

# Note

## The Good Left Undone: How to Stop Sex Offender Laws From Causing Unnecessary Harm at the Expense of Effectiveness

Catherine Wagner\*

Introduction .....	264
I. Background .....	265
A. The History of Sex Offender Legislation.....	265
B. Public Perception and Access to Sex Offender Registries .....	266
II. Collateral Consequences for Sex Offenders .....	267
A. Housing.....	268
B. Employment.....	270
C. Stigma: Unique Laws & Restrictions.....	271
D. Vigilantism .....	272
III. Solutions .....	274
A. Make Sex Offender Registries Manageable .....	275
1. Prioritization: Type of Offense .....	277
2. Prioritization: Risk of Offender .....	278
B. Make Sex Offender Registries Easier to Follow and Fix Incentives	
Not to Comply .....	280
1. Make Compliance More Feasible.....	280
2. Make Laws Understandable .....	282
3. Exception for Good Faith .....	284
C. Why We Should Revise the Punishment for Compliance.....	284
Conclusion.....	287

---

\* The University of Texas School of Law, J.D. expected 2011. I would like to thank Sarah Hunger, Kristin Czubkowski, Molly Wurzer, and my most dedicated editors, Catherine M. Wagner and Theodore R. Bonner, for their thoughtful suggestions and critiques. Additionally, I would like to thank the staff of the American Journal of Criminal Law for their hard work throughout the editing process.

## Introduction

Certainly, sex offenders deserve little sympathy. Sex offenders can be dangerous criminals who pose a threat to society, including some of its most vulnerable members. Society should not excuse sex offender behavior. Attempts to prevent future sexual crimes, particularly by past offenders, are clearly important. Sexual assault, sexual abuse, and their crushing impact upon victims are not problems that should be taken lightly. In 2007, the U.S. Department of Justice revealed that 248,280 sexual assaults, attempted rapes, and rapes were reported against those over the age of twelve in the United States.<sup>1</sup> According to the U.S. Department of Health and Human Services, there were 70,252 reports of sexual abuse of children in 2008.<sup>2</sup>

In response to numerous highly publicized sex offenses in recent years—like the cases of Megan Kanka, Adam Walsh, Jessica Marie Lundsford, and Chelsea King,<sup>3</sup> unprecedented laws have been passed at the local, state, and national levels in attempts to protect society from sex offenders. These laws are designed to identify sex offenders and restrict their actions once they are released from prison and mental health facilities.

But in attempting to achieve these well-intentioned goals, new sex offender laws have tremendous collateral consequences that often undermine the intended goals of their drafters. Registered sex offenders often have trouble maintaining their normal lives as their photographs, descriptions, addresses, and employers are posted in flyers, made available in public records, and remain easily accessible online. Often these registries make no distinction between dangerous and non-dangerous offenders. No descriptions of the particular crimes are listed; lists fail to provide any more information or context beyond the ominous-sounding label given to the offense. In some areas, public meetings are held warning community members about each sex offender's arrival in a neighborhood. In others, police officers will go door-to-door alerting neighbors.

Whether or not we believe these laws are prudent public policy, we should be concerned that sex offenders are often unable to effectively comply with sex offender registration laws even when they attempt to do so in good faith. It is also distressing that government officials are struggling to effectively ensure compliance with these laws as the number of individuals required to register and the length of time they must register continues to grow.

---

1. U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION IN THE UNITED STATES, NAT'L CRIME VICTIMIZATION SURVEY, 2007—STATISTICAL TABLES 14 (2010).

2. U.S. DEP'T OF HEALTH & HUMAN SERVICES ADMIN. FOR CHILDREN AND FAMILIES, ADMIN. ON CHILDREN, YOUTH AND FAMILIES, CHILDREN'S BUREAU, CHILD MALTREATMENT xiii, 23 (2008), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm08/cm08.pdf>.

3. Monica L. P. Robbers, *Lifers on the Outside: Sex Offenders and Disintegrative Shaming*, 53 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 5, 6 (2008).

This Note will begin by providing a brief history of sex offender legislation and the public's view of this legislation. Next, it will discuss in greater detail the problems facing individuals attempting to comply with these provisions. The collateral consequences of registration explain why sex offenders are willing to risk the legal penalties for not registering rather than face the jarring personal ramifications of being branded as a sex offender and the daunting limitations of sex offender registration requirements. Finally, this Note will discuss remedies for these problems by targeting offender reregistration concerns while attempting to explain why these general suggestions will strengthen the overall registration scheme.

## I. Background

### A. The History of Sex Offender Legislation

In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act,<sup>4</sup> mandating that all sexually violent offenders and offenders who committed crimes against children register with law enforcement agencies for at least ten years after their release.<sup>5</sup> Megan's Law<sup>6</sup> was passed in 1996, expanding sex offender registration to sexual offenders who did not target children and were not found to be sexually violent offenders.<sup>7</sup> Under this law, registries became publicly available and included community notification policies.<sup>8</sup> These requirements were extended by the Pam Lychner Sexual Offender Tracking and Identification Act of 1996<sup>9</sup> and the Adam Walsh Child Protection and Safety Act of 2006.<sup>10</sup> Both of these acts increased registration periods for sex offenders.<sup>11</sup> The Lychner Act also established a national sex offender database,<sup>12</sup> and the Adam Walsh Act made community notification rules more strict.<sup>13</sup>

In conjunction with this series of federal statutes, each state has

---

4. Pub. L. No. 103-322, § 170101, 108 Stat. 1796, 2038 (1994) (codified as amended at 42 U.S.C. § 14071 (1994)) (repealed 2006).

5. Robbers, *supra* note 3, at 5.

6. Pub. L. No. 104-145, 110 Stat. 1345 (1996) (amending 42 U.S.C. § 14071 (1994)).

7. Robbers, *supra* note 3, at 6.

8. *Id.*; *America's Unjust Sex Laws*, ECONOMIST, Aug. 8, 2009, at 9.

9. Pub. L. No. 104-236, 110 Stat. 3903 (1996) (codified as amended at 42 U.S.C. § 14072 (2006)).

10. Pub. L. 109-248, 120 Stat. 587 (2006) (codified as amended in scattered sections of 18 & 42 U.S.C.).

11. Robbers, *supra* note 3, at 6.

12. 42 U.S.C. § 14072(b) (1996) (establishing a national registry to track the "movements and whereabouts" of sex offenders).

13. Robbers, *supra* note 3, at 6; *see also America's Unjust Sex Laws*, *supra* note 8, at 9 (noting that the Adam Walsh Act requires states to make sex offender registries public).

established its own sex offender registry, the last implemented in 1999.<sup>14</sup> Some states have had these laws much longer. California established its sex offender registry in 1947.<sup>15</sup> Under the Adam Walsh Act of 1996, each state must have a website for its sex offender registry and must link its website to the national registry's website.<sup>16</sup> Additionally, an offense-based classification system is required for each state's registry.<sup>17</sup> States would have lost federal funding if they were not in compliance with these acts by 2009.<sup>18</sup> While each state was required by Megan's Law to enact online sex offender registries and to have a system for community notification,<sup>19</sup> community notification still differs from state to state and may include flyers, phone calls, door-to-door visits, or neighborhood meetings in addition to the Internet database.<sup>20</sup> Furthermore, states often have their own detailed restrictions and reporting requirements for sex offenders residing or working in their state.<sup>21</sup>

#### B. Public Perception and Access to Sex Offender Registries

The sex offender registries mandated by these statutes are not ignored by the public. Internet websites and smart phone applications allow easy access to registries. In 2006, California's website for its sex offender registry was visited over 180 million times.<sup>22</sup> Such access has had a demonstrable impact. A study in the *Journal of Urban Economics* determined that when a registered sex offender moves into an area, housing prices within a tenth of a mile of the sex offender's residence drop around 2.3% (about \$3,500) but increase immediately after the sex offender moves.<sup>23</sup>

Studies have shown that not only do the majority of citizens think

---

14. Robbers, *supra* note 3, at 5.

15. *Unjust and Ineffective*, ECONOMIST, Aug. 8, 2009, at 21.

16. Stacey Katz Schiavone & Elizabeth L. Jeglic, *Public Perceptions of Sex Offender Social Policies and the Impact on Sex Offenders*, 53 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 679, 680 (2009).

17. *Id.*

18. *Id.*

19. 42 U.S.C. § 14071(a)(1) (2006) (requiring states to establish sex offender registries); *see also* Schiavone & Jeglic, *supra* note 16, at 680.

20. *See* Jill S. Levenson et al., *Megan's Law and its Impact on Community Re-entry for Sex Offenders*, 25 BEHAV. SCI. L. 587, 588 (2007) ("In the first several years of community notification, popular mechanisms for distributing information to the public included press releases, informational flyers, and community meetings in which law enforcement officers advised citizens when sex offenders moved within close proximity.").

