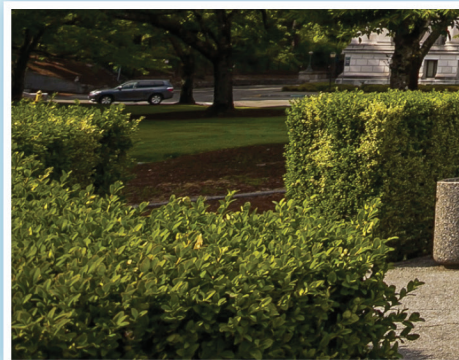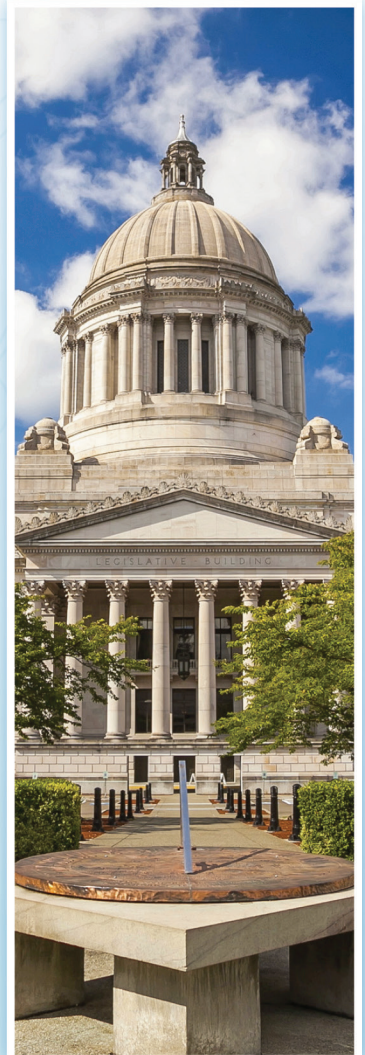# WASHINGTON STATE
Statistical Analysis Center
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Sex Offender Leveling in Washington and SORNA Tiering

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What this report is about

This report aims to show how the state would tier registered sex offenders in Washington, if the state chooses to incorporate a specific tiering system and seek compliance with the Adam Walsh Child Protection and Safety Act.

Introduction

Across the country, a series of violent attacks in the 1980s and 1990s led to the passage of several influential pieces of legislation. This included the Jacob Wetterling Act, Megan's Law, and the Pam Lychner Sex Offender Tracking and Identification Act, which all increased restrictions for convicted sex offenders. In partnership, these laws created the sex offender registry, began the practice of community notification, closed older loopholes, and created a national sex offender database. Even more importantly, these changes paved the way for our current sex offender legislation, the Adam Walsh Act.

The president signed this into law on July 27, 2006. Title 1 of the act introduced regulations for sex offender registration and notification procedures and is known as the Sex Offender Registration and Notification Act (SORNA). States have since been asked to comply with SORNA regulations, or risk the loss of federal funding.[1]

The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) provides states with guidelines for their sex offender policies and procedures to be in substantial compliance with SORNA. Compliance with SORNA is important because it indicates that a state is align with federal law. The leveling process is a significant indicator that must be met to be found in substantial compliance with SORNA. SORNA requires a three-level tiering system, where the state assigns offenders to a tier based on the seriousness of their offense. Tier 1 is considered low-risk, Tier 2 moderate-risk, and Tier 3 encompasses offenders who pose a significant threat to the community.

As of today, Washington has not reached substantial compliance with SORNA. Washington has chosen to assign sex offenders to one of three levels using an evidence-based risk assessment rather than crime of conviction. As it assigns levels, the state also considers dynamic risk factors and aggravating/mitigating circumstances. Studies have not found support for interventions rooted in personal experience, tradition or "common sense". Instead the literature supports interventions tested and supported by empirical study providing them the title of "evidence-based practices". When those in the field use evidence-based practicies, they can use intervnentions and processes

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[1] https://smart.ojp.gov/

based on what they already know cocerning the cause of the crime. They can also use knowledge about how to promote change in individuals who have commited crimes.[2]

Using a list of laws in the Revised Code of Washington (RCW) and their associated tiers, we can determine what an individual's SORNA tier would be, if Washington moves to that system. By analyzing the differences in Washington's sex offender population based on SORNA tiering and the current leveling system, we can more clearly understand the changes the state may see if the SORNA tiering were implemented.

