THE SEX OFFENDER UNDER THE BRIDGE: HAS MEGAN'S LAW RUN AMOK?

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I. INTRODUCTION

On June 10, 1991, eleven-year-old Jaycee Lee Dugard was abducted as she walked to the school bus stop just a few blocks from her home.[1] For the next eighteen years, Jaycee's alleged abductor, Phillip Garrido, held her captive in the backyard of his California home, in a compound of tents where he repeatedly raped her.[2] By the time Jaycee was reunited with her family in August 2009, she had given birth to two of Garrido's children—daughters, ages eleven and fifteen, who believed Jaycee was their older sister.[3]

The above scenario is troubling in and of itself, but perhaps what is more disturbing is the fact that Garrido was on parole the entire time, for substantially similar crimes.[4] Garrido is but one of many examples of the failure of modern sex offender management: he was a registered sex offender, supervised by a series of parole officers, subjected to home visits, and monitored by a GPS tracking bracelet—and yet he managed to abduct, imprison, and impregnate a young girl, undetected.[5] As a direct result, both California and Nevada have begun reviewing their parole systems,[6] but parole issues are just the tip of the sex offender iceberg.

Megan's Law is the informal name given to a set of laws that govern the management of sex offenders in a community.[7] Megan's

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1. *Missing Children: Jaycee Lee Dugard*, AMERICA'S MOST WANTED, http://www.amw.com/missing_children/case.cfm?id=25928 (last visited June 20, 2010).

2. *Id.*

3. *Gone 18 Years, Girl Found but Questions Remain*, MSNBC (Aug. 30, 2009, 1:10 AM), http://www.msnbc.msn.com/id/32614326/.

4. *Id.* In 1976, Phillip Garrido abducted a twenty-five-year-old woman from a parking lot in California. He transported her to a storage shed in Nevada—described by authorities as a "sex palace"—where he handcuffed her, tied her down, and raped her. Garrido received a fifty-year federal prison sentence for the kidnapping charge, and a life sentence in state court for the rape charge, but he was granted an early release in 1988. *Id.*

5. *See* Don Thompson, *Review Targets Parole Lapses in Calif. Kidnap Case*, N. COUNTY TIMES (Escondido, CA) (Sept. 29, 2009, 8:55 PM), http://www.nctimes.com/news/state-and-regional/article_8c11dce2-5990-5b03-a710-598170bed5bc.html. Garrido was supervised by federal parole officers for eight years, and then by California parole officers for ten years. *Id.*

6. *See id.*; Ed Vogel, *Nevada Parole Officers: Sex Offenders Get More Scrutiny*, LAS VEGAS REV.-J., Sept. 6, 2009, at B1.

7. *See* Michael Buncher, *Special Hearings*, N.J. OFFICE OF THE PUB. DEFENDER, http://www.thedefenders.nj.gov/div_shu.shtml (last visited June 20, 2010); Aaron

Laws differ greatly from state to state, but always require at least two things: sex offender registration and community notification.[8] Since the inception of these laws, the overwhelming legislative trend across the country has been to impose greater and greater restrictions on sex offenders,[9] with the offenders themselves raising constitutional challenges along the way.[10] As a result, much of this new legislation has been later repealed or significantly amended.[11] However, other provisions have become "cornerstones of contemporary sex offender management efforts"—often at considerable expense, and with dubious results.[12]

This Note will focus on reforming Megan's Laws to achieve effective sex offender management and deterrence, while simultaneously minimizing the potential for constitutional challenges. It should be noted, while the management of incarcerated and civilly-committed offenders is also of great importance, this Note will address only issues pertaining to sex offenders in the community. Since it is important to understand why we have these laws at all, Part II of this Note will outline a brief history of the origin and purpose of the country's first Megan's Law, as well as trace the proliferation of similar laws across the country.[13] Part III will discuss the growing trend toward stricter sex offender restrictions, fueled in part by underlying public moral outrage.[14] In particular, this Note will address overly broad definitions of "sex offender," and two of the newer, more problematic restrictions: residency restrictions and Internet bans.[15] Part III will also discuss some of the unfair, unintended collateral consequences arising from these heightened provisions.[16]

Larson, *Megan's Law*, EXPERTLAW (Aug. 2003), http://www.expertlaw.com/library/criminal/megans_law.html.

8. *See* Larson, *supra* note 7.

9. *See* CTR. FOR SEX OFFENDER MGMT., U.S. DEP'T OF JUSTICE, LEGISLATIVE TRENDS IN SEX OFFENDER MANAGEMENT 1, 2 (2008), *available at* http://www.csom.org/pubs/legislativetrends.pdf [hereinafter LEGISLATIVE TRENDS].

10. *See, e.g., Megan's Law Still Under Attack*, AM. CIVIL LIBERTIES UNION OF N.J, http://www.aclu-nj.org/theissues/issues/privacy/meganslawstillunderattack.htm (last visited June 20, 2010) ("The ACLU-NJ continues to be involved in the ongoing legal challenges to Megan's Law . . . .").

11. LEGISLATIVE TRENDS, *supra* note 9, at 1.

12. *Id.*; *see also* KRISTEN ZGOBA ET AL., N.J. DEP'T OF CORR., MEGAN'S LAW: ASSESSING THE PRACTICAL AND MONETARY EFFICACY (2008), *available at* http://www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf.

13. *See infra* Part II.

14. *See infra* Part III.

15. *See infra* Part III.

16. *See infra* Part III. This section will deal only with issues invoking common perceptions of fundamental "fairness." Legal and constitutional issues will be discussed later. *See infra* Part IV.

Part IV of this Note will present some of the constitutional issues that have arisen from the registry laws, residency restrictions, and Internet bans of various states.[17] Challenges to these restrictions have been raised for allegedly violating offenders' rights under a variety of constitutional provisions, including the Ex Post Facto Clause, the Fifth Amendment's Takings Clause, the Fourteenth Amendment's Due Process Clause, and the First Amendment's guarantees of freedom of speech, association, and religion.[18] Part IV will also include a review of both federal and state cases illustrating these issues.[19]

Part V will review some of the effectiveness studies conducted on Megan's Laws.[20] Of particular note is a 2008 study conducted in New Jersey, which revealed that Megan's Law has had virtually no impact on sex offender recidivism—despite great expense poured into its enforcement.[21] Finally, Part VI will present an argument, founded in equal protection principles and the prohibition against cruel and unusual punishment, that Megan's Laws must be narrowly tailored to target only the truly predatory offenders, with its attendant restrictions based on standards of efficacy rather than moral indignation.[22] This Part concludes with suggestions to the state legislatures on how to tailor Megan's Law to meet these goals.[23]

II. BACKGROUND: THE MAKING OF MEGAN'S LAW

A. Origin and History

The story of Megan Kanka, for whom Megan's Law was named, has been told and re-told in the opening paragraph(s) of a great many notes and articles on the subject.[24] While this Note's author opted to open with a more current tale, reflective of Megan's Law's

17. *See infra* Part IV.

18. *See infra* Part IV.

19. *See infra* Part IV.

20. *See infra* Part V.

21. ZGOBA ET AL., *supra* note 12, at 1-2.

22. *See infra* Part VI.

23. *See infra* Part VI.

24. *See, e.g.*, Rose Corrigan, *Making Meaning of Megan's Law*, 31 LAW & SOC. INQUIRY 267, 267 (2006) ("On July 29, 1994, in Hamilton Township, New Jersey, Jesse Timmendequas invited seven-year-old neighbor Megan Kanka to his house to see his new puppy."); Robert R. Hindman, *Megan's Law and its Progeny: Whom Will the Courts Protect?*, 39 B.C. L. REV. 201, 201 (1997) ("On July 30, 1994, Jesse Timmendequas of Hamilton Township, New Jersey, lured seven-year-old Megan Kanka into his home where he brutally raped her and strangled her to death."); Andrew J. Hughes, *Haste Makes Waste: A Call to Revamp New Jersey's Megan's Law Legislation As-Applied to Juveniles*, 5 RUTGERS J.L. & PUB. POL'Y 408, 409 (2008) ("Megan Kanka was brutally raped and murdered on July 29, 1994 [sic] by her neighbor, Jesse Timmendequas.").

shortcomings,[25] Megan Kanka's story is worth retelling in order to fully understand the origin and purpose of the law.

Megan Kanka was a seven-year-old girl who lived with her family in Hamilton Township, New Jersey.[26] On July 29, 1994, her neighbor, Jesse Timmendequas, lured her into his home with promises of playing with his puppy.[27] He tried to touch Megan in a sexual manner, but she fought back, suffering a head injury in the struggle.[28] Thereafter, Timmendequas strangled her, sexually assaulted her, and prepared to dump her body.[29] Before discarding Megan's body in a local park, he sexually assaulted her one more time,[30] placed his fingers in the seven-year-old child's vagina, and "'played with her a little.'"[31]

By the time he abducted, killed, and raped Megan Kanka, Jesse Timmendequas was already a twice-convicted "compulsive, repetitive sexual offender."[32] In 1979, Timmendequas pled guilty to aggravated sexual assault, after he persuaded two five-year-old girls to go looking for ducks with him.[33] One of the girls fled, after which he knocked down the other girl, pulled down her pants, and smelled her vagina.[34] In 1981, he pled guilty to attempted criminal sexual contact and attempted aggravated assault, after he approached two seven-year-old girls with a promise of firecrackers.[35] As before, one of the two girls fled, leaving him alone with the second girl, whom he dragged into the woods and choked until she turned blue.[36] Although doctors could not find evidence of sexual contact, Timmendequas pled guilty to a sex-related offense in exchange for serving his sentence at the Adult Diagnostic and Treatment Center.[37]

In the words of Maureen Kanka, "If we had been aware of his

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25. *See supra* text accompanying notes 1-6.

26. State v. Timmendequas, 737 A.2d 55, 66 (N.J. 1999) [hereinafter *Timmendequas I*]; State v. Timmendequas, 773 A.2d 18, 23 (N.J. 2001) [hereinafter *Timmendequas II*].

27. *Timmendequas II*, 773 A.2d at 23.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Timmendequas I*, 737 A.2d at 68-69.

32. William Glaberson, *Stranger on the Block—A Special Report; At Center of 'Megan's Law' Case, a Man No One Could Reach*, N.Y. TIMES, May 28, 1996, at A1.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *See id.* The Adult Diagnostic and Treatment Center is a special sex offender prison that provides treatment for its inmates and aftercare services for its parolees. *Adult Diagnostic and Treatment Center*, N.J. DEP'T OF CORR., http://njdoc.gov/cia/adtc.html (last visited June 20, 2010).

record, my daughter would be alive today."[38] Within days of their daughter's death, Richard and Maureen Kanka set about lobbying for change.[39] Altogether, the Kankas collected over 400,000 signatures on a petition calling for community notification whenever a sex offender moves into the neighborhood.[40] Just eighty-nine days later, the New Jersey Legislature passed legislation setting forth registration requirements for sex offenders,[41] and authorizing law enforcement agencies to publicly release information about said offenders "when the release of the information is necessary for public protection."[42] The new legislation's purpose, contained within its own text, echoed the Kankas' intent: to protect against "[t]he danger of recidivism posed by sex offenders . . . who commit other predatory acts against children."[43] Thus, the first Megan's Law was born, signed with Megan Kanka's parents in attendance.[44]

B. Proliferation

New Jersey's Megan's Law was not the nation's first attempt to keep track of sex offenders. California enacted the first sex offender registration provision in 1947,[45] and Washington boasts the first community notification provision, enacted in 1990.[46] Further, on September 13, 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program ("Wetterling Act"), which required every state to set up a sex offender registration database within three years, or risk losing certain criminal justice funding.[47] The Wetterling Act allowed for

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38. *Our Mission*, MEGAN NICOLE KANKA FOUND., http://www.megannicolekanka foundation.org/mission.htm (last visited June 20, 2010) (statement of Maureen Kanka).

39. *See id.*; *see also* James Barron, *Vigil For Slain Girl, 7, Backs a Law on Offenders*, N.Y. TIMES, Aug. 3, 1994, at B4 (recalling local vigil and support of neighbors that gathered 1,500 signatures, petitioning for a sex offender notification law).

40. *Our Mission*, *supra* note 38.

41. Megan's Law, ch. 133, §§ 2-4, 1994 N.J. Sess. Law Serv. 133 (West) (codified as amended at N.J. STAT. ANN. § 2C:7-2 to -4 (West 2005 & Supp. 2009)) (effective date Oct. 31, 1994).

