidivism. Are the laws in Florida having a deterrent effect on the overall number of sex offences in Florida?

**Sergeant Sileo:** Perhaps Mary Coffee could answer that question better. However, I will briefly give you my opinion. I think that the laws have reduced sex offences. I cannot give you hard numbers but, to my mind, the recidivism rate is much lower than it was in the past, so in that respect the number of new sex offences has been reduced. With any crime, there will always be new offences carried out by the new and upcoming generation, in this case by people who have not previously been designated as sex offenders or predators. I do not believe that that problem will go away. However, on the basis of Mary Coffee's numbers, I can tell you that in approximately four years the numbers across the state have risen by about 3,000 or so. Mary can probably give you better figures but, for a state that is as large as Florida, I do not think that that is a horribly high number. Of course, I do not like any such numbers, but they seem to indicate that the number of sex offences has reduced overall, at least on the recidivism side.

**The Convener:** Does Mary Coffee want to comment on the statistics?

**Mary Coffee:** Yes—although I am afraid that I do not have any firm statistical information to offer you. We know that the number of offences has gone down. To try to apply direct causality to the registry would get me in a lot of hot water very quickly, because we cannot prove it.

I can tell you anecdotally that, early on in the days of registration, one of our larger counties—Hillsborough County—did some tracking and found that there had been a 30 per cent reduction in sex offences after registration started. However, there are many variables and unfortunately we do not have any studies to offer to you, or to ourselves: I would like to have studies in my pocket when I talk with our legislators.

There are a lot of additional factors. As Ed Sileo pointed out, awareness is key. Specific language in the registration laws tells courts that they may not adjust the registration requirements. Essentially, if a person is convicted of one of the qualifying offences, they must register—there is no room for wiggling. However, that does not take into account the fact that, now that there are registration laws, bargaining about what offence a

person is convicted of may happen prior to conviction.

That links to a question that you sent to me ahead of the meeting. Again I am sorry that I do not have statistics. A person may be arrested for lewd exposure in front of a minor, which is a registrable offence, but because of the prosecuting state attorney's discretion, the evidence that is available to the judge or the strength of witness testimony, the offence may be pled down to a child-abuse offence for which the person is not required to register. On the flip-side, because of registry and the close public and media scrutiny of registering issues, there is a lot of pressure to prevent a court from allowing people to plead down or to prevent a state attorney from even considering allowing someone to plead down.

There are many mitigating factors. We know that offending has gone down, but we cannot attribute that directly to the fact that there is a registry. There are multiple reasons for that.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I want to follow the question that John Home Robertson asked about the offending rate, because I am not sure that I heard the answer correctly. Did you say that certain offences, for example child-abuse offences, do not require registration? Could you expand on that, or did I pick that up wrong?

**Mary Coffee:** No, you picked that up exactly right. As I said, we do not have a psychological risk assessment for registering, although Dr Harrison from our civil commitment programme might comment. Such an assessment is different from registering. I wanted her to talk about some of the treatment issues that were mentioned in the document that the committee sent to us ahead of the meeting.

There are specified lists in both the predator and offender statutes, and our law requires that if someone is convicted of certain offences, they must register. A lot of offences do not require registration, but any sexual-type offence does. A parent who was convicted of a general child-abuse offence that was not sexual would not be required to register.

**Jeremy Purvis:** That may be something that the committee could look into separately.

Do the courts set the period of registration, or is registration for life in some instances?

18:00

**Mary Coffee:** As the law stands today, registration is for life, with a few exceptions. The exceptions are based on such things as the age of the offender and the age of the victim at the time, for example in a case that we would classify as a

Romeo and Juliet offence or a statutory rape. If the offender has no prior convictions and their adjudication is withheld, and if they are not arrested for anything after their conviction, they may petition the court after 10 years from the beginning of their sanctions, and the court may review the case to determine whether or not the person still requires registration.

There are similar timeframes for other registrants, but because of the newness of the laws very few individuals have come off the list. The earliest point at which that could happen is after 10 years, as I have just described. There are also some cases that fall into a 20-year group, and others that fall into a 30-year group. All that is based on the fact that the federal law would allow the person to be released from registration requirements, and many of those laws require a lifetime's registration in any case.

**Jeremy Purvis:** I would like to ask about some of the practical elements of maintaining the website and the register. Tom Breedlove outlined some of the monitoring procedures, which might be done monthly or more frequently, I presume at the discretion of the local sheriff. Is that information from each county then fed through to you at the Florida Department of Law Enforcement because you are responsible for maintaining the register? I think you said that there are 30,000 entries on the central register website. If there is monthly checking of the residency of a predator or an offender, is that information fed through to the central state-wide register from every county once the check is made?