SORNA's policies

SORNA was implemented in 2006 to create minimum standards that states could implement for sex offender policies and procedures. In addition to closing loopholes that previous policies left, SORNA created a nationwide baseline to track and monitor registered and convicted sex offenders, while simultaneously standardizing the process of sex offender management.[3]

While SORNA had a vast number of policies that needed to be implemented, the focus fell on the tiering system. SORNA requires a three-tier system where individuals are assigned to a tier based on the severity of their offense. Tier I includes misdemeanor sex offenses, while Tier II contains individuals convicted of less serious felony sex offenses. Tier III includes the most serious felony sex offenses.

An individual's tier is important because it also determines how long they are required to register. This classification process was created to provide the public with information on which sex offenders are the most dangerous, while also providing education and knowledge on how to use the national sex offender registry.[4]

Tier	Length of Registration	Frequency of In-Person Verification
Tier 1	15 years	Once a year
Tier 2	25 years	Every 6 months
Tier 3	Lifetime Registration	Every 90 days

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[2] https://www.uscourts.gov/sites/default/files/66_2_6_0.pdf

[3] Freeman NJ, Sandler JC. The Adam Walsh Act: A False Sense of Security or an Effective Public Policy Initiative? Criminal Justice Policy Review. 2010;21(1):31-49. doi:10.1177/0887403409338565

[4] Freeman NJ, Sandler JC. The Adam Walsh Act: A False Sense of Security or an Effective Public Policy Initiative? Criminal Justice Policy Review. 2010;21(1):31-49. doi:10.1177/0887403409338565

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After Congress passed the Adam Walsh Act, states were given from 2006 to 2009 to fully implement SORNA. Over the three-year implementation period, states could apply for grants from the SMART Office to help with the added costs of the new policies. It a state chose not to comply with SORNA, or couldn't comply, they would risk losing 10% of their Byrne Justice Assistance grant.[5] Many states made the decision not to comply with SORNA, because there was little evidence that the policies would improve public safety. In addition, many states struggled to justify SORNA's requirements based on monetary concerns. In Washington alone, the state estimated it would cost $10.5 million is to fund SORNA implementation for one year.[6] In contrast, Washington only suffered a loss of $353,800 for not complying with the new regulations. This suggests implementing SORNA's policies would not be cost effective, nor would they enhance public safety.[7]

As of May 2021, only 18 states, 136 tribes, and four territories had reached full compliance with SORNA, raising further concern implementation feasibility.[8] As we mentioned previously, the implementing SORNA requires the launch of a three-tier classification system. This places a burden on many states because they would be required to recreate their classification system — something that requires additional resources. For example, during Ohio's first year of full compliance, the government spent approximately $18.6 million to pay for implementation and other associated costs.[9]

Furthermore, when implementing SORNA, states are required to determine a way to "recapture" or retroactively apply tiering requirements to individuals who have already moved through the system. Numerous people have argued that this provision is unconstitutional, and some courts agree. In essence, states are required to provide a system where they re-register individuals who previously registered with the state, no longer have to register, but are now required to under SORNA's policies. In many cases, offenders are placed into a different tier — often higher — which leads to additional restrictions, and increased monitoring requirements.

There are several reasons why states may have failed to substantially implement SORNA. For many states, the cost is insurmountable, even with grant assistance. For Washington and others, the lack of supporting evidence for SORNA's approach is worrisome. To determine if SORNA compliance is a

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[5] Caldwell, M. F., Ziemke, M. H., & Vitacco, M. J. (2008). An examination of the Sex Offender Registration and Notification Act as applied to juveniles: Evaluating the ability to predict sexual recidivism. *Psychology, Public Policy, and Law, 14*(2), 89–114. https://doi.org/10.1037/a0013241

[6] Ewing, C. P. (2011). Justice Perverted: Sex Offender Law, Psychology, and Public Policy. New York: Oxford University Press

[7] https://sgc.wa.gov/sites/default/files/public/sopb/documents/12_Dec_09_SOPB_%20Full_Report.pdf

[8] https://smart.ojp.gov/sorna/substantially-implemented

[9] Ewing, C. P. (2011). Justice Perverted: Sex Offender Law, Psychology, and Public Policy. New York: Oxford University Press

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best practice for Washington, this report will examine the differences we could see in the leveling of Washington's sex offender population if we adopted the SORNA method.