42. *Id.* § 5 (codified as amended at N.J. STAT. ANN. § 2C:7-5 (West 2005 & Supp. 2009)).

43. *Id.* § 1(a) (codified as amended at N.J. STAT. ANN. § 2C:7-1(a) (West 2005 & Supp. 2009)).

44. Joseph F. Sullivan, *Whitman Approves Stringent Restrictions on Sex Criminals*, N.Y. TIMES, Nov. 1, 1994, at B1 (referring to the new laws as Megan's Law).

45. *Sex Offender Registration and Exclusion Information*, CAL. DEP'T OF JUSTICE, http://www.meganslaw.ca.gov/sexreg.aspx (last visited June 20, 2010).

46. *See* WASH. REV. CODE ANN. §§ 4.24.550, 9A.44.130 to .140 (West 2005).

47. Jacob Wetterling Crimes Against Children and Sexually Violent Offender

disclosure of sex offenders' information to other government entities for specific purposes.[48] Community notification was permitted if it was thought necessary to protect the public—but such notification was entirely discretionary, not required.[49]

The aforementioned laws notwithstanding, it was New Jersey's Megan's Law that accelerated the wave of states enacting sex offender registration and community notification laws into a veritable tsunami,[50] each typically reflecting the Kankas' purpose of child protection.[51] By the end of 1995, twenty-two states had laws providing for registration and community notification.[52] In 1996, the federal government amended the Wetterling Act with its own version of Megan's Law, which made the release of sex offenders' information, when deemed necessary to protect the community, mandatory and no longer discretionary.[53] By 1997, forty-one states and the District of Columbia had a version of Megan's Law,[54] and today, the same is true of every state.[55]

More recently, on July 27, 2006, Congress enacted the Adam Walsh Child Protection and Safety Act of 2006[56] ("Adam Walsh Act"),

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Registration Act, Pub. L. No. 103-322, § 170101(f)(1) to (f)(2), 108 Stat. 1796, 2042 (1994) (codified as amended at 42 U.S.C. § 14071(g)(1) to (g)(2) (2006)) [hereinafter Wetterling Act].

48. Wetterling Act, Pub. L. No. 103-322, § 170101(d)(1) to (d)(2), 108 Stat. 1796, 2041 (1994) (codified as amended at 42 U.S.C. § 14071(e)(1) to (e)(2) (2006)).

49. *See* Wetterling Act, Pub. L. No. 103-322, § 170101(d)(3), 108 Stat. 1796, 2042 (1994) (codified as amended 42 U.S.C. § 14071(d)(2) (2006)).

50. Alan R. Kabat, *Scarlet Letter Sex Offender Databases and Community Notification: Sacrificing Personal Privacy for a Symbol's Sake*, 35 AM. CRIM. L. REV. 333, 334-35 (1998).

51. *See, e.g.*, Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, § 102, 120 Stat. 587, 590 (2006) (codified at 42 U.S.C. § 16901 (2006)) (describing purpose of Act as "protect[ing] the public from sex offenders and offenders against children," followed by a list of sixteen mostly juvenile victims); ALA. CODE § 13A-11-200 (LexisNexis 2005) ("The Legislature declares that its intent . . . is to protect the public, especially children, from the dangers posed by criminal sex offenders . . . ."); *see also* 139 Cong. Rec. 31, 250 (1994) (statement of Sen. Sensenbrenner, arguing in favor of Jacob Wetterling Act) ("The reason this bill is so important is because of the high rate of recidivism in persons who have committed crimes against children . . . .").

52. Kabat, *supra* note 50, at 359-61 app. 1.

53. Megan's Law, Pub. L. No. 104-145, § 170101(d), 110 Stat. 1345 (1996) (codified as amended at 42 U.S.C. § 14071(e) (2006)).

54. Kabat, *supra* note 50, at 335. Of the remaining states, three had registration-only laws, and six had registration with some disclosure mechanism upon request, but no provision for community notification. *Id.*

55. *Megan's Law Coast to Coast*, MEGAN NICOLE KANKA FOUND., http://www.megannicolekankafoundation.org/ctc.htm (last visited June 20, 2010).

56. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 102, 120 Stat. 587 (2006) (codified as 42 U.S.C. § 16901 (2006)) [hereinafter Adam Walsh Act].

Title I of which is known as the Sex Offender Registration and Notification Act[57] ("SORNA"). SORNA was designed to create a National Sex Offender Registry[58] and raise the minimum standards for registration and community notification through several changes to the existing law.[59] The location in which an offender is required to register was expanded to include not only where he lives, but also where he works or attends school.[60] A system was created to separate offenders into three tiers, based on the severity of the underlying offense.[61] The frequency and minimum duration of registration would be determined by tier: Tier I offenders would be required to register annually for fifteen years; Tier II offenders, every six months for twenty-five years, and Tier III offenders, every three months for life.[62] The tiering system also applies to juveniles over the age of fourteen[63] and offenders who were not previously required to register, as long as they fall under SORNA's definitions.[64]

SORNA increases the amount of information sex offenders must provide when they register, including, but not limited to, the following: names, dates of birth, and Social Security numbers (including any of the above used in an alias); addresses for a primary residence and any temporary residence of more than seven days; email addresses, instant messenger client screen names, and any other Internet identifiers; employment information, including typical travel route(s); a vehicle description, driver's license number, and license plate number; and a physical description of the offender, photograph, fingerprints and DNA information.[65] Further, most of this information must be published online, on the local sex offender

57. Adam Walsh Act, tit. I, Pub. L. No. 109-248, § 102, 120 Stat. 587, 590 (2006) (codified as 42 U.S.C. § 16901 (2006)) ("This title may be cited as the 'Sex Offender Registration and Notification Act.'").

58. OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, THE NATIONAL GUIDELINES FOR SEX OFFENDER REGISTRATION AND NOTIFICATION 5 (2008) [hereinafter SORNA GUIDELINES], *available at* http://www.ojp.usdoj.gov/smart/pdfs/final_sornaguidelines.pdf.

59. *Id.* at 3.

60. *Id.* at 41.

61. OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, FREQUENTLY ASKED QUESTIONS: THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA) PROPOSED GUIDELINES 6 (May 17, 2007) [hereinafter SORNA FAQ], *available at* http://www.ojp.usdoj.gov/smart/pdfs/sorna_faqs.pdf. Tier I consists of minor offenses that do not fall into a higher category, Tier II includes most felony child sexual abuse or exploitation offenses, and Tier III includes sexual assaults, sexual contact with children under thirteen, or kidnapping of a child other than by a parent, and "attempts or conspiracies to commit such offenses." *Id.*

62. *Id.* at 13.

63. SORNA GUIDELINES, *supra* note 58, at 16.

64. *Id.* at 45-47.

65. *Id.* at 26-33; SORNA FAQ, *supra* note 61, at 8-9.

registry website.[66] Finally, SORNA requires minimum criminal penalties for failing to register in accordance with its provisions, often resulting in terms of incarceration.[67]

States were to substantially implement SORNA by July 27, 2009, or suffer a mandatory 10% cut in Byrne Justice Assistance Grant funding,[68] a program which provides federal money to state and local governments to support a broad range of crime prevention objectives.[69] However, as the July deadline approached, no state had come into compliance.[70] Various problems with the Act were cited as barriers to compliance, such as cost, retroactivity, inclusion of juveniles, and grouping of violent and nonviolent sex offenses into the same tier.[71] As of September 2009, only one state has achieved substantial implementation.[72]

III. THE RACE TO STRICTER SEX OFFENDER PROVISIONS

Federal law provides a floor to sex offender provisions, but states are free to enact stricter laws if they so choose.[73] Indeed, the general trend has been to impose increasingly harsh restrictions on sex offenders.[74] This Part will discuss the forces driving the race to stricter provisions. It will also describe three main areas of greater restriction—the definition of "sex offender" itself, residency restrictions, and Internet bans—as well as the often-unfair collateral consequences they bring about.

A. Fear, Misconceptions, and Moral Outrage

"'There's no such thing as monsters.' We tell our kids that. The

66. SORNA FAQ, *supra* note 61, at 9-10. The few absolute prohibitions involve releasing sensitive information such as the offender's Social Security number. *Id.* at 10.

67. Under federal law, a failure-to-register conviction carries up to ten years in prison. *Id.* at 14. SORNA also requires states to enact failure-to-register law that carry a maximum of more than a year in prison. *Id.* at 10.

68. *Id.* at 5.

69. Bureau of Justice Assistance, *Justice Assistance Grant (JAG) Program*, OFFICE OF JUSTICE PROGRAMS, http://www.ojp.usdoj.gov/BJA/grant/jag.html (last visited June 20, 2010).

70. Jolynne M. Hudnell, *No State in Compliance With Adam Walsh Act as July Deadline Approaches*, ASSOCIATED CONTENT (June 21, 2009), http://www.associatedcontent.com/article/1831723/no_state_in_compliance_with_adam_walsh?cat=17.

71. *See id.*

72. *See* Anita Wolfe, *Ohio Becomes First State in the U.S. to Reach Substantial Implementation of Adam Walsh Act*, CUYAHOGA COUNTY CRIME EXAMINER (Sept. 24, 2009, 4:48 AM), http://www.examiner.com/x-11711-Cuyahoga-County-Crime-Examiner~y2009m9d24-Ohio-Becomes-First-State-in-the-US-to-Reach-Substantial-Implementation-of-Adam-Walsh-Act.

73. SORNA GUIDELINES, *supra* note 58, at 6-7.

74. *See* LEGISLATIVE TRENDS, *supra* note 9, at 2.

truth is that monsters are real. . . . These monsters are called 'Sex Offenders,' a label that is far too innocuous to convey the evil of those who have earned it."[75] Sex offenders are one of the most hated and reviled groups of criminals;[76] so abhorred that, recently, a father killed his own fifteen-year-old son after learning the boy might have committed a sex crime.[77] The boy asked to see a counselor, but his father responded by beating him, stripping him naked, and shooting him in the head.[78]

Sex offenders are despised not only by the general public, but by fellow inmates and prison guards alike.[79] Sex offenders occupy among the lowest positions in the prison hierarchy; known by a variety of epithets, such as "tree jumpers,"[80] "short eyes,"[81] or "baby rapers."[82] Other inmates target sex offenders, tampering with their food, defecating in their cells, teasing, beating, or even murdering them.[83] In fact, killing a sex offender can enhance an inmate's reputation with fellow prisoners.[84]

The public furor over sex offenders has been largely generated by the media, which creates misconceptions about the frequency of crime and propagates myths about sex offenders themselves.[85] For instance, one study demonstrated that people who watch television crime dramas, particularly female viewers, tend to overestimate the actual incidence of violent crime in the real world.[86] Such

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75. John G. Winder, *The Monster Next Door: The Plague of American Sex Offenders*, CYPRESS TIMES (Nov. 20, 2009, 1:49 PM), http://www.thecypresstimes.com/article/News/Your_News/THE_MONSTER_NEXT_DOOR_THE_PLAGUE_OF_AMERICAN_SEX_OFFENDERS/25925.

76. Sarah E. Agudo, *Irregular Passion: The Unconstitutionality and Inefficacy of Sex Offender Residency Laws*, 102 NW. U. L. REV. 307, 308 (2008).

77. Doug Guthrie, *Family Recounts Dad's Rage During Teenager's Final Minutes*, DETROIT NEWS, Dec. 2, 2009, at A1.

78. *Id.*

79. Ted Conover, Op-Ed., *Prisoners of Hate*, N.Y. TIMES, Aug. 28, 2003, at A31. Mr. Conover, a former Sing Sing prison guard, describes his revulsion at learning one of his inmates is a sex offender as "immediate, visceral and stronger than I would have expected." *Id.*

80. Michael S. James, *Prison is "Living Hell" for Pedophiles: Some Prisoners May See "Taking Out" Child Molesters as a Way to Build Reputation*, ABC NEWS (Aug. 26, 2003), http://abcnews.go.com/US/story?id=90004.