**Mary Coffee:** Typically it is, but not every agency checks the offenders in its jurisdiction so frequently. The law currently requires two forms of monitoring. The first is address verification, which occurs at least annually for offenders and at least quarterly for predators. That information is gathered electronically. It is a detailed process—I will go into it if you want—that involves our working in conjunction with law enforcement.

Secondly, the law also requires that each registrant, whether predator or offender, report in person to a sheriff's office anywhere in the state once during the month of their birth and once in the sixth months thereafter: they are required to report in person twice a year to verify the information that we have on file with the central registry. They also have to sign to show that they acknowledge the requirements on them under the registration laws. At minimum, we will have no fewer than six contacts with predators, through address verification and re-registration, and we will have no fewer than three contacts with offenders, through the same two processes.

The Florida Department of Law Enforcement has direct electronic access to the database, and

agencies can report as many contacts as they have with each offender as frequently as they choose. Many of our larger law enforcement agencies have databases for their jurisdictions, and we are now working on a pilot programme to streamline the process even more by ensuring that once an entry is made in such a database, the information will be transferred electronically directly to the central registry, so that it does not have to be entered twice.

**John Home Robertson:** Could Tom Breedlove or Ed Sileo say a little about the right that law enforcement officers have to access the accommodation of registered sex offenders, to monitor their behaviour, their actions, their computer equipment, and so on?

**Detective Breedlove:** Are you talking about gaining access to an offender's house?

**John Home Robertson:** Yes.

**Detective Breedlove:** We go to an offender's house every 30 or 90 days. We knock on their door to verify that they still live there. If a family member answers, we ask to speak to the offender, but we never require to enter the house. Offenders who are not violating or trying to hide anything usually invite us in because they have got to know the deputy or detective who makes contact with them. If we gain entry to the house, that is fine, but if we see the offender mowing the yard, taking the garbage out or unloading groceries from the car into the house, those are considered to be positive checks to verify the offender's address. We try very hard to make face-to-face contact so that we can talk to them and see how things are going with them—for example, we want to know whether they have developed a bad attitude towards law enforcement because that could be a safety issue for us. However, we do not require admittance into the residence as a positive check.

**The Convener:** I ask Ed Sileo whether the situation is the same in Fort Lauderdale.

**Sergeant Sileo:** Yes. Our law prohibits us from making an unreasonable search of a person's home. As Tom Breedlove said, we do not require access to an offender's home or anything like that, although we are invited in many times.

The probation and parole folks have administrative rights to go in and search the homes of offenders who are on probation and parole, but it is not the same on the law enforcement side. If certain sanctions are placed on such offenders by the state or the sentencing court that fall under the jurisdiction of Florida Department of Corrections, probation officers have the right to enter that person's home whether they like it or not, but that does not include people from the Florida Department of Law Enforcement—we do not have that right to enter. Sometimes we go

along with probation and parole officers for their safety, but our access is fairly restricted.

**The Convener:** I am curious about what you have said and would like to explore it further. It has been suggested to us, certainly in relation to people who are in the high-risk category—I think you call them predators—that it would be useful for the police here to have the power to enter their homes. If you had the chance to write the law in your state, would you include such a power for yourselves?

**Sergeant Sileo:** I do not know; I have never thought about it in that context. To be honest with you, people's constitutional rights are very near and dear to my heart. However, from a law enforcement perspective, if someone had committed a crime against a child, it would be a useful tool to have the ability to enter their home simply to find evidence of something that might set off bells and whistles in our minds that the person had contact with children when they were not supposed to. As to whether something like that would ever pass into legislation in the USA, I am not sure.

**The Convener:** Fascinating.

**Jeremy Purvis:** It is a curious irony that although we do not publish the sex offenders register on the web, we passed a law this year that will allow the police access to people's homes. Our situation is the reverse of yours. On that constitutional point, if you do not have access to homes but are able to publish information about people on the internet and there has been no demonstrable change in the child sex offences trend, as far as I can pick up, have not questions been asked about the efficacy of maintaining such a large list that could potentially raise issues about privacy?

**The Convener:** In fairness, that is probably a question for Mary Coffee rather than for Ed Sileo. Did you catch that, Mary?

**Mary Coffee:** I did. I was paying attention that time. The bottom-line answer is no. There are probably several political reasons for that—it might be helpful for you to understand how the registry laws were developed. Originally, the registries were meant to be a tool for law enforcement. That stemmed from the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. A child was abducted and the law enforcement department found out only later that a known sex offender who fitted the profile for the abduction lived close by. The department was unaware of that at the time. The act was passed to allow the department to use a list of known sex offenders in the community as an investigative tool.

After that, there were several other cases. Megan's law came about because a sex offender who lived across the street from Megan abducted, assaulted and ultimately murdered her. Although the law enforcement department might have known of his existence, the public did not, so there was an outcry. The public said that they wanted the information on known sex offenders so that they could take their own precautions to protect themselves and their children. Given that background, the question about whether we should maintain such a list does not crop up often. As I am sure is the case in Scotland, sympathy for people who sexually offend, particularly against children, is not in great supply.