Washington state's sex offender management history

The Community Notification Act

In March 1990, Washington passed the Community Notification Act in response to public outcry over the recidivism of a few convicted sex offenders in the late 1980s. This policy had two main objectives and was the first of its kind in the nation. By authorizing local law enforcement to provide the community with information on convicted sex offenders, the state hoped to enhance public safety. It also hoped to increase law enforcement's ability to investigate future crimes by providing them with convenient access to information on individuals convicted of sex crimes.[10]

Since its inception, the state has modified the Community Notification Act several times. In 1994, Washington determined the recommended length of time that local law enforcement has to notify the public of a sex offender living or working nearby. In 1995, Washington added registration for offenders convicted under federal jurisdiction and those found not guilty by reason of insanity. Two years later, in 1997, Washington adopted the use of an evidence-based risk assessment tool, while also adding registration requirements for those convicted of kidnapping and unlawful imprisonment.

Changes in 2002 brought forth the ability to have sex offender information available to the public through an online registry. In 2005, the state added school notifications. Washington began collecting DNA samples in 2008 for convicted sex offenders who were required to register. Finally, 2010 and 2011 saw several changes in policy specifics including registration timeframes and amending definitions. In addition to other changes we still have, the Community Notification Act also had several changes repealed.

Sex offender registration

As part of the Community Notification Act of 1990, Washington began using a registry to provide local law enforcement with 24/7 access to convicted sex offender information. With a goal to increase officers' ability to investigate new cases in a timely manner, sex offender registration grew into a tool for the public. Today, Washington has an online registry, available to the public at all times[11]. Citizens can search by name or location and see information on all Level 2 and Level 3

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[10] http://www.wsipp.wa.gov/ReportFile/1208/Wsipp_Community-Notification-A-Study-of-Offender-Characteristics-and-Recidivism_Full-Report.pdf

[11] https://sheriffalerts.com/cap_office_disclaimer.php?office=54528&fwd=aHR0cDovL3d3dy5jb21tdW5pdHlub3RpZmljYXRpb24uY29tL2NhcF9tYWluLnBocD9vZmZpY2U9NTQ1Mjg=

offenders. Those determined to be Level 1, or who committed their offense as a juvenile, are not published for the public to see.

Though the online registry does not include Level 1 offenders, the Washington State Supreme Court ruled in 2016 that all registered sex offenders (including those who are Level 1) are subject to public disclosure policies.[12]

Since its creation, registry requirements have continued to develop. Based on their level, individuals must complete in-person verification every 90 days for Level 3, every 6 months for Level 2, and once a year for Level 1. And the required information on the registry continues to grow. The public can now see an offender's picture, address, criminal history, and other personal identifying information[13]. As we mentioned earlier, Washington's registry system is based on actuarial risk assessments rather than the crime of conviction that SORNA requires.

Washington's use of the Static-99R Risk Assessment

To provide individuals with the most effective treatment intervention possible, it is important to determine their specific needs and their risk level. If the state doesn't do this correctly, individuals may be placed into treatment with a program that targets the wrong factors. This can lead to an ineffective use of resources and little to no impact on reducing recidivism or improving community safety.

Washington uses the Static-99R, an evidence-based actuarial risk assessment, before releasing convicted sex offenders from incarceration. The End of Sentence Review Committee, a multidisciplinary group of experts, reviews the individual's file material, administers the assessment, and recommends a notification level to local law enforcement. Upon an individual's release, they must report to the sheriff's office in their release county to complete their initial registration. That's when they individual will be assigned a final level of 1, 2, or 3.

While the ESRC provides a leveling recommendation, local law enforcement has the final authority in leveling decisions. Local law enforcement may use their best judgement, as well as aggravating and mitigating factors, when determining an individual's final level. If local law enforcement decides to depart from the ESRC recommendation, they must submit a form to the ESRC detailing their reasoning and the individual's final level. In general, it is uncommon for local law enforcement to depart from ESRC recommendations.

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[12] http://courts.mrsc.org/wacourtdecisions/185wn2d363slip.pdf
[13] https://app.leg.wa.gov/RCW/default.aspx?cite=9A.44.130

In addition, once an individual completes their initial registration, law enforcement enters it into the online database called Offender Watch. Individuals are then responsible to follow their supervision conditions. If an individual moves, begins school, work, or has any information changes, they should notify local law enforcement within three business days.

Literature review

An increasing amount of published literature shows that SORNA policies are ineffective at predicting who will recidivate, which is important when considering public safety. Ticknor[14] examined Ohio's use of the Static-99 when determining treatment for offenders. Unlike Washington, Ohio is in substantial compliance with SORNA, follows the SORNA tiers, but uses the Static-99 for treatment purposes. Ticknor compared Static-99 scores to an individual's SORNA tier, and then examined recidivism.