81. *Id.*

82. Conover, *supra* note 79, at A31.

83. James, *supra* note 81.

84. *Id.*

85. LEGISLATIVE TRENDS, *supra* note 9, at 1-2.

86. *See* Susan Huelsing Sarapin & Glenn G. Sparks, The CSI Effect: The Relationship between Exposure to TV Crime Dramas and Perceptions of the Criminal Justice System 9, 16 (Oct. 7, 2009) (unpublished research paper) (on file with Purdue University).

overestimation can result in "mean world syndrome"—the idea that the world is "a scary place,"[87] ultimately resulting in a fear of victimization that threatens their sense of security.[88] The same study also highlighted some misperceptions about sex offenders common to all study subjects, regardless of whether they viewed crime dramas.[89] The subjects overestimated the number of sexual assaults committed by strangers, and vastly overestimated the number of sexual assaults involving a weapon.[90]

The news also plays a major role in the public's perceptions of crime, with more than three-quarters of respondents in one survey indicating they base their views on crime from news coverage.[91] Crime stories in general increased dramatically during the 1990s, on both the three major networks[92] and local stations.[93] In the 2000s, crime stories on the major networks decreased in response to the attack on the World Trade Center and the ensuing war in Iraq,[94] but crime coverage on local stations remained largely unaffected.[95]

Local news in particular has a great effect on viewers' perceptions of crime,[96] and in one local-news study, "10 percent of all crime stories" involved sexual offenses.[97] Moreover, the sex crime stories were more likely to be portrayed in a manner calculated to induce fear than stories about other types of criminal activity.[98] Crime is not just a favorite topic among television news broadcasts; newspapers, too, rely on crime stories for their low production costs and appeal to the public.[99]

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87. Amy Patterson Neubert, *Researchers Rest Their Case: TV Consumption Predicts Opinions About Criminal Justice System*, PURDUE U. NEWS SERVICE (Oct. 28, 2009), http://www.purdue.edu/newsroom/research/2009/091028SparksCrime.html.

88. *Id.*

89. *See* Sarapin & Sparks, *supra* note 86, at 9.

90. *See id.* Notably, the study subjects estimated nearly 57% of all sexual assaults involve a weapon, versus the real-world statistic of 11%. *Id.*

91. Sara Sun Beale, *The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397, 441 (2006).

92. *Id.* at 424-25.

93. *Id.* at 430.

94. *Id.* at 424.

95. *Id.* at 430.

96. Kenneth Dowler, *Media Consumption and Public Attitudes Toward Crime and Justice: The Relationship Between Fear of Crime, Punitive Attitudes, and Perceived Police Effectiveness*, 10 J. CRIM. JUST. & POPULAR CULTURE 109, 110 (2003) [hereinafter Dowler, *Media Consumption*].

97. Kenneth Dowler, *Sex, Lies, and Videotape: The Presentation of Sex Crime in Local Television News*, 34 J. CRIM. JUST. 383, 390 (2006) [hereinafter Dowler, *Sex, Lies, and Videotape*].

98. *Id.*

99. *Id.* at 383-84.

The exaggerated perception of the frequency of sex crimes is exacerbated by the media's often-inaccurate portrayal of the offenders' characteristics.[100] In particular, the media tends to propagate the myths that sex offenders are more likely to reoffend than other criminals, that they "tend to target strangers," and that the rate of sex crimes is increasing.[101] Indeed, the media's ability to induce fear has been noted in the past as a contributor to moral panic, leading to stricter, more punitive criminal laws.[102]

B. Defining a Sex Offender

What it means to be a "sex offender" varies according to the state one calls home. In addition to the crimes one would expect, such as rape, sexual assault, criminal sexual contact, kidnapping of a child other than by a parent, soliciting a child, or promoting the prostitution of a child,[103] some states require registration for offenses that do not so clearly advance the legislative purpose of protecting children from sexual predators. For example, in California, an offender convicted of indecent exposure or annoying or molesting a child under eighteen is required to register as a sex offender.[104] At first glance, perhaps registration would seem appropriate, but less so after considering the statutory definitions of each crime: the former includes assisting another in indecent exposure, even a benign act such as asking an adult to participate in an artistic exhibition.[105] With regard to the latter, note that "molest" is used synonymously with "annoy," not "molest" in the sense commonly applied to children.[106] Here, "molest" means "to disturb or irritate, especially by continued or repeated acts," impliedly with a "connotation of abnormal sexual motivation."[107] A conviction for this offense includes engaging in such conduct with an adult, as long as the offender believed the adult was actually a child.[108]

As another example, consider Alabama's sex offender registration law, which grants broad discretion by requiring registration for "generally any act of sexual perversion" and not just

100. *See* LEGISLATIVE TRENDS, *supra* note 9, at 1.

101. *Id.* at 1-2.

102. Beale, *supra* note 91, at 456.

103. *See, e.g.*, N.J. STAT ANN. § 2C:7-2(b)(1) (West 2005 & Supp. 2010); SORNA GUIDELINES, *supra* note 58, at 17-21.

104. *Registrable Sexual Offenses*, OFFICE OF THE ATTORNEY GEN., CAL. DEP'T OF JUSTICE, http://www.meganslaw.ca.gov/registration/offenses.aspx (last visited June 20, 2010).

105. *See* CAL. PENAL CODE § 314 (West 2008).

106. *See* People v. Kongs, 37 Cal. Rptr. 2d 327, 331 (Cal. Ct. App. 1994).

107. *Id.* (quoting People v. Tate, 164 Cal. App. 3d 133, 139 (Cal. Ct. App. 1985)).

108. CAL. PENAL CODE § 647.6(a)(2) (West Supp. 2010).

specifically enumerated crimes.[109] Even the enumerated crimes are questionable: in Alabama, one must register as a sex offender for displaying an obscene bumper sticker, defined as one describing "sexual or excretory" functions,[110] or for engaging in any type of deviant sexual intercourse, which effectively criminalizes any type of homosexual intercourse.[111]

Both New York and New Jersey label defendants who have been convicted of the false imprisonment of a child other than their own as a "sex offender"—even when the crime involved absolutely no conduct or motivation of a sexual nature.[112] Nationwide, at least thirteen states require sex offender registration for public urination, thirty-two for indecent exposure-type offenses, and twenty-nine (including New Jersey) for consensual sex between teenagers.[113] It is worth noting that federal law mandates lifetime registration for only the most serious crimes,[114] but in at least seventeen states, offenders have to register for life—no matter how minor the offense.[115]

These broad definitions cast a wide net, affixing the label of "sex offender" to individuals—particularly teenagers—who do not genuinely pose a danger to society. For example, seventeen-year-old Wendy Whitaker, a Georgia resident, was placed on the sex offender registry for engaging in oral sex with her fifteen-year-old classmate.[116] Although her offense took place in 1997, she remains on the registry list more than a decade later.[117] She and her husband

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109. ALA. CODE § 13A-11-200(b) (LexisNexis 2005).

110. *Id.* § 13A-12-131.

111. *See id.* § 13A-6-65.

112. *See* N.J. STAT. ANN. § 2C:7-2(b)(2) (West 2005) (including "false imprisonment . . . if the victim is a minor and the offender is not the parent of the victim" in definition of sex offense); N.Y. CORRECT. LAW § 168-a(2) (McKinney 2003) (including "kidnapping or related offense(s)" where victim is under seventeen years old and offender is not victim's parent in definition of sex offense).

113. SARAH TOFTE, HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE U.S. 39-40 (Jamie Fellner ed., 2007), *available at* http://www.hrw.org/sites/default/files/reports/us0907webwcover.pdf. Some states, however, have addressed the issue of consensual sex between teenagers with a "Romeo and Juliet" exception to the relevant law. *See, e.g.*, GA. CODE ANN. § 16-6-4(d)(2) (LexisNexis 2007) (creating an exception to the minimum sentence of twenty-five years for aggravated sexual molestation where victim is between thirteen and sixteen years old and offender is eighteen or younger).

114. *See supra* note 62 and accompanying text.

115. TOFTE, *supra* note 113, at 42.

116. Bill Rankin, *Woman Sues Over Ongoing Sanctions for Sex as a Teen*, ATLANTA J. - CONST. (July 14, 2008), http://www.ajc.com/metro/content/metro/stories/2008/07/13/sex_offender.html.

117. *Id.*; *Sexual Offender Search Form*, GA. BUREAU OF INVESTIGATION (July 10, 2010, 11:44 AM), http://services.georgia.gov/gbi/gbisor/SORSearch.jsp (search first name "Wendy" last name "Whitaker").

have had to move twice due to changing residency restrictions laws,[118] and in 2006, she became the lead plaintiff in a class-action lawsuit over an amendment that would require them to move yet again.[119] Finally, in May 2010, the Georgia Legislature passed another amendment permitting Ms. Whitaker and others in her situation to petition the court for release from the sex offender registry.[120]

Similarly, Phillip Alpert, an eighteen-year-old Florida resident, found himself added to a sex offender registry last year for "sexting," defined as sending sexually explicit photographs via text messages.[121] The photograph in question was of his sixteen-year-old girlfriend, which she took herself and sent him, and which he then forwarded to others after they had an argument.[122] Mr. Alpert is not alone—one in five teenagers admit to "sexting," and most of them do not know they could be charged with a crime for doing so.[123]

C. Residency Restrictions: "Not in My Town"

Residency restrictions are laws that prohibit sex offenders from living within a specified distance of locations commonly frequented by children or other vulnerable individuals.[124] These laws typically create an exclusion zone of anywhere from a 500 to 2,500 foot radius from locations such as parks, schools, childcare facilities, or playgrounds.[125] The first residency restrictions were enacted in 1995[126] in Florida,[127] Delaware,[128] and Michigan.[129] By the end of the

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118. Rankin, *supra* note 1166.

119. Whitaker v. Perdue, No. 4:06-CV-00140-CC (N.D. Ga. filed June 20, 2006).

120. 2010 GA. LAWS ACT 389, § 15 (permitting offenders who were "sentenced for a crime that became punishable as a misdemeanor on or after July 1, 2006" to petition for release from registration and residency restrictions). Another portion of the new legislation downgrades offenses like Ms. Whitaker's to a misdemeanor. *Id.* § 2(f)(2) ("If at the time of the offense the victim of the offense is at least 14 years of age but less than 16 years of age and the actor is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.").

121. Deborah Feyerick & Sheila Steffen, *'Sexting' Lands Teen on Sex Offender List*, CNN (April 4, 2009, 10:50 AM), http://www.cnn.com/2009/CRIME/04/07/sexting.busts/index.html.

122. *Id.*

123. *Id.*

124. LEGISLATIVE TRENDS, *supra* note 9, at 6.

125. *Id.*

126. David A. Singleton, *Sex Offender Residency Statutes and the Culture of Fear: The Case for More Meaningful Rational Basis Review of Fear-Driven Public Safety Laws*, 3 U. ST. THOMAS L.J. 600, 607 (2006).

127. Act effective June 15, 1995, Fla. Laws 1995, ch. 95-283, § 57 (codified as amended at FLA. STAT. ANN. § 947.1405(7)(a)(2) (West 2010)).

decade, four more states passed residency restrictions,[130] and today, the majority of states have this type of law on the books.[131]

In addition to the state laws, municipalities in various states began enacting their own local residency restrictions.[132] These proliferated quickly; by 2006, four hundred municipalities had their own local ordinances creating residency restrictions.[133] At least one state, New Jersey, recently invalidated local ordinance restrictions as interfering with the state's power to determine the appropriate residency restrictions.[134] In doing so, the court noted one of the most problematic aspects of local ordinance restrictions: that their heightened severity achieves the likely-intentional effect of banishing sex offenders from the town entirely.[135]

Overly-strict residency restrictions have placed some sex offenders in untenable living situations.[136] In 2007, a group of sex offenders in Miami, Florida were ordered to take up residence under the Julia Tuttle Causeway.[137] Although the state set a 1,000-foot limit from schools, daycare centers, parks, and other places where children congregate, Miami-Dade County has a stricter 2,500-foot limit that forced these offenders to resort to living under a bridge.[138]

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128. Act effective July 25, 1995, 70 Del. Laws 1995, ch. 279, § 3 (codified as amended at DEL. CODE ANN. tit. 11, § 1112(a) (Michie 2001)).

129. Act effective Oct. 1, 1995, 1994 Mich. Pub. Act 295, § 35 (codified as amended at MICH. COMP. LAWS ANN. § 28.735 (West 2004 & Supp. 2006)).

130. Singleton, *supra* note 126, at 607.

131. LEGISLATIVE TRENDS, *supra* note 9, at 6.

132. Singleton, *supra* note 126, at 608.

133. SANDRA NORMAN-EADY, OFFICE OF LEGISLATIVE RESEARCH, CONN. GEN. ASSEMBLY, 2009-R-0227, LOCAL ORDINANCES RESTRICTING SEX OFFENDERS FROM CERTAIN AREAS (2009), http://www.cga.ct.gov/2009/rpt/2009-R-0277.htm.