**The Convener:** I think you will find that that is the case the world over.

**Mary Coffee:** Yes.

This point is becoming less sharp because other states are expanding their registries as well, but in Florida we have broad public records laws regarding criminals in general. With very few exceptions, all criminal histories are available to the public. That is one reason why Florida was a forerunner in registration. Information about individuals' criminal histories, if not about their residences, is already available to the public for the asking. It is just that the method through which they receive it is now a little more streamlined.

**Jeremy Purvis:** I was interested to hear that you have no risk assessment process. Would you be able to say, if asked, how many of the 39,000 offenders are what we would call high-risk offenders—that is, those who have been assessed as likely to reoffend and therefore require more monitoring and more stringent conditions? Do you have an equivalent process for identifying high-risk offenders or is that done in the courts beforehand?

**Mary Coffee:** I have two answers. First, for registration purposes, no risk assessment is done beyond consideration of the individual's frequency of convictions, or recidivist history, which determines their level. Both in Florida and nationally, experts in the field say that with risk assessment they can do only so much. If we designate individuals administratively, that allows citizens and the law enforcement department to know about them without the known risk of not being able to determine whether an individual has a high risk of reoffending.

However, in Florida we also have the civil commitment process, which is a secondary process that is separate from registration. That is why we have Dr Harrison with us. A great deal of work is done on examining an individual's psychological and criminal history backgrounds. Dr Harrison can talk to you about what that process involves and what is found when

individuals' backgrounds are investigated. The process begins with study of a person's criminal history, then moves from there to consideration of psychological and other risk factors.

18:15

**The Convener:** You have pre-empted my next question. We would love to hear from Dr Harrison.

**Dr Harrison:** I will start by saying that the civil commitment process is extremely involved. It has produced many strong reactions because people tend to assume that individuals who have already served time in a correctional setting are again serving time for a previous crime when that is not the case.

The state determined that it was extremely important for persons who were approaching release from correctional custody to be assessed for determination of whether their return to the community would pose a public safety hazard. For those who had been incarcerated but had not received treatment and in respect of whom there was still a risk that they would return to the community and commit sexual offences in the future, the idea was developed that they should be civilly committed so that they could participate in treatment prior to returning to the community.

In many respects, our process is twofold. Pursuant to state statute, Florida Department of Children and Families is responsible for running the sexually violent predator programme and the civil commitment facility. On average, we receive about 3,000 to 4,000 referrals a year from three of our state institutes: Florida Department of Corrections, Florida Department of Children and Families mental health treatment facilities, and Florida Department of Juvenile Justice.

When a referral comes to our office, several considerations are crucial in determining whether we should recommend to the state prosecuting attorney that a petition be filed to the effect that we think that the person should not be released. We examine the offender's general criminal history, especially whether it includes violence against a person. We take specific account of the offender's history of sexual offending. We consider whether there is a long-standing pattern of offences and note the gender and age of the victims and the sort of injuries that they sustained during the assault. If the person has been on probationary sanctions on previous occasions, we assess their record. We look at whether they have spent a significant amount of time in the community without violating their probationary conditions or reoffending, or whether they have had difficulty following clearly articulated rules of law.

A further consideration is whether the person has a history of participation in sex-offender-

specific treatment. We will often be informed that they have repeatedly turned down the option of participating in such treatment. Another factor is whether the person holds himself accountable for the offence or denies it. Those are some of the issues that we take into account when we make the initial determination on whether the person may be at increased risk of committing additional offences.

That determination is one of our primary missions. The second is the operation and oversight of the civil commitment facility, about which I could give more information, if you would like.

**The Convener:** I am conscious of the time, but we would be interested to find out a bit more. Perhaps you could provide us with some brief information by e-mail.

**Dr Harrison:** I could do that. May I have your e-mail address?

**The Convener:** One of our clerks will e-mail you. We are interested in evidence on whether your treatment programmes work and we would like information about how civil commitment works. Someone will be in touch with you and the committee will take into account all the evidence with which you provide us.

**Dr Harrison:** We can co-ordinate that through Mary Coffee.

**The Convener:** That would be excellent. I thank Mary Coffee for volunteering to be the postbox. As the committee has no more questions, it remains only for me to thank you all very much for an extremely interesting meeting. I thank Mary Coffee, Annamarie Whatley—from whom we did not hear—Alan Moses, Jeremy Gordon, Tanya Weldon, Dr Teion Harrison, Detective Tom Breedlove and Sergeant Ed Sileo. You have all been most helpful to our inquiries.

I call a short break to allow us to change states.