They found that Static-99 scores *did not* predict recidivism for sex offenders in Ohio, and neither did SORNA tiering. The majority of individuals who were categorized by the Static-99 as "high-risk" were placed in Tier 2 of SORNA. Approximately 75% of those found to be "low-risk" were assigned to tiers 2 or 3, and 85% of "high risk" individuals were placed in either tiers 1 or 2. Overall, Ticknor found that the Static-99 only had a slight advantage over SORNA tiering when predicting recidivism. Should Ohio determine tier based on risk assessment versus SORNA tiering, there would be a shift in tier distribution with the majority of offenders falling into Tiers 1 and 2.

A 2010 study by Freeman and Sandler examined the effectiveness of SORNA's tiering system to classify offenders by their likelihood to recidivate.[15] The study found an individual's tier was not significantly correlated with either sexual or non-sexual arrest, though several variables did correlate to the recidivism of adult male sex offenders. These items include offender age, criminal history, prior sexual history, and prior incarceration terms, all items found on many isk assessments such as the Static-99R. In addition, the authors found that Tier 1 offenders were arrested for a non-sexual offense 34% faster than Tier 2 offenders, and 33% faster than Tier 3 offenders. **This suggests that SORNA's policies incorrectly classify individuals according to the goals of SORNA.** In short, they argue that SORNA tiering is not an efficient or accurate way to predict recidivism. If SORNA is unable to identify high-risk offenders, then this could lead to an increase in recidivism.

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[14] Ticknor, B. (2014). *Sex Offender Policy and Practice: Comparing the SORNA Tier Classification System and Static-99 Risk Levels.* (Electronic Thesis or Dissertation). Retrieved from https://etd.ohiolink.edu/

[15] Freeman NJ, Sandler JC. The Adam Walsh Act: A False Sense of Security or an Effective Public Policy Initiative? Criminal Justice Policy Review. 2010;21(1):31-49. doi:10.1177/0887403409338565

Harris and colleagues[16] completed a study that evaluated the impact of SORNA registration on the distribution of individuals within states' sex offender registries. Specifically, they drew from the experiences of Ohio and Oklahoma, two of the first states to implement SORNA and its tiering system. Following the SORNA implementation, both states saw a large aggregate shift in tiers. For example, before implementation, Ohio had approximately 76% of its convicted sex offenders either as unregistered or in the lowest tier. After SORNA, 55% of adults and 46% of juvenile offenders were shifted to Tier 3. Even more worrisome, 59% of those placed in Tier 3 were previously unregistered and were counted due to SORNA's requirement to recapture all individuals.

Oklahoma saw a very similar change in levels. Approximately 71% of convicted sex offenders who were active registrants were placed into Tier 3, with 6% in Tier 2 and 23% in Tier 1. Out of the individuals who were listed as "completed" (meaning they had completed their registration period) 93% would have been classified as Tier 3. In sum, this study found that the policies required by SORNA placed most individuals in Tier 3, leading to increased workloads for local law enforcement and an increased demand for monetary resources. Furthermore, "widening the net" to capture all individuals in this way dilutes the effectiveness and makes it more difficult for the public to determine which individuals pose a higher risk to them. The authors also argue that placing so many individuals in Tier 3 — deeming them high-risk — contradicts all previous research. This research argues that individuals convicted of sex offenses have low recidivism rates when compared to other felony offenders without a sex offense history.

Finally, a multi-state evaluation completed by Zgoba and colleagues[17] aimed to answer whether or not SORNA tiering was an accurate representation of an individual's risk to reoffend. They found that only 5.2% of the individuals observed during the study engaged in some form of sexual recidivism during the 5-year, follow-up period. Additionally, that number only grew to 10.3% after the 10-year follow up. They say the highest recidivism rate in Tier 2 of SORNA, and higher SORNA tiers had lower odds of engaging in sexual recidivism. Overall, the authors found that a higher SORNA tier was unrelated to reoffending, though in one state there was a negative correlation (Florida).

