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United States

No Easy Answers

Sex Offender Laws in the US

HUMAN RIGHTS WATCH

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I. Summary

> The reality is that sex offenders are a great political target, but that doesn't mean any law under the sun is appropriate.
> —Illinois State Representative John Fritchey[1]

> People want a silver bullet that will protect their children, [but] there is no silver bullet. There is no simple cure to the very complex problem of sexual violence.
> —Patty Wetterling, child safety advocate whose son was abducted in 1989 and remains missing[2]

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What happened to nine-year-old Jessica Lunsford is every parent's worst nightmare. In February 2005 she was abducted from her home in Florida, raped, and buried alive by a stranger, a next-door neighbor who had been twice convicted of molesting children. Over the past decade, several horrific crimes like Jessica's murder have captured massive media attention and fueled widespread fears that children are at high risk of assault by repeat sex offenders. Politicians have responded with a series of laws, including the sex offender registration, community notification, and residency restriction laws that are the subject of this report.

Federal law and the laws of all 50 states now require adults and some juveniles convicted of specified crimes that involve sexual conduct to register with law enforcement—regardless of whether the crimes involved children. So-called "Megan's Laws" establish public access to registry information, primarily by mandating the creation of online registries that provide a former offender's criminal history, current photograph, current address, and other information such as place of employment. In many states everyone who is required to register is included on the online registry. A growing number of states and municipalities have also prohibited registered offenders from living within a designated distance (typically 500 to 2,500

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[1] Ryan Keith, "Illinois Measure Would Move Some from Sex Offender List," Associated Press, June 24, 2006.

[2] Human Rights Watch telephone interview with Patty Wetterling, January 8, 2007.

feet) of places where children gather—for example, schools, playgrounds, and daycare centers.

Human Rights Watch appreciates the sense of concern and urgency that has prompted these laws. They reflect a deep public yearning for safety in a world that seems increasingly threatening. Every child has the right to live free from violence and sexual abuse. Promoting public safety by holding offenders accountable and by instituting effective crime prevention measures is a core governmental obligation.

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Unfortunately, our research reveals that sex offender registration, community notification, and residency restriction laws are ill-considered, poorly crafted, and may cause more harm than good:

- The registration laws are overbroad in scope and overlong in duration, requiring people to register who pose no safety risk;
- Under community notification laws, anyone anywhere can access online sex offender registries for purposes that may have nothing to do with public safety. Harassment of and violence against registrants have been the predictable result;
- In many cases, residency restrictions have the effect of banishing registrants from entire urban areas and forcing them to live far from their homes and families.

The evidence is overwhelming, as detailed in this report, that these laws cause great harm to the people subject to them. On the other hand, proponents of these laws are not able to point to convincing evidence of public safety gains from them. Even assuming some public safety benefit, however, the laws can be reformed to reduce their adverse effects without compromising that benefit. Registration laws should be narrowed in scope and duration. Publicly accessible online registries should be eliminated, and community notification should be accomplished solely by law enforcement officials. Blanket residency restrictions should be abolished.

Public Safety and Mistaken Premises

Proponents of sex offender registration and community notification believe they protect children in two ways: police have a list of likely suspects should a sex crime occur in the neighborhood in which a registered offender lives, and parents have information that will enable them to heighten their vigilance and to warn their children to stay away from particular people. Advocates for residency restrictions believe they will limit offenders' access to children and their temptation or ability to commit new crimes. While these beliefs may seem intuitively correct, they are predicated on several widely shared but nonetheless mistaken premises. Given these faulty underpinnings, it is not surprising that there is little evidence that the laws have in fact reduced the threat of sexual abuse to children or others.

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Sex offender laws are based on preventing the horrific crimes that inspired them—but the abduction, rape, and murder of a child by a stranger who is a previously convicted sex offender is a rare event. The laws offer scant protection for children from the serious risk of sexual abuse that they face from family members or acquaintances. Indeed, people children know and trust are responsible for over 90 percent of sex crimes against them.

In addition, sex offender laws are predicated on the widespread assumption that most people convicted of sex offenses will continue to commit such crimes if given the opportunity. Some politicians cite recidivism rates for sex offenders that are as high as 80-90 percent. In fact, most (three out of four) former sex offenders do not reoffend and most sex crimes are not committed by former offenders. Patty Wetterling, a prominent child safety advocate who founded the Jacob Wetterling Foundation after her son was abducted in 1989, recently told Human Rights Watch,

> I based my support of broad-based community notification laws on my assumption that sex offenders have the highest recidivism rates of any criminal. But the high recidivism rates I assumed to be true do not exist. It has made me rethink the value of broad-based community notification laws, which operate on the assumption that most sex offenders are high-risk dangers to the community they are released into.

Over-breadth of the Registration Requirement

The justifications offered for sex offender laws focus on sexually violent offenders. Yet people who have not committed violent or coercive offenses may nonetheless be required to register as sex offenders and be subject to community notification and residency restrictions. For example, in many states, people who urinate in public, teenagers who have consensual sex with each other, adults who sell sex to other adults, and kids who expose themselves as a prank are required to register as sex offenders.

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Brandon M.'s case is an example. Brandon was a senior in high school when he met a 14-year-old girl on a church youth trip. With her parents' blessing, they began to date, and openly saw each other romantically for almost a year. When it was disclosed that consensual sexual contact had occurred, her parents pressed charges against Brandon and he was convicted of sexual assault and placed on the sex offender registry in his state. As a result, Brandon was fired from his job. He will be on the registry and publicly branded as a sex offender for the rest of his life. In his mother's words, "I break down in tears several times a week. I know there are violent sexual predators that need to be punished, but this seems like punishment far beyond reasonable for what my son did."[3]

The over-breadth in scope is matched by over-breadth in duration: the length of time during which a former offender must register and be included in online registries is set arbitrarily, based on the nature of the crime of conviction and not on any assessment of the likelihood that the former offender continues to pose a safety threat. Indeed, legislators are steadily increasing the duration of registration requirements: in 17 states, registration is now for life. Yet former sex offenders are less and less likely to reoffend the longer they live offense-free.

Unfortunately, only a few states require or permit periodic individualized assessments of the risk to the community a former offender may pose before requiring initial or continued registration and community notification.

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[3] Human Rights Watch telephone interview with Brandon M.'s mother, November 13, 2006.

Unrestricted Access to Registry Information

If former offenders simply had to register their whereabouts with the police, the adverse consequences for them would be minimal. But online sex offender registries brand everyone listed on them with a very public "scarlet letter" that signifies not just that they committed a sex offense in the past, but that by virtue of that fact they remain dangerous. With only a few exceptions, states do not impose any "need to know" limitations on who has access to the registrant's information. With a national registry including every state registrant's online profile due to be complete by 2009, information about previously convicted sex offenders will be available to anyone anywhere in the country, without restriction.

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Most registries simply indicate the statutory name of the crime of which a person was convicted, for example, "indecent liberties with a child." Such language does not provide useful information about what the offending conduct actually consisted of, and the public may understandably assume the worst. Jameel N. described for Human Rights Watch the public response to his inclusion on his state's online registry:

> When people see my picture on the state sex offender registry they assume I am a pedophile. I have been called a baby rapist by my neighbors; feces have been left on my driveway; a stone with a note wrapped around it telling me to "watch my back" was thrown through my window, almost hitting a guest. What the registry doesn't tell people is that I was convicted at age 17 of sex with my 14-year-old girlfriend, that I have been offense-free for over a decade, that I have completed my therapy, and that the judge and my probation officer didn't even think I was at risk of reoffending. My life is in ruins, not because I had sex as a teenager, and not because I was convicted, but because of how my neighbors have reacted to the information on the internet.[4]

[4] Email communication from Jameel N. to Human Rights Watch, June 4, 2005.

Public Hostility to Registrants

Jameel N.'s experience of public hostility is all too typical. Former offenders included on online sex offender registries endure shattered privacy, social ostracism, diminished employment and housing opportunities, harassment, and even vigilante violence. Their families suffer as well.

Registrants and their families have been hounded from their homes, had rocks thrown through their home windows, and feces left on their front doorsteps. They have been assaulted, stabbed, and had their homes burned by neighbors or strangers who discovered their status as a previously convicted sex offender. At least four registrants have been targeted and killed (two in 2006 and two in 2005) by strangers who found their names and addresses through online registries. Other registrants have been driven to suicide, including a teenager who was required to register after he had exposed himself to girls on their way to gym class. Violence directed at registrants has injured others. The children of sex offenders have been harassed by their peers at school, and wives and girlfriends of offenders have been ostracized from social networks and at their jobs.

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Residency Restrictions

Among laws targeting sex offenders living in the community, residency restrictions may be the harshest as well as the most arbitrary. The laws can banish registrants from their already established homes, keep them from living with their families, and make entire towns off-limits to them, forcing them to live in isolated rural areas. For example, former sex offenders in Miami, Florida have been living under bridges, one of the few areas not restricted for them by the residency restriction laws of that city.

There is no evidence that prohibiting sex offenders from living near where children gather will protect children from sexual violence. Indeed, the limited research to date suggests the contrary: a child molester who does offend again is as likely to victimize a child found far from his home as he is one who lives or plays nearby. A study by the Minnesota Department of Corrections found that individuals who committed another sex crime against a child made contact with their victim through a social relationship.

Moreover, the laws apply to all registered sex offenders regardless of whether their prior crimes involved children. It is hard to fathom what good comes from prohibiting a registered offender whose victim was an adult woman from living near a school bus stop. Stories of the senseless impact of residency restrictions are legion. For example, Georgia's residency restriction law has forced a 26-year-old married woman to move from her home because it is too close to a daycare center. She is registered as a sex offender because she had oral sex with a 15-year-old when she was 17.

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Some lawmakers admit to another purpose for residency restriction laws. Georgia State House Majority Leader Jerry Keen, who sponsored the state's law banning registrants from living within 1,000 feet of places where children gather, stated during a floor debate, "My intent personally is to make [residency restrictions] so onerous on those that are convicted of [sex] offenses … they will want to move to another state."[5] Yet people who have committed sex offenses must live somewhere. For those who do pose a threat to public safety, they should be able to reside in communities where they can receive the supervision and treatment they need, rather than be forced to move to isolated rural areas or become homeless.

Juvenile Offenders

In most states, children (age 18 and younger) who are convicted of sex offenses can be subject to registration, community notification, and residency restrictions. The recently passed federal Adam Walsh Act requires states to register children as young as 14. Some of their offenses are indeed serious—for example, raping much younger children. But children are also subjected to sex offender laws for conduct that, while frowned upon, does not suggest a danger to the community, including consensual sex, "playing doctor," and exposing themselves. Some of the conduct reflects the impulsiveness and perhaps difficulty with boundaries that many teenagers experience and that most will outgrow with maturity. In some cases it seems nothing short of irrational to label children as sex offenders. Human Rights Watch spoke with a father whose 10-year-old son was adjudicated for touching the genitals of his five-

[5] Peter Whoriskey, "Some Curbs on Sex Offenders Called Ineffective, Inhumane," *Washington Post*, November 22, 2006.

year-old cousin. He told us, "My son doesn't really understand what sex is, so it's hard to help him understand why he has to register as a sex offender."[6]

According to child development experts, many children move past the misdeeds of their youth, although some will require special support and treatment to do so. Although there is little statistical research on recidivism by youth sex offenders, the studies that have been done suggest recidivism rates are quite low. For example, in one study only 4 percent of youth arrested for a sex crime recidivated. Research also indicates that most adult offenders were not formerly youth offenders: less than 10 percent of adults who commit sex offenses had been juvenile sex offenders. Applying registration, community notification, and residency restriction laws to juvenile offenders does nothing to prevent crimes by the 90 percent of adults who were not convicted of sex offenses as juveniles. It will, however, cause great harm to those who, while they are young, must endure the stigma of being identified as and labeled a sex offender, and who as adults will continue to bear that stigma, sometimes for the rest of their lives.