18:20

*Meeting suspended.*

18:27

*On resuming—*

**The Convener:** I thank Charles McDonald for joining us. I understand that Bree Cunningham is with him.

I am the convener of the Justice 2 Sub-Committee. My colleagues are Kenny MacAskill, John Home Robertson and Jeremy Purvis.

I hope that somebody has explained to you what the committee is doing. Essentially, we are

carrying out a short parliamentary inquiry into child sex offenders. We are particularly interested in registration and notification.

The committee has just spoken to your colleagues in Florida. We thought that we would come hotfoot to you to hear your views, which will be enormously helpful for us in determining the way forward in Scotland.

We sent you a list of questions. Rather than going through them one at a time, I would be grateful if you would outline to us what happens in your state and how notification and registration happen there.

**Charles McDonald (Massachusetts Sex Offender Registry Board):** That is a terrific idea, ladies and gentlemen. Bree Cunningham and I talked about the questions beforehand. Given their breadth, it is clear that you have a perception that we do more than other states or countries do.

The Massachusetts Sex Offender Registry Board is responsible for registering sex offenders. We can classify sex offenders only when we have registered them; information is then disseminated to the public. We have three levels of sex offenders: level 1 offenders are those with a low risk of reoffending; level 2 offenders are those with a moderate risk of reoffending; and level 3 offenders are those with a high risk of reoffending. All are a danger to the community.

18:30

I will give you an example of a case that might come to us—we will call the individual Bob Jones. Bob registers with us by completing a short form that asks for his name and address. In response, we mail him what we call a 30-day letter—Bree Cunningham will interrupt me any time now, because she does that every day and knows the nuts and bolts of the system. In the letter, we give Bob an opportunity to submit information that he wants us to consider when we classify him. When Bob has sent us the information, or after 30 days, we proceed to the recommended classification process.

I will step back a minute, because I wanted to make the point that we do not supervise sex offenders in the community—the Massachusetts Sex Offender Registry Board has no supervisory function. I noted from the committee's e-mails that what you call licensing corresponds to what we call parole and probation, through which sex offenders are supervised in the community. A judge or the parole board might impose conditions on the sex offender as part of his sentence. For example, the sex offender might be told that he cannot be with someone under 16 or have access to the internet.

I will get back to the classification process. We come up with a recommended classification for the sex offender. We must follow due process because of court rulings that were handed down on the basis of the Massachusetts constitution—the Massachusetts declaration of rights—which predates our United States constitution and is very protective of individual rights. I will tell you about the history of our law later, but first we will stick with the example of Mr Jones.

A staff member assembles a file on Mr Jones, which includes the information that he sent us and information from police departments, ports, and probation and parole officers. A victim impact statement might also be gathered. To ensure that the same approach is taken to all sex offenders, we use a numerical system of evaluating information. Ultimately, staff put forward to the seven-member sex offender registry board a range of recommendations. For example, they might recommend that Mr Jones is regarded as presenting a low-to-moderate or moderate-to-high risk. A member of the board takes into account the information and determines the recommended classification. If staff say that the risk presented by Mr Jones is low to moderate, the board member might decide that there is a moderate risk of reoffending. Mr Jones then receives a letter from the board, which tells him that his recommended classification level is moderate risk of reoffending and moderate degree of danger.

When Mr Jones gets the letter, he must decide whether to accept the classification. If he does, the classification process ends. We instruct him to register with the local police department in the town or city where he lives. He must register annually for 20 years or throughout his life, depending on the severity of the crime that he committed.

Are you following me so far?

**The Convener:** We are, indeed.

**Charles McDonald:** In practice, the classification process can take three months.

Mr Jones might disagree with the classification and think that the risk of his reoffending is low, not moderate. That is important, because if there is low risk of someone reoffending, information on him is not publicly accessible or available. He must still register annually, but information on him is available only to law enforcement agencies that have access to our database through our criminal record information process.

Let us say that Mr Jones disagrees with his recommended classification. Essentially, he is asking us for a hearing. It is not a hearing in a court of law, in which the standard would be proof beyond reasonable doubt because his liberty would be at risk. It is an administrative law hearing

that is akin to the processes used by the Massachusetts Registry of Motor Vehicles. We are administrators and the rules of administrative law apply. I do not want to go into the matter in too much detail but, in addition to board members, we employ hearing examiners, who conduct the hearings.

A sex offender who is indigent can request the appointment of an attorney to represent him at a hearing. There can also be interrogatories, filings and requests for information—discovery, if you will—prior to the hearing. The hearing takes place on the date that has been agreed. It is not a public or court hearing; it is an administrative law hearing that takes place in private. The sex offender or his attorney can cross-examine any witnesses against him, submit evidence and move motions to have evidence excluded; it can be a somewhat complicated process. At the end of the hearing, there is a period during which the hearing examiner draws up a final classification document for the offender. The recommendation has no bearing on the hearing examiner; he is not bound to classify an individual as someone who poses a moderate risk of reoffending, even if that was the recommended classification. Often, the hearing examiner lowers the classification from moderate risk of reoffending to low or from high risk of reoffending to moderate. He can also go in the other direction, but that happens far less often.