21. Michelle Cohen & Elizabeth L. Jeglic, *Sex Offender Legislation in the United States: What Do We Know?*, 51 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 369, 374 (2007).

22. Sarah W. Craun & Matthew T. Theriot, *Misperceptions of Sex Offender Perpetration: Considering the Impact of Sex Offender Registration*, 24 J. INTERPERSONAL VIOLENCE 2057, 2059 (2009).

23. Jaren C. Pope, *Fear Of Crime And Housing Prices: Household Reactions To Sex Offender Registries*, 64 J. URB. ECON. 601, 611-12 (2008).

that sex offender residence restrictions are an effective way to reduce sexual offenses but also that sex offender registries effectively meet this goal.<sup>24</sup> Citizens overwhelmingly believe that they have a right to sex offenders' personal information<sup>25</sup> and personally feel safer because of sex offender registries.<sup>26</sup> One survey found that 75% of people did not believe that Megan's Law violated sex offenders' right to privacy, including 37% who believed that sex offenders had no rights.<sup>27</sup> In that same study, 44% of respondents thought it was acceptable for sex offenders to be harassed, 35% thought it was acceptable for sex offenders to be injured, and 28% thought it was acceptable for sex offenders to have their property damaged because of their status as sex offenders.<sup>28</sup> Sixty-six percent of those surveyed thought it was appropriate for legislation to isolate sex offenders from their supportive loved ones, even though only 26% agreed that such separation occurred in reality.<sup>29</sup> In one 2007 study, researchers discovered that almost half the population would support sex offender registries even if there was no evidence that these registries reduced sexual assaults, while an additional 24% responded that they at least partially adopted this view.<sup>30</sup> The idea has become so accepted that animal rights activists are proposing their own parallel registry in California and attempted to pass an act creating a registry for those who abuse animals in Tennessee.<sup>31</sup>

## II. Collateral Consequences for Sex Offenders

Public registration has a demonstrable effect on all aspects of the lives of sex offenders and their families. This Part highlights a number of the key collateral consequences of sex offender registration and notification laws to explain why sex offenders would risk the often-harsh consequences for failing to reregister rather than face the daily hardships of being a registered sex offender.

---

24. See Schiavone & Jeglic, *supra* note 16, at 681 (reporting that a survey of residents in Melbourne, Florida, found 58% of respondents believed the former and 83% believed that latter). Although, "only 30% [of Melbourne residents] agreed that housing restrictions help prevent sex offenders from offending." *Id.* at 688 (internal quotation marks omitted).

25. See *id.* at 688 ("The majority felt it was very fair for the community to know a registered sex offender's name (76%), home address (58%), their physical description (83%), photographs (73%), and description of sex crimes (78%)."). However, it should be noted that the same study found that "the majority felt knowing the work address (61%), home telephone (76%), employer (59%), and fingerprints (53%) of registered sex offenders was unfair." *Id.*

26. *Id.* at 688 (noting that 65% agree that they feel safer knowing where sex offenders live); see also *id.* at 682 ("Because of community notification, 78% of respondents reported they felt safer. The majority of citizens . . . felt the law was very important or somewhat important.").

27. *Id.* at 687.

28. *Id.* at 688.

29. *Id.* at 689-90.

30. *Id.* at 691 (citing Jill S. Levenson et al., *Public Perceptions About Sex Offenders and Community Protection Policies*, 7 ANALYSES OF SOC. ISSUES & PUB. POL'Y 1 (2007)).

31. Jesse McKinley, *Lawmakers Consider an Animal Abuse Registry*, N.Y. TIMES, Feb. 21, 2010, at A10.

## A. Housing

Restrictions on how close sex offenders may live to a day care, school, park, playground, or other locations often are retroactively applicable, apply to offenders no matter the severity of their offenses, and leave sex offenders with few places to live. These restrictions rarely differentiate between those offenders who target children and those who do not.<sup>32</sup> They also do not distinguish between offenders who targeted individuals who they had contact with before the crime and offenders who targeted strangers.<sup>33</sup>

A study concerning Florida sex offenders found that the 1,000-foot housing restriction for schools, day care centers, parks, playgrounds, or other places where children tend to gather forced half of the respondents to move away from their homes when the laws were first passed.<sup>34</sup> An additional 25% of respondents were unable to return to their pre-conviction home after their serving their sentence.<sup>35</sup> Given that most of the states with a housing restriction use distances of 500 to 3,000 feet, the results in this Florida study may underestimate the impact of housing restrictions in other states.<sup>36</sup> Additional studies in Florida, Kentucky, and Indiana discovered that 31.6% to 45.3% of registered sex offenders were forced to move away from their home or were denied a place to live.<sup>37</sup> In Florida, 44% of those individuals were forced to move away from their families.<sup>38</sup> Eighty-three percent of registered sex offenders in Wisconsin had difficulty finding and being allowed to remain at a residence.<sup>39</sup> A study of all the registered sex offenders in West Virginia determined that 59.7% of registered sex offenders had lived at their current address for less than two years.<sup>40</sup>

In addition, housing restrictions cause an increasing number of sex offenders to become homeless and to cluster in certain areas.<sup>41</sup> As communities begin to pass laws that prevent sex offenders from being able to live anywhere in the community, sex offenders are left with fewer and fewer options. This is especially true in small towns where overlapping restrictions may prevent sex offenders from living or working in the entire town.<sup>42</sup> Sex offenders are completely barred from living in some

---

32. Richard Tewksbury, *Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions*, 42 HARV. C.R.-C.L. L. REV. 531, 536 (2007).

33. Jill S. Levenson & Leo P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?*, 49 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 168, 175 (2005).

34. *Id.* at 172.

35. *Id.*

36. *Id.* at 168; Tony H. Grubestic, *Sex Offender Clusters*, 30 APPLIED GEOGRAPHY 2, 3 (2010).

37. Tewksbury, *supra* note 32, at 533-34.

38. *Id.* at 537.

39. *Id.*

40. *Id.*

41. Grubestic, *supra* note 36, at 3.

42. Cohen & Jeglic, *supra* note 21, at 379.

communities. Real estate developers in Texas, Kansas, and Georgia have already begun marketing subdivisions that ensure that no sex offenders may reside in them.<sup>43</sup> These subdivisions have been extremely popular and are legal under federal law; sex offenders are not protected under the Federal Fair Housing Act.<sup>44</sup> When one community passes legislation that prevents all sex offenders from being able to live within its borders, neighboring communities respond by passing similar legislation so that they do not receive an influx of sex offenders. This eventually results in sex offenders being barred from living and working in broad regions.

A growing number of sex offenders turn to homelessness because they have increasing trouble finding places to live. This difficulty is the result of multiple factors. First, sex offenders are often disowned by family members or may not be able to live with supportive family because of housing restrictions.<sup>45</sup> Even if family members or landlords are willing to house sex offenders, laws may prevent the sex offender from living at that location. For example, a new 2,000-foot housing restriction in California has resulted in four to five times as many homeless sex offenders; those numbers continue to increase as the restrictions begin to apply retroactively.<sup>46</sup>

Second, many offenders do not have the resources or income to own their own home and must instead find places to rent. Landlords often will not rent to sex offenders. In some places, housing restrictions even prevent sex offenders from living in homeless shelters. In these areas, homeless sex offenders are forced to live on corners, under bridges, in fields, or in wooded areas.<sup>47</sup> Until recently, this was the case in Miami where large numbers of sex offenders were forced to live under a bridge in makeshift huts without plumbing, electricity, or running water and with a rodent problem.<sup>48</sup>

When they can find homes, registered sex offenders tend to live in neighborhoods "characterized by economic disadvantage, lack of physical resources, relatively little social capital, and high levels of social

---

43. Interview by Kathy Lohr, Nat'l Pub. Radio, with Chris Geiger and Clayton Isom (Oct. 10, 2006), *transcript available at* <http://www.npr.org/templates/story/story.php?storyId=6231080>.

44. U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV. & U.S. DEP'T OF HOUSING AND URBAN DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY, JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE, REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT 4 (2004).

45. Robert Samuels, *For Miami-Dade Sex Offenders, Wandering Awaits*, MIAMI HERALD, July 27, 2010, <http://www.miamiherald.com/2010/07/26/1747834/for-sex-offenders-wandering-awaits.html>.

46. Interview by Jacki Lyden, Nat'l Pub. Radio, with Dr. Tom Tobin (Feb. 23, 2008), *transcript available at* <http://www.npr.org/templates/story/story.php?storyId=19308775>.

47. *See id.* (noting that, upon release from prison, sex offenders are shown a map of where they may sleep, and quoting the Florida Department of Corrections spokeswoman as saying, "If it's a parking lot or a street corner or a wooded area, we have to make sure they stay there[']").