134. *See* G.H. v. Twp. of Galloway, 951 A.2d 221, 238 (N.J. Super. Ct. App. Div. 2008), *aff'd*, 971 A.2d 401 (N.J. 2009).

135. *See id.* at 229 n.6. Residency restrictions do not necessarily have to restrict sex offenders from 100% of the municipality's geographic area to effectively exile them from the community. *See id.* In this case, one of the ordinances permitted sex offenders to reside in only two areas in the entire township: an expensive community well out of their price range, and a "desolate field." *Id.*

136. Catharine Skipp, *A Law for the Sex Offenders Under a Miami Bridge*, TIME.COM (Feb. 1, 2010), http://www.time.com/time/nation/article/0,8599,1957778,00.html.

137. Gigi Stone, *Sex Offenders Forced Under Miami Bridge*, ABC NEWS (May 6, 2007), http://abcnews.go.com/WNT/LegalCenter/Story?id=3096547. Some of the offenders' drivers' licenses even list their home address as "Under Julia Tuttle Causeway," and they receive their mail at that so-called address. Gabriella von Rosen, *Miami Tent City in Retrospective*, BLAST MAG. (June 2, 2010), http://blastmagazine.com/the-page-one-story/2010/06/miamis-tent-city-in-retrospective/.

138. Julie Brown, *For Julia Tuttle Sex Offenders, No Escape From Cold*, MIAMI HERALD (Jan. 8, 2010), http://www.miamiherald.com/news/miami-dade/story/1414991.html.

One offender described the conditions as "mental torture," and has asked the county to send him back to prison instead of leaving him in the makeshift camp under the bridge.[139] By early 2010, as many as seventy sex offenders were still living under the Julia Tuttle Causeway, feeling forgotten and abandoned as they shivered through the unusually cold winter.[140]

Media coverage of the camp, however, subjected Miami to growing public scrutiny, "manag[ing] the improbable feat of arousing sympathy for pedophiles" and ultimately prompting Miami-Dade County to take action.[141] In February 2010, a new law was passed that amended the county's 2,500-foot residency restriction to apply only to schools, and created a 300-foot no-loitering zone for other places where children congregate.[142] Subsequently, in April 2010, the City of Miami-Dade County's Homeless Trust moved all of the offenders into what was intended to be more permanent housing, placing them in a motel paid for with taxpayer money.[143] The motel's manager evicted them within days, however, due to complaints from other guests who did not like the idea of sex offenders in close proximity.[144] Forbidden from returning to the camp under the bridge, some of the offenders are currently roaming the streets with nowhere to go.[145]

Similarly, in Georgia, parole officers directed offenders to a camp in the woods, after they could not find a legally permissible residence.[146] One resident of the camp was married and owned a home with his wife in Virginia, but he was not permitted to move there, despite his wife's pleas.[147] Another camp resident described life there as "living like an animal," the conditions so terrible he would prefer death.[148] After the press ran a story on the camp in the woods, the state ordered the offenders to leave within twenty-four hours,[149] and they were left in fear of being re-arrested if they could not find somewhere to go.[150] They had good reason to be afraid: until 2008, a sex offender who became homeless in Georgia would be charged with

139. Stone, *supra* note 137.

140. Brown, *supra* note 138.

141. Skipp, *supra* note 136.

142. *Id.*

143. von Rosen, *supra* note 137.

144. *Id.*

145. *Id.*

146. *Homeless Georgia Sex Offenders Ordered Out of Woods Camps*, FOXNEWS.COM (Sept. 29, 2009), http://www.foxnews.com/story/0,2933,556300,00.html.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

a failure-to-register offense,[151] and if convicted twice of such an offense, the offender would be sentenced to a mandatory term of life in prison.[152]

D. Exiling Sex Offenders from the Internet

As of 2007, 71% of American households have some kind of Internet access, and for households with family incomes of $75,000 or more, that number jumps to 95% or more.[153] The percentage of adults who use the Internet on a daily basis has been rising steadily over the past decade.[154] Similarly, the reasons for which they use the Internet has diversified, including activities such as reading e-mail, shopping, using social networking websites, checking the weather, blogging, watching videos, and sending instant messages.[155]

However, as the Internet becomes increasingly integrated into daily life, sex offenders have been capitalizing on the Internet more frequently in the commission of their crimes.[156] The Internet affords sex offenders a cloak of anonymity and easy access to children and child pornography,[157] and has been described as a "nearly perfect medium for offenders seeking children for sex."[158] In an effort to balance offenders' rights with public welfare, many offenders have

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151. The Georgia law establishing the sex offender registry specifies that "homeless does not constitute an address" for the purpose of registration. GA. CODE ANN. § 42-1-12(a)(1) (West 2008). In 2008, the Georgia Supreme Court held in *Santos v. State* that § 42-1-12(a)(1) was "unconstitutional under the due process clause of the Georgia and United States Constitutions." Santos v. State, 668 S.E.2d 676, 677 (Ga. 2008).

152. *See* Bradshaw v. State, 671 S.E.2d 485, 492 (Ga. 2008) (holding that mandatory life sentence for second failure-to-register conviction violates Eighth Amendment).

153. *Households Using the Internet In and Outside the Home, By Selected Characteristics: Total, Urban, Rural, Principal City, 2007*, NAT'L TELECOMM. AND INFO. ADMIN., http://www.ntia.doc.gov/reports/2008/Table_HouseholdInternet2007.pdf (last visited June 20, 2010).

154. *See Daily Internet Activities, 2000-2009*, PEW INTERNET & AM. LIFE PROJECT, http://www.pewinternet.org/Static-Pages/Trend-Data/Daily-Internet-Activities-2000200909.aspx (last visited June 20, 2010).

155. *Id.*

156. *See Internet Fuels Child Exploitation*, INT'L INST. FOR CHILD RIGHTS AND DEV. (Mar. 20, 2008), http://www.iicrd.org/News/InternetFuelsExploitationEpochMarch2008; Julie Poppen, *Online Predators Using Phones, Blackberrys*, ROCKY MOUNTAIN NEWS (Feb. 12, 2009, 12:05 AM), http://www.rockymountainnews.com/news/2009/feb/12/online-predators-using-phones-blackberrys/.

157. Emily Brant, *Sentencing "CyberSex" Offenders: Individual Offenders Require Individualized Conditions When Courts Restrict Their Computer Use and Internet Access*, 58 CATH. U. L. REV. 779, 780-81 (2009).

158. MICHAEL MEDARIS & CATHY GIROUARD, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, PROTECTING CHILDREN IN CYBERSPACE: THE ICAC TASK FORCE PROGRAM 2 (2002), *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/191213.pdf.

been subjected to Internet restrictions as a condition of their release from incarceration.[159]

There are no federal laws providing for Internet restrictions, but the Federal Sentencing Guidelines—uniform rules that federal courts must consider when imposing criminal sentences[160]—authorize courts to impose special conditions for offenders on supervisory release,[161] including restrictions on Internet usage.[162] In fashioning special conditions, the court may consider the offender's characteristics and the circumstances surrounding the crime itself,[163] but it must be no more restrictive than necessary "to protect the public from the [offender's] future crimes, deter future criminal conduct, or provide correctional treatment and training in an effective manner."[164] Although most Internet restrictions require the sex offender to obtain his probation officer's permission before accessing the Internet,[165] there is a circuit split as to the proper interpretation of whether this type of restriction is truly "necessary."[166]

The Fourth, Fifth, Eighth, Ninth, and Eleventh Circuits have upheld comprehensive bans on Internet access, while the Second, Third, Seventh, and Tenth Circuits have typically required a more tailored approach, banning the offender only from specific websites.[167] Of the circuits favoring a stricter approach, both the Fifth and the Fourth Circuits have upheld complete bans on computer and Internet access,[168] and find it permissible that such a

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159. Brian W. McKay, *Guardrails on the Information Superhighway: Supervising Computer Use of the Adjudicated Sex Offender*, 106 W. VA. L. REV. 203, 219-20 (2003).

160. 18 U.S.C. § 3553 (2006); *see* U.S. SENTENCING GUIDELINES MANUAL § 1A (2009).

161. 18 U.S.C. § 3583(c) (2006). Supervised release is a period of supervision in the community, which is served after completing a term of incarceration. *See id.* § 3583(a).

162. Brant, *supra* note 1577, at 784; McKay, *supra* note 159, at 219-20.

163. 18 U.S.C. § 3553(a)(1) (2006).

164. McKay, *supra* note 1599, at 220.

165. Brant, *supra* note 1577, at 785; Susan S. Kreston, *Emerging Issues in Internet Child Pornography Cases: Balancing Acts*, J. INTERNET L., June 2006, at 22, 29. It should be noted that all of the federal cases discussed in this Part pertain to child pornography. *See infra* notes 168-73. This is easily explained by the fact that possession of child pornography is the most common federal sex crime. SUMTER CAMP & STEVEN KALAR, COMPUTER FORENSICS 101: HOW TO SOUND LIKE A GEEK (WITHOUT BECOMING ONE) 2 (2007), *available at* http://txw.fd.org/LinkClick.aspx?fileticket=Ws3LTQI%2BVXM%3D&tabid=58.

166. Brant, *supra* note 1577, at 784-85.

167. *Id.*

168. *See, e.g.*, United States v. Granger, 117 F. App'x 247, 248-49 (4th Cir. 2004) (holding that imposing absolute computer and Internet ban on offender convicted of transporting and shipping child pornography on computer disks was not an abuse of discretion); United States v. Paul, 274 F.3d 155, 167-70 (5th Cir. 2001) (finding that an

ban limits the offender's employment and freedom of expression, so long as the restriction is tailored to the crime, deters the offender from future criminal activity, and serves to protect the public.[169] The Eighth, Ninth, and Eleventh Circuits have supported broad-but-not-absolute bans on computer and Internet usage, following the Fourth and Fifth Circuits' reasoning but also requiring some mechanism for providing a discretionary exception to the blanket prohibition.[170]

Of the circuits favoring more tailored restrictions, the Second Circuit is the most vehemently opposed to broad Internet bans, holding that such bans, even when rationally related to the circumstances of the offense and the deterrent and protective goals of sentencing, constitute "a greater deprivation o[f] [the offender's] liberty than is reasonably necessary."[171] The Third, Seventh, and Tenth Circuits place great weight on the importance of the Internet in modern life, but are willing to impose some restrictions on Internet access.[172] Even when the underlying offense involved the Internet, these circuits require Internet access to be individually crafted, thus permitting as much lawful Internet use as possible.[173]

State legislatures, on the other hand, have begun passing laws to restrict sex offenders' Internet access. At the end of 2007, New Jersey joined Florida and Nevada with its own Internet restriction law,[174]

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absolute computer and Internet ban is "reasonably necessary in light of" offender's conviction for possessing 1,200 child pornography images and serves the "legitimate need to prevent recidivism and protect the public").

169. *Paul*, 274 F.3d at 169.

170. *See, e.g.*, United States v. Rearden, 349 F.3d 608, 620-21 (9th Cir. 2003) (affirming restriction of Internet access to that approved by probation officer of offender convicted of shipping child pornography); United States v. Ristine, 335 F.3d 692, 695-96 (8th Cir. 2003) (finding that restriction imposed on offender convicted of receiving child porn which permitted computer use subject to probation officer's permission, but wholly banned Internet use, was not abuse of discretion); United States v. Zinn, 321 F.3d 1084, 1093 (11th Cir. 2003) (upholding limitation requiring probation officer's permission before using Internet for offender convicted of possessing computer disks containing 4,000 images of child pornography).

171. *See, e.g.*, United States v. Sofksy, 287 F.3d 122, 126 (2d Cir. 2002) (rejecting ban on Internet use except as permitted by probation officer of offender convicted of receiving thousands of images of child pornography).

172. *See* Brant, *supra* note 1577, at 794-95.

173. *See, e.g.*, United States v. Freeman, 316 F.3d 386 (3d Cir. 2003). Freeman was convicted of receiving and possessing child pornography after he downloaded numerous images from an informant's computer. *Id.* at 387. However, since he never used a computer or the Internet to solicit children, the court held that a restriction conditioning his computer and Internet use upon permission from his probation officer was overly broad and "not reasonably necessary." *Id.* at 391-92. *Cf.* United States v. Crandon, 173 F.3d 122, 124 (3d Cir. 1999) (upholding restriction limiting Internet usage to that approved by probation officer for offender convicted of receiving child pornography obtained by soliciting child on Internet).