At the end of the hearing, the hearing examiner writes up the decision. He makes findings of fact and rulings of law with regard to the factors that we must consider. There are about 25 factors, which are laid out on our website. I will not bore the committee by going through our website, but they are factors that one would normally consider when determining whether someone is a danger to the community. We ask, for example, whether the sex offender was an adult committing a crime against a child, whether violence was used and whether the offender has drug and alcohol issues. It is very important to consider whether he has undergone sex offender treatment. We strongly support such treatment, as the relapse prevention process makes offenders less likely to reoffend. Obviously, we can never say that someone is cured and will never reoffend but, through relapse prevention treatment, which generally involves group therapy, they can learn to identify the triggers for their criminal behaviour and to keep themselves from those triggers.

Say that the hearing examiner determines that Mr Jones is a level 2 offender, which means that he is at moderate risk of reoffending. We notify the sex offender that that is his final classification and direct him to go to his local police department, if he lives in the state of Massachusetts or, if he works in the state but lives in another state, to the police department in the community where he

works. He then registers, as I said, either for 20 years or for life, depending on the severity of the crime. He has to reregister annually, during his birth month, at the local police department.

In your thinking on the issue, you must understand that our partners in the process are all the police departments in the state of Massachusetts, of which there are about 350. They have certain obligations under the law, just as we do, at that point in Mr Jones's classification. With a level 2 sex offender, the information is not disseminated publicly by proactive notices on our internet website or posters in public buildings, but it is available in the police department in the area in which the sex offender lives, works or attends college, university or school, to people who request it at the police department. An individual who requests the information must, by law, state that it is for himself or herself or for his or her personal safety or the safety of someone such as a child whom they supervise or oversee. They must also take note that they cannot use the information to commit a crime against the sex offender.

I will now describe the process for a level 3 offender, so that members understand the difference, which is in the manner in which the information is disseminated. If Mr Jones were a level 3 offender, his information would be on our website, which anyone can see. Right now, we have about 1,200 or 1,300 level 3 sex offenders on our website. On the website, members can get an idea of what the posters look like and what information is publicly available. The information is posted in the city or town where the sex offender lives or works. It must also be provided to anyone who may come in contact with that sex offender, which means that it could go to a local school department or day care centre. However, the local school department will not necessarily put the poster out in the hallway for children to see. Considerable leeway is allowed from one town to another and from one school department to another to determine how best to disseminate the information.

The information on level 3 sex offenders is on the internet and on posters in the communities where they live, work or attend school. For level 2 offenders, people have to ask for the information. For level 1 offenders, no public dissemination of the information takes place. I will complicate matters a little by mentioning one additional step. After we have finally classified a sex offender—when he has had his hearing and the hearing examiner has determined his final classification—the offender has the right under Massachusetts law to appeal the classification in the courts. To boil down the matter, he has to show that the Massachusetts Sex Offender Registry Board was arbitrary and capricious in the manner in which we

classified him or that we otherwise violated his constitutional rights or some other law by classifying him at that level.

As members will realise, an appeal can stretch out the classification process considerably, which is why the legislature—the Massachusetts General Court—has in its wisdom just given us the power to begin classifying sex offenders before they are released from incarceration. The intent is that, when a sex offender hits the street, everyone will know, if he is a level 2 or level 3, although they will not know if he is a level 1. How does that sound?

18:45

**The Convener:** It sounds tremendous. What you have given us is a comprehensive and clear outline of each separate stage. I will invite committee members to question you in a second. First, I would like to know that I have captured this correctly. Someone's level 1 status is not made public; an individual needs to apply for the information about someone's level 2 status; and you make the information about someone's level 3 status widely available. In percentage terms, how many sex offenders are in each category? I would like an idea of the resource implications that you face.

**Charles McDonald:** As of 31 October, we had a total of 8,768 sex offenders in the community. As of that time, there were 2,468 level 1 offenders; 5,040 level 2 offenders; and 1,260 level 3 offenders. The number goes up and down; it is a dynamic figure that changes every day—sometimes many times during the day—because sex offenders have the right to appeal. Also, a sex offender's obligation to register could expire because their crime was not as serious as other sex offences.

Level 2 offenders make up the largest group of offenders and level 3 offenders make up the smallest group of the three. A lot of litigation and activity surrounds level 3 offenders, whereas there is less surrounding level 2 offenders and zero surrounding level 1 offenders—although, believe it or not, from time to time, sex offenders fight not to be on the sex offender registry.