48. John Zarrella & Patrick Oppmann, *Florida Housing Sex Offenders Under Bridge*, CNN.COM, Apr. 6, 2007, <http://www.cnn.com/2007/LAW/04/05/bridge.sex.offenders>.

disorganization.”<sup>49</sup> This tendency seems to affect registered sex offenders who are African-American more than other sex offenders.<sup>50</sup> Researchers have theorized that this worrisome trend exists because socially disorganized areas tend to house rehabilitation centers, have cheaper rent, and have characteristics that lead registered sex offenders to think that they will be less noticed and less targeted.<sup>51</sup> Others argue that this is not a choice; the only available housing for sex offenders is located in these neighborhoods.<sup>52</sup> In these socially disorganized areas, “unemployment rates were higher, fewer residents had high school or college educations, greater proportions of families lived below the poverty line, fewer residents owned their homes, and household incomes and home values were lower.”<sup>53</sup> These clusters of sex offenders place disproportionate numbers of sex offenders in certain neighborhoods. If we apply the reasoning of the drafters of sex offender legislation, this creates a greater threat for the children and other residents living in financially disadvantaged and disorganized neighborhoods. These communities may have special difficulty bearing the cost of effectively keeping track of sex offenders and ensuring that their registration information is up-to-date because of the communities’ preexisting fiscal and organizational problems.

## B. Employment

In order for sex offenders to live normal lives and to attempt to integrate back into the community after completing their prison sentence or civil commitment, offenders must be able to find employment. Studies have shown, however, that this is exceedingly difficult for registered offenders. In Kentucky, 42% of surveyed sex offenders lost their jobs because they were registered sex offenders.<sup>54</sup> Similarly, a study of female sex offenders in Kentucky and Indiana discovered that 42.1% of sex offenders lost a job because of their registration.<sup>55</sup> Twenty-seven percent of surveyed Florida sex offenders reported losing their job.<sup>56</sup>

Each time offenders lose their job or have to change jobs, they must register their status with law enforcement officials and then look for employment in an occupation and location that meets the requirements of

---

49. Tewksbury, *supra* note 32, at 535; *see also* Grubestic, *supra* note 36 (explaining that based on his survey of registered sex offenders in Illinois, neighborhoods with clusters of sex offenders seem to be disadvantaged and be socially disorganized); Levenson et al., *supra* note 20, at 597 (explaining that sex offenders are more likely to live in impoverished and socially disorganized communities that have less access to online sex offender registries).

50. Tewksbury, *supra* note 32, at 535.

51. *See, e.g.*, Grubestic, *supra* note 36, at 15 -- 16.

52. Tewksbury, *supra* note 32, at 535.

53. *Id.*

54. *Id.* at 532-33.

55. *Id.* at 533.

56. *Id.*

local, state, and federal laws.<sup>57</sup> Sex offenders are, as a general group, banned from certain occupations in different states and localities. Although these bans are often enacted to protect children, the statutes impact all sex offenders, even those who have never targeted children, do not target strangers, and are not considered dangerous or likely to reoffend. For instance, all sex offenders in New York, even those whose offenses do not involve children, are banned from driving ice cream trucks.<sup>58</sup>

Additional restrictions can compound the difficulties that sex offenders already face when trying to find employment. Limits on sex offenders' abilities to travel, surf the Internet, and carry out other essential job functions can also limit job opportunities. This harms the ability of these individuals to find available positions, qualify for these openings, and relocate near or commute to the jobs they can find. Such restrictions will especially impact offenders whose job history, training, expertise, and connections are in the banned fields or require using banned items. For example, all of North Carolina's registered sex offenders are prohibited from driving a commercial passenger vehicle or a school bus due to licensing restrictions.<sup>59</sup> Sex offenders' job prospects in numerous industries can be significantly hampered if they are unable to obtain a full commercial driver's license.

### C. Stigma: Unique Laws & Restrictions

Sex offenders are often subject to creative lawmaking that singles them out for public shaming and increases the chance that they will be targeted based on their status as registered sex offenders. Wisconsin, Ohio, and Alabama have considered requiring their registrants to have specially colored license plates that would clearly identify the driver of the vehicle as a sex offender.<sup>60</sup> If the law had passed, Wisconsin offenders would have faced up to \$25,000 in fines and up to ten years in prison for not installing the green license plates on their vehicles and up to \$10,000 in fines and up to six years in prison for driving a vehicle without the green plates.<sup>61</sup> As another example, all sex offenders in Missouri, not just those who target children, are banned from celebrating Halloween.<sup>62</sup> They must "[a]void all Halloween-related contact with children," cannot leave their homes from 5

---

57. See U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, FREQUENTLY ASKED QUESTIONS: THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA) FINAL GUIDELINES 15 (2008), available at [http://www.ojp.usdoj.gov/smart/pdfs/faq\\_sorna\\_guidelines.pdf](http://www.ojp.usdoj.gov/smart/pdfs/faq_sorna_guidelines.pdf) (outlining the registration requirements for sex offenders who move into different jurisdictions).

58. N.Y. CORRECT. LAW § 168-v (McKinney Supp. 2005).

59. N.C. GEN. STAT. § 14-208.19A (2009).

60. Ben Jones, *States May Require Sex Offenders to Use Special License Plates*, USA TODAY, June 2, 2007, [http://www.usatoday.com/news/nation/2007-05-01-sex-offender-tags\\_N.htm](http://www.usatoday.com/news/nation/2007-05-01-sex-offender-tags_N.htm).

61. Stacy Forster, *Lawmakers Debate Color-Coded License Plates for Sex Offenders*, MILWAUKEE J. SENTINEL, Apr. 12, 2007, <http://www.jsonline.com/news/statepolitics/29359104.html>.

62. MO. REV. STAT. § 589.426 (2008).

p.m. to 10:30 p.m. on Halloween without just cause (which includes an emergency or employment), cannot have any lighting outside their house after 5 p.m., and must post a sign that says "No candy or treats at this residence" outside of their home.<sup>63</sup> There is no exception in the statute for sex offenders who have children of their own.<sup>64</sup> Sex offenders in Florida—and, if recently proposed legislation passes, in California—must have special markings on their driver's licenses so that every person who sees their identification will see that they are sex offenders whether they are in a bar, in an airport, checking out at a store, or being pulled over for speeding.<sup>65</sup>

These are just a few of the many examples of innovative sex offender restrictions. Such laws work to isolate sex offenders from society, increase the costs for sex offenders of complying with sex offender legislation, and make complying with sex offender legislation increasingly more complicated. Sex offenders are forced to keep up with and alter their lives for an increasing number and variety of retroactive requirements. These laws usually create new and more public ways to identify sex offenders, serving as a scarlet letter for sex offenders and their families. This type of widely popular legislation can be used by legislators to boost their own popularity and can be passed with an inadequate concern for the collateral consequences generated by such enactments.

#### D. Vigilantism

With detailed information about registered sex offenders' homes, jobs, and appearances easily available to the public, most sex offenders report having been harassed.<sup>66</sup> A number of sex offenders have been beaten, and some sex offenders have been murdered by vigilantes.<sup>67</sup> Though some may argue that such treatment promotes public safety or is otherwise justified, this equates to sentencing sex offenders to corporal punishment and perhaps even death after they have served the full term of their sentence and, in some cases, been involuntarily civilly committed or have voluntarily received counseling and treatment. Forty-seven percent of registered sex offenders in a Kentucky study were harassed because of their registered status.<sup>68</sup> For female sex offenders in Kentucky and Indiana and for offenders in Florida, this percentage was lower with 34.2% and 19%,

---

63. *Id.*

64. *Id.*

65. See Ryan Mills, *New Florida Driver's License IDs Registered Sex Offenders*, NAPLES NEWS (Fla.), July 31, 2007, [http://www.naplesnews.com/news/2007/jul/31/new\\_florida\\_drivers\\_license\\_ids\\_registered\\_sex\\_off](http://www.naplesnews.com/news/2007/jul/31/new_florida_drivers_license_ids_registered_sex_off); Elliot Spagat, *Sex Offenders May Have Driver's Licenses Marked*, S.F. GATE, May 26, 2010, [http://articles.sfgate.com/2010-05-26/bay-area/21333996\\_1\\_driver-s-licenses-amber-dubois-offenders](http://articles.sfgate.com/2010-05-26/bay-area/21333996_1_driver-s-licenses-amber-dubois-offenders).

66. *America's Unjust Sex Laws*, *supra* note 8, at 9.