174. Fred J. Aun, *Does NJ Sex Offender Net Ban Go Too Far?*, TECHNEWSWORLD

one of the strictest to date. Under the New Jersey law, registered sex offenders whose crimes involved use of the Internet are presumptively banned from all Internet access.[175] To ensure compliance, they are subject to periodic unannounced searches of their computers, installation of monitoring software and/or hardware, and any other restriction deemed appropriate.[176] The only way these offenders can gain access is by obtaining written permission from the court, or if they are on probation or parole, by obtaining permission from their supervising officer.[177]

Even when New Jersey offenders' underlying offenses did not involve the Internet, they may still be banned from Internet access if they are under the supervision of the New Jersey Parole Board ("Parole Board").[178] The New Jersey Parole Act[179] authorizes the Parole Board to impose, based on the offender's prior history, any specific conditions "deemed reasonable in order to reduce the likelihood of recurrence of criminal or delinquent behavior . . . ."[180] The Parole Act further provides that for a convicted sex offender, a specific condition may include a blanket prohibition on using Internet-enabled devices, except when his parole officer permits it for employment or job-searching purposes.[181]

The state of Illinois, with new legislation that took effect on January 1, 2010, has also all but banned sex offenders from the Internet.[182] The new laws—which were passed unanimously by both chambers of the Legislature[183]—prohibit registered sex offenders from accessing a "social networking website."[184] The term is defined as an "Internet website containing profile web pages of the members," including the members' names or nicknames, photographs, other personal identifying information, and which offers members or visitors to the site a means of leaving comments or messages on members' profile pages.[185]

(Dec. 28, 2007, 11:40 AM), http://www.technewsworld.com/story/Does-NJ-Sex-Offender-Net-Ban-Go-Too-Far-60983.html?wlc=1263707471.

175. *See* N.J. STAT. ANN. § 2C:43-6.6 (West Supp. 2009).

176. *Id.* §§ 2C:43-6.6(a)(2)-(a)(4).

177. *Id.* § 2C:43-6.6(a)(1). However, a parole or probation officer only has authority to grant permission to use the Internet for job-seeking or work-related activities. *Id.*

178. N.J. STAT. ANN. §§ 30:4-123.45 to -123.69 (West 2008).

179. *Id.*

180. *Id.* § 30:4-123.59(b)(1) (West Supp. 2010).

181. *Id.* § 30:4-123.59(b)(2) (West Supp. 2010).

182. Declan McCullagh, *Kicking Sex Offenders Off the Internet?*, CBS NEWS (Aug. 13, 2009), http://www.cbsnews.com/stories/2009/08/13/opinion/main5240568.shtml.

183. *Id.*

184. 730 ILL. COMP. STAT. ANN. 5/3-3-7(a)(7.12) (West 2007 & Supp. 2010).

185. 720 ILL. COMP. STAT. ANN. 5/16D-2(h) (West 2003 & Supp. 2010).

The above definition is so broad that many websites not typically considered to be a social networking website fall under its purview, including search engines like Google and Yahoo!, various news sites, multimedia sites like Netflix and MP3.com, and more.[186] Whether the Illinois Legislature recognized the breadth of its definition would amount to a total Internet ban is unclear, but such severe limitation of Internet use is bound to negatively impact offenders' ability to successfully reintegrate into society.[187]

IV. CONSTITUTIONAL CHALLENGES TO SEX OFFENDER RESTRICTIONS

Challenges to sex offender laws have been brought for allegedly violating a variety of constitutional rights, including those protected by the Ex Post Facto Clause, and the First, Fifth, and Eighth Amendments. This Part will present case illustrations of constitutional challenges, both successful and otherwise, prompted by the increasing strictness of various sex offender restrictions.

A. Ex Post Facto Clause

Both the state and federal governments are prohibited from enacting ex post facto laws[188]—defined as those that impose "punishment for an act which was not punishable at the time it was committed[,] or impose[ ] additional punishment to that then prescribed."[189] Whether a law that applies retroactively is unconstitutional under the Ex Post Facto Clause is dependent upon the intent of the legislature: whether it intended the law to impose punishment, or whether it merely intended the law to be a civil, regulatory scheme.[190] If the court finds the law was intended to be punitive, then no further inquiry is required.[191] If, however, the court finds that the legislature intended the law to be a civil, regulatory scheme, then it must determine whether it "is so punitive either in purpose or effect as to negate [the legislature's] intention to deem it civil."[192]

Ex post facto claims are one of the most common challenges brought against sex offender residency restrictions, and initially, many such claims were routinely rejected by a variety of courts.[193]

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186. *See* McCullagh, *supra* note 182.

187. *See id.*

188. *See* U.S. CONST. art. I, §§ 9-10.

189. Cummings v. Missouri, 71 U.S. 277, 325-26 (1866).

190. *See* Smith v. Doe, 538 U.S. 84, 91-92 (2003).

191. *Id.*

192. *Id.* (quoting Kansas v. Hendricks, 521 U.S. 346, 361 (1997) (internal quotation marks omitted)).

193. *See, e.g.*, Weems v. Little Rock Police Dep't, 453 F.3d 1010, 1017 (8th Cir. 2006); Doe v. Miller, 405 F.3d 700, 718, 723 (8th Cir. 2005); Doe v. Baker, No. Civ. A.

However, as residency restrictions have grown increasingly harsh, courts have begun finding them violative of the Ex Post Facto Clause.[194]

For example, in 2006 the Kentucky Legislature amended its residency restriction, making it stricter in several ways.[195] The new law applied to all registered sex offenders, whereas the previous version included only those actively on probation or parole.[196] It added public playgrounds to the list of prohibited places, which previously consisted of schools and day care centers.[197] It also altered the method of defining the 1,000-foot radius, from a measurement taken between the nearest exterior walls of each building to one taken between the respective property lines.[198] Finally, the new law placed the burden of determining whether compliance with the law is met on the offender.[199]

In *Commonwealth v. Baker*, the Kentucky Supreme Court invalidated the new law as applied to offenders whose crimes predate its passage.[200] Michael Baker was required to register as a sex offender as a result of an offense he committed in 1995.[201] After he was arrested for residing within 1,000 feet of a playground, he brought an ex post facto challenge to the new law.[202] The court found that the legislature intended the act to be a civil scheme, but that "the residency restrictions are so punitive in effect as to negate any intention to deem them civil."[203]

The Kentucky Supreme Court's determination that the law was truly punitive was based on a number of factors: 1) it is "decidedly similar to banishment," which is historically a form of punishment; 2)

1:05-CV-2265, 2006 WL 905368, at *3, *6 (N.D. Ga. Apr. 5, 2006); Lee v. State, 895 So.2d 1038, 1041, 1044 (Ala. Crim. App. 2004); Thompson v. State, 603 S.E.2d 233, 234, 236 (Ga. 2004); People v. Leroy, 828 N.E.2d 769, 779, 782 (Ill. App. Ct. 2005); State v. Seering, 701 N.W.2d 655 (Iowa 2005).

194. *See, e.g.*, Mikaloff v. Walsh, No. 5:06-CV-96, 2007 WL 2572268, at *10, *13 (N.D. Ohio Sept. 4, 2007); State v. Pollard, 908 N.E.2d 1145, 1150, 1154 (Ind. 2009); Commonwealth v. Baker, 295 S.W.3d 437, 441, 447 (Ky. 2009), *cert. denied*, 130 S. Ct. 1738 (2010).

195. *Baker*, 295 S.W.3d at 440-41. *See* KY. REV. STAT. ANN. § 17.545 (West 2006 & Supp. 2009).

196. *Baker*, 295 S.W.3d at 440-41.

197. *Id.*

198. *Id.*

199. *Id.* If a new school, day care, or playground were to open within 1,000 feet of the offender's home, the offender would be presumed to know of its existence, and would be required to move within ninety days. *Id.*

200. *Id.* at 447.

201. *Id.* at 441.

202. *Id.*

203. *Id.* at 447.

it accomplishes both general deterrence and retribution, both of which are traditional goals of punishment; 3) it prevents offenders from living in large swaths of the community and keeps them in constant fear of having to move, thus imposing "affirmative disabilities and restraints"; 4) it is not rationally related to the nonpunitive purpose of providing for public safety; and 5) it "is excessive with respect to the nonpunitive purpose of public safety."[204]

Of particular relevance on a broader scale are the Kentucky Supreme Court's findings on the fourth and fifth items.[205] The court found that the law was not rationally related to public safety because although the law prevents offenders from residing within 1,000 feet of prohibited areas, it did nothing to prohibit them from "spending all day" visiting those locations at a time when children are most likely to be present.[206] Further, the court found that the law is excessive regarding public safety because the restrictions applied uniformly to all offenders, regardless of whether they victimized children or adults: there was no provision for individually assessing each offender to determine whether he or she posed a threat to public safety.[207] Note that only seven states prohibit offenders from merely loitering in protected zones,[208] and most do not limit their application of this ban to offenders who victimized children.[209]

B. Fifth Amendment: Takings Clause

The Takings Clause of the Fifth Amendment prohibits the government from taking private property "for public use, without just compensation."[210] In *Mann v. Georgia Department of Corrections*, the Georgia Supreme Court faced a Takings Clause challenge to both the state residency and employment restrictions.[211] When Anthony Mann

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204. *Id.* at 444-46.

205. *See id.* at 445-46.

206. *Id.* at 445.

207. *Id.* at 446.

208. The seven states are Alabama, Delaware, Georgia, Illinois, Michigan, Missouri, and South Dakota. *See* ALA. CODE § 15-20-26 (LexisNexis 1995 & Supp. 2005); DEL. CODE ANN. tit. 11, § 1112 (2001); GA. CODE ANN. § 42-1-15 (West Supp. 2008); 720 ILL. COMP. STAT. ANN. § 5/11-9.3 (West 2002 & Supp. 2010); MICH. COMP. LAWS ANN. § 28.734 (West Supp. 2010); MO. ANN. STAT. § 566.149 (West Supp. 2010); S.D. CODIFIED LAWS 22-24B-24 (2010).

209. *See generally* BRENDA V. SMITH, NIC/WCL PROJECT ON ADDRESSING PRISON RAPE, FIFTY STATE SURVEY OF ADULT SEX OFFENDER REGISTRATION REQUIREMENTS (2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1517369 (to download full paper, follow "One-Click Download" hyperlink).

210. U.S. CONST. amend. V.

211. Mann v. Ga. Dep't of Corr., 653 S.E.2d 740, 745 (Ga. 2007). The residency restriction prohibited registered sex offenders from residing within 1,000 feet of a school, child care center, church, or place where children congregate. GA. CODE ANN. §

purchased a house with his wife and became part-owner of a restaurant, both locations were in compliance with residency and employment restrictions.[212] Some time thereafter, day care centers opened within 1,000 feet of both his home and business; as a result, Mann's probation officer "demanded that [he] quit the premises of his business and remove himself from his home upon penalty of arrest and revocation of probation."[213]

Unlike some states' residency restrictions, which provided an exception for changes to the surrounding protected zone after an offender has already established residency,[214] the court found that the Georgia restriction left offenders "continually at risk of being ejected" from their homes.[215] No matter where Mann might move, he would always be in danger of a prohibited place choosing to establish itself within 1,000 feet of his home—a situation which "positively precludes [him] from having any reasonable investment-backed expectation in any property purchased as his private residence."[216] The court held that while protecting children is a substantial public purpose, justice required that the cost of advancing that purpose (i.e., requiring Mann to give up his home) be "spread among taxpayers through the payment of compensation."[217] Thus, the court invalidated the residency restriction to the extent that it allowed uncompensated taking of Mann's home.[218]

However, with respect to Mann's business, the Georgia Supreme Court found that the employment restriction did not require him to forfeit his economic interest.[219] Specifically, Mann's physical presence was not essential to operating the restaurant, and he testified that he could do his work off-site.[220] Therefore, although the employment restriction physically ousted him from the restaurant, it did not result in an unconstitutional taking of his property interest.[221] Although the Georgia law was later amended to provide an exception

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42-1-15(a) (2006) (codified as amended at § 42-1-15(b) (2008)). Similarly, the employment restriction prohibited registered sex offenders from working at a location within 1,000 feet of a school, child care center, or church. GA. CODE ANN. § 42-1-15(b)(1) (2006) (codified as amended at § 42-1-15(c)(1) (2008)).