We are a small agency with a budget of about \$4 million and about 40 employees. There are seven full-time board members, who are appointed for six-year terms by the Governor of the state of Massachusetts. The chairman and executive director is one of those seven members, but he or she serves coterminously with the Governor. So, a new Governor coming in would likely appoint either the person in the post or some other individual who reflected his or her view of how they wanted the sex offender registry to operate from an administrative standpoint.



**The Convener:** That is interesting.

**Jeremy Purvis:** I have a question that you might not feel qualified to answer. Why do you think that there is a difference in the approach of some states? We have heard from officials in Florida, where everything is published. They do not have a classification system; they just publish everything on the web. You focus on those who are in a higher risk category, but why not publish everything? There may be some offenders among the 2,468 people in the level 1 category whose risk will change or whose status you have got wrong, so why not publish everything?

**Charles McDonald:** That is a very good question. It is down to the way in which the law evolved. I will take you on a brief trip through the litigation in Massachusetts—at both federal and state levels—to show the way in which our sex offender registry law has played out.

In 1996, Massachusetts was the last state in the country to establish a state sex offender registry. Massachusetts was under pressure from the federal Government, which had passed a federal law that required states to establish sex offender registries. If we did not set up a registry, the federal Government would sequester money—in other words, it would not give us money that we wanted. In October 1996, the Governor was successful in getting the legislature to pass the first sex offender registry law in Massachusetts.

There were tremendous constitutional problems with the 1996 law. There was a tremendous amount of litigation by individual sex offenders and by groups of offenders, who alleged that their constitutional rights had been violated and wanted a court order to stay any dissemination of information about them. The courts said that individuals could not be classified in the way envisaged by the 1996 law. By 1998, the sex offender registry had, in effect, been shut down by a combination of factors. The state's highest court, the Supreme Judicial Court of Massachusetts, required that we must provide due process to sex offenders. In other words, sex offenders must be given a chance to challenge the classification. No such opportunity existed under the 1996 law.

There were also changes at a federal level. The Jacob Wetterling act required dissemination of information about sex offenders. In 1999, the Massachusetts legislature passed a new sex offender registry law, under which information on a level 1 sex offender would no longer be publicly available or accessible. The legislature also set up the seven-member, full-time board. The registry would be an agency with a budget and full-time staff, because it was realised that if we were to follow the due process requirements of the Supreme Judicial Court, we would need a pretty

big operation. We needed a process-oriented approach to the classification of sex offenders.

Under the 1996 law, everything was public. People were supposed to be able to get information by going into their local police department—committee members heard about a similar approach in Florida. Any police officer or close observer of the system would tell you that it was a mess and a disaster. The law provided for protocols, which were similar to the factors that we use under the 1999 law—the committee might ask me about them—but if the sex offence was against a child, the offender would automatically be classified as a level 3, high-risk sex offender who presented a high degree of danger. In 1998, the court said, "Under the Massachusetts constitution, you can't simply classify someone as a level 3 sex offender on the basis of the crime that they committed." The court said that we must take an individualised approach to classification, because every sex offender is different. The court said, "You can't classify someone on the basis of the degree of danger or risk of reoffending that they presented when they committed the crime, when they were convicted, when they went into prison or when they got out after serving time or got probation or parole. You have to consider the degree of danger and risk of reoffending that the individual presents right now." That is why we have the various levels. It all evolved from litigation that brought into play those constitutional rights in Massachusetts.

I am sure that you are aware that the United States Congress has passed the Adam Walsh Child Protection and Safety Act of 2006, which will impact on everything that Massachusetts and every other state does. That is going to play out in the future, but I am telling you how our law operates now.

**John Home Robertson:** That was an interesting account of the scope for litigation. Am I right in thinking that a rich sex offender who can afford to pay for a good attorney might find it easier to get their risk status downgraded than somebody who did not have their means?

**Charles McDonald:** The fact is that, by law, if a sex offender is indigent—we determine indigency—he is allowed to have an attorney appointed to represent him. You appear to be suggesting that if I have more money, I can hire a better attorney to represent me than the appointed attorney. I am not sure that that is the case. The hearing examiners work hard to tie the observations that they make on facts of the case and rulings of law to the factors to which I referred.

We have sex offenders who go pro se—they represent themselves—and get a recommended level 3 status lowered to a level 2 status or even a level 1 status on the basis of the facts that they

produce about dynamic issues. For example, they might say, "I've been on the street and I haven't reoffended in 12 years. That's a pretty strong indicator that I'm less at risk of reoffending and pose a lesser degree of danger. I haven't committed any violent crimes." If a sex offender has a history of committing violent crimes, that is a big indicator to us that we have a problem with that guy. He is automatically considered to have an aggravating circumstance because he has committed violent crime. The same would apply to someone who had committed a crime against an extra-vulnerable victim such as a child under 10, someone who was drunk or drugged, or someone over the age of 60.