67. *Id.*

68. Tewksbury, *supra* note 32, at 532.

respectively, reporting personal harassment.<sup>69</sup> A study of sex offenders determined that 10% of registered sex offenders in Connecticut and Indiana had been physically assaulted, while almost half feared for their personal safety.<sup>70</sup> In another study, 48% of the sex offenders reported having been physically threatened or harassed.<sup>71</sup> Family members also feel the impact of harassment and physical violence. Eighty-six percent of sex offenders' family members felt stressed as a result of sex offender registration restrictions, and 49% feared for their safety.<sup>72</sup>

Evidence of this harassment and violence is not limited to studies. In recent years, there have been several murders of sex offenders by strangers. Two registered sex offenders in Maine were shot and killed in 2006 by a young man who had no apparent connection to the men.<sup>73</sup> In Washington, a man posing as an FBI agent killed two sex offenders who were living at a halfway house after speaking to his victims for over two hours and warning them that they were on a hit list online.<sup>74</sup> A newly freed California sex offender was stabbed to death in his home by a neighbor.<sup>75</sup> Though this murdered sex offender's offenses only involved adult women, he was listed in California's online registry as having committed oral copulation with a person under fourteen years old or by force.<sup>76</sup> His alleged murderer stated that, "I felt that by not taking evasive action as a father in the right direction, I might as well have taken my child to some swamp filled with alligators and had them tear him to pieces. It's no different."<sup>77</sup> He then continued by explaining that "any father in my position, with moral, home, family values, wouldn't have done any different. At the end of the day, what are we as parents? Protectors, caregivers, nurturers."<sup>78</sup> In another incident, a sex offender was stabbed to death in Michigan after trying to protect his wife from the intruder; the police suspected that it was not a simple break-in.<sup>79</sup> In 2010, a registered sex offender was tracked down using California's registry and was killed by an alleged white supremacist, who had also robbed his victim before.<sup>80</sup> Before the murder,

---

69. *Id.* at 533.

70. Levenson et al., *supra* note 20, at 593–94.

71. Schiavone & Jeglic, *supra* note 16, at 683.

72. *Unjust and Ineffective*, *supra* note 15, at 23.

73. *2 Sex Offenders Shot to Death in Their Homes*, N.Y. TIMES, Apr. 17, 2006, at A14.

74. *Two Sex Offenders Killed in Home*, ABC NEWS, Aug. 29, 2005, <http://abcnews.go.com/US/LegalCenter/story?id=1077310&page=1>.

75. Maria L. La Ganga, *Megan's Law Listing May be Tied to Slaying*, L.A. TIMES, Dec. 10, 2007, at A1.

76. *Id.*

77. *Id.*

78. *Id.*

79. Amy Mayhew, *Police Search for Suspect in Holly Township Homicide*, HOLLY EXPRESS (Mich.), Aug. 24, 2009, <http://www.thehollyexpress.com/holly-express/article-archives/46-police-search-for-suspect-in-holly-township-homicide>.

80. *Alleged White Supremacist Charged With Killing Convicted Sex Offender*, VALLEY NEWS (Cal.), Jan. 10, 2010, <http://www.myvalleynews.com/story/44597/>.

the killer bragged that he was planning to harm or kill sex offenders once released from prison.<sup>81</sup> Similar murders have occurred in the United Kingdom.<sup>82</sup>

Additionally, people who are mistaken for sex offenders have become the victims of crime. A trailer of carpet-cleaning equipment at the home of a non-sex offender in Evansville, Illinois, was set on fire by someone targeting a man who had been arrested a month earlier for child solicitation and who lived nearby.<sup>83</sup> The perpetrator spray painted "get out perv" on the home's garage.<sup>84</sup> Other innocent people have suffered far more serious crimes. In 2007, the wife of a man suspected of possessing child pornography died when neighbors tried to scare her husband away by setting his home on fire.<sup>85</sup> Her husband ran into the burning home, carried his wife to safety, and administered CPR but was unable to save her.<sup>86</sup> After losing his wife and possessions, the man was then forced to live in a homeless shelter while awaiting trial.<sup>87</sup> In another case, a masked father and son broke into a New Jersey home and assaulted a guest at the home thinking he was the registered sex offender who was living there with his aunt and uncle.<sup>88</sup>

By providing easily accessible personal information, sex offender registries can make sex offenders (and those mistaken for them) easy targets of harassment and crime. Though sex offenders may quite rightly not be the most sympathetic victims, the victimization and harassment of sex offenders also has ramifications for society at large. "Chronic torment can contribute to feelings of anxiety and resentment, which in some situations may erode restraint."<sup>89</sup> This means that sex offender registration, because of its collateral consequences, may increase the likelihood of offender recidivism.

### III. Solutions

This Note proposes three types of solutions to address some of the broad shortcomings of sex offender legislation: the difficulties of

---

81. *Id.*

82. A British sex offender was fatally stabbed in the head, neck, chest, and groin. Audrey Gillan, *Sex Offender Found Stabbed to Death in his Caravan*, GUARDIAN (U.K.), Dec. 13, 2008, available at <http://www.guardian.co.uk/uk/2008/dec/13/uk-crime-sex-offender-attack>. He was killed in a caravan on an industrial site where he had been living after a fire was set outside his family's home. *Id.*

83. Mark Wilson, "Get Out Perv" Left at Fire Site, EVANSVILLE COURIER & PRESS (Ill.), Feb. 2, 2008, <http://www.courierpress.com/news/2008/feb/02/get-outperv-leftat-fire-site/>.

84. *Id.*

85. *Vigilantes Torch Home, Kill Innocent Woman*, CBS NEWS, Sept. 14, 2007, <http://www.cbsnews.com/stories/2007/09/14/national/main3262871.shtml>.

86. *Id.*

87. *Id.*

88. Jon Nordheimer, "Vigilante" Attack in New Jersey Is Linked to Sex-Offenders Law, N.Y. TIMES, Jan. 11, 1995, at A1.

89. Cohen & Jeglic, *supra* note 21, at 376.

administering sex offender registries, the hurdles sex offenders face when trying to comply with sex offender registration requirements, and sex offenders' perception that registration is such a severe punishment that not registering is worth the risk. My suggestions to address these three issues attempt to avoid, to the greatest degree possible, undercutting the principle goal of sex offender registration: preventing future sex crimes. Importantly, I attempt to minimize the extent to which legislators will be forced to make unpopular proposals that make them appear soft on sex offenders.

#### A. Make Sex Offender Registries Manageable

Part of the problem with sex offender registration is the difficulty of tracking sex offenders. If the whereabouts of sex offenders are unknown, it does not matter how public the sex offender registries are; they will be ineffective in alerting the public to the location of sex offenders. A large part of the problem is the size of sex offender registries; the number of registered sex offenders is already astonishing. As of July 2008, California currently has the highest number of sex offenders of any state with 118,692 registered sex offenders.<sup>90</sup> Eleven states average over 300 sex offenders per 100,000 residents, including Oregon with 574 sex offenders per 100,000 residents.<sup>91</sup> Twenty-nine states average over 200 sex offenders per 100,000 residents. North Dakota has the smallest number of registered sex offenders of any state with 1,304.<sup>92</sup> Even Washington, D.C. has 882 registered sex offenders.<sup>93</sup> This means that there are currently more registered sex offenders in the United States than the individual populations of three U.S. states: Vermont, North Dakota, and Wyoming.<sup>94</sup> The United States registers sex offenders at a rate four times that of Britain, which has an international reputation for having very stringent sex offender registration laws.<sup>95</sup>

Approximately 60,000 to 70,000 arrests are made every year in the United States for the sexual assault of a child.<sup>96</sup> Even if only a fraction of these individuals are convicted, this means that sex offender registries will only grow larger over time unless significant changes are made. This is especially a concern because seventeen states require lifetime registration for all sex offenses—no matter the severity of the offense.<sup>97</sup>

With so many sex offenders, it is difficult for officials to ensure that

---

90. *Map: Registered Sex Offenders By State*, NAT'L. PUB. RADIO, May 28, 2010, <http://www.npr.org/templates/story/story.php?storyId=127235597>.

91. *Id.*

92. *Id.*

93. *Id.*

94. *America's Unjust Sex Laws*, *supra* note 8, at 9.

95. *Unjust and Ineffective*, *supra* note 15, at 22.

96. Grubestic, *supra* note 36, at 2.

97. HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US 42 (2007).

each registrant's information is up-to-date and accurate.<sup>98</sup> Government officials reported not being given extra funding or personnel to ensure that states' sex offender registries are run properly.<sup>99</sup> The lack of additional funding can be highly problematic, particularly in the current economic climate. A study conducted by the New Jersey Department of Corrections found that the New Jersey registration system cost millions of dollars and still did not decrease the number of sex crimes.<sup>100</sup> Similarly, a survey of Wisconsin police and probation officers revealed that officers were not receiving additional funding to implement sex offender registration rules even though officers now were obligated to "spend considerable time creating supervision networks, obtaining housing, arranging transportation, working on electric monitoring systems, and finding employment for these offenders."<sup>101</sup> Under the current system, law enforcement officers have these obligations even though registered sex offenders are not usually monitored by law enforcement agencies unless they are on parole.<sup>102</sup> The difficulties of actually monitoring all sex offenders and checking to ensure their registration information is accurate on a regular basis would only exacerbate these already pressing problems.