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Are the Laws Counterproductive?

Current registration, community notification, and residency restriction laws may be counterproductive, impeding rather than promoting public safety. For example, the proliferation of people required to register even though their crimes were not serious makes it harder for law enforcement to determine which sex offenders warrant careful monitoring. Unfettered online access to registry information facilitates—if not encourages—neighbors, employers, colleagues, and others to shun and ostracize former offenders—diminishing the likelihood of their successful reintegration into communities. Residency restrictions push former offenders away from the supervision, treatment, stability, and supportive networks they may need to build and maintain successful, law abiding lives. For example, Iowa officials told Human Rights Watch that they are losing track of registrants who have been made transient by the state's residency restriction law or who have dropped out of sight rather than

[6] Human Rights Watch telephone interview with the father of a minor who was adjudicated for a sex offense, October 27, 2006.

comply with the law. As one Iowa sheriff said, "We are less safe as a community now than we were before the residency restrictions."[7]

Many child safety and rape prevention advocates believe that millions of dollars are being misspent on registration and community notification programs that do not get at the real causes of child sexual abuse and adult sexual violence. They would like to see more money spent on prevention, education, and awareness programs for children and adults, counseling for victims of sexual violence, and programs that facilitate treatment and the transition back to society for convicted sex offenders. As one child advocate told Human Rights Watch, "When a sex offender succeeds in living in the community, we are all safer."[8]

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US Sex Offender Policies: Alone in the World

Sexual violence and abuse against children are, unfortunately, a worldwide problem. Yet the United States is the only country in the world that has such a panoply of measures governing the lives of former sex offenders. It is the only country Human Rights Watch knows of with blanket laws prohibiting people with prior convictions for sex crimes from living within designated areas. To our knowledge, six other countries (Australia, Canada, France, Ireland, Japan, and the United Kingdom) have sex offender registration laws, but the period required for registration is usually short and the information remains with the police. South Korea is the only country other than the United States that has community notification laws.

Officials in Australia, Ireland, and the United Kingdom have considered and in each case rejected the adoption of universal community notification laws (although in some cases, police are authorized to notify the public about the presence of a convicted sex offender in the neighborhood). After reviewing the experience of the United States, they concluded that there is little evidence that community notification protects the public from sex crimes, and that such laws are often accompanied by vigilante violence against registrants.

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[7] Human Rights Watch telephone interview with an Iowa sheriff who requested anonymity, August 15, 2006.

[8] Human Rights Watch telephone interview with Alison Feigh, child safety specialist, Jacob Wetterling Foundation, September 8, 2006.

Rethinking Sex Offender Laws

Increasingly severe registration, community notification, and residency restriction laws have encountered little public opposition. Given the widespread belief in the myths about sex offenders' inherent and incurable dangerousness, it is perhaps not surprising that very few public officials have questioned the laws or their efficacy.

Proponents of sex offender laws say their first priority is protecting the rights of victims. Yet few public officials who have supported registration, community notification, and residency restriction laws have done so based on a careful assessment of the nature of sex crimes and the best way to prevent sexual violence. And few public officials have acknowledged their responsibility to protect the well-being and fundamental rights of all residents—including those who have been convicted of crimes.

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Protecting the community and limiting unnecessary harm to former offenders are not mutually incompatible goals. To the contrary, one enhances and reinforces the other. In Minnesota, state legislators and government officials, in consultation with child safety and women's rights advocates, have constructed carefully tailored evidence-based laws that aim to prevent sexual violence by safely integrating former sex offenders into the community, restricting their rights only to the extent necessary to achieve that goal. Before they are released from prison, convicted sex offenders in Minnesota are assessed by a panel of experts, who determine whether an individual should be subject to registration and community notification, and if so for how long. The panel has the authority to periodically reassess the convicted sex offender's level of dangerousness and adjust his or her registration and community notification requirements accordingly. Community notification is on a need-to-know basis. As the Minnesota community notification law states, "The extent of the information disclosed and the community to whom disclosure is made must be related to the level of danger posed by the offender, to the offender's pattern of offending behavior, and to the need of community members for information to enhance their individual and collective safety." Minnesota has not adopted universal residency restriction legislation. Instead, law enforcement and the assessment panel jointly assess whether an individual on probation or parole should be subject to residency restrictions and what those restrictions should be.

The recently passed federal Adam Walsh Act forces states to either dramatically increase their registration and community notification restrictions or lose federal law enforcement grant money. While some states have rushed to amend their sex offender laws to comply with the Act, other states are considering not adopting the provisions, citing a concern that they will not benefit public safety.

As a human rights organization, Human Rights Watch seeks to prevent sexual violence and to ensure accountability for people who violate the rights of others to be free from sexual abuse. We are convinced that public safety will be as protected, if not more so, by modified registration laws targeted only at former offenders who pose a high or medium risk of reoffending, as determined through an individualized risk assessment and classification process, and by community notification that is undertaken by law enforcement on a need-to-know basis. We are also convinced that there is no legitimate basis for blanket residency restrictions. We do not object to time-limited restrictions that are imposed on individual offenders on a case-by-case basis, for example, as a condition of parole. But a wholesale banishment of a class of individuals should have no place in the United States.

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Reforming sex offender laws will not be easy. At a time when national polls indicate that Americans fear sex offenders more than terrorists,[9] legislators will have to show they have the intelligence and courage to create a society that is safe yet still protects the human rights of everyone.

9 The Gallup Poll, "Sex Offenders," video report, June 9, 2005, http://www.galluppoll.com/videoArchive/?ci=16708&pg= (accessed March 19, 2007). The poll found that 66 percent of people surveyed were "very concerned" about sex offenders, compared to 52 percent who were concerned about violent crime and 36 percent who were concerned about terrorism.

II. Methodology

Human Rights Watch reviewed the sex offender registration, community notification, and residency restriction laws of the 50 states in the United States and the District of Columbia. We ascertained the offenses that triggered mandatory registration requirements, the period of time for which the offender must remain registered, whether states classify registrants by level of risk, and what types of review procedures exist either to alter a registrant's level of risk or allow him to be relieved of reporting or notification obligations. We cross-checked the offenses that trigger registration and notification requirements with each state's criminal code to identify precisely what kinds of conduct triggered registration requirements. We also searched each state's juvenile code for specific provisions dealing with the obligation of young offenders to register and be subject to community notification.

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Human Rights Watch visited all 50 state sex offender registry websites and that of the District of Columbia to determine what kind of information about registrants is available to the public. We communicated with law enforcement officials from 30 states about their state registries, in particular about whether the states had mechanisms for reporting vigilantism or harassment against registrants.

State laws and online registry information are constantly being modified. The information compiled in this report is accurate, to the best of our knowledge, as of July 1, 2007. States are constantly changing the information distribution format of their online sex offender registries, and some of the information in this report may already be outdated. For the most current registration and community notification requirements and distribution policies regarding a particular state's online sex offender registry, Human Rights Watch encourages readers to check their state's most current policies.

In addition to an exhaustive review of the published scientific and legal literature about sex offenders, we interviewed 122 sex offenders and 90 of their loved ones, all of whom are referred to in the report by pseudonyms, given their concerns about privacy. We spoke with a number of survivors of sexual abuse, members of victims'

rights and child sexual assault prevention groups, child safety experts, and sex offender researchers. Finally, we interviewed state officials responsible for enforcing sex offender laws, including probation and parole officers and county sheriffs.

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III. Recommendations

With the goal of increasing the effective protection of children and others from sexual violence while protecting former offenders from unnecessary, unjust, and even counterproductive laws, Human Rights Watch makes the following recommendations for changes in federal and state legislation.

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Adam Walsh Act

- All provisions of the Adam Walsh Act that deal with state registration and community notification requirements should be repealed.
- If Congress does not repeal the Adam Walsh Act requirements as they pertain to state registration and community notification, states should not adopt the Adam Walsh Act provisions to their registration and community notification laws.

State Sex Offender Registries

- Former offenders who have committed minor, non-violent offenses, such as prostitution between adults; non-lascivious indecency offenses, such as streaking and public urination; and consensual sexual activity with a minor who is within five years of age of the offender (statutory rape) should not be required to register.
- No offender who was under the age of 18 at the time of his or her offense should be required to register. If states do require child offenders to register, then they should do so only after a panel of qualified experts determines that the child poses a high risk of sexual reoffense, and that public safety cannot be adequately protected through any means other than the child being subject to registration. A determination that registration is necessary should be reviewed at least on an annual basis for as long as the registration requirement lasts.
- States should institute mechanisms by which offenders are removed from registries if they are exonerated; their convictions have been overturned, set

aside, or otherwise vitiated; or if their conduct is no longer considered criminal.

- States should regularly review all registration information to ensure its accuracy.
- Former offenders should not be required to register with their schools or places of employment. Most state laws require, and employers always have the option of running, a criminal background check for prospective employees who will be working with children.
- Registration should be limited to former offenders who pose a high or medium risk of committing a serious crime in the future, either of sexually abusing children or committing a violent sex crime against adults. The risk should be assessed on a case-by-case basis for each convicted sex offender, using tools that have predictive validity and take into consideration a variety of factors found by research to be associated with recidivism, including the nature of the crime, prior offending history, the age of the offender at the time of the crime, treatment or therapy history, and the length of time an individual has remained offense-free.
- Former offenders considered low-risk for reoffending, on the basis of individual assessment, should not be required to register.
- The period of inclusion on the registry for former offenders assessed as medium- and high-risk should be initially determined by his or her individual risk assessment and then be subject to periodic review with a view to extension or termination. An initial determination of lifetime inclusion should not be permitted. At periodic review, registrants should be able to present evidence of rehabilitation, change in life circumstances, incapacitation (for example, disease or disability) or substantial time living in the community without reoffense in order to obtain termination of the requirement to register or to have their assigned level of risk changed. After a fixed period of time, the burden should shift from the registrant to the state to prove that a registrant poses a public safety risk and must remain on the registry.

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Community Notification

- Access to sex offender registries should be limited to law enforcement.

Law Enforcement

- Law enforcement officials should only release information about registered sex offenders on a need-to-know basis. This would include notification to the individual(s) victimized by the offender. When determining who else in the community should be notified, law enforcement officials should weigh factors such as the size of the community, the nature of the offense, the level of reoffense risk at which the registrant has been assessed, and the likelihood that access to the information will enhance the recipient's personal safety or that of their children.

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- Law enforcement officials should eliminate the use of posters, flyers, and other easily replicable materials to alert communities of the presence of a registered sex offender in their neighborhood. They should inform community members individually, using accurate and responsible language to describe the potential threat posed by the registrant.

- Law enforcement and other local officials must recognize their responsibility and authority to keep all community members safe, including people who have been convicted of sex offenses. In deciding the method and scope of community notification, officials should be required to take into consideration the potential for community hostility against registrants and take any necessary steps to mitigate the potential hostility.

- States should enact laws allowing all registrants to appear periodically before a panel of qualified experts to review the requirement that law enforcement publicly release their personal information. Registrants should be able to present evidence of rehabilitation, change in life circumstances, incapacitation (for example, disease or disability), or substantial time without reoffense in order to terminate community notification requirements.