**John Home Robertson:** We have heard from Florida, where the identities of everybody who is on the register are disclosed publicly. You have explained that disclosure is a much more restricted affair in Massachusetts. You might expect that to lead to some displacement of offenders from one state to another, where the regime is less harsh. Are you at all worried that sex offenders may be coming to Massachusetts from other states?

**Charles McDonald:** I do not think so. We might have seen that early on, back in 1996, when we were the only state without a sex offender registry. At that time, Governor Weld got a little bit tough with the legislature. "You're going to make Massachusetts a haven for perverts"—that is how he put it. The fact is that sex offenders are, as a class, very mobile. They move not only from location to location within a community, but from community to community and from state to state. As we all know, sex offenders do not want to be on the sex offender registry, so they do not make it easy for us to know where they are.

That brings us to the issue of compliance. We are not a law enforcement agency: we do not have badges, guns or any right of arrest. The Massachusetts state police uses its violent fugitive apprehension section to find sex offenders who are living here in non-compliance.

That is another aspect of how the system operates here. As you probably know, the United States Marshals Service has just conducted a major round-up of sex offenders who were in violation in various states throughout the country.

Did I answer your question?

19:00

**John Home Robertson:** Yes, thank you.

What percentage of your registered sex offenders are disappearing into the system or across your borders? We asked your colleagues in

Florida about that and it would be helpful to get a Massachusetts perspective.

**Charles McDonald:** As of 31 October—that magic date again—648 classified sex offenders were in violation. That means that they did not register, moved from one location to another within a community without registering their change of address with the police department, or just did not re-register annually with the police as they are required to do, so they are in non-compliance.

There is a neat little section for that on our website. If you want to do a search by county, you will notice that there is an option called "violators". If you click on that option, the search returns the posters of level 3 sex offenders who are in violation. I do not know how many we have who are in violation just now—the number goes up and down, I guess. Perhaps Bree Cunningham can help me.

**Bree Cunningham (Massachusetts Sex Offender Registry Board):** I would say that there are perhaps 50 to 100. The number is not particularly high.

**John Home Robertson:** How many of them do you expect to find?

**Charles McDonald:** That is the number of classified sex offenders who are in violation as of 31 October. How many we will find depends on local police, who are able to arrest sex offenders and bring them before the court on charges of failing to register. Often, from a practical standpoint, the police get the guy back into compliance, which the courts tend to favour. A sex offender might be arrested for failing to register but, if we looked at his criminal record later on, it would say that the charge was dismissed. The reason for that would not be that the arrest was a bad one or that he was not guilty of failing to register but that he was back in compliance—he was registered. We, the county police and the state police all work together to make that happen.

**Jeremy Purvis:** Has the figure of 50 to 100 of the highest-risk offenders in violation been fairly constant since the law came into effect?

**Charles McDonald:** No. It is dynamic. For instance, Boston police department has a phenomenally well-funded, electronically advanced system for running its sex offender registry, which is part of ours—it is simply part of the overall registry. It may determine on its own initiative to work with the local prosecutor—the local district attorney—and go out and round up 40 people. Bingo—if it goes after level 3 sex offenders and arrests 40 people, we lose 40 of the people who are in violation because they come back into compliance one way or another.

**Jeremy Purvis:** So there is no consistent approach to the policing of sex offenders who are in violation in each county. As you say, Boston may wish to have a crackdown, as happened throughout the whole United States, but other counties may not.

**Charles McDonald:** You must remember that the state police have statewide jurisdiction but, on a county level, the Boston police department has no jurisdiction outside the city of Boston.

I forgot to mention a point about the book-keeping process. In its wisdom, the legislature added the provision that a sex offender who is in violation can be arrested without a warrant. That is a big deal, because under state law it is necessary to apply to a court for a warrant to arrest somebody, unless there are other considerations. If a sex offender is in violation, the police do not need to get a warrant to arrest them for failing to register.

**Jeremy Purvis:** You said that the US Marshals carried out a national crackdown. Presumably, that was an attempt to identify and arrest violators who had moved from state to state. How many were rounded up, as it were?

**Charles McDonald:** About 1,300 or so, I think. Do you know, Bree?

**Bree Cunningham:** I am trying to remember. I think that it was about 1,200 or 1,300.

**Charles McDonald:** There is a national initiative by the US Marshals, who have federal, countrywide jurisdiction and more resources than anybody, including planes and fleets of cars. In many instances, federal law is more efficient in handling arrests. For example, someone who was arrested for carrying a weapon would not want to be tried in the federal court. They would hope to be tried in a state court under state law because federal law has strict minimum mandatory sentences for felons, particularly those in possession of guns. That is just an example. The US Marshals can do a lot more federally.

**Jeremy Purvis:** Massachusetts is the most recent state to establish a sex offenders register. What impact has that had on the trend of offending?