212. *Mann*, 653 S.E.2d at 742.

213. *Id.*

214. *See, e.g.*, ALA. CODE § 15-20-26(e) (LexisNexis Supp. 2005) ("[c]hanges to property within 2,000 feet" of offender's registered address that take place after offender moves in cannot form basis for violation).

215. *Mann*, 653 S.E.2d at 742.

216. *Id.* at 744.

217. *Id.* at 745 (quoting Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, 543 (2005)).

218. *Id.*

219. *Id.* at 746.

220. *Id.*

221. *Id.*

for offenders whose employment or residency pre-date the establishment of the protected facility,[222] many states still do not have any such exceptions.[223]

C. *Eighth Amendment: Cruel and Unusual Punishment*

The Eighth Amendment prohibits the infliction of cruel and unusual punishment,[224] which includes "not only barbaric punishments, but also sentences that are disproportionate to the crime committed."[225] In 2006, the Georgia legislature amended the penalties for failing to register by providing false information, imposing a sentence of ten to thirty years prison for a first violation and a mandatory sentence of life imprisonment for a second violation.[226] In *Bradshaw v. State*, Cedric Bradshaw challenged the mandatory penalty after he was convicted of a second failure-to-register offense by registering with a false address.[227] In determining whether the punishment was excessive, the court followed the framework set forth by the U.S. Supreme Court in *Solem v. Helm*,[228] taking into consideration the seriousness of the offense, the punishments imposed for other offenses within the state of Georgia, and punishments imposed for failure-to-register charges in other jurisdictions.[229]

Regarding the gravity of Bradshaw's crime, the court found that the offense was passive and nonviolent, "neither caus[ing] nor threaten[ing] to cause harm to society."[230] The gravity was further mitigated by Bradshaw's efforts to comply with the law.[231] The court also noted that life in prison "is the third most severe penalty permitted by law,"[232] and is the harshest sentence available in

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222. GA. CODE ANN. § 42-1-15(f) (Supp. 2008).

223. *See* SMITH, *supra* note 2099 (listing state statutory residence and work restrictions, most of which make no exception when the sex offender's residence or place of work pre-dates establishment of the protected facility).

224. U.S. CONST. amend. VII.

225. Solem v. Helm, 463 U.S. 277, 284 (1983).

226. Bradshaw v. State, 671 S.E.2d 485, 488 n.5 (Ga. 2008).

227. *Id.* at 487.

228. 463 U.S. at 292-93.

229. *Bradshaw*, 671 S.E.2d at 489-93.

230. *Id.* at 490.

231. *Id.* Bradshaw initially registered with his sister's address, and then with his aunt's address, but both were rejected due to noncompliance with residency restrictions. *Id.* at 487. Additionally, he voluntarily responded to the local jail within twenty-four hours of law enforcement officers advising the aforementioned aunt that they wished to speak with him. *Id.* at 490. Thus, the court found that even though he failed to register, he was still "readily accessible" to law enforcement via the address where he originally intended to reside. *Id.*

232. *Id.* Only life in prison without parole and the death penalty are more severe

Georgia for crimes other than murder or "serious violent felon[ies]" committed by repeat offenders.[233] Thus, the court found there was a "threshold inference of gross disproportionality" in a mandatory life term for a second failure-to-register offense.[234]

The court then turned to a comparison of Bradshaw's crime to other crimes in Georgia for which a life sentence could be imposed, and found that all other such crimes—murder, feticide, hijacking a motor vehicle, certain kidnapping offenses, and certain weapons offenses—were significantly more violent than failing to register.[235] Moreover, other violent offenses such as voluntary manslaughter, aggravated battery, and aggravated assault would result in lesser punishment, potentially as low as one year in prison.[236]

In considering sentences available for similar offenses in other jurisdictions, the court found that while all states have statutes criminalizing failure-to-register offenses, no other state imposes life in prison for a second violation.[237] Georgia was "the clear outlier"—the most common permissible punishment was a term of five years or less, and only two states permitted a term of more than ten years.[238] After taking all of the above factors into account, the court concluded that a mandatory term of life imprisonment "is so harsh in comparison to the crime for which it was imposed that it is unconstitutional."[239]

D. Fourteenth Amendment: Due Process

The Fourteenth Amendment's Due Process clause provides that no state shall "deprive any person of life, liberty, or property, without due process of law."[240] When depriving an individual of a fundamental right—those deemed to be "deeply rooted in this Nation's history and tradition"[241]—the state must demonstrate that

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punishments than life in prison. *Id.*

233. *Id.*

234. *Id.* at 491.

235. *Id.* The court also noted all of these offenses are "more disruptive of society, and require manifestly more culpability" than failing to register. *Id.*

236. *Id.*

237. *Id.*

238. *Id.* at 491-92. Approximately half the states had laws providing specific punishment for a second offense; the rest did not differentiate between multiple offenses. *Id.* at 491. Of the states that had a separate second-offense penalty, fifteen provide a maximum punishment of five years or less, and two provide a maximum of more than ten years. *Id.* at 491-92. Of the states that do not differentiate between subsequent offenses, seventeen states provide a maximum penalty of five years or less; none permit a sentence of more than ten years. *Id.* at 492.

239. *Id.*

240. U.S. CONST. amend. XIV, § 1.

241. Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977).

the restriction serves a compelling government purpose.[242] For non-fundamental rights, the state need only demonstrate that the restriction is rationally related to a legitimate government purpose.[243]

As previously mentioned, in New York, defendants who are convicted of kidnapping or related offenses against a child other than their own are classified as sex offenders.[244] In *People v. Knox*,[245] the New York Court of Appeals was called upon to address whether applying the label of "sex offender" violates the due process rights of defendants whose crimes involved no evidence of sexual conduct or motivation.[246] The court "assume[d] that [the] defendants ha[d] a constitutionally-protected liberty interest" in not being "mischaracterized in a way that is arguably even more stigmatizing, or more frightening to the community, than a correct designation would be,"[247] but held that such a liberty interest does not ascend to the level of a "fundamental right."[248]

The court then considered whether the law was rationally related to the state's purpose of protecting children from being the victims of sex crimes.[249] Even though more often than not, kidnappings of unrelated child victims do *not* involve sexual misconduct,[250] the court determined that the New York Legislature

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242. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 797 (3d ed. 2006).

243. *Id.*

244. *See* N.Y. CORRECT. LAW § 168-a(2) (McKinney 2010) (including "kidnapping or related offense(s)" where victim is under seventeen years old and offender is not victim's parent in definition of sex offense). The law contains no requirement of sexual conduct or motivation. *See id.*

245. 903 N.E.2d 1149 (N.Y. 2009).

246. *Id.* at 1150. The three defendants in *Knox* are as follows: (1) Judy Knox, who grabbed an eight-year-old girl's arm "and tried to pull her away" from a group of children after she lost custody of one of her own children; (2) Eliezer Cintron, who locked his girlfriend and her two children in her apartment after she "asked him to leave;" and (3) Francis Jackson, who abducted and threatened to kill the child of a prostitute in his employ after she indicated she no longer wished to work for him. *Id.* at 1150-51. Knox and Jackson were both convicted of attempted kidnapping, while Cintron was convicted of unlawful imprisonment. *Id.* The defendants also brought an equal protection claim, which the court dismissed as "obviously lacking in merit." *Id.* at 1151-52.

247. *Id.* at 1152. The defendants admitted that based on their crimes, they are dangerous to children; they only contest the application of the label "sex offender" because their offenses did not involve anything sexual. *Id.*

248. *Id.* (citing Immediato v. Rye Neck Sch. Dist., 73 F.3d 454, 463 (2d Cir. 1996) (holding that "a fundamental right is not 'implicated every time a governmental regulation intrudes on an individual's 'liberty'")).

249. *Id.* at 1153.

250. *Id.* Forty-six percent of kidnappings in which the victim is a child unrelated to the offender involve sexual assaults. *Id.* (citing David Finklehor, Heather Hammer &

had a rational basis for believing that children who fall victim to such crimes are, "in the large majority of cases[,] . . . sexually assaulted or are in danger of sexual assault."[251] The court further held that it was rational for the legislature not to provide an exception for defendants such as these—where there is no evidence of sexual motivation or misconduct—because it could have found that the administrative costs and risks of making an error were too great.[252] Thus, the court upheld the law, and the defendants remain registered as sex offenders, despite the lack of any sexual misconduct.[253]

E. First Amendment: Freedoms of Religion, Association, and Free Speech

The First Amendment guarantees individuals the right to freedom of speech, freedom of association, and freedom to practice religion.[254] Challenges to sex offender laws for allegedly violating rights under the First Amendment are relatively uncommon, but are beginning to crop up as the laws grow stricter.

On July 1, 2008, Utah's registry statute was amended to require registered sex offenders to provide the Utah Department of Corrections with any Internet identifiers, including passwords, "and the websites [at] which they use [the] identifiers."[255] In *Doe v. Shurtleff I*, a registered sex offender who was no longer on probation, parole, or supervised release challenged this law, alleging, among other things, that it violated his right to free speech.[256] The court

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Andrea J. Sedlak, *Nonfamily Abducted Children: National Estimates and Characteristics*, NISMART (Office of Juvenile Justice and Delinquency Prevention, Washington, DC), Oct. 2002, at 10).

251. *Knox*, 903 N.E.2d at 1154. The court rationalized its decision by claiming that the report counted only identifiable sexual assaults, but there could have been sexual assaults in cases where the "child is killed or remains missing," in which case no one would know that a sexual assault had been committed. *Id.* at 1153. The court also noted that some offenders may have intended to sexually assault their victims, but were prevented from doing so either by their own arrest or the victim's escape. *Id.* at 1153-54.

252. *Id.* at 1154.

253. *Id.* Knox and Jackson were classified as lower-level offenders, but Cintron was placed in a higher-risk category due to previous offenses. *Id.* at 1155. Due to their classifications, only Cintron is listed in the public-access sex offender registry. *See New York State Sex Offender Registry Search*, N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS., http://criminalJust..state.ny.us/nsor/search_index.htm (last visited Aug. 13, 2010) ("DCJS is barred by law from posting information on Level 1 (low level) sex offenders, or those with a pending risk level, on this public site.").

254. U.S. CONST. amend. I.

255. Doe v. Shurtleff (*Doe v. Shurtleff I*), No. 1:08-CV-64-TC, 2008 WL 4427594, at *1 (D. Utah Sept. 25, 2008).

256. *Id.*

noted that anonymous speech, particularly political speech, "is a well-established constitutional right,"[257] and rejected the argument that Mr. Doe had forfeited his First Amendment rights by virtue of being a convicted sex offender.[258]

The court determined that the statute represented a content-based restriction on speech, and was thus subject to strict scrutiny.[259] Although the court found Utah's "interest in protecting children from internet [sic] predators" and deterring Internet crime in general to be compelling, it held that the law was not the "least restrictive means available to meet these goals."[260] The court then temporarily enjoined the enforcement of the disclosure provision against Mr. Doe for one year, as a violation of his First Amendment rights.[261] Subsequently, on May 12, 2009, the disclosure provisions were amended to expressly omit passwords from the definition of "Internet identifier" and limit the use of the identifiers to investigations of sex crimes.[262] In *Doe v. Shurtleff II*, the court found that the amendment removed the law from the realm of strict scrutiny, as it "no longer burden[ed] core political speech."[263] As amended, the law was deemed constitutional, and the temporary injunction was lifted.[264]

In December 2008, North Carolina passed a law preventing registered sex offenders from coming "[w]ithin 300 feet of any location intended primarily for the use, care, or supervision of minors," even when the premises are generally not used for such a purpose, and from being "[a]t any place where minors gather for regularly scheduled educational, recreational, or social programs."[265] As a result, James Nichols and Francis Demaio were arrested for attending services at Montcure Baptist Church, which has a daycare facility for parents attending services.[266] Both defendants sought to

257. *Id.* at *5 (citing McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 357 (1995)).

258. *Id.* at *6.

259. *Id.* at *7. "Content-based restrictions are those [that] 'suppress, disadvantage, or impose differential burdens upon speech because of its content.'" *Id.* (quoting Golan v. Gonzales, 501 F.3d 1179, 1196 (10th Cir. 2007)). The identity of a document's author is considered part of that document's contents, and thus forcing disclosure of identity creates a content-based restriction. *See id.* If the restriction had not been content-based, it would only be subject to intermediate scrutiny. *Id.*

260. *Id.* at *8.