When the government bodies that were required to administer the sex offender registries were surveyed in twenty-five states, 60% of the states reported that they had no way of knowing whether offenders registered.<sup>103</sup> Of the 40% of states that were able to track the number of offenders who had registered, states reported statistics ranging from 51% to 100% compliance.<sup>104</sup> Iowa had 60% compliance, while California determined that only 54% of sex offenders who had once registered were still complying with their requirement to register as sex offenders.<sup>105</sup> Additionally, Massachusetts only knew the residence of 51% of its sex offenders.<sup>106</sup> Twenty-five percent of registered sex offenders in Kentucky registered with an inaccurate address, while almost half of the registered sex offenders in Florida were deceased, incarcerated, or not living at their listed address.<sup>107</sup> Natural disasters and other major problems only exacerbate these issues. After Hurricane Katrina, around 2,000 sex offenders were forced to leave their homes, making tracking these individuals even more difficult during one of the most challenging times for government officials

---

98. Pierre Thomas & Sadie Bass, *10 Bodies in Sex Offender's Home: Is System Broken*, ABC NEWS, Nov. 4, 2009, <http://abcnews.go.com/WN/anthony-sowell-murder-case-highlights-broken-sex-offender/story?id=8999276>.

99. *Id.*

100. *Unjust and Ineffective*, *supra* note 15, at 23.

101. Cohen & Jeglic, *supra* note 21, at 375.

102. *Id.*; Interview by Jacki Lyden, *supra* note 46.

103. Cohen & Jeglic, *supra* note 21, at 375.

104. *Id.*

105. *Id.* at 376.

106. Levenson et al., *supra* note 20, at 589.

107. *Id.*

in impacted areas.<sup>108</sup> These statistics suggest that sex offender registries are creating a false sense of security among registry users, who are led to believe that law enforcement agencies are providing them with accurate information concerning the whereabouts of local sex offenders.

### 1. Prioritization: Type of Offense

One way to solve this problem is to limit the offenses that require registration instead of including every offense with a sexual component or involving sex organs. This in no way suggests that individuals who commit violent or serious offenses should be left off of registries. Instead, it enhances accuracy through focusing limited resources. It attempts to avoid placing individuals on sex offender lists who pose no harm to the public. For instance, at least thirteen states require registration for public urination; eleven of these states do not require a minor to be present at the time.<sup>109</sup> At least five states require registration for visiting a prostitute.<sup>110</sup> Twenty-nine states register minors who have consensual sex with other minors, and thirty-two states register individuals for indecent exposure: flashing and streaking.<sup>111</sup> “In most states, teenagers who send or receive sexually explicit photographs [or video] by cellphone or computer—known as ‘sexting’—have risked felony child pornography charges and being listed on a sex offender registry for decades to come.”<sup>112</sup> Studies have shown that almost 20% of teenagers admit to having sexted and nearly half of male high school students at coed high schools have seen at least one picture of a naked female classmate.<sup>113</sup> A Virginia man convicted of having oral sex is required to register as a sex offender for the rest of his life, even though Virginia’s law banning oral and anal sex is likely to be unconstitutional under the Supreme Court’s ruling in *Lawrence v. Texas*.<sup>114</sup>

Moreover, states commonly require individuals to register for offenses without a sexual component. At least thirty-five states require sex offenders to register for the kidnapping of a child even if no sexual component is required unless they are the victim’s parent.<sup>115</sup> North Dakota requires individuals to register for the nonsexual assault of a minor.<sup>116</sup> This means that a seventeen-year-old could be forced to register as a sex

---

108. Cohen & Jeglic, *supra* note 21, at 376.

109. *Unjust and Ineffective*, *supra* note 15, at 22.

110. *Id.*

111. *Id.*

112. Tamar Lewin, *Rethinking Sex Offender Laws for Youth Texting*, N.Y. TIMES, Mar. 20, 2010, at A1.

113. *Id.*

114. Adam Liptak, *A Place On The Sex-Offender Registry For A Crime That May Be Off The Books*, N.Y. TIMES, Jan. 10, 2011, at A12.

115. *E.g.*, IDAHO CODE ANN. § 18-8304(1)(a) (2004); KAN. STAT. ANN. § 22-4902(a)(4)(A) (2007 & Supp. 2008); KY. REV. STAT. ANN. § 17.500(3)(a) (LexisNexis 2008); N.C. GEN. STAT. § 14-208.6(1m) (2007).

116. N.D. CENT. CODE § 12.1-32-15(1) (1997 & Supp. 2009).

offender for getting into a fight with another seventeen-year-old.

## 2. Prioritization: Risk of Offender

If some of the key purposes of sex offender registration legislation are to (1) combat the dangers of recidivism by those who target children and other vulnerable individuals, (2) allow law enforcement officials to more easily identify sex offenders and alert the public to their presence, and (3) prevent or more quickly solve sexual offenses against children,<sup>117</sup> then sex offender registries should be tailored to these goals. More states should adopt the tiered sex offender systems of states like Oklahoma, New Hampshire, and Ohio that treat different types of sex offenders differently.

Recidivism rates for different types of sex offenders vary greatly.<sup>118</sup> Sex offenders who are considered high-risk are those most likely to reoffend.<sup>119</sup> Sex offenders should be evaluated based on their risk of future recidivism, the dangerousness of the particular circumstances of their offense, and the risk they pose to the public. The degree of restraint imposed upon and public notification concerning sex offenders should be tailored to these findings. For instance, sex offenders who do not target children should not be forced to face housing and employment restrictions that are intended to keep sex offenders away from children. Those who are convicted of a nonviolent offense that caused no harm to others, like public urination or the solicitation of an adult prostitute, should not be required to register except in extreme instances or at the very least not have their registration information made available to all members of the public. Prostitution is legal in some areas of the country<sup>120</sup> but requires lengthy periods of registration in other areas, including lifetime registration in Alabama.<sup>121</sup> If public urination remains sex offense, many young men and people who have gone camping will have committed a sexual offense, could be prosecuted, and could be required to register as a sex offender.

Some states are beginning to take positive steps to reach these goals. For example, a bill has been proposed in the Texas legislature that would alter the state's criminalization of sexting.<sup>122</sup> Sexting by a minor would be prosecuted as a misdemeanor that does not require registration rather than as a felony involving the possession, production, or distribution of child pornography.<sup>123</sup> Though the proposed law is not perfect, it

---

117. *E.g.*, N.J. STAT. ANN. § 2C:7-1 (West 2005).

118. Grubestic, *supra* note 36, at 2.

119. *Id.* at 2.

120. *See, e.g.*, NEV. REV. STAT. § 244.345(8) (2006) (legalizing the grant of licenses to businesses for the purpose of prostitution in Nevada counties with populations under 400,000).

121. ALA. CODE §§ 15-20-21(4)(f), 15-20-23 (LexisNexis 2005 & Supp. 2009).

122. Jessica Vess, *Sexting Legislation Introduced to Lawmakers*, KVUE NEWS (Tex.), Feb. 7, 2011, <http://www.kvue.com/home/related/Sexting-legislation-introduced-to-state-lawmakers-115489599.html>.

123. S.B. 407, 82nd Leg., Reg. Sess. (Tex. 2011); Vess, *supra* note 122.

recognizes a need for an affirmative defense for those who unwittingly receive these images or videos.<sup>124</sup> The New Jersey legislature is considering a bill that would decriminalize sexting altogether.<sup>125</sup> It should be noted that limiting a statute's reach need not decriminalize or reduce the severity of an offense. Connecticut is considering legislation that would allow students to be expelled from school if convicted of a sex offense in order to avoid victims having to attend school with the offenders who victimized them.<sup>126</sup> The statute would only apply to offenders convicted of violent sexual offenses involving first-degree rape, rape using a weapon, and kidnapping as part of a sexual assault.<sup>127</sup> Though it is unclear how the law will be applied or if it will be altered before passage, its limited scope should be applauded for only targeting the most dangerous sex offenders.

In addition, after years of registration with no re-offense, individuals should be allowed to petition to be removed from the sex offender registry. This step is not unprecedented; some states allow certain types of sex offenders to be removed from registration lists after extended periods of good behavior.<sup>128</sup> These individuals should not be forced to withstand frequently onerous reregistration restrictions after proper registration and law-abiding activity for a number of years. Their fingerprints, blood samples, DNA, former addresses, former employers, and other information could be kept on file to assist the police if a future case should arise. This could include a time period when sex offenders would still be required to update their addresses and other information, but the information would not be available publicly or would only be available to those who requested the information and were granted access in the name of public safety.

The United Kingdom has adopted this system for all sex offenders on a trial basis and is planning to expand due to its success.<sup>129</sup> It chose not to adopt the American system of "widespread public disclosure to anybody and everybody because that's just the sort of thing that leads to the

---

124. Tex. S.B. 407 § 43.261(c). The bill would create an affirmative defense for minors who (1) did not produce the material, (2) possessed the material only after receiving it from another minor, and (3) reported the receipt of the material to law enforcement within forty-eight hours. Admittedly, the listed affirmative defense is highly impractical as few young people will be willing to immediately report their friends and significant others. It also does not help individuals whose immediate reaction is to delete the text.

125. "Sexting" Teens Avoid Charges Under NJ Bill, NBC NEWS, Mar. 14, 2011, <http://www.nbcnewyork.com/news/local/Sexting-Bill-Lets-Teens-Avoid-Charges-117961499.html>.

126. Connecticut Bill Would Let Schools Expel Sex Criminals, MIDDLETOWN PRESS (Conn.), Jan. 15, 2011, <http://www.middletownpress.com/articles/2011/01/15/news/doc4d31f7869c475406270113.txt?viewmode=fullstory>.

127. *Id.*

128. Catherine L. Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295, 329 n.158, 335 n.183 (2006).

129. 'Sarah's Law' Sex Offender Alerts May be Expanded, BBC NEWS, Jan. 24, 2010, [http://news.bbc.co.uk/2/hi/uk\\_news/8477310.stm](http://news.bbc.co.uk/2/hi/uk_news/8477310.stm).

vigilantism which [they have] seen in the past.”<sup>130</sup> In the first six months of their program, 150 parents requested that they be informed of the identities of the sex offenders living in their neighborhoods; ten of those requests were granted as legitimately needed.<sup>131</sup> Additionally, based on a recent Supreme Court of the United Kingdom ruling, sex offenders may apply for removal from the sex offender registration list after they have been released for fifteen years.<sup>132</sup>

As an alternative, sex offenders with less serious offenses or who are at a lower risk for recidivism could be allowed over time to provide less detailed information to the public in light of their good behavior. This would lessen the burden on law enforcement officials who otherwise have to constantly track the detailed personal information of low-risk sex offenders. At the same time, this still provides the public with the information they need. It would also serve as a signal to the public that the more information an offender has listed, the more they should pay attention to that offender. Finally, this serves as an incentive for sex offenders as they can earn a greater degree of personal privacy over time and more relaxed reregistration requirements through good behavior.

#### B. Make Sex Offender Registries Easier to Follow and Fix Incentives Not to Comply

Next, complying with sex offender registration requirements needs to be made easier for sex offenders. Though the requirement that sex offenders update their registration information may seem like a small aspect of the overall sex offender registration scheme, it can make successful reregistration extremely difficult for sex offenders.

##### 1. Make Compliance More Feasible

The risk of noncompliance by sex offenders is a realistic concern in light of the complex steps that sex offenders are required to take in order to properly register. Sex offenders must provide an exhaustive list of information when initially registering and must periodically update this information. Registration laws commonly require sex offenders to provide information concerning their primary address, second home, name, employment, email addresses, instant messaging username, social networking website username, school enrollment, vocation, watercrafts, aircrafts, and vehicles.<sup>133</sup>

---

130. *Police Doubt 'Sarah's Law' Will Cause Vigilante Attacks*, BBC NEWS, Aug. 1, 2010, <http://www.bbc.co.uk/news/uk-10827669>.

131. *Id.*

132. *Sex Offender Registration Appeals to Go Ahead*, BBC NEWS, Feb. 26, 2011, <http://www.bbc.co.uk/news/uk-12476979>.

133. DEL. CODE ANN. tit. 11, § 4120(d)(2) (2007 & Supp. 2008); IND. CODE ANN § 11-8-8-11(e), (f) (LexisNexis 2003 & Supp. 2009).

The information also must be updated whenever there is a change in information. All states, territories, and the District of Columbia have laws dictating when an offender must register after he or she changes his or her residence.<sup>134</sup> Failure to register on time or according to requirements often carries steep penalties. For instance, failure to register or reregister as a sex offender is a felony in several states.<sup>135</sup> Strict requirements can make

---

134. ALA. CODE § 15-20-23 (LexisNexis 2005 & Supp. 2009) (thirty days before); ALASKA STAT. § 12.63.010 (2008 & Supp. 2009) (one business day after); ARIZ. REV. STAT. § 13-3822 (LexisNexis 2008-09) (seventy-two hours during business days); ARK. CODE ANN. § 12-12-906(c)(2)(E) (2003 & Supp. 2009) (three business days after); CAL. PENAL CODE § 290(b) (West 2008 & Supp. 2009) (five working days after); COLO. REV. STAT. § 16-22-108 (2008) (five business days); CONN. GEN. STAT. § 54-251 (2009) (five business days after); DEL. CODE ANN. tit. 11, § 4120(f)(2) (2007 & Supp. 2008) (three business days after); D.C. MUN. REGS. tit. 6-A, § 412 (2008) (three days after); FLA. STAT. § 943.0435 (2008) (forty-eight hours after); GA. CODE ANN. § 42-1-12(b)(3) (1997 & Supp. 2009) (seventy-two hours after); tit. 9 GUAM CODE ANN. § 89.03 (2009) (seven days after unless leaving Guam, then three days before); HAW. REV. STAT. § 846E-6 (2007) (three working days after); IDAHO CODE ANN. § 18-8309 (2004) (two working days after); 730 ILL. COMP. STAT. ANN. 150/3 (LexisNexis 2003 & Supp. 2008) (three days after); IND. CODE ANN. § 11-8-8-11 (LexisNexis 2003 & Supp. 2009) (seventy-two hours after); IOWA CODE § 692A.104(2) (2003 & Supp. 2007) (five business days after); KAN. STAT. ANN. § 22-4904(b) (2007 & Supp. 2008) (fourteen days after); KY. REV. STAT. ANN. § 17.510(10)(a) (LexisNexis 2008) (on or before change of address in county moving from and five days after in county moving to); LA. REV. STAT. ANN. § 15:542.1.2(A) (2005) (three business days after); ME. REV. STAT. ANN. tit. 34-A, § 11222(5) (1998 & Supp. 2003); MD. CODE ANN., CRIM. PROC. § 11-705(e) (LexisNexis 2008) (three working days after); MASS. GEN. LAWS ch. 6, § 178E(h) (2006) (ten days after); MICH. COMP. LAWS SERV. § 28.725(1) (LexisNexis 2009) (ten days after); MINN. STAT. ANN. § 243.166(4a)(b) (West 2003) (five days after); MISS. CODE ANN. § 45-33-29(1) (2004) (ten days after); MO. REV. STAT. § 589.414 (2003) (three business days after); MONT. CODE ANN. § 46-23-505 (2009) (three business days after); NEB. REV. STAT. § 29-4004 (2008) (three working days after); NEV. REV. STAT. ANN. § 179D.447(1) (LexisNexis 2006) (three business days after); N.H. REV. STAT. ANN. § 651-B:5(I) (LexisNexis 2007 & Supp. 2009) (five business days after); N.J. STAT. ANN. § 2C:7-2(d)(1) (West 2005) (ten days before); N.M. STAT. ANN. §§ 29-11A-4(F), (G), (H) (LexisNexis 2009) (ten days after); N.Y. CORRECT. LAW § 168-c(2) (Consol. 2005 & Supp. 2006) (forty-eight hours after); N.C. GEN. STAT. § 14-208.9(a) (2007) (three business days unless moving into a new county, then ten days after); N.D. CENT. CODE § 12.1-32-15(7) (1997 & Supp. 2009) (at least ten days before); OHIO REV. CODE ANN. § 2950.05(A) (LexisNexis 2006 & Supp. 2009) (three days after for adults and twenty days before for juveniles); OKLA. STAT. tit. 57, § 584(D) (2004) (three days before); OR. REV. STAT. ANN. §§ 181.595(3)(a)(B), 181.596(4)(a)(B), 181.567(1)(a)(b) (2009) (ten days after); 42 PA. CONS. STAT. ANN. § 9795.2 (West 2007) (forty-eight hours after); P.R. LAWS ANN. tit. 4, § 536c (2002 & Supp. 2006) (ten days before); R.I. GEN. LAWS § 11-37.1-9(d) (2002) (before move if moving out of state, one day after if moving within town, and if moving to another town, notify town moving from before move and new town one day after); S.C. CODE ANN. §§ 23-3-460(C), (D) (2007) (three business days after); S.D. CODIFIED LAWS § 22-24B-12 (2006) (five days after); TENN. CODE ANN. § 40-39-203 (2006) (forty-eight hours after); TEX. CODE CRIM. PROC. ANN. art. 62.051 (West 2006) (seven days after or first date allowed to register); UTAH CODE ANN. § 77-27-21.5(9)(b)(i) (LexisNexis 2008 & Supp. 2009) (five days after); VT. STAT. ANN. tit. 13, § 5407(a)(3) (1998 & Supp. 2009) (thirty-six hours after); VA. CODE ANN. § 9.1-903(D) (2006) (location of new home three days after and location of old home ten days before); V.I. CODE ANN. tit. 14, § 1724(b) (1996 & Supp. 2009) (three days after); WASH. REV. CODE ANN. § 9A.44.130(5) (LexisNexis 2005 & Supp. 2009) (three business days); W. VA. CODE ANN. § 15-12-3 (LexisNexis 2009) (ten business days after); WIS. STAT. ANN. § 301.45(4)(b) (West 2005) (before individuals move if they know of the move beforehand or twenty-four hours after the move if they are unaware of the move); WYO. STAT. ANN. § 7-19-302(e) (2009) (three working days after).

135. *E.g.*, S.D. CODIFIED LAWS § 22-24B-2 (2006); TENN. CODE ANN. § 40-39-208 (2006); VA. CODE ANN. § 18.2-472.1 (2006); WASH. REV. CODE ANN. § 9A.44.132 (LexisNexis 2005 & Supp. 2009); WYO. STAT. ANN. § 7-19-307(c) (2009).

it nearly impossible for perfect compliance throughout a registrant's lifetime. This is especially problematic in states and territories such as Alabama, Guam, Kentucky, New Jersey, Puerto Rico, North Dakota, Ohio, Oklahoma, Rhode Island, and Virginia, which require sex offenders to notify authorities before they change their address, at least in some circumstances.<sup>136</sup> This means that if sex offenders are evicted or kicked out of their lodging by the owner, they have broken the law. If sex offenders cannot prove that they have immediately relocated to a new address (in some cases with documented owner approval) after leaving or being forced to leave their last address, they may also be in violation of the law.

Updates are required for more than just changing one's home address or email address. For instance, a P.O. Box has been found to be included in the definition of address and must be updated as if it were the registrant's home address.<sup>137</sup> If sex offenders in a number of states are away from their home for a short period of time, they are forced to reregister. For example, if a sex offender who lives in Iowa or Nebraska visits his or her sibling or goes on vacation for more than five days, he or she is forced to register with the county sheriff in his or her hometown.<sup>138</sup> In Indiana, a sex offender who committed an offense that is considered sexually violent must inform the county law enforcement agency in their home county and the county that he or she is visiting when he or she is away from his or her home for more than seventy-two hours.<sup>139</sup> Sex offenders in Texas must register if they plan to be in a location for more than seven days.<sup>140</sup> Sex offender legislation needs to spell out unique aspects of legislation that would not be intuitive for sex offenders in order to increase compliance with such provisions.

## 2. Make Laws Understandable

Even if the law allows sex offenders to update their registration information and register in their new home after they move, sex offenders may not be aware that they are required to register within such short time periods, may not have the resources to register, and may have trouble determining how and with whom they register as the laws are different in each state and county. To make sexual offender registries effective, legislatures must craft statutes so that individuals seeking to comply with the statutes can do so. For example, sex offenders may not own cars to

---

136. *See supra* note 134.

137. *See State v. Rubey*, 611 N.W.2d 888, 892 (N.D. 2000) (holding that a statute that requires the reporting of a sex offender's "address" rather than "residence" requires the reporting of a mailing address, such as a P.O. box, in addition to a residence).

138. IOWA CODE § 692A.105 (2003 & Supp. 2007); NEB. REV. STAT. § 29-4004 (2008).

139. IND. CODE ANN § 11-8-8-18 (LexisNexis 2003 & Supp. 2009).

140. TEX. CODE CRIM. PROC. ANN. art. 62.051(a) (West 2006).

register in person, may not have proper identification, may not have the money available to pay registration fees, and/or may not have or be allowed to have Internet access. Furthermore, sex offenders may not have had to register in the state in which they previously resided; they may have no idea that they are required to register in their new home.

Sex offenders may not have lawyers or extensive legal resources to help them decipher the meaning of complex statutes or even know where to look to find their requirements. Even when directly notified by law enforcement authorities of their registration requirements, offenders may not be able to understand everything that is being asked of them or may not be able to meet the requirements detailed in the notification. If registrants are unable to comply with registration requirements even with their best efforts, some may question whether they should go through the trouble and expense of attempting to comply in the first place. Sex offenders may be tempted not to register since not registering may allow them to avoid the social humiliation of the public having up-to-date information on the registrant.

This is especially problematic considering that attempting to comply makes sex offenders vulnerable to easy identification and arrest for non-compliance. As the system is currently designed, sex offenders bring their failure to register to the attention of law enforcement officials when they try to register but do so improperly. Registration laws would better serve the public by promoting partial compliance over all-or-nothing registration. For instance, having eight of ten required pieces of information is more beneficial to the public than having no information. Following the example of the large number of individuals on sex offender registries with unknown or inaccurate information, sex offenders may rely on the fact that most offenders are not tracked because of law enforcement officials' limited resources.<sup>141</sup> Rather than face penalties after being caught trying to register unsuccessfully, sex offenders may choose not to register and take their chances that their failure to reregister will not be noticed in the long lists of sex offenders.

Since there are so many more sex offenders than law enforcement officials, sex offender registries rely on the willingness of sex offenders to register. It would be impossible for law enforcement officials to track down and keep constant watch over all sex offenders. Legislatures need to adopt sex offender registration legislation that is written so that a lay person, including one with minimal education, can understand its requirements. Sex offenders should be able to follow clear steps to meet their registration requirements. If sex offenders are unable to figure out what they are required to do in order to be in compliance with the legislation and if they are unable to properly meet their requirements even when attempting to do so in good faith, sex offenders may stop attempting to register.

---

141. *See supra* Part III.A.

### 3. Exception for Good Faith

With this in mind, sex offenders who try to register in good faith should not be punished for unintentional mistakes. In prosecutions for failure to register as a sex offender, the state should be required to prove that the sex offender willingly did not register. A few states provide some mechanism to protect sex offenders from being punished if they try to comply with the law. The Virgin Islands<sup>142</sup> and North Dakota<sup>143</sup> require proof of willfulness, and Vermont<sup>144</sup> and West Virginia<sup>145</sup> require proof of knowledge. Although not interpreted liberally,<sup>146</sup> these requirements improve the common practice of treating failure to register as a strict liability offense.

### C. Why We Should Revise the Punishment for Compliance

Sex offender registries should be tailored to achieve the highest level of public protection. In order to achieve this goal, sex offender housing and employment restrictions need to be revised so that sex offenders are not shut out of entire communities or areas of the country. Sex offenders' ability to reintegrate into society and to avoid recidivism is hindered by the collateral consequences of sex offender registration and notification laws.<sup>147</sup> Sex offender housing and employment restrictions should not make it impossible for sex offenders to have basic necessities. As I argued above,<sup>148</sup> if sex offenders find it too difficult to carry on their daily lives when registered, they will stop registering and risk that the current system is so broken that they will not be identified and prosecuted. Thus, these changes serve as a first step in making sex offenders easier to locate. They work to prevent sex offenders from having a dangerous level of stress and hopelessness by making sure the sex offenders have a place to live and work.

When sex offenders cannot find a place to live, the normal problems associated with registration for sex offenders and officials are magnified. When sex offenders are forced to leave their own home, even

---

142. V.I. CODE ANN. tit. 14, § 1728 (1997 & Supp. 2009).

143. *State v. Knowels*, 643 N.W.2d 20, 24 (N.D. 2002).

144. VT. STAT. ANN. tit. 13, § 5409 (1998 & Supp. 2009).

145. W. VA. CODE ANN. § 15-12-8 (LexisNexis 2009).

146. *See State v. Igou*, 691 N.W.2d 213, 218 (N.D. 2005) (upholding the determination that the defendant was guilty of willful failure to register, despite the prosecution's failure to present any evidence of actual willfulness, after the jury rejected the defendant's testimony that he tried to register by letter). *See generally State v. McAvoy*, 767 N.W.2d 874 (N.D. 2009) (finding sufficient evidence to support the jury's verdict, despite the fact that trial evidence only focused on the defendant's lack of an overnight residence rather than his intent, based on the jury's rejection of the defendant's explanation that he was only visiting the county for the holidays).