- Local officials should work with the Center for Sex Offender Management (CSOM) and local agencies or organizations with the capacity to conduct community meetings aimed at safe reintegration of registrants when they

move into a neighborhood. Community meetings should be designed as an opportunity for education about where the risk for sexual victimization lies and how to prevent sexual abuse before it occurs. Organizations to include in the development and implementation of these community meetings should be victim advocacy groups, sexual violence prevention and response professionals, and sex offender treatment and management agencies.

Online Sex Offender Registries

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- States should eliminate public access to online registries of sex offenders as a form of community notification.
- States that do maintain online registries should only include information about offenders assigned a high level of risk, and only for so long as they are individually determined to pose such a risk.
- Online registry search capabilities should only permit targeted searches (for example, by specific personal name or zip code). No member of the public should be able to search the entire database. States should also take steps to preclude the possibility of registry information being found via internet search engines.
- Accountability for those who search online databases should be ensured by requiring the database user to specify the purpose for the search, and to provide his or her name and zip code (with such information kept confidential and accessible only by state officials and law enforcement).
- Online registry databases should provide enough information to enable a layperson user to understand the nature of the sex offense of which the offender was convicted and the registrant's risk of recidivism. This should include more information than the identification of the statute he or she violated. Databases should indicate when the offense was committed, how long has passed since the registrant was released from incarceration, and contain both the registrant's and the victim's age at the time of the offense.

- The information about a registrant revealed online should be limited to what is necessary to promote public safety. For example, information such as place of employment or place of education should not routinely be available.
- Congress and state legislatures should incorporate stronger prohibitions against and penalties for misuse of online registration and community notification information to harass, threaten, or injure registrants or their family members, or to discriminate unreasonably against registrants in the denial of housing, education, or other necessary benefits and services. Online registries must prominently display warnings against misuse of information on the registry. Misuse of registration information should be vigorously prosecuted.
- Registrants should have a periodic opportunity to petition to be removed from the online registry. Registrants should be able to present evidence of rehabilitation, change in life circumstances, incapacitation (for example, disease or disability) or substantial time without reoffense in order to terminate community notification requirements.

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National Sex Offender Registry

- Congress should eliminate public access to the national sex offender registry.
- If the national sex offender registry is to be maintained, Congress should direct the Department of Justice to ensure that the national sex offender registry includes only such information from state registries as is consistent with the above criteria.

Residency Restrictions

- Neither states nor localities should have residency restriction laws that apply to entire classes of former offenders. Authorized residency restrictions should be limited to individually tailored restrictions for certain offenders as a condition of the terms of his or her probation, parole, or other mandated supervision.

Treatment, Research, and Education

- Federal and state governments should support sex offender treatment programs as a key component of sex offender management.
- The Department of Justice and states should encourage and fund research to assess and compare the effectiveness of different strategies to prevent the perpetration and reoffense of sexual violence. This research should include efforts to identify and assess the impact that registration, community notification, and residency restrictions have on registrants, their families, and communities.
- The Department of Justice should continue to support and fully fund the Center for Sex Offender Management, a national project of the Department of Justice's Office of Justice Programs, to provide training and education to communities to facilitate the safe reintegration of registrants.
- Federal, state, and local governments should support collaborative efforts between citizens, law enforcement, offenders, victim advocacy and sexual violence prevention groups, and specialized sex offender treatment providers to enhance the successful reintegration of convicted sex offenders into the community in ways that promote community safety.
- Federal, state, and local governments should support efforts to develop a range of strategies to prevent sexual abuse that go beyond control and treatment of former offenders, including educational programs for families, treatment and other resources for survivors of sexual violence, promotion of safety precautions by youth and adults, and those that treat the reduction of sexual violence as a public health campaign.

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IV. Sexual Violence in the United States

> Being sexually assaulted as a child, for me, was like having my heart ripped to shreds. I am still trying to put it all back together.
> —Naomi L., a 32-year-old child sexual abuse survivor, who was molested from age six to 10 by her step-uncle[10]

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> Sexual violence is a serious problem, and any recidivism rate is too high. But recidivism rates for sex offenders are not as high as politicians have quoted in their attempts to justify the need for overly harsh sex offender laws.
> —Dr. Jill Levenson, expert on sex offender treatment and management[11]

Patty Wetterling, a national child safety advocate whose son was abducted in 1989 and is still missing, has aptly identified the core problem with US registration, community notification, and residency restriction laws for sex offenders: "People want a silver bullet that will protect their children. There is no silver bullet. There is no simple cure to the very complex problem of sexual violence."[12] In order to effectively combat sexual violence, public officials must first understand it. Research on sexual violence reveals a very different picture of who the perpetrators are and what their likelihood of reoffending is compared to what the public assumes.

Sexual Violence

Sex crimes constitute a relatively small proportion of reported violent crimes in the United States. According to crime victimization surveys, rape and sexual assault accounted for 3.7 percent of the violent crimes in 2005 against people age 12 or

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10 Human Rights Watch telephone interview with Naomi L., October 12, 2006.

11 Human Rights Watch telephone interview with Dr. Jill Levenson, professor of Human Services at Lynn University and national expert on sex offender management, October 31, 2006.

12 Human Rights Watch telephone interview with Patty Wetterling, January 8, 2007.

older.[13] Nevertheless, given their impact on the victims, sex crimes must be seen as a significant problem, particularly when children are the victims. Furthermore, sexual violence is perhaps the most underreported violent crime, meaning that the number of victims of sexual violence is far higher than what is reported. For example, a study by the National Institute of Justice found that only one in five adult women rape victims (19 percent) reported their rapes to police.[14]

In one 2000 study that looked at data from 12 states, persons under the age of 18 at the time of the crime accounted for two-thirds of all victims of sexual assault reported to law enforcement agencies.[15] According to a 2006 report, an estimated 89,500 cases of child sexual abuse were substantiated by child protective agencies in 2000.[16] Children under the age of six represented one in every seven victims of sexual assault, or 14 percent of all victims.[17] In each of the different sexual assault categories (for example, forcible rape, forcible sodomy, sexual assault with an object and forcible fondling) children below the age of 12 comprised about half of the victims.

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In 2005 there were 191,670 recorded victims age 12 and older of rape, attempted rape, or sexual assault.[18] These statistics almost certainly underestimate the extent of the crimes, because victim fear, shame, or loyalty to the abuser contribute to underreporting.[19] Self-report victimization surveys have found that 23 percent of women were sexually abused before the age of 18.[20] Females are far more likely than

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13 Shannan Catalano, US Bureau of Justice Statistics (BJS), "2005 National Crime Victimization Survey," September 2006, http://www.rainn.org/docs/statistics/ncvs_2005.pdf (accessed July 13, 2007).
14 Patricia Tjaden and Nancy Thoennes, National Institute of Justice (NIJ), "Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence against Women Survey," January 2006, http://www.ncjrs.gov/pdffiles1/nij/210346.pdf (accessed July 13, 2007).
15 Howard Snyder, BJS, "Sexual Assault of Young Children as Reported to Law Enforcement," July 2000, http://www.ojp.usdoj.gov/bjs/pub/pdf/saycrle.pdf (accessed July 13, 2007), p. 2. The data reflect reports to law enforcement agencies in 12 states gathered between 1991 and 1996.
16 David Finkelhor and Lisa Jones, US Department of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP), "Explanations for the Decline in Child Sexual Abuse Cases," *Juvenile Justice Bulletin* (January 2004), http://www.ncjrs.gov/pdffiles1/ojjdp/199298.pdf (accessed December 4, 2006).
17 Snyder, BJS, "Sexual Assault of Young Children," p. 11.
18 Catalano, BJS, "2005 Crime Survey."
19 Anna Salter, *Transforming Trauma: A Guide to Understanding and Treating Adult Survivors of Child Sexual Abuse* (New York: Sage Publications, 1995).
20 David Finkelhor, "Sexually Abused Children in a National Survey of Parents: Methodological Issues," *Child Abuse and Neglect: The International Journal*, vol. 21 (1997), pp. 1-9.

males to be the victims of sexual violence, constituting 86 percent of all sexual assault victims.[21] Based on reported crimes, a male is most likely to be sexually assaulted at age four, and even then his risk of sexual assault is half that of females of the same age.[22] Among adolescents, females are victims of sexual assault at 10 times the rate of males.[23] Indeed, the proportion of female victims increases with age at the time of offense: by age 19, 95 percent of victims are female.[24]

The reluctance or inability of survivors of abuse or their family members to report sexual assault crimes to law enforcement contributes to the fact that the majority of sex crimes never lead to arrests and convictions.[25] The Bureau of Justice Statistics estimates that an arrest is made in only 27 percent of all cases of sexual assault. The assaults of juvenile victims were more likely to result in an arrest (29 percent) than were adult victimizations (22 percent), but assaults against children under age six resulted in an arrest in only 19 percent of the cases.[26]

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Sexual violence in the US is, fortunately, decreasing—over the period 1993-2005, the rate of reported adult rape and sexual assaults declined 69 percent.[27] Incidents of reported sex crimes against children have also decreased significantly in the past decade. According to a 2004 report by the Crimes against Children Research Center at the University of New Hampshire, cases of child sexual abuse substantiated by child protection agencies fell 40 percent between 1992 and 2000; the report's authors believe that some of this drop reflects a decline in the occurrence of sexual abuse, in addition to other factors such as stricter reporting practices.[28]

It would be difficult to overestimate the devastating effect sexual violence can have for survivors. For adults, the emotional and psychological consequences of sexual violence can be profound and enduring, including depression, anxiety, and post-

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21 Catalano, BJS, "2005 Crime Survey."
22 Ibid.
23 Ibid.
24 Ibid.
25 Snyder, BJS, "Sexual Assault of Young Children," p. 11.
26 Ibid.
27 Catalano, BJS, "2005 Crime Survey."
28 Finkelhor and Jones, OJJDP, "Explanations for the Decline."

traumatic stress disorder.[29] According to the American Psychological Association, children who have been sexually abused may suffer a range of short- and long-term problems, including depression, anxiety, eating disorders, guilt, fear, withdrawal, self-destructive behaviors, and sexual acting out.[30] Given the consequences of sexual violence, it is understandable that society wants it to end.

Danger from Strangers?

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With the purpose of helping parents identify unknown convicted sex offenders in the neighborhood, sex offender laws like community notification schemes reflect the assumption that children and adults are most at risk from strangers. Yet sexual violence against children as well as adults is overwhelmingly perpetrated by family members or acquaintances.

The US Bureau of Justice Statistics has found that just 14 percent of all sexual assault cases reported to law enforcement agencies involved offenders who were strangers to their victims.[31] Sexual assault victims under the age of 18 at the time of the crime knew their abusers in nine out of 10 cases: the abusers were family members in 34 percent of cases, and acquaintances in another 59 percent of cases.[32] When the sexual assault victim was under six years old, almost half (49 percent) of the offenders were family members.[33]

Sex abuse crimes against children that have received the most media attention and have consequently generated great public concern typically involve a child who has been kidnapped, sexually assaulted, and killed by a stranger. Although such crimes are seared into the public consciousness, they represent a tiny fraction of crimes against children. The US Department of Justice (DOJ) estimates that around 115 children are abducted per year by non-family strangers—of which 46 result in the

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29 Safe Horizon, "After Sexual Assault: A Recovery Guide for Survivors," http://www.safehorizon.org/files/After_Sexual_Assault_Bklt.pdf (accessed January 8, 2007).
30 American Psychological Association, "Understanding Child Sexual Abuse: Education, Prevention, and Recovery," 2001, http://www.apa.org/releases/sexabuse/effects.html (accessed July 13, 2007).
31 Catalano, BJS, "2005 Crime Survey."
32 Snyder, BJS, "Sexual Assault of Young Children."
33 Ibid.

death of the victim.[34] The number of those cases that included sexual abuse is unknown. According to a 1997 analysis of 1,214 juvenile kidnappings, 49 percent of juvenile kidnappings are perpetrated by family members, 27 percent by an acquaintance, and 24 percent by a stranger.[35]

High Rates of Recidivism?

Sex offender laws also reflect the assumption that previously convicted sex offenders are responsible for most sex crimes. Yet according to a 1997 US Department of Justice study, 87 percent of the people arrested for sex crimes were individuals who had not previously been convicted of a sex offense.[36]

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The focus of sex offender laws on people who have previously been convicted of sex offenses may originate in the misperception that most if not all of those who have committed sex crimes in the past will do so again. Legislators, public officials, and members of the public routinely claim that people who have committed sex offenses pose a great risk to the public because they have "astronomically high" recidivism rates.[37] For example, federal legislators justified the need for federal sex offender laws by asserting sex offender recidivism rates of 40 percent, 74 percent, and even 90 percent.[38] Legislators rarely cite, nor are they asked for, the source and credibility of such figures. In addition, most of those who make public assertions about the recidivism rates of sex offenders take a "one-size-fits-all" approach; they do not acknowledge the marked variation in recidivism rates among offenders who have

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34 Howard Snyder and Melissa Sickmund, OJJDP, "Juvenile Offenders and Victims: 2006 National Report," http://www.ojjdp.ncjrs.org/ojstatbb/nr2006/downloads/NR2006.pdf (accessed November 28, 2006), p. 44. Of the 1.3 million children or youth under the age of 18 reported missing from home in 2005, the vast majority of non-family abductions were teens—not younger children—and most were kidnapped by someone they knew somewhat, not by strangers or slight acquaintances.

35 Ibid.

36 Lawrence Greenfeld, BJS, "Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault," February 1997, http://www.ojp.usdoj.gov/bjs/pub/pdf/soo.pdf (accessed July 16, 2007).

37 Congressional Record, vol. 140, statement of then-Representative Jennifer Dunn (R-WA) in support of Megan's Law ("[t]he rate of recidivism for these crimes is astronomical because these people are compulsive.").

38 Congressional Record, vol. 142, statement of Senator Kay Bailey Hutchinson (R-TX) ("we know that more than 40 percent of convicted sex offenders will repeat their crimes"); Congressional Record, vol. 139, statement of Representative Jim Ramstad (R-MN) ("[a] study of imprisoned child sex offenders found that 74 percent had a previous conviction for another child sex offense."). A few minutes after the statement of Representative Ramstad, then-Representative Fish repeated the same recidivism rate of 74 percent. Congressional Record, vol. 151, statement of then-Representative Mark Foley (R-FL) ("There is a ninety percent likelihood of recidivism for sexual crimes against children. Ninety percent. That is the standard. That is their record. That is the likelihood. Ninety percent.").

committed different kinds of sex offenses, nor the influence of other factors on recidivism.

Accurately measuring reoffense rates of people previously convicted of sex offenses is difficult, confounded by many factors.[39] Some offenders claim to have committed many offenses prior or subsequent to the one for which they were arrested and convicted.[40] It may be that such self-reports of long offense histories by a few offenders have led to the perception that all sex offenders have high rates of reoffending. But numerous, rigorous studies analyzing objectively verifiable data—primarily arrest and conviction records—indicate sex offender recidivism rates are far below what legislators cite and what the public believes.

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The US Department of Justice tracked 9,691 male sex offenders in 15 states who were released from prison in 1994 and found that within three years only 5.3 percent of all sex offenders were arrested, and 3.5 percent convicted, for a new sex crime; 2.2 percent were rearrested for a sex offense against a child.[41] Among the released child molesters (defined in the study as someone convicted of a forcible or non-forcible sex crime against a child), 3.3 percent were rearrested for a sex crime against a child.[42] Sex offenders with prior histories of sex offenses had somewhat higher rates of rearrest: 7.3 percent of child molesters and 8.3 percent of all sex offenders with more than one prior conviction for a sex offense were rearrested for another sex crime.[43]

The most comprehensive study of sex offender recidivism to date consists of a meta-analysis of numerous studies yielding recidivism rates for a period of up to 15 years post-release for people convicted of such serious offenses as rape and child

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39 It is also important to note that studies on recidivism rates vary depending on how recidivism is defined. Some studies look at arrest rates, others at conviction rates, and some include informal reports to child protection agencies and self-reports. The length of the follow-up period may vary as well. As the follow-up period increases, so does the cumulative number of recidivists. Further complicating matters is that many sex offenses are never reported to the police.

40 Gene Abel et al., "Self-Reported Sex Crimes of Non-Incarcerated Paraphiliacs," *Journal of Interpersonal Violence* (1987), pp. 3-25.

41 Greenfeld, BJS, "Sex Offenses and Offenders."

42 Ibid.

43 Ibid.

molesting.[44] The analysis, which included over 29,000 sex offenders, found that within four to six years of release, 14 percent of all sex offenders will be arrested or convicted for a new sex crime.[45] Over a 15-year period, recidivism rates for all sex offenders averaged 24 percent.[46] This is not a trivial rate by any means, given the seriousness of the offenses committed. Yet it also indicates that three out of four sexually violent offenders do not reoffend.

The study also found that recidivism rates varied markedly depending on the kind of sex crime committed. For example, recidivism within four to six years of release from prison was 13 percent for child molesters, and 24 percent for rapists. There are also differences within types of crime. For example, men who molest boys have the highest measured rates of recidivism of any sex offender.[47] Within five years, their rate of sexual recidivism was 23 percent, and an additional 12 percent committed another sexual offense over the next decade.[48] Thus, over a 15-year period, about one out of every three men who have molested boys will be arrested or convicted of another sex offense.

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State-specific studies have yielded similar results. For example, in Ohio, only 8 percent of former sex offenders were reincarcerated for another sex offense within a 10-year period.[49] Sex offenders who returned for a new sex offense did so within a few years of release.[50] Within three years of their release, 2 percent of New York inmates who had served time for a sex offense returned to prison with a conviction for another sex offense.[51] Within nine years, the number was 10 percent.[52]

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44 Andrew Harris and R. Karl Hanson, Public Safety and Emergency Preparedness Canada, "Sex Offender Recidivism: A Simple Question," 2004, http://ww2.psepc-sppcc.gc.ca/publications/corrections/pdf/200403-2_e.pdf (accessed August 24, 2007), pp. 3-6. The study used data from 10 follow-up studies of adult male sexual offenders (a combined sample of 4,724) from Canada, the United Kingdom, and the United States. Ibid. p. ii.
45 Ibid., p. 7.
46 Ibid.
47 Ibid., p. 23.
48 Ibid.
49 State of Ohio Department of Rehabilitation and Correction, "Ten Year Recidivism Follow-up of 1989 Sex Offender Releases," April 2001, www.drc.state.oh.us/web/Reports/Ten_Year_Recidivism.pdf (accessed August 24, 2007), p. i.
50 Ibid.
51 Based on an analysis of 12,863 releases between 1985 and 2002 of inmates whose most serious conviction offense had been rape, sodomy, sexual abuse or other sex crimes. Leslie Kellam, State of New York Department of Correctional Services, "2001 Releases: Three-Year Post Release Follow-Up," 2002, http://theparson.net/so/2001_Releases_Three_Year_Post_Release_Follow_Up_NY.pdf (accessed August 24, 2007), pp. 17-18.

Sex offenders do not recidivate at far higher rates than other offenders, as is often believed. A federal study of prisoners released in 1994 found that 67.5 percent of all former prisoners were rearrested for a new offense within three years of their release.[53] Rearrest rates varied by category of crime: 70.2 percent for those who had been in prison for robbery, 74 percent for burglary, and 41.4 percent for homicide. Released rapists had a rearrest rate of 46 percent.[54] These rearrests are for any crime, not necessarily the same type of crime for which they had been in prison. Only 2.5 percent of prisoners who had been convicted of rape were arrested for another rape in the three-year post-release period.[55] The other released rapists were either rearrested for something other than rape (for example, non-sexual assault or property offenses) or not rearrested at all.

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Some of the public misapprehensions about the rates at which sex offenders recidivate may have originated with calculations by the Bureau of Justice Statistics (BJS) as to the relative likelihood at which released prisoners are rearrested for the same type of crime as that for which they had been in prison. In a study published in 1997 based on prisoners released in 1983, the BJS calculated that relative to other offenders, a rapist was 10.5 times more likely than other released prisoners to be rearrested for another rape.[56] More recently, based on a study of prisoners released in 1994, the BJS calculated a rapist's likelihood of being rearrested for rape as 4.2 times a non-rapist's odds.[57]

However, the odds of 10.5 or 4.2 do *not* mean that rapists' rates of recidivism are 10.5 or 4.2 times greater than the recidivism rates of other offenders.[58] The figures are properly understood as indicating the "degree of specializing" that is apparent

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52 Based on an analysis of 556 sex offenders released in 1986 and followed through 1995. State of New York Department of Correctional Services, "Profile and Follow-up of Sex Offenders Released in 1986," 1995, http://theparson.net/so/Profile_and_follow_up_of_sex_offenders_released_in_1986.pdf (accessed August 24, 2007), p. 20.
53 Patrick Langan, BJS, "Recidivism of Prisoners Released in 1994," June 2002, http://www.ojp.gov/bjs/pub/pdf/rpr94.pdf (accessed August 24, 2007), p. 1.
54 Ibid.
55 Ibid., p. 9.
56 Allen Beck, BJS, "Recidivism of Prisoners Released in 1983," 1997, http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr83.pdf (accessed August 24, 2007), p. 6.
57 Langan, BJS, "Recidivism 1994," p. 10. Someone convicted of a sexual assault other than rape was 5.9 times more likely than someone convicted of a non-sexual crime of being rearrested for sexual assault. Ibid.
58 Human Rights Watch telephone interview with Allen Beck, chief, BJS Corrections Statistics Program, April 30, 2007.

among many offenders.[59] For example, according to the BJS, a robber is 2.7 times more likely of being rearrested for another robbery as compared to an offender who had not been serving time for a robbery.[60] Specialization is not absolute; non-rapists are also rearrested on rape charges. For example, 1.2 percent of the prisoners who had been serving time for robbery were rearrested for rape.[61] Indeed, people who had been serving time for rape were responsible for only 4.8 percent of the rapes committed in the three-year post-release period by all prisoners released in 1994.[62]

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Most prisoners who are going to reoffend do so fairly soon after their release from prison.[63] This is also true for sex offenders. For example, according to the Bureau of Justice Statistics, during the three years following release from prison in 1994, 40 percent of the rearrests of sex offenders for new sex crimes occurred in the first year.[64] In Ohio, of all sex offenders who came back to prison for a new sex offense within a 10-year post-release period, one-half did so within two years, and two-thirds within three years.[65] The corollary—for people who have committed sex offenses as well as other kinds of crimes—is that the longer someone remains offense-free in the community, the less likely he or she will commit another offense. For example, the 2004 meta-analysis of sex offender recidivism studies cited above indicated that an average of 20 percent of all sex offenders would be arrested or convicted for another sex offense over a 10-year period after being released into the community. But, for offenders who remained offense-free for five years, their recidivism rate for the next 10 years declined to 12 percent; for those who remained offense-free for 10 years, their recidivism over the next five years declined even further to 9 percent. After 15 years offense-free, the recidivism rate for the next five years was 4 percent.[66]

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59 Ibid.
60 Langan, BJS, "Recidivism 1994," p. 10.
61 Ibid., p. 9.
62 Ibid.
63 For example, in "Recidivism 1994," as much as two-thirds of all recidivism occurred in the first year after release. Recidivism rates were also highest in the first year for prisoners released in 1983 and tracked for three years. Beck, BJS, "Recidivism 1983," p. 1.
64 2.1 percent out of the total of 5.3 percent who were rearrested by the end of year three. Patrick Langan, Erica Schmitt, and Matthew DuRose, BJS, "Recidivism of Sex Offenders Released from Prison in 1994," November 2003, http://www.ojp.gov/bjs/pub/pdf/rsorp94.pdf (accessed August 24, 2007), p. 25.
65 Ibid.
66 Harris and Hanson, "Sex Offender Recidivism: A Simple Question," 2004, p. 1.

A number of other factors are also correlated with recidivism. One such factor is the relationship of the victim to the offender. Offenders whose victims were within the family recidivate at a significantly lower rate than offenders whose victims were outside of the family.[67] For all child molesters, the lowest reoffense rates were for those who abused family members—13 percent after 15 years living in the community.[68] The age at which a sex offender commits the sex offense also has a substantial association with recidivism. Offenders older than 50 when released from prison reoffended at half the rate of those younger than 50—12 percent versus 26 percent, respectively, after 15 years.[69]

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Some experts who specialize in the treatment of individuals who commit sex offenses are not surprised that individuals caught for their sex crimes have a relatively low recidivism rate. As one treatment provider told Human Rights Watch, "When an individual is caught and held accountable for his behavior, he often becomes motivated to get better. His behavior is no longer a secret, and it becomes a reckoning point for him—he must decide whether he is going to change his behavior, or face the consequences."[70]

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67 Ibid.
68 Ibid., p. 7.
69 Ibid.
70 Human Rights Watch interview with a treatment provider, June 26, 2007.

Case Study: North Carolina

Human Rights Watch did a case study of North Carolina to determine how many of the offenders on its online sex offender registry had been convicted of another sex offense after they were released from prison into the community, and the kinds of crimes for which the registrants were required to register. We chose North Carolina because it is one of only two states that we could find whose registries list the date of release into the community. North Carolina's registry includes persons convicted of sexually violent offenses,[71] offenses against minors,[72] and other sex offenses.[73] Depending on the gravity of their offense, offenders must register either for 10 years or for life.[74] Ten-year registrants may petition for removal from the registry after 10

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71 The following offenses are defined as "sexually violent": first degree rape, second degree rape, first degree sexual offense, second degree sexual offense, attempted rape or sexual offense, intercourse and sexual offense with certain victims, statutory rape or sexual offense of a person who is 13, 14, or 15 years old where the defendant is at least six years older, subjecting or maintaining a person for sexual servitude, incest between near relatives, employing or permitting minor to assist in offenses against public morality and decency, felonious indecent exposure, first degree sexual exploitation of a minor, second degree sexual exploitation of a minor, third degree sexual exploitation of a minor, promoting prostitution of a minor, participating in the prostitution of a minor, taking indecent liberties with children, and solicitation of child by computer to commit an unlawful sex act. The term also includes the following: a solicitation or conspiracy to commit any of these offenses; and aiding and abetting any of these offenses. N.C. Gen. Stat. 14-208.6 (2006).

72 "Offense against a minor" means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: kidnapping, abduction of children, and felonious restraint. The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; and aiding and abetting any of these offenses. N.C. Gen. Stat. 14-208.6 (2006).

73 Under N.C. Gen. Stat. 14-208.6 (2006), the following persons must register: (a) Those convicted of an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses, unless the conviction is for aiding and abetting (a conviction for aiding and abetting requires reporting only upon a court determination); (b) Those convicted in another state of an offense requiring registration under the laws of that state; (c) Those convicted in another state or in a federal jurisdiction of an offense that is substantially similar to an offense against a minor or a sexually violent offense under North Carolina law; (d) Those convicted of secretly peeping into a room occupied by another person if: (i) using a device to create a photographic image of another person in that room for the purpose of arousing or gratifying the sexual desire of any person; (ii) the person secretly or surreptitiously uses any device to create a photographic image of another person underneath or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent; (iii) the person for the purpose of arousing or gratifying the sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent; (iv) the person knowingly possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of the sex offender statute; or (v) the person who disseminates or allows to be disseminated images that the person knows, or should have known, were obtained as a result of the violation of the sex offender statute.

74 Under N.C. Gen. Stat. 14-208.6A (2006), there is a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. Lifetime registration is required for recidivists, persons who commit aggravated offenses, and sexually violent predators.

years, providing they fulfill certain requirements.[75] Lifetime registrants may not petition for removal from the registry.[76]

Human Rights Watch analyzed the criminal histories reported on the registry for a statistically significant randomly chosen sample of 500 out of the total 10,073 registrants living in the community. The overwhelming majority, 98.6 percent, were one-time offenders, that is, their only sex offense was the one for which they were currently required to register. The earliest date of release in the sample was 12 years ago, and no offender living in the community 10-12 years from release has been reconvicted for another sex offense. Of the 36 percent of the sample (183 offenders) who had been out of confinement for more than five but fewer than 10 years, only 2.19 percent (four offenders) had been reconvicted. All four of these recidivists were reconvicted for "indecent liberties with a minor."

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In our sample, 67 percent of the registrants reported indecent liberties with a minor as the registerable offense (this is a broadly-defined offense[77] that need not include violence and need not even involve physical contact with the minor victim).[78] Another 10 percent were registered for rape (first and second degree).[79] The other 23 percent were registered for other sex crimes.

Among the 13 registered sex offenders in our sample who were under 18 at the time of conviction, six were registered for indecent liberties with a minor, and four were convicted of second degree rape (rape not involving the use of a weapon).

75 N.C. Gen. Stat. 14-208.12 (2006).

76 N.C. Gen. Stat. 14-208.23 (2006). For any registrant, the time period required for registration can only be terminated if conviction was set aside, vacated, reversed, or pardoned. N.C. Gen. Stat. 14-208.6C (2006).

77 N.C. Gen. Stat 14-202.1 (2006)(a). A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either: (1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or (2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years.

78 *State v. Turman*, 52 N.C. App. 376, 278 S.E.2d 574 (1981) (holding that touching of the child by the defendant is not necessary in order to constitute an indecent liberty under this statute).

79 N.C. Gen. Stat. 14-27.2-14.27.3 (2006).

Treatment

Treatment of sex offenders can contribute to community safety. Offenders who participate in and complete treatment are less likely to reoffend than those who do not.

As the Center for Sex Offender Management (CSOM) has pointed out, the current emphasis on registration, community notification laws, and residency restrictions for individuals who have been convicted of sex offenses "has begun to overshadow the important role of treatment in sex offender management efforts."[80] The CSOM believes mandated specialized treatment as part of probation or parole conditions is an integral and important component of effective community supervision.

Cited in U.S. v. Juvenile Males, No. 07-30290 archived on January 11, 2010

The classification, diagnosis, and assessment of sex offenders for treatment are complicated by a high degree of variability among individuals in terms of personal characteristics, life experiences, criminal histories, and reasons for offending.[81] The effectiveness of treatment at reducing reoffending behavior depends on many factors, including the type of sexual offender (for example, child molester or adult rapist), the specific treatment models and modalities being used, and the nature and extent of probation or parole supervision.[82] Most sex offender treatment programs in the United States use cognitive-behavioral treatment as well as relapse prevention (designed to help sex offenders maintain behavioral changes by anticipating and coping with the problem of relapse).[83] According to the CSOM, effective sex offender treatment holds offenders accountable and reflects the "notion that if an offender can be taught to manage successfully his propensity to sexually abuse, he becomes less of a risk to past and potential victims."[84]

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80 Center for Sex Offender Management (CSOM), "Understanding Treatment for Adults and Juveniles Who Have Committed Sex Offenses," November 2006, http://www.csom.org/pubs/treatment_brief.pdf (accessed August 24, 2007), p. 11.
81 Robert Prentky, Raymond Knight, and Austin Lee, US Department of Justice National Institute of Justice (NIJ), "Child Sexual Molestation: Research Issues," June 1997, http://www.ncjrs.gov/txtfiles/163390.txt (accessed August 24, 2007), p. v.
82 CSOM, "Understanding Treatment," pp. 5-9.
83 CSOM, "Myths and Facts about Sex Offenders," August 2000, http://www.csom.org/pubs/mythsfacts.html (accessed August 24, 2007). ("Offense specific treatment modalities generally involve group and/or individual therapy focused on victimization awareness and empathy training, cognitive restructuring, learning about the sexual abuse cycle, relapse prevention planning, anger management and assertiveness training, social and interpersonal skills development, and changing deviant sexual arousal patterns.").
84 CSOM, "Community Supervision of the Sex Offender: An Overview of Current and Promising Practices," January 2000, http://www.csom.org/pubs/supervision2.pdf (accessed August 24, 2007).

Early studies, conducted in the 1970s and 80s, did not detect differences in recidivism rates between sex offenders who had undergone treatment and those who had not.[85] Some recent research has produced similar findings. These findings have been widely publicized, opening the door to public policies predicated on the assumption that "treatment doesn't work" and sex offenders will invariably recidivate.[86]

Other studies, however, have testified to the positive impact of sex offender treatment. For example, a recent meta-analysis of 43 studies of 9,454 convicted sex offenders (5,078 treated and 4,376 untreated) found that contemporary cognitive-behavioral treatment was associated with a 41 percent reduction in recidivism.[87]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

85 L. Furby, M. Weinrott, and L. Blackshaw, "Sex Offender Recidivism: A Review," *Psychological Bulletin*, vol. 105(1) (1989), pp. 3-30.

86 For examples of current public and professional doubt regarding the efficacy of treatment of sex offenders, see Abby Goodnough and Monica Davey, "For Sex Offenders, A Dispute Over Therapy's Benefits," *New York Times*, March 6, 2007.

87 The rate of recidivism declined from 17 percent to 10 percent after approximately five years of follow up. R.Karl Hanson et al., "First Report of the Collaborative Outcome Data Project on the Effectiveness of Treatment for Sex Offenders," *Sexual Abuse: A Journal of Research and Treatment*, vol. 14(2) (2004), pp. 169-194.

V. Sex Offender Registration Laws

> Look, I did something wrong. I think it makes sense that the police have the information they need to monitor my whereabouts. I accept that. I committed a crime, and I accept that consequence. That consequence makes sense. It's the rest of it that doesn't.
> —Paul G., convicted in 1994 of adult rape, released from prison in 1995[88]

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If sex offender registries were limited to previously convicted sex offenders who had committed sexually violent crimes or sex crimes against children and who have been individually assessed as presenting a high or medium risk of committing similar crimes again, registration might help protect the public. Indeed, at least some registrants convicted of sexually violent crimes agree that registering with local law enforcement makes sense.[89] As a man convicted of rape in 1992 and released into his Idaho community in 2002 told Human Rights Watch, "The police should know where I live. They should monitor me. I have no problem going down to the police station to register. It's the price I pay for what I did."[90]

But registration is not limited to offenders who pose a significant risk of committing another serious crime. This chapter describes who is required to register, for what, and for how long.

The Role of Federal Law

While a few states have had sex offender registries since the 1940s, most states began creating registries in the 1990s.[91] Today all 50 states and the District of

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88 Human Rights Watch telephone interview with Paul G., August 10, 2006.

89 Richard Tewksbury, "Sex Offender Registries as a Tool for Public Safety: Views from Registered Offenders," *Western Criminology Review*, vol. 7(1) (2006), pp. 1-8.

90 Human Rights Watch interview with James T., who was convicted of rape in Idaho, June 30, 2006.

91 California's was established in 1947. California Research Bureau (CRB), "The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review," August 2006, www.library.ca.gov/html/statesegzz.cfm (accessed January 21, 2007). Washington State established its police registry in 1990. Washington Institute for Public Policy, "Sex Offender Sentencing in Washington State: Has Community Notification Reduced Recidivism?" December 2005, http://www.wsipp.wa.gov/rptfiles/05-12-1202.pdf (accessed August 24, 2007). The

Columbia have them. Federal law now requires states to maintain sex offender registries and has limited state discretion regarding who must register, and for how long.

In 1994 the US Congress passed the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act, named after an 11-year-old boy who was abducted at gunpoint while riding his bike near his home.[92] The law required states to establish sex offender registries, subject to the loss of a percentage of federal funding if they did not.[93] Under the legislation, people convicted of sexual abuse of children or sexually violent crimes against adults were required to register their current addresses with local law enforcement for 10 years following their release into the community.[94] The law authorized, but did not require, law enforcement officials to release to the public information on a registered sex offender when, in their discretion, they determined public notification about the registered sex offender's presence in the community was "necessary to protect public safety."[95]

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In 1996 Congress expanded the length of registration required for individuals convicted of "aggravated" sexual violence and for sex crime recidivists.[96] These individuals were required to register for life.[97]

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other states—except for Washington—created sex offender registries in the 1950s and 60s. Elizabeth Pearson, BJS, presentation at the National Conference on Sex Offender Registries, "Status and Latest Development in Sex Offender Registration and Notification," April 1998, http://www.ojp.usdoj.gov/bjs/pub/ascii/ncsor.txt (accessed August 24, 2007). Washington created their registry in 1990. Ibid.

92 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. 103-322, Title XVII, Subtitle A, §170101, Sept. 13, 1994, 108 Stat. 2038, 42 USC. §14071. In October 1989, while riding his bike with his brother and a friend in St. Joseph, MN, 11-year-old Jacob Wetterling was abducted by an unknown male assailant. Few suspects were identified; to date, no arrest has been made in the case, and Jacob remains missing. Jacob's parents became advocates for more effective laws to aid in the recovery of missing children and the prevention of sexual violence against children. For more information on Jacob's abduction, see Jacob Wetterling Foundation, http://www.jwf.org/ReadArticle.asp?articleId=78 (accessed September 8, 2006).

93 If states do not comply with federal registration and community notification laws, they lose 10 percent of their appropriation from the federal Edward Byrne Justice Assistance Grant Program, which provides funding for state and local crime prevention and control programs. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. 103-322, Title XVII, Subtitle A, §170101, Sept. 13, 1994, 108 Stat. 2038, 42 USC. §14071.

94 Those determined by a court to be "sexually violent predators" were required to register under the Wetterling Act until they were found by the state (using guidelines set forth by the Act) to be no longer dangerous.

95 CSOM, "Sex Offender Registration Requirements," April 2001.

96 Department of Justice Office of the Attorney General, "Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended," December 17, 1998, http://pub.bna.com/cl/19990120/2196.htm (accessed August 24, 2007). An aggravated sexual act is defined as "(1) engaging

Ten years later, with the Adam Walsh Act of 2006, Congress again passed legislation increasing the categories of people that states were required to register as sex offenders and for how long they would have to do so.[98] The Act also authorized a national registry that would incorporate the information from every state registry.

The Adam Walsh Act significantly expands the federal requirements of who must register as a sex offender. The Act defines a sex offense as a "criminal offense that has an element involving a sexual act or sexual contact with another."[99] The law exempts consensual sexual conduct where the victim was at least 13 and the offender was no more than four years older.[100] For the first time, federal law under the Adam Walsh Act requires some juveniles to register (see Chapter VII, "Sex Offender Laws and Child Offenders").

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The Adam Walsh Act creates three tiers or levels of registrants, determined solely by the conviction offense, with Tier I crimes the least serious and Tier III crimes the most serious. The tiers dictate the duration of the registry requirement.[101]

The Act also sets the frequency with which a former offender must update registry information: Tier I sex offenders must do so every year; Tier II sex offenders must do so every six months; and Tier III offenders must do so every three months. A registrant must not only register with local law enforcement in the jurisdiction where

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in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; and (2) engaging in sexual acts involving penetration with victims below the age of 12."

97 Ibid. Megan's Law is most commonly associated, however, with its community notification provisions, discussed below.

98 The act is named after a six-year-old boy who was abducted and murdered in 1981. Adam's severed head was found in a canal about 100 miles from his family home. The rest of his remains have never been found, nor has anyone been convicted of his murder. His father, John Walsh, is a prominent national victims' rights advocate and the host of the television show America's Most Wanted. "About John Walsh," http://www.amw.com/about_amw/John_Walsh.cfm (accessed January 14, 2007).

99 Adam Walsh Act, Title I, Sec. 111(5)(A)(i).

100 Ibid., Sec. 111(5)(C).

101 Ibid., Sec. 111. Tier III registrants are those who committed a sex crime punishable by more than one year in prison and comparable or more severe than aggravated sexual abuse, abusive sexual contact with a child under 13, kidnapping of a child by someone other than the guardian, any sex crime occurring after the offender was a Tier II offender. Ibid., Sec. 111(4). Tier II registrants are "those who are not a Tier III offender" and whose offense is against a minor, is punishable by imprisonment of more than one year, and is comparable or more severe to sex trafficking, coercion and enticement, transportation with intent to engage in criminal sexual activity, abusive sexual contact, involves the use of a minor in a sexual performance, solicitation of a minor to practice prostitution, production or distribution of child pornography, or if the sex offense occurs after the offender becomes a Tier I sex offender. Ibid. Sec. 111(3). A Tier I sex offender is defined as "a sex offender other than a Tier II or Tier III sex offender." Ibid. Sec. 111(2).

he or she resides, but must also register in the jurisdiction where he or she is employed or and goes to school.[102] The Act makes failure to register a violation of federal law, carrying with it a fine or imprisonment.[103] These registration requirements are applied to all registrants, for the duration of their registration. So, for example, a man convicted of soliciting an underage prostitute would have to register in the jurisdiction where he lives and also in the jurisdiction where he is employed (if different) and provide information about his employer to the police, even if his work does not involve contact with children.

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One of the goals of the Act was to create more uniformity among state registration schemes, to avoid some of the confusion as to registration requirements when registrants moved to different states. However, since the Act does not limit the authority of states to go beyond federal law (see below), uniformity will still be elusive.

Moreover, the Act will preclude state officials from instituting registration laws they deem more reasonable or effective but which fall below the federal mandate.

In 1996 Congress authorized the creation of a national registry of offenders convicted of coercive, penetrative sex with anyone, sex with children under the age of 12, recidivists of any sexual offense, and sexually violent predators.[104] In 2005 the national registry went online with links to state online registries.[105] The Adam Walsh Act requires all states to upload their online sex offender database to the national database by 2009.[106]

State Registration Laws

> The only reason I am considered a sex offender is because I committed an offense that triggers registration. In any other context, my crime

102 Ibid. Sec. 113(a).
103 Ibid. Sec. 141. Failure to register is also a deportable offense for non-citizens.
104 The Pam Lyncher Sexual Offender Tracking and Identification Act of 1996, 42 USC. Sec. 14072. Pam Lyncher was a victim of sexual assault and the founder of Justice for All, a victims' rights group. She died with her two daughters when TWA Flight 800 crashed in New York in July 1996. Justice for All, "In Memory," http://www.jfa.net/memory.html (accessed September 8, 2006). The FBI maintains the registry. 42 USC. sec. 14072.
105 Dru Sjodin National Sex Offender Public Website, http://www.nspor.gov (accessed March 16, 2007).
106 Ibid.

would never be considered a sex offense, and I would not be considered a threat to society.
—Trent B., a Pennsylvania registrant convicted of streaking[107]

While federal law requires states to register former offenders convicted of certain offenses, it does not limit states' authority to increase the number of offenses that trigger registration or the duration of the requirement to register.

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Expanding the Definition of Sex Offender

Most people assume that a registered sex offender is someone who has sexually abused a child or engaged in a violent sexual assault of an adult. A review of state sex offender registration laws by Human Rights Watch reveals that states require individuals to register as sex offenders even when their conduct did not involve coercion or violence, and may have had little or no connection to sex. For example:

- At least five states require registration for adult prostitution-related offenses;[108]
- At least 13 states require registration for public urination; of those, two limit registration to those who committed the act in view of a minor;[109]
- At least 29 states require registration for consensual sex between teenagers;[110] and

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107 Email communication from Trent B. to Human Rights Watch, January 11, 2007.

108 Alabama, Ala. Code §13A-200(b); Michigan, Mich. Comp. Laws §28.722 & §750.455; Oregon, Or. Rev. Stat. §181.594, 595; Tennessee, Tenn. Code Ann §40-39-202, 203; West Virginia, W. Va. Code §15-12-2, §61-8-6, §61-8-7. These provisions are distinct from prostitution-related offenses with children. At least 39 states require persons to register as sex offenders for prostitute-related offenses against children.

109 Arizona, Ariz. Rev. Stat. §13-3821 (if the individual has more than one previous conviction for public urination—two if exposed to a person under 15; three if exposed to a person over 15); California, Cal. Penal Code §314(1)-(2), 290; Connecticut, Conn. Gen. Stat. §53a-186, §54-250, §54-251 (if the victim was under 18); Georgia, O.C.G.A. §42-1-12, 16-6-8 (if done in view of a minor); Idaho, Idaho Code Ann. §18-4116, 8306, 8304; Kentucky, Ky. Rev. Stat. Ann. §510.148, §17.520, 500, §510.150; Massachusetts, Mass. Gen. Laws ch. 272 §16, ALM GL ch. 6 §178G, 178C; Michigan, Mich. Comp. Laws §167(1)(f), §28.722, 723; New Hampshire, N.H. Rev. Stat. Ann. §651-B:1, RSA 651-B:2, 645:1(II), (III); Oklahoma, 57 Okl.St. §582.21, §1021; South Carolina, S.C. Code Ann. §23-3-430; Utah, Utah Code Ann. §77-27-21.5, §76-9-702.5; Vermont, Vt. Stat. Ann. Tit. 13, §2601, §5407, 5401.

110 Alabama, Ala. Code §13A-6-63, §13A-11-200; Alaska, Alaska Stat. S11.41.434, §12.63.010, 100; Arizona, A.R.S. §13-1405, 3821; Arkansas, Ark. Code Ann §12-12-903, 905, §5-14-110; Colorado, Colo. Rev. Stat. §16-22-103, §18-3-402, 411; Connecticut, Conn. Gen. Stat. § 54-250, § 54-251, § 53a-70; Florida, Fla. Stat. Ann. §775.21, § 794.011; Indiana, Burns Ind. Code Ann § 11-8-8-7, § 11-8-8-5; Louisiana, La. R.S. 15:542, 15: 541, 14:92(A)(7); Maine, 34-A M.R.S. § 11222, 34-A M.R.S. § 11203, 17-

- At least 32 states require registration for exposing genitals in public;[111] of those, seven states require the victim to be a minor.[112]

Case study: Oklahoma

Oklahoma law treats any type of public exposure as a sex offense that triggers 10 years on the sex offender registry, even if the offender had no sexual or lascivious motivation or intent at the time he or she exposed him- or herself. According to a local newspaper, nearly 600 registrants appear on Oklahoma's website for engaging in indecent exposure.[113]

In 1999 a high school senior in Salina, Oklahoma was arrested for what his mother described to the local media as a "high school thing."[114] He reportedly exposed himself to a group of female freshman gym students on his way to the restroom.

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

A M.R.S. § 254; Maryland, Md. Criminal Procedure Code Ann. § 11-704, 11-701, 3-308; Massachusetts, ALM GL ch. 6, § 178C, 178D, ALM GL ch. 272, § 35A; Michigan, MCLS § 28.723, 28.722, 750.520e; Minnesota, Minn. Stat. § 243.166, Subd. 1b(a)(1)(iii), 609.345 (2006); Missouri, 589.400 R.S.Mo., § 566.032 R.S.Mo.; New Hampshire, N.H. Rev. Stat. Ann. §651-B:1, RSA 651-B:2, RSA 632-A:2; New Jersey, N.J. Stat. Ann. §2c 14-2, § 2C:7-2, 2C:14-3b; North Carolina, N.C. Gen. Stat. § 14-208.7, 14-208.6, 14-27.7A; North Dakota, N.D. Cent. Code § 12.1-32-15, 12.1-20-07; Oklahoma, 57 Okl. St. § 582, 21 Okl. St. § 1123; Rhode Island, R.I. Gen. Laws § 11-37.1-3, 11-37.1-2; South Carolina, S.C. Code Ann. § 23-3-430, § 16-3-655; South Dakota, S.D. Codified Laws § 22-24B-2, 22-24B-1, 22-22-7; Tennessee, Tenn. Code Ann. § 40-39-202, 40-39-203, 39-13-506; Texas, Tex. Code Crim. Proc. art. 62.002, 62.001, Tex. Penal Code §21.11; Utah, Utah Code Ann. § 77-27-21.5, § 76-5-401, 76-5-401.2; Washington, Rev. Code Wash. (ARCW) § 9A.44.130, § 9A.44.096; West Virginia, W.Va. Code § 15-12-2, § 61-8B-9; Wisconsin, Wis. Stat. §301.45, §948.02 (2006).

111 Alabama: Code of Ala. § 13A-11-200, 13A-6-68; Arizona: A.R.S. § 13-3821, § 13-1402; Arkansas: A.C.A. § 12-12-905, § 12-12-903, § 5-14-112; California: Cal Pen Code § 290, § 314; Colorado: C.R.S. 16-22-103 (2006), 18-3-411 (2006), 18-7-302 (2006);Connecticut: Conn. Gen. Stat. § 54-250, 54-251, 53a-186; Idaho: Idaho Code § 18-8304, 18-4116 ;Illinois: 730 ILCS 150/3, 730 ILCS 150/2, 720 ILCS 5/11-9; Iowa: Iowa Code § 692A.2, 692A.1, 709.9 (2006); Kansas: K.S.A. § 22-4904, 22-4902, 21-3508 (2006); Kentucky: KRS §17.510, 17.500, 510.148, 510.150 (2006); Louisiana: La. R.S. 15:542, 15:541, 14:81; Massachusetts: ALM GL ch. 6, § 178E, 178C, ALM GL ch. 272, § 16; Michigan: MCLS § 28.723, 28.722, 750.335a; Minnesota: Minn. Stat. § 243.166, 617.23 (2006); Montana: Mont. Code Anno. § 46-23-504, 46-23-502, 45-5-504 (2005); Nevada: Nev. Rev. Stat. Ann. § 179D.450, 179D.400, 179D.410, 201.220; New Mexico: N.M. Stat. Ann. § 29-11A-4, 29-11A-3, 30-9-14.3; North Dakota: N.D. Cent. Code § 12.1-32-15, 12.1-20-12.1; South Carolina: S.C. Code Ann. § 23-3-430, 16-15-130 (2006); South Dakota: S.D. Codified Laws § 22-24B-2, 22-24B-1, 22-24-1.2; Tennessee: Tenn. Code Ann. § 40-39-203, 40-39-202, 39-13-511; Texas: Tex. Code Crim. Proc. art. 62.051, 62.001, Tex. Penal Code § 21.08; Vermont: 13 V.S.A. § 5407, 5401, 2601; West Virginia: W.Va. Code § 15-12-2, 61-8-9.

112 Alaska: Alaska Stat. § 12.63.100, § 11.41.460 (to anyone under 16 AND the offender has a prior conviction for the offense); Delaware: 11 Del. C. § 4120, 4121(a)(4), 765 (exposed to person under 16); Florida: Fla. Stat. § 775.21, 800.04 (exposed to anyone under 16 and must be in a lewd or lascivious manner); Georgia: O.C.G.A. § 42-1-12, 16-6-8; Missouri: § 589.400 R.S.Mo., § 566.083 R.S.Mo. (exposure to a child less than 14 years old); North Carolina: N.C. Gen. Stat. § 14-208.7, 14-208.6, 14-190.9 (exposure by anyone over 18 to anyone under 16; must be for the purpose of sexual arousal/gratification); Utah: Utah Code Ann. § 77-27-21.5, 76-9-702.5 (exposure to a child under age 14).

113 Curtis Killman, "Sex Offenders Struggle to Find Jobs," *Tulsa World*, July 10, 2005.

114 Ibid. The paper did not report the name of the youth.

School officials notified the police, who took the young man away in handcuffs. He was incarcerated for four months pending trial, and pled guilty to indecent exposure. In addition to community service and a five-year suspended sentence, he was required to register as a sex offender.

According to his mother, the stigma of the label drove him out of his community and away from his family. He dropped out of high school and moved to Tulsa. He had a hard time finding and maintaining employment. "It seemed like after that happened, he didn't care," his mother told a local newspaper.[115] The youth was found shot to death in November 2000 in what officials ruled a suicide. He was one month away from his 20th birthday. His mother now believes that some consideration should be given to sex offender registration requirements when the charge stems from a nonviolent act. "He was a pretty normal kid," she said. The sex offender registration requirements "changed his life."[116]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Increasing the Length of Time of Registration

> No matter if I complete treatment, never reoffend, lead an exemplary life to the best of my ability, I will have to register as a sex offender for the rest of my life.
>
> —Jacob V., South Carolina registrant convicted of possessing child pornography[117]

If the goal of sex offender registries is to enhance community safety, then the law should require registration for only so long as a former offender can reasonably be deemed to pose a meaningful risk of committing another sexually violent offense. Yet federal and state registration laws often require individuals to register for far longer.

Federal law requires mandatory lifetime registration for some offenders, and some states require lifetime registration for all offenders, with the duration of the registration under both federal and most state laws keyed solely to the crime of

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115 Ibid.

116 Ibid.

117 Email communication from Jacob V. to Human Rights Watch, March 30, 2005.

conviction. Under the Adam Walsh Act, Tier I sex offenders are required to register for 15 years, Tier II sex offenders for 25 years, and Tier III offenders for life.[118]

The Act does acknowledge in a limited way the significance of living offense-free: Tier I registrants can petition for removal from registration requirements if they maintain a clean record for 10 years. But Tier II offenders and Tier III offenders must register for 25 years or the rest of their lives, respectively, regardless of how long they live offense-free or present other evidence of rehabilitation.[119] Under this law, for example, a man who sexually abused a child in his family but has been living in the community offense-free for 20 years would nonetheless be required to continue to register until he dies.[120]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

The Adam Walsh Act will extend the duration of registration for many offenders as states amend their laws to comply with it. But the law does not prevent states from setting longer registration requirements. Seventeen states currently require lifetime registration for *all* registrants—from the most minor offenders to the most serious. Two of these states, Alabama and South Carolina, do not provide any means by which a registrant might secure release from the registry requirement.[121] In Alabama, for example, a man convicted of soliciting an adult prostitute must register for life, with no way to obtain a release from the registration requirements. The other 15 states allow some registrants to petition a court for removal from registration requirements after living in the community offense-free for a specific number of years.[122]

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118 The Adam Walsh Act, Sec.115.

119 Tier III registrants adjudicated as juveniles, however, may petition to reduce their time on the registry by maintaining a clean record for a specified amount of time. Ibid. Sec. 115(b)(1)-(3).

120 An estimated 4 percent of such offenders will recidivate after 20 years offense-free. Harris and Hansen, "Sex offender Recidivism: A Simple Question," p. 7.

121 AL St §15-20-33; S.C. Code Ann. §23-3-460.

122 In these states, a registrant can only be taken off the sex offender registry if they petition, unless the reason for registration no longer exists (i.e. due to conviction reversal, a pardon, ect). California (Cal Pen Code § 290.5) (no relief for some offenses), Colorado (C.R.S. 16-22-113), Florida (Fla. Stat. § 943.0435(11)), Georgia (O.C.G.A. § 42-1-12(g)) (offender has to have been sentenced to less than the mandatory minimum due to certain mitigating factors in order to be eligible for petition for relief from registration), Hawaii (HRS § 846E-10), Idaho (Idaho Code § 18-8310) (those convicted of aggravated offenses or who have been designated violent sexual predators may not petition for relief from registration), Mississippi (Miss. Code Ann. § 45-33-47) (no relief for some offenses), Missouri (§ 589.400(3) R.S.Mo.) (no relief for some offenses), Montana (Mont. Code Anno. § 46-23-506(3)) (no relief for some offenses), Nevada (Nev. Rev. Stat. Ann. § 179D.270(2)) (no relief for some offenders), New Jersey (N.J. Stat. § 2C:7-2(f)) (no relief for some offenders), Oregon (ORS § 181.600) (no relief for some offenders), South Dakota (S.D. Codified Laws § 22-24B-19) (no relief for some offenses), Tennessee (Tenn. Code Ann. § 40-39-207) (no relief for

Thirty-three states require some, but not all, offenders to register for life.[123] As best we can tell, lifetime registration in these states is typically reserved for more serious crimes.[124] In 24 of these states, former offenders who had been convicted of more serious crimes will have to register until they die, no matter how unlikely the possibility of recidivism. Six of these states permit lifetime registrants to petition for early release of the registration requirements.[125] The Adam Walsh Act may eliminate that option for most, if not all, of these registrants.

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

How Bad Can Registration Be? Chris F.'s Story[126]

> I am 29 years old. I was adjudicated when I was 12 years old. I found some pornographic videos in my parents bedroom (they were well hidden but I was a kid and overturned everything) and invited some neighbor friends over to watch it while my parents were away. The neighbor I first invited was 12 years old. He told his friend who was 10 and that person told his friend who was 8. So there were 4 of us (all males) in a room watching these videos. What started off a little more as "you show me yours, I'll show you mine" turned into a bit more. There was not any force.
>
> I was adjudicated and placed in the California Youth Authority (CYA). I was out in 1997. I enrolled in college to study criminal justice, then switched to pre-law. I dropped out of classes when I found out the registration laws changed to apply toward college campus police departments. I could not see myself going in to register with classmates that were working their work study jobs with the campus security department.

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some offenders), Virginia (Va. Code Ann. § 9.1-909) (relief only available to those who, due to a physical condition, are incapable of reoffending and reregistering).

123 Alaska, Alaska Stat. §12.63.020; Arizona, A.R.S. §13-3821; Arkansas , A.C.A. §12-12-919; Connecticut, Conn. Gen. Stat. §54-251-254; Delaware, 11 Del. C. §4121; Illinois , 730 ILCS 150/7; Indiana, Burns Ind. Code Ann. §11-8-8-19; Iowa, Iowa Code § 692A.2; Kansas, K.S.A. §22-4906; Kentucky, KRS § 17.520; Louisiana, La.R.S. § 15:542.1; Maine, 34-A M.R.S. §11225-A, 34-A M.R.S. §11203; Maryland, Md. Criminal Procedure Code Ann. §11-707; Massachusetts, ALM GL ch.6, §178G; Michigan, MCLS §28.728c, 28.728d; Minnesota, Minn. Stat. §243.166; Nebraska, R.R.S. Neb. §29-4005; New Hampshire, RSA 651-B:6; New Mexico, N.M. Stat. Ann. §29-11A-4(L); New York, NY CLS Correc §168-h; North Carolina, N.C. Gen Stat. §14-208.23; North Dakota, N.D. Cent. Code §12.1-32-15(8); Ohio, ORC Ann. 2950.07(B); Oklahoma, 57 Okl. St. §583(B)(4); Pennsylvania, 42 Pa.C.S. §9795.1; Rhode Island, R.I. Gen. Laws §11-37.1-4; Texas, Tex. Code Crim. Proc. Art. 62.101; Utah, Utah Code Ann. §77-27-21.5(10); Vermont, 13 V.S.A. §5407(e)-(f); Washington, Rev. Code Wash. (ARCW) §9A.44.140; West Virginia, W.Va. Code §15-12-4; Wisconsin, Wis. Stat. §301.45(5); Wyoming, Wyo. Stat. §7-19-304.

124 Ibid.

125 Massachusetts, ALM GL ch.6, §178G; Michigan, MCLS §28.728c; New York, NY CLS Correc §168-o; Ohio, ORC Ann. 2950.07(E); Texas, Tex. Code Crim. Proc art. 62.404; Wyoming, Wyo. Stat. §7-19-304(d).

126 Email communication from Chris F. to Human Rights Watch, September 21, 2006.

At age 23 I became Director of Security for a hotel. I got married at 25 and have a child now.

[Among the incidents he experienced because of his registration status:]

1. When I was attending college, I lived in Sacramento, CA but my school was in Santa Rosa, which is about a 150 mile trip. I pulled over to sleep a bit during the commute in an empty parking lot. A city policy officer told me to move along, that it was illegal to sleep in a car. She knew that I was a registered sex offender and asked me about the crime I had committed. I told her about it, and she said she did not believe me.

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2. I was pulled over for speeding for doing 80 mph in a 65 mph zone. Even though my crime and offender registration was supposed to remain confidential, the police officer announced that I was a registered sex offender to everyone in the car with me. That hurt my relationship with the people I was traveling with.

3. When I went to register at the police station, they had me wait in a busy hallway in a court building. I had to get a finger print and the officer doing it calls out my name in the hallway and then says, "step up for your sex offender registry finger print." Then the whole hallway knew what I was there for.

4. When I was working in Reno, doing security, my boss calls me into his office and lets me know I'm a registered sex offender based off the criminal check they did. He said "there must be some mistake. The date of the crime doesn't match. You aren't that old to be a sex offender." He allowed me to return to work. I quit shortly after that to save face.

5. I was fired from a job because I didn't disclose the fact that I was a registered sex offender, and they did a background check.

This last firing was the reason I started pursuing to get my name off the law enforcement registry. I had had enough. I was taken off the registry at age 28. I am 29, and feel like my life can start over again.

Do Registries Help Law Enforcement?

Police have used sex offender registries to identify potential suspects when a sex crime has been committed in their jurisdiction. Yet, given that most sex crimes are not committed by registered offenders (See Chapter IV above), the utility of the

registries for law enforcement is limited. For example, a 1999 study about Massachusetts' sex offender registry showed that of the 136 new sex crimes in a particular jurisdiction, only six were committed by individuals listed on a police registry.[127] Human Rights Watch asked a state law enforcement official in Minnesota whether the sex offender registry changed the way he investigated new sex crimes. He told us, "It gives us a place to start, but most suspects we arrest are not previously convicted sex offenders. Last year, Minnesota had 585 sex offender convictions, and only 58 of those individuals had a prior conviction for a sex offense."[128]

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With over 600,000 men and woman listed on sex offender registries,[129] law enforcement cannot actively monitor all the registrants. Human Rights Watch spoke to a police officer who oversees the sex offender registry for his city. He told us, "To be honest, it would be hard to go out and patrol every registrant on the list. We don't follow the guys around on the registry. We don't really check in on them, unless they failed to register and we have to try to find them."[130] Another law enforcement official told Human Rights Watch, "The expansion of state sex offender registries to include more offenses and longer registration periods has really compromised our ability to monitor high-risk sex offenders."[131] The chief probation officer in an Arizona county told Human Rights Watch, "Lawmakers have no idea the kind of burden they put on law enforcement when they increase the number of offenders who must register."[132]

The volume of registrants is such that law enforcement officials cannot even make sure that those who are supposed to register are doing so. In 2003, for example, the state of California admitted that it had lost track of 33,000 of the state's convicted sex offenders—44 percent of the 76,350 who should have been registering but were

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127 Anthony and Carolyn Petrosino, "The Public Safety Potential of Megan's Law in Massachusetts: An Assessment from a Sample of Criminal Sexual Psychopaths," *Crime and Delinquency*, vol. 45 (1999), pp. 140-158.

128 Human Rights Watch telephone interview with a Minnesota law enforcement official who requested anonymity, January 26, 2006.

129 The exact number is 602,245. National Center for Missing and Exploited Children (NCMEC), "Registered Sex Offenders in the United States," http://www.missingkids.com/en_US/documents/sex-offender-map.pdf (accessed March 16, 2007).

130 Human Rights Watch telephone interview with a law enforcement officer who requested anonymity, January 25, 2006.

131 Human Rights Watch telephone interview with two probation supervisors from Grand Rapids, MI who requested anonymity, December 6, 2006.

132 Human Rights Watch telephone interview with a probation officer in Arizona who requested anonymity, August 11, 2006.

not.[133] As the lone officer responsible for tracking Sacramento's 1,945 registered sex offenders put it, "We could definitely use some help … there is so many of them out there, it's hard to keep track."[134] In 2005 a study of Florida's sex offender registry found that over 7,000 registrants had run away or could not be found. "As a result, you have an excessively long list that does not generate enough accurate information to make registration useful to anyone," noted a child safety advocate.[135]

Rethinking Registration

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There is little public safety purpose served by imposing registration requirements on those who pose a minimal risk to the community. Legislators should replace one-size-fits-all registration with a system that limits registration to those who have been individually determined to pose a high or medium risk to the community. In determining that risk, states should take into consideration the offender's prior record, the specific offense committed, the period of time he or she has lived in the community offense-free, and other factors that are statistically correlated with the likelihood of reoffending. For example, the Center for Sex Offender Management advocates individualized risk assessment for sex offenders that takes into consideration "the complex and varying nature of sexual abuse and the individuals who perpetrate it."[136] States should also allow all registrants to periodically petition or appeal for review of their initial risk-level status.

Carefully tailored, sensible registration is possible. For example, in Minnesota, a coalition of public officials, law enforcement personnel, and victims' rights organizations have created reasonable registration laws (see text box on Minnesota at the end of Chapter VI, "Public Access to Information on Sex Offenders").

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133 "California Loses Track of 33,000 Sex Offenders: Overworked Police Unable to Enforce Megan's Law," Associated Press, January 8, 2003.

134 Ibid.

135 Melanie Payne and Jeff Cull, "Sex Offender Site Criticized Half on List Are Dead, Jailed or Missing," *News-Press* (Florida), December 18, 2005.

136 CSOM, "An Overview of Sex Offender Management," July 2002, http://www.csom.org/pubs/csom_bro.pdf (accessed August 24, 2007), p. 5.

VI. Public Access to Information on Sex Offenders

> We knew nothing about him. If we had been aware of his record, my daughter would be alive today.
> —Maureen Kanka, whose daughter, Megan, was abducted, sexually assaulted, and murdered by a neighbor who was a convicted sex offender[137]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

> Nothing is more threatening to our families and communities and more destructive of our basic values than sex offenders who victimize children and families. Study after study tells us that they often repeat the same crimes. That's why we have to stop sex offenders before they commit their next crime, to make our children safe and give their parents piece of mind.
> —President Bill Clinton, in a 1996 radio address about the passage of Megan's Law[138]

Federal and state community notification laws give the public easy access to significant information about registrants. All 50 states have online sex offender registries which anyone with access to the internet can view. As noted in our previous chapter, by 2009 all state registration information that is publicly available will be uploaded onto the online national sex offender registry.[139]

Information on the registry typically includes not just a person's criminal conviction—which is in the public record, except in the case of juveniles—but also his or her current address and picture, and sometimes his or her license plate number and place of employment, among other information.[140] Community notification thus does

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137 Megan Nicole Kanka Foundation, "Statement of Maureen Kanka," http://www.megannicolekankafoundation.org (accessed January 14, 2007).
138 President William J. Clinton, "Presidential Radio Address," August 24, 1996, http://www.answers.com/topic/presidential-radio-address-24-august-1996 (accessed August 24, 2007).
139 Dru Sjodin National Sex Offender Public Website, http://www.nspor.gov (accessed March 16, 2007).
140 Richard Tewksbury and George Higgins, "What Can Be Learned from an Online Sex Offender Registry Site?" *Journal of Community Corrections*, vol. 14(3) (2005), pp. 9-11, 15-16.

not, as some contend, simply make public what is in already in the public record. Instead, it makes readily accessible additional information that would otherwise be private or difficult to obtain.[141]

Legislative History

On July 29, 1994, Jesse Timmendequas raped and murdered his neighbor, seven-year-old Megan Kanka, luring her into his home by asking her if she wanted to see his new puppy.[142] Timmendequas had two prior convictions for sexual offenses against children.[143] The story of Megan's murder, which occurred in a small central New Jersey community, received significant national attention. In the aftermath of the crime, Megan's parents stated that if they had known about Timmendequas' past, they would have been able to protect their daughter from him.[144] Parents and concerned citizens pressed for an expansion of the federal sex offender registration law (The Jacob Wetterling Act) to include community notification. Congress responded by passing Megan's Law in 1996.[145] All 50 states and the District of Columbia also passed their own Megan's Laws.[146]

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Support for Megan's Laws within both Congress and state legislatures was overwhelming. When community notification came up for discussion in the US House of Representatives, only one representative voiced opposition and the bill eventually passed 418-0.[147] In Florida, legislators held no debate on the merits of making sex offender registrants' names public through community notification before

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141 *Smith v. Doe*, 123 S. Ct. at 1608, (Souter, J., concurring). ("Although [community notification] may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record.").

142 John J. Goldman, "Sex Offender Guilty of Killing Megan Kanka," *Los Angeles Times*, May 31, 1997.

143 Thomas Zambito, "New Hearings Will Determine if Wyckoff Rapist Can Be Freed," *Record* (Bergen County, N.J.), August 4, 1994.

144 Steven W. Dill, "Pink Ribbons Symbolize Drive for Megan's Law," *Record* (Bergen County, NJ), Aug. 3, 1994; also, The Megan Kanka Foundation, http://www.megankankafoundation.