261. *Id.* at *9.

262. Doe v. Shurtleff (*Doe v. Shurtleff II*), No. 1:08-CV-64-TC, 2009 WL 2601458, at *2 (D. Utah Aug. 20, 2009).

263. *Id.* at *4.

264. *Id.* at *7.

265. N.C. GEN. STAT. § 14-208.18(a)(2)-(a)(3) (2009).

266. State v. Demaio, No. 09 CRS 50647, slip op. at 3-4 (N.C. Super. Ct. Dec. 17, 2009). Nichols informed the pastor of his status as a convicted sex offender when he began attending services, and explained that he wanted to better his life. *Id.* at 4. The

have the law declared unconstitutional, as violative of their freedom to practice religion.[267] The court found that the relevant sections of the law implicated the defendants' freedom of association as well as their freedom to practice religion.[268] Although the state's interest in protecting children is compelling, the court held that the statute was not narrowly tailored enough to avoid unnecessary infringement on freedoms.[269] The court also found the sections both unconstitutionally overbroad, in that "there are a host of protected religious activities abridged by this statute which do not serve the compelling governmental interest,"[270] and unconstitutionally vague, in that it is unclear whether the actual presence of children is required to bar an offender from the premises.[271] The court then dismissed the criminal charges against both defendants and declared the relevant portions of the statute unconstitutional.[272]

V. (IN)EFFECTIVENESS STUDIES

For all of the effort and expenditure put into enforcing Megan's Laws around the country, the grim reality is that children are not any safer than they were before.[273] This section will discuss the findings of four of the more recent effectiveness studies, none of which find that Megan's Law is achieving its purpose.[274]

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pastor advised Nichols he was "welcome to worship there," as long as he did not engage in any misconduct. *Id.* In fact, most of the churchgoers also welcomed Nichols to worship with them. Alysia Patterson, *Banned From Churches, Sex Offenders Go to Court*, ABC NEWS (Oct. 7, 2009), http://abcnews.go.com/US/wireStory?id=8773606.

267. *Demaio*, No. 09 CRS 50647, slip op. at 1.

268. *Id.* at 10.

269. *Id.* at 11. The court suggested that the legislature could have avoided unnecessary infringement by providing an exception for churches, and noted there were exceptions to other portions of the statute. *Id.* For example, the statute also barred offenders from being "on the premises of any place intended primarily for the use, care, or supervision of minors," such as schools and day care facilities, § 14-208.18(a)(1), but included exceptions for parents of schoolchildren, registered voters whose voting places fall on school property, and juvenile sex offenders. § 14-208.18(d)-(f).

270. *Demaio*, No. 09 CRS 50647, slip op. at 11. For example, an offender could be barred from attending services even when parents maintain direct supervision over their children, as would be the case in a church with no separate daycare facility. *Id.* at 11-12. An offender could be similarly banned from attending a study group on a weeknight, when the church only maintains a daycare facility during weekend services. *Id.* at 12.

271. *Id.* at 13-14. The sheriff's department advised both defendants that their presence would be illegal even when no children were on the premises, but the state attorney general issued an opinion interpreting the law to mean that the offenders could attend services as long as no children were actually present. *Id.* at 14.

272. *Id.* at 15.

273. *See infra* text accompanying notes 278, 284, 295, 298.

274. *See id.*

A. *The New Jersey Study*

In December 2008, the New Jersey Department of Corrections published the findings of a three-part study aimed at examining the legislation's overall effect on the rate of sex crimes, the specific deterrence effect on individual sex offenders, and the costs associated with enforcing Megan's Law.[275] The first phase involved a twenty-one-year trend study of the rate of sex offenses,[276] and found that the rate of sex offenses declined steadily across the entire period.[277] Although there was a drop in the rate of sex offenses statewide after the law was enacted in 1994, the change point on the county level varied wildly.[278] Thus, the timing of the statewide drop appeared to be a mere "artifact of aggregation."[279]

Phase Two involved an analysis of data collected on 550 offenders who were released between 1990 and 2000,[280] focusing on the differences in the rate of recidivism, community tenure, and overall harm "before and after the implementation of Megan's Law."[281] The study found a consistent downward trend in recidivism across the ten-year period, except for a spike in 1995.[282] There was no statistically significant difference in community tenure between the pre- and post-Megan's Law groups.[283] Further, the study found that across the board, 9% of offenders were re-arrested for a sex offense, and Megan's Law neither made a difference in the seriousness nor in the type of the sex crime for which the offender was re-arrested.[284]

Phase Three involved submitting questionnaires to each county

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275. ZGOBA, *supra* note 12, at 7. According to the comments on the unnumbered cover page, the study was submitted to the U.S. Department of Justice for publication, but has yet to be published. *Id.* at pmbl.

276. *Id.* The twenty-one years consisted of ten years before the implementation of Megan's Law, the year it was implemented, and ten years afterward. *Id.* at 7.

277. *Id.* at 13.

278. *Id.* at 14. Only nine out of twenty-one counties had a statistically significant change point in the four years after Megan's Law was passed. *Id.* Additionally, counties such as Ocean, Warren, and Hunterdon that demonstrated significant drops just after the law was passed have had a substantial uptick in the rate of sexual offending in the past few years. *Id.* at 14-15.

279. *Id.* at 38.

280. *Id.* at 7.

281. *Id.* at 20-21. The recidivism component includes new arrests, convictions, and terms of incarceration. *Id.* at 21. Community tenure reflects the length of time between the offender's release and his re-arrest for a sexual offense and/or any other offense. *Id.* The harm component consists of reducing the number and seriousness of offenses, as well as the number of child victims. *Id.*

282. *Id.* at 29.

283. *Id.* at 31. In both groups, the time from release to arrest for any crime was 753 days, and the time from release to arrest for a sex crime was 795 days. *Id.*

284. *Id.* at 32.

on the cost of Megan's Law.[285] For the fifteen counties that responded, the total startup cost was $555,565, and the total cost of continuing to enforce Megan's Law was over $3.9 million per year.[286] Given the results of the first two phases, the researchers concluded that they would be "hard-pressed to determine that the escalating costs are justifiable."[287]

B. The New York Study

Researchers in New York also conducted a twenty-one year time-series analysis of arrest data, spanning from 1986 to 2006.[288] The study focused on whether Megan's Law, enacted in 1996, (1) influenced the overall rate of sex offenses; (2) deterred registered sex offenders from committing a subsequent sex offense; and (3) deterred individuals from committing a first-time sex offense.[289] In all three areas, the study found that Megan's Law bore no statistically significant effect whatsoever.[290] Furthermore, the vast majority of individuals arrested for any sex offense during the study were first-time offenders,[291] which "casts doubts on the ability of sex offender registration and notification laws, as well as residency and occupational restriction laws, to actually reduce sexual offending."[292]

C. The Nationwide Study

Another group of researchers conducted a nationwide time series analysis using monthly rape data from the FBI's Uniform Crime Report from 1990 to 2000.[293] After excluding various states due to problems with acquiring sufficient data, the researchers proceeded to

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285. *Id.* at 33. The survey took into account startup costs, such as equipment, computer software, and initial establishment of the registry, as well as ongoing costs such as staff salaries and maintaining the registry. *Id.* at 34.

286. *Id.* at 35. The vast majority of the annual $3.6 million enforcement costs was attributable to staff salaries. *Id.*

287. *Id.* at 39.

288. Jeffrey C. Sandler, Naomi J. Freeman & Kelly M. Socia, *Does a Watched Pot Boil?: A Time-Series Analysis of New York's Sex Offender Registration and Notification Law*, 14 PSYCHOL. PUB. POL'Y & L. 284, 289 (2008).

289. *Id.* at 297.

290. *See id.*

291. *Id.* Specifically, 95.9% of those arrested for any sex crime were first-time offenders, as were 95.9% of those arrested for rape and 94.1% of those arrested for child molestation. *Id.*

292. *Id.* The researchers noted that the laws governing sex offenders were intended to reduce their opportunities to commit a new sex offense, but given their findings, only 4%-5% of sex offenses might be subject to prevention by such measures. *Id.*

293. Bob Edward Vasquez, Sean Maddan & Jeffery T. Walker, *The Influence of Sex Offender Registration and Notification Laws in the United States: A Time-Series Analysis*, 54 CRIME & DELINQ. 175, 182 (2008) (rape was selected because due to the seriousness of the offense, data on a monthly basis would be readily available).

analyze pre- and post-Megan's Law data from ten states.[294] Of these ten states, six experienced no statistically significant change in monthly rapes after Megan's Law was implemented,[295] three experienced a statistically significant decrease,[296] and one (California) experienced a steep, statistically significant *increase*.[297] The researchers concluded that "[t]he empirical finding of this research is that the sex offender legislation seems to have had no uniform and observable influence on the number of rapes reported in the states analyzed."[298]

D. The United Kingdom Study

In an update to an earlier study, the National Society for the Prevention of Cruelty to Children examined the effect of Megan's Law in five U.S. states to determine whether it should be implemented in the United Kingdom ("U.K.").[299] Information was gathered from academic research, the media, telephonic interviews with attorneys in the five states, official crime statistics, and the individual states' Megan's Law websites.[300] The researchers found that "[m]ost of the understood benefits of the laws are based on assumptions . . . . [Which] are rarely supported through research."[301] In conclusion, the study recommended against the adoption of Megan's Law and instead recommended that U.K. policymakers "ensure that sex offender management policies are based on objective evidence . . . and not [simply] on popular responses to high-profile sex

294. *Id.* Reasons for excluding states included poor or missing data on rapes, and early enactment of Megan's Law, such that the researchers could not obtain enough pre-enactment data. *Id.* The ten states included in the analysis are: Arkansas, California, Connecticut, Hawaii, Idaho, Nebraska, Nevada, Ohio, Oklahoma, and West Virginia. *Id.* at 186.

295. *Id.* at 185-86. Although four of the six states experienced an increase in monthly rapes after Megan's Law was implemented, it was not statistically significant. *See id.* at 186.

296. *Id.*

297. *Id.* On average, the number of rapes per month in California increased by forty-one after Megan's Law was implemented. *Id.*

298. *Id.* at 188. The researchers also suggested that the widespread proliferation of Megan's Laws may be the result of "knee jerk legislation that simply became more attractive as public support increased." *Id.*

299. Kate Fitch, *Megan's Law: Does it Protect Children?*, NAT'L SOC'Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, 6-7 (2006), http://www.nspcc.org.uk/Inform/publications/Downloads/meganslaw2_wdf48102.pdf. The five states—California, Washington, Minnesota, Louisiana, and Vermont—were chosen as a geographical representation of the U.S. as a whole, as well as a representation of a variety of implementation methods. *Id.*

300. *Id.* at 16.

301. *Id.* at 50.

crimes."[302]

VI. TARGETING REFORM: THE BIG THREE

Although there is a Megan's Law at the federal level, state law changes far more quickly and thus represents the vast majority of problematic legislation.[303] In some states, Megan's Law has spun so far out of control that it can be difficult to figure out just where to begin reforms.[304] However, the bulk of constitutional and practical issues can be addressed by changing the law in three main areas: the definition of sex offender, residency restrictions, and Internet restrictions.

A. Redefining a Sex Offender

The current definition of "sex offender" employed by some states is drastically over-inclusive, encompassing crimes that pose no risk to children.[305] Including such crimes does nothing to further the purported legislative purpose of child protection,[306] and denies affected offenders equal protection of the law. The Equal Protection Clause of the Fourteenth Amendment provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."[307] Absent a suspect or quasi-suspect statutory classification such as race or gender, courts review a statutory scheme under the rational basis test.[308] This standard is extremely deferential, and requires only that the classification be "rationally related to a legitimate state interest."[309] Even when the legislature has not clearly stated its purpose, the court will provide a reason on

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302. *Id.* at 52-53.

303. *See, e.g.*, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, *Myth v. Fact: Implementation of the Sex Offender Registry and Notification Act*, U.S. DEP'T OF JUSTICE (Winter 2009), http://www.ojp.usdoj.gov/smart/smartwatch/09_january/mythfact.html (debunking the myth that there are federal sex offender residency restrictions, and explaining that all such restrictions arise from numerous state and/or local laws).