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16 Harris AJ, Lobanov-Rostovsky C, Levenson JS. Widening the Net: The Effects of Transitioning to the Adam Walsh Act's Federally Mandated Sex Offender Classification System. Criminal Justice and Behavior. 2010;37(5):503-519. doi:10.1177/0093854810363889

17 http://www.aca.org/aca_prod_imis/Docs/Corrections%20Today/ResearchNotes/ResearchNotes_May2013.pdf

Present study

Data

We began by conducting a public records request for all currently registered sex offenders in Washington by county, and their assigned level in the community from the Washington State Patrol. We then worked with the Department of Corrections to obtain data on incarcerated individuals who ESRC reviewed between Jan. 1, 2016 and Dec. 31, 2019. DOC provided the Static-99R score that the ESRC used, the ESRC's recommended level for the community, and the RCWs that helped convict the individual. DOC then matched this data to the information received by WSP and removed identifiers (such as date of birth, names, etc.).

Once OFM received the final dataset a "SORNA tier" was assigned to each individual based on their convicted offense. All Failure to Register offenses were removed from the data, as well as any additional crimes that were not sex offenses. If an individual was convicted for multiple sex crimes, the highest tiered offense is the record that was kept for analysis.

The final data set included 1,799 unique individuals currently registered in the community. OFM will use the WSP level for the majority of analyses as this is considered an individual's official level.

Results

Table 1. Frequencies for SORNA Tier and WSP Level18

	N	%
SORNA Tier		
0	207	8.99
I	113	4.91
II	365	15.86
III	1,617	70.24
Total	2,302	100.00
WSP Level		
1	1,031	56.87
2	529	29.18
3	239	13.18
Total	1,799	100.00

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[18] The number of individuals with a SORNA tier is higher than those with a WSP level because some people were not assigned a level upon release to the community but would have still been assigned a SORNA tier.

Table 2. Frequency of Registered Individuals: SORNA vs. WSP Level

	Level 1	%	Level 2	%	Level 3	%	Total	%
Tier 0	127	12.4	37	7.0	20	8.4	**184**	**10.2**
Tier I	64	6.2	28	5.3	8	3.3	**100**	**5.6**
Tier II	180	17.4	78	14.7	41	17.2	**299**	**16.6**
Tier III	660	64.0	386	73.0	170	71.1	**1,216**	**67.6**
Total	**1,031**	**57.3**	**529**	**29.4**	**239**	**13.3**	**1,799**	**100.0**

Here are the most important takeaways from Table 2:

- In the sample, 57% of individuals are registered as a Level 1, another 30% are Level 2. Using SORNA's tiering methods, that population would flip, and 1, 216 (70.2%) of individuals would be placed in Tier III. Another 16% would be placed in Tier II. **This flip would place the majority of Washington's registered sex offenders in the top risk tier, and under lifetime registration, regardless of their risk to reoffend.**
- Notably, 660 individuals currently registered as a Level 1 in Washington would shift to Tier III and subject to lifetime registration.

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Table 3. Static-99R Score Frequencies

Score	N	%	Level	
-3	16	0.76	Level I: Very low risk	
-2	16	0.76		
-1	67	3.20	Level II: Below average risk	Average or lower risk to recidivate: 63.24%
0	176	8.40		
1	255	12.17	Level III: Average risk	
2	355	16.95		
3	440	21.00		
4	298	14.22	Level IVa: Above average risk	
5	203	9.69		
6	123	5.87	Level IVb: Well above average risk	
7	76	3.63		
8	39	1.86		
9	20	0.95		
10	8	0.38		
11	2	0.10		
12	0	0.00		
13	1	0.05		
TOTAL	2,095	100.00		

Static-99R scores place individuals into one of five risk categories to help illustrate their likelihood to recidivate[19]. The risk categories are as follows:

- Level I – Very low risk (Scores -3 to -2)
- Level II – Below average risk (Scores of -1 to 0)
- Level III – Average risk (Scores 1 to 3)
- Level IVa – Above average risk (Scores of 4 to 5)
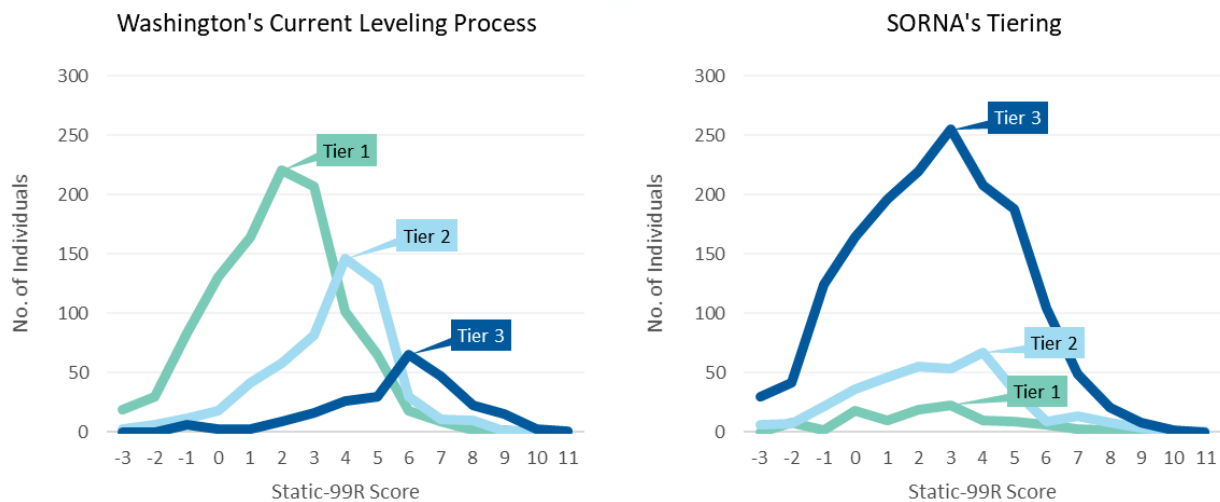- Level IVb – Well above average risk (Scores of 6+)

Here is the most important takeaway from Table 3.

- Approximately 63% of individuals in the sample are low to average risk to recidivate.

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[19] http://www.static99.org/

Chart 1. Static-99R Score and Level or Tier

Here is the most important takeaway from Table 4:

- Under Washington's current level process, the majority of individuals who are in Level 3 also have higher Static-99R scores. This indicates a higher risk to recidivate.
- Under a SORNA tiering process, the majority of individuals would be in Tier 3, regardless of their Static-99R score and risk to recidivate. **This means that individuals who do not pose a threat to the community, or only pose a small threat, would still be required to register for life.**

Policy Implications

Financial

Based on the information above, Washington would require substantial financial support to implement SORNA tiering requirements. Some examples of what Washington would need financial support and assistance for are:

- Review past convictions and recapture any individuals required to register under SORNA that were already relieved of the duty to register under Washington's current law.
- Update information and registration requirements for all currently registered sex offenders.
- Increased workload for local law enforcement due to increase in individuals in the highest tier of registration.

- Increased workload for local law enforcement that will continue to expand over time, as fewer individuals will be relieved of the duty to register, while the number of individuals assigned to Tier 3 will continue to grow.

Public Safety and Legislation

There is no evidence that SORNA's tiering method better supports public safety than Washington's current system, which uses evidence-based risk assessment and law enforcement discretion. If Washington moves forward with implementing SORNA's tiering process, it would need major statutory revisions to include support and desire from a majority of legislators, with no evidence to show that SORNA increases public safety, at a large fiscal cost.

In short, Washington's current system uses a hybrid model of law enforcement discretion and an evidence-based risk assessment system. Moving to SORNA's offense-based, tiering method would require substantial funding and could not be done without financial support, additional staff, and additional resources for law enforcement. There is also minimal evidence to support SORNA's tiering methods – much evidence suggests it is a misuse of resources. Finally, it is difficult to justify such a drastic shift in requirements for those currently registering as sex offenders in Washington at a large personal cost and a significant disruption in the lives of the individuals required to register.

Conclusion

If Washington moves to SORNA's tiering method, it would be a drastic shift in the population of currently registered sex offenders. Table 1 shows that of the sample we used for this study, more than half (57%) of individuals are currently Level 1, indicating more than half of the sample verifies their registration one time a year and are not reported on the public registry due to their assessed low risk to reoffend. If Washington moves to SORNA tiering, the Level 1 population would also change. 660 of the 1,031 individuals (62%) who are Level 1 would shift to Tier 3 and be subject to lifetime registration. This would lead to the negative impacts outlined below.

This is notable because SORNA has a retroactive requirement. For those individuals who were previously Level 1 and required to register but have since been relieved of the duty to register, may be required to begin registering again and do so for the remainder of their lives. Based on the sample we used for this report, we can safely assume that a bit more than half of those individuals relieved of the duty to register may be required to begin registering again. This comes with no positive impacts to public safety and significant negative impacts to the individual.

Overall, Washington would move from the majority of registered sex offenders being in Level 1 (56%) or Level 2 (29%) to the majority (about 70%) of individuals being in Tier 3. In addition, 9% of individuals currently registering under Washington's laws would no longer be required to register under SORNA.