**Charles McDonald:** Bree Cunningham, our chairman and I saw that on the list of questions. I will give you an anecdote.

In 2004, our general counsel—our solicitor—argued before the state Supreme Judicial Court that we should be able to put information on sex offenders on our website. Obviously, we won, because you can see information about them on our website. During the arguments in court, the attorney for the sex offenders, who was trying to prevent us from publishing the information on our

website, argued that there was no proof or evidence that our doing so would dissuade people from committing sex offences against children or adults.

The seven judges, who come from completely different ideological backgrounds, all laughed and said, "That's ridiculous. It would take years for there to be any correlation between the existence of a sex offenders register and a reduction in crime." One of the judges said, "Of course, you could do any study you wanted, and depending on the parameters that you used, you could prove or disprove that the register had had an impact on crime."

**The Convener:** That is interesting.

**Mr MacAskill:** When someone is classified as a level 3 offender, are there any automatic consequences, such as monitoring, a right to treatment or restrictions on housing or on where they can go and what they can do? Are such things imposed automatically when someone is on the register, or are they left to parole or a licence?

**Charles McDonald:** The second part of your question answers the first part. If a sex offender is out on probation or parole, Bree Cunningham, I and others are certainly able to have greater oversight of the situation.

The legislature, the Governor and the Administration—in fact, everyone—are intent on ensuring that sex offenders receive more supervision. Under a law that has just been passed and is about to go into effect, if a level 2 or level 3 sex offender is convicted of failing to register, he will be put on lifetime parole. You will notice that I did not say "lifetime probation". That, I think, highlights an idiosyncrasy in Massachusetts. Parole is administered by a Governor-appointed board, which basically assesses a person's risk of reoffending and the degree of danger that they represent. The board can simply cut someone loose from prison, but if that person is on parole, they are subject to many conditions. For example, a child molester who is found hanging around a playground where children are playing can be yanked right off the street and incarcerated. Of course, after some time, they have the right to a hearing in order to be released. As you will see, the approach to supervision is now much more immediate and close up. Your question certainly touches on an issue that we are very much moving on.

**Jeremy Purvis:** I appreciate the point that has been made about the trend of offending, but the argument applies equally to those who are in favour of publicising these people even if a trend cannot be demonstrated. In any case, you should still be able to indicate how many offenders at each level on the register reoffended last year, for

example, and then compare that figure with the annual number of offences that were committed before the changes were introduced.

**Charles McDonald:** Whether a sex offender was classified at a particular level would not necessarily be attributable to our having—or not having—a sex offender registry. Too many other dynamic factors are involved.

**Jeremy Purvis:** But you are able to find out how many people on the registry database have reoffended.

**Charles McDonald:** I do not have that information.

**Jeremy Purvis:** Would information that an individual has committed a subsequent offence not come up on your registry database?

**Charles McDonald:** If he has committed a subsequent sex offence, it would be listed on the individual's poster.

**Jeremy Purvis:** And it would show up on the database.

**Charles McDonald:** I should explain that our looked-at period goes back to 1 August 1981. I am not trying to dodge your question, but you must understand that a person qualifies for inclusion on the Massachusetts sex offenders registry if, since 1 August 1981, they have been convicted of and incarcerated for, or put on probation or parole for, a qualifying crime.

I expect that you will now ask me to tell you how many sex offenders we have. The answer is about 15,000.

**Jeremy Purvis:** My next question is: how many of those have reoffended since 1981?

**Charles McDonald:** Again, I do not have that information. It is not one of our objectives or part of what we have to do to fulfil our obligations under the statute.

**Mr MacAskill:** With regard to the website, do you know how many hits you have had on it or how many requests have been made to the authorities to whom you disseminate information? Have you calculated the uptake of the information that you have made available?

19:15

**Charles McDonald:** We do not compile that information. However, we are part of a statewide information technology initiative, which informed us that, when the courts first allowed us to put level 3 sex offenders on the internet in August 2004, the site received so many hits that the system broke down.

As you might well find in Scotland if similar legislation is passed, every time there is a high-profile sexual assault case, the number of hits on our website and the number of inquiries made about level 2s and 3s by people in the community to local police departments rise. Every day, the website might receive a couple of thousand hits. However, if a bad sexual assault case comes to light and the media focus on it for two or more days in a row, the figures go up.

This is certainly a hot topic. Some television stations capitalise on sex offences and the sex offender registry. Indeed, there is almost a story a night on those matters.

**The Convener:** That is absolutely fascinating. You are right to say that it is a hot topic, but it probably has not reached that level of exposure in Scotland.

On behalf of the committee, I thank Charles McDonald and Bree Cunningham for such an interesting explanation of what goes on in their state. I am truly grateful for their evidence, which will help us to shape some of our recommendations.

I close the public part of this meeting.

19:17

*Meeting continued in private until 19:18.*

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