147. Schiavone & Jeglic, *supra* note 16, at 683.

148. *See discussion supra* Part III.B.iii.

unexpectedly, they are expected to have a new home before they update their registration information. Even if these sex offenders wish to comply with registration laws, they do not immediately have a specific address at which to register. With housing so difficult to find, it can be nearly impossible for sex offenders to find new residences in a short time period, including in as little time as the twenty-four hours required in Wisconsin.<sup>149</sup> The consequences of failing to find a residence can be severe. In 2007, a homeless sex offender in Georgia faced life imprisonment upon his second failure to properly register.<sup>150</sup> Though some states have provisions that allow homeless offenders to register with a description of the place where they sleep when they are homeless,<sup>151</sup> other states require sex offenders to go through extensive administrative steps each week, on a monthly basis, or every ninety days if they do not have a permanent address.<sup>152</sup> For officials, it can be very difficult to locate transient sex offenders.<sup>153</sup> Even if sex offenders register with a description of where they sleep, it is difficult to know where offenders are staying at all times and to verify their location. As one example, Florida has been unable to locate 1,800 sex offenders in recent years.<sup>154</sup>

Housing instability and joblessness as a result of registration requirements compounds the factors that lead to recidivism by sex offenders. Housing and employment restrictions:

[H]inder sex offenders' successful reintegration into society by isolating them from treatment options and employment opportunities and isolating them from an adequate support system, which may be crucial to preventing recidivism . . . . [Housing restriction] statutes increased isolation, affected the financial and emotional well-being of offenders, decreased their chance to live a stable life, and increased stress and triggers for reoffending.<sup>155</sup>

---

149. WIS. STAT. ANN. § 301.45(4)(b) (West 2005) (requiring notifications of a change in address before the change occurs if the individual is aware beforehand or within twenty-four hours if the individual is unaware beforehand).

150. Brittany Bacon, *Sex Offender Faces Life in Prison for Being Homeless*, ABC NEWS, Aug. 8, 2007, <http://abcnews.go.com/TheLaw/story?id=3454688&page=1>; see GA. CODE ANN. § 42-1-12(n)(3) (1997 & Supp. 2009) (mandating that any offender who is convicted of a second offense of failing to properly register be punished with life in prison).

151. *E.g.*, OHIO REV. CODE ANN. § 2950.05(A) (LexisNexis 2006 & Supp. 2009); MONT. CODE ANN. § 46-23-505 (2009) (2); VT. STAT. ANN. tit. 13 § 5407(h) (1998 & Supp. 2009). This gives law enforcement officials a place to begin their search for a particular sex offender and gives homeless sex offenders the ability to successfully register.

152. Carpenter, *supra* note 133, at 333; *e.g.*, ARIZ. REV. STAT. § 13-3822(A) (LexisNexis 2008-09) (every 90 days); 730 ILL. COMP. STAT. 150/3 (LexisNexis 2003 & Supp. 2008) (weekly); TENN. CODE ANN. § 40-39-203(f) (2006) (monthly).

153. Interview by Jacki Lyden, *supra* note 46.

154. Zarrella & Oppmann, *supra* note 48.

155. Schiavone & Jeglic, *supra* note 16, at 683.

Homelessness, in particular, combines a lack of social support with unemployment and housing instability.<sup>156</sup> With limited resources, sex offenders often experience stress, hopelessness, depression, vulnerability, and isolation.<sup>157</sup> Sex offenders “reported experiencing hopelessness (72%), shame and embarrassment (67%), and stress that interfered with their recovery (71%).”<sup>158</sup> These feelings not only increase the chance of recidivism but also can lead to alcohol and drug abuse, which further contribute to recidivism.<sup>159</sup> Together, these findings suggest that, despite significant public support, strict housing and employment restrictions actually make sex offenders harder to track and more likely to reoffend. As a result, the public faces a greater chance of sex offender relapse in exchange for housing and other registry information that may be inaccurate or difficult to sift through.

At the same time, altering housing and employment restrictions would not weaken sex offender legislation’s efficacy—especially considering that the United States already has the strictest sex offender restrictions of any wealthy, democratic nation.<sup>160</sup> Changing sex offender housing restrictions will not significantly threaten communities.<sup>161</sup> Though sex offender registration and notification laws are designed to help prevent recidivism by convicted sex offenders, most studies have determined that the registration of sex offenders does not decrease recidivism.<sup>162</sup> “No statistical difference was found in recidivism rates between registered and unregistered offenders. Furthermore, sex offenders who were registered recidivated more quickly than those who were not.”<sup>163</sup>

Sex offender recidivism rates are lower than the recidivism rates of other types of criminals.<sup>164</sup> Studies have found that the vast majority of sex offenders do not commit a second offense; only somewhere between 5.3%<sup>165</sup> and 17%<sup>166</sup> of all sex offenders will commit additional crimes.

---

156. Samuels, *supra* note 43.

157. Schiavone & Jeglic, *supra* note 16, at 682.

158. *Id.* at 682–83.

159. *Id.*; Interview by Jacki Lyden, *supra* note 46.

160. *America’s Unjust Sex Laws*, *supra* note 8, at 9.

161. The advantages of registration achieved by being able to locate sex offenders quickly would not be impacted by relaxing the restrictions that control where sex offenders live. Since sex offender information would still be on file with law enforcement agencies, sex offenders could be tracked equally efficiently whether or not they lived within 3,000 feet of a park, for instance.

162. Levenson et al., *supra* note 20, at 588.

163. Cohen & Jeglic, *supra* note 20, at 375.

164. BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, at 14 (2003); see Levenson et al., *supra* note 20, at 598 (citing studies which demonstrate that, despite widely held beliefs to the contrary, the vast majority of sex offenders are not convicted of additional sex crimes, although some sex offenders are more dangerous than others). It should be noted that some studies have argued that sex offenders have higher recidivism rates. For a discussion of the common misperceptions and historical controversy concerning sex offender recidivism rates, see Abril R. Bedarf, *Examining Sex Offender Community Notification Laws*, 83 CALIF. L. REV. 885, 893–98 (1995), and HUMAN RIGHTS WATCH, *supra* note 103, at 25–29 (2007).

165. BUREAU OF JUSTICE STATISTICS, *supra* note 164, at 24 (2003) (noting that 5.3% of sex

Those sex offenders who do recidivate tend not to commit additional sex offenses in the community near their home.<sup>167</sup> In only 9% of cases did sex offenders target victims with whom contact was initiated within a mile of the sex offender's home.<sup>168</sup>

Moreover, although housing restrictions target sexual offenses committed by strangers, the vast majority of sex offenders do not recidivate. Most sex offenses are committed by people who the victims know or are acquaintances of, not by strangers.<sup>169</sup> Studies have found that between 70%<sup>170</sup> and 95%<sup>171</sup> of sexual assaults are committed by acquaintances rather than strangers. The latter determined that 50% of children under age six and 42% of children between the ages of six and eleven are victimized by family members, not just acquaintances.<sup>172</sup> Sixty-three percent of sex offenders who reoffended did so in their own home.<sup>173</sup> Most of these offenses involved the victimization of another resident of the home.<sup>174</sup> If strangers at community day cares, schools, and bus stops are not the target of the great majority of sex offenders, making housing restrictions more flexible so that those sex offenders who target strangers can be more easily tracked will actually improve the safety of potential victims.

## Conclusion

The purpose of this Note is not to suggest that sex offender registries should be abolished or to suggest that they do not serve an important function in our society. No level of recidivism by sex offenders is acceptable. Sex offender registries can be an important tool for law enforcement officials and provide potential victims important warnings about high-risk sex offenders who have a history of violence and/or a criminal history of committing repeated sexual offenses. Rather, this Note endeavors to highlight some of the most important difficulties and adverse effects of sex offender registration laws. It suggests ways to make these registries more effective without resorting to draconian measures or significant increases in state and local expenditures.

By making sex offender registries target the most dangerous sex offenders and making it easier for sex offenders to comply with registration laws, legislators can create sex offender registries that help parents, those who work with children, and other interested parties know who to warn

---

offenders released in 1994 had committed another sex offense within the following three years).

166. Cohen & Jeglic, *supra* note 21, at 369.

167. Tewksbury, *supra* note 37, at 538.

168. *Id.* at 539.

169. Levenson et al., *supra* note 20, at 598.

170. Cohen & Jeglic, *supra* note 21, at 374.

171. Craun & Theriot, *supra* note 22, at 2058.

172. *Id.*

173. Tewksbury, *supra* note 32, at 539.

174. *Id.*

children about. At the same time, these registries would be both manageable and more easily kept up-to-date. Yet, legislators must remember that even if sex offender registries are made more manageable by eliminating minor offenses that pose little threat to the public, sex offender registration lists cannot be effective if sex offenders will not register and will not register accurately. Harsher is not always better. Sex offender legislation cannot be so complex and so restrictive that sex offenders would rather risk punishment than try to comply with the law. Law enforcement officials simply do not have the resources to continually track every registered sex offender in their jurisdiction. If sex offenders are not denied the basic aspects of everyday life as a consequence of registering, they may not choose to evade the law, making all of us safer. Revising housing and employment restrictions would make sex offender legislation more effective by making sex offenders easier to track and by lessening the heightened levels of stress and frustration caused by homelessness and joblessness.

Copyright of American Journal of Criminal Law is the property of University of Texas at Austin School of Law Publications and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.