304. *See* LEGISLATIVE TRENDS, *supra* note 9, at 13-14 ("Unlike previous eras in which sex offender-specific laws were repealed as new laws were enacted, the current trends appear to be primarily cumulative. And unfortunately, research regarding the impact and effectiveness of these laws and policies has not kept pace.").

305. *See supra* notes 103-18 and accompanying text (describing laws classifying indecent exposure, annoying or molesting a child, public urination, consensual sex between teenagers, display of obscene bumper sticker, and kidnapping offenses with no sexual component as sex offenses).

306. *See supra* note 51 (describing legislative purpose of multiple sex offender statutes as child protection).

307. U.S. CONST. amend. XIV, § 1.

308. Gayle Lynn Pettinga, *Rational Basis with Bite: Intermediate Scrutiny by Any Other Name*, 62 IND. L.J. 779, 782-83 (1987).

309. *Id.* at 783.

its own, requiring only "some plausible set of facts . . . to justify the challenged statute."[310] However, when the classification appears to be motivated by prejudice, the court has employed a somewhat more stringent standard—rational basis with "bite."[311]

Here, it is clear much of the "crackdown" on sex offenders is motivated by a general public hatred of them as a group,[312] which is fueled in great part by sensational media coverage.[313] Although there is no real evidence that Megan's Law is achieving the purpose of child protection,[314] the purpose could still be considered rationally related to classification as a sex offender for offenders who are actually dangerous to children.[315] However, for offenders whose sole offense is, for instance, displaying an obscene bumper sticker,[316] the stated legislative purpose bears no plausible relationship to the classification. The same is true of offenders whose "victims" are children, but who pose no actual danger to anyone; offenders like Wendy Whitaker and Phillip Alpert[317] are not lurking around the corner, waiting to molest anyone's child. As the U.S. Supreme Court ruled in *United States Department of Agriculture v. Moreno,* "a

310. *Id.*

311. *See, e.g.,* City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 450 (1985) (invalidating ordinance Court determined was motivated by "irrational prejudice against the mentally retarded," despite government's claim the purpose was to protect them).

312. For example, the Allegheny County, Pennsylvania residency restriction passed in 2007 was strongly advocated by parents who were "outraged to learn . . . a convicted sex offender was living" near a local school. Paula Reed Ward, *Residency Restrictions for Sex Offenders Popular, but Ineffective*, PITTSBURGH POST-GAZETTE (Oct. 26, 2008), http://www.post-gazette.com/pg/08300/922948-85.stm. Although studies show lack of stable housing increases recidivism, the parents' prejudices overcame logic. *See id.* One of the parents commented that she did not care if the offenders could find homes or jobs, and that "they should work out in a cornfield in the middle of Iowa." *Id.* The not-in-my-town attitude was also reflected by supporters of a Georgia law that imposed a mandatory life-in-prison sentence for a second failure-to-register conviction. *See* Shaila Dawan, *Homelessness Could Mean Life in Prison for Offender*, N.Y. TIMES (Aug. 3, 2007), http://www.nytimes.com/2007/08/03/us/03homeless.html. Supporters of the law touted that it would "force sex offenders to leave the state." *Id.* Legislators are also reluctant to recognize that sex offenders still have rights—or outright feel they have forfeited them. *See* Patterson, *supra* note 266. The sponsor of a North Carolina bill that resulted in offenders' arrests for attending church commented, "I'm not denying him the right to go to church. He denied himself that. . . . If [he is] a convicted pedophile, [he has] given up a lot of [his] rights." *Id.*

313. *See supra* Part III.A.

314. *See supra* Part V.

315. Courts will generally uphold a classification as long as the legislature could have plausibly found a rational connection to the legislative purpose—even if they turn out to be wrong. *See* Pettinga, *supra* note 308308, at 783.

316. ALA. CODE § 13A-12-131 (LexisNexis 2005) (including displaying an obscene bumper sticker as a sex offense).

317. *See supra* Part III.B.

bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest."[318] Thus, for offenders whose crimes are not truly child-predatory, classification as a sex offender violates their equal protection rights.

B. Residency Restrictions as Punishment

For all the reasons outlined by the Kentucky Supreme Court in *Commonwealth v. Baker*,[319] it is intellectually dishonest to claim residency restrictions are anything other than a form of punishment. As these laws grow stricter, they start infringing on the offenders' rights, resulting in effective banishment,[320] illegal taking of property,[321] and/or preventing the free exercise of religion or associational freedoms.[322] Such effects are hardly merely regulatory in nature, and as the laws continue to grow stricter, they could well form the basis of cruel and unusual punishment claims, particularly for minor, non-dangerous offenders. Consider, for instance, urinating in public within the context of the *Solem v. Helm* framework.[323] Such a crime is nonviolent and poses no physical danger to anyone. Within the jurisdiction, such a punishment is primarily available for serious offenses, such as rape or child molestation. As compared to other jurisdictions, a majority of states do not subject public urinators to sex offender laws;[324] such an offense is often a mere local ordinance violation,[325] with only a fine as punishment. Thus, residency restrictions are not only punishment, but constitute cruel and unusual punishment for those offenders who do not pose a danger to children.

C. Internet Restrictions: A Problem for Tomorrow

This third issue is important mainly for its promise for the

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318. U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 534 (1973) (emphasis in original).

319. *See* Commonwealth v. Baker, 295 S.W.3d 437, 441-45 (Ky. 2009).

320. *See, e.g.*, G.H. v. Twp. of Galloway, 951 A.2d 221, 229 n.6 (N.J. Super. Ct. App. Div. 2008), *aff'd*, 971 A.2d. 401 (N.J. 2009) (describing residency restrictions that all but banished offenders from entire towns).

321. *See, e.g.*, Mann v. Ga. Dep't of Corr., 653 S.E.2d 740, 745 (Ga. 2007) (holding that residency restriction forcing offender to abandon home he purchased violated Takings Clause).

322. *See, e.g.*, State v. Demaio, No. 09 CRS 50647, slip op. at 13 (N.C. Super. Ct. Dec. 17, 2009) (striking down law preventing offenders from coming within 300 feet of church with nursery on standards of overbreadth and vagueness).

323. *See* Solem v. Helm, 463 U.S. 277, 296-300 (1983).

324. Only thirteen states list public urination as a sex crime. TOFTE, *supra* note 113, at 39.

325. *See, e.g.*, SEA BRIGHT, NJ, CODE § 91-2(R) (1995) ("No person shall, within the limits of said borough, urinate or defecate upon any public street or way or upon public or private property, except in toilet facilities.").

future. Currently two federal circuits[326] and at least one state[327] permit a total or what amounts to a total ban on Internet usage. Other federal circuits recognize, however, the importance of the Internet in everyday life, and find that a total ban unreasonably infringes upon offenders' right to freedom of expression.[328] Although Internet restrictions are not yet as common as residency restrictions, they are quite likely on the horizon, given how much the Internet is beginning to permeate everyday life.[329] And, as that proliferation of Internet use continues, restrictions will infringe more and more upon freedom of expression and general daily activities.

VII. CONCLUSION

The increasing strictness of Megan's Laws and the attendant restrictions are fueled more by moral outrage than any hard evidence that such laws are keeping our children safe,[330] and as the laws become increasingly strict, they begin to infringe upon more and more constitutional rights.[331] Megan's Law was intended to protect children. State legislatures can remedy a large portion of the problems posed by overly strict laws by implementing three basic changes, all focused at achieving that specific purpose.

First, and most importantly, the definition of "sex offender" should be narrowly tailored to include only those offenders who are truly child predators. This could be done by an individualized assessment of each offender who is convicted of a potentially registrable sex crime. Such an assessment is not infeasible; for instance, New Jersey already requires a psychological evaluation of virtually every sex offender prior to sentencing.[332] By narrowly tailoring the definition in this manner, financial resources and

326. *See supra* note 168 and accompanying text.

327. *See* 730 ILL. COMP. STAT. ANN. 5/3-3-7(a)(7.11)(i) (West 2003 & Supp. 2010) (requiring written approval from Corrections Department prior to accessing the internet).

328. *See supra* notes 171-73 and accompanying text.

329. *See generally Daily Internet Activities, 2000-2009*, *supra* note 1544 (finding that as of 2008-2009, 55% of American adults used the internet on a typical day).

330. *See supra* Part III.A and Part V.

331. *See supra* Part IV.

332. N.J. STAT. ANN. § 2C:47-1 (West 2005). Offenders convicted of "aggravated sexual assault, sexual assault, aggravated criminal sexual contact," certain kidnapping offenses, and certain child endangerment offenses must undergo a psychological evaluation at the Adult Diagnostic and Treatment Center, unless they are to be sentenced to a life term. *Id.* The purpose of such an evaluation is to determine "whether the offender's conduct was characterized by a pattern of repetitive, compulsive behavior and, if it was, a further determination of the offender's amenability to sex offender treatment and willingness to participate in such treatment." *Id.* It would not be too far a stretch to adapt that type of evaluation to determine whether an offender poses a danger to children.

manpower can be focused on managing the truly dangerous population of offenders in the community.[333] The narrower definition will also reduce the amount of successful challenges to stricter restrictions, as the government's interest in protecting children from a truly predatory population will be tremendous.

Second, state legislatures should relax their residency restrictions in favor of imposing no-loitering restrictions and applying them specifically to those offenders whose victims are juveniles. As the court in *Commonwealth v. Baker* pointed out, residency restrictions do nothing to prevent sex offenders from spending all day at a playground.[334] They also do not serve any child-protective purpose when applied to an offender who victimizes adults.[335] The restrictions do, however, prevent offenders from finding stable housing, as exemplified by the Julia Tuttle Sex Offender Colony.[336] Having seventy-sex offenders living like trolls under a bridge cannot seriously be deemed in the best interest of public or child safety.[337] Lack of stable housing prevents offenders from reintegrating into the community, and although no one wants a sex offender living in their town, those who cannot reintegrate into the community are more likely to reoffend.[338]

Third, state legislatures should follow the approach to Internet restrictions followed by the Third, Seventh, and Tenth Circuits, applying them only to those offenders whose crimes involved the Internet and tailoring them narrowly to permit legitimate Internet use whenever possible.[339] Most offenders victimize children they

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333. The expense associated with enforcing Megan's Law is significant—the total yearly cost for fifteen out of New Jersey's twenty-one counties is over $3.9 million, mostly coming from staff salaries. ZGOBA, *supra* note 12, at 35. This cost can only be expected to increase over time, as the state has a policy of placing sex offenders on lifetime parole supervision. *See* N.J. STAT. ANN. § 2C:43-6.4 (West 2008) ("Notwithstanding any provision of law to the contrary, a judge imposing sentence on a person who has been convicted of [a sex offense] . . . shall include, in addition to any sentence authorized by this Code, a special sentence of parole supervision for life.").

334. Commonwealth v. Baker, 295 S.W.3d 437, 445 (Ky. 2009).

335. *Id.* at 446.

336. Skipp, *supra* note 141.

337. *Id.* In fact, Ron Book, a lobbyist who previously fought for the restrictive laws that led to the establishment of the sex offender colony, realized that "homelessness makes offenders potentially more dangerous" and helped draft new legislation that relaxed residency restrictions in favor of no-loitering zones. *Id.*

338. Ward, *supra* note 312. Stable employment, which is difficult if not impossible to obtain without a stable residence, is also a crucial factor in reducing recidivism. *See* TOFTE, *supra* note 113, at 84-85.

339. *See* Brant, *supra* note 157, at 794-95 (citing cases in which the Third, Seventh, and Tenth Circuits held a complete ban on internet usage to be unreasonable where a more limited restriction was available).

already know,[340] and it serves no purpose to bar an offender from the Internet if he poses no danger online.

By implementing these three basic changes, state legislatures can help focus Megan's Law efforts on protecting children from those who are truly likely to harm them. Although such changes will almost certainly be politically unpopular,[341] it is time for both the public and legislators to step back and re-examine whether reason or moral outrage is driving Megan's Law legislation, for the sake of the very children they mean to protect.

340. *See* LEGISLATIVE TRENDS, *supra* note 9, at 2. "Stranger-danger" is one of the most common misconceptions about sex offenders. *See id.*

341. *See, e.g.*, Skipp, *supra* note 1416 ("Theoretically, Florida's 1995 legislation should have pre-empted more severe local ordinances. Yet most state politicians didn't want to be seen as coming to the rescue of sex offenders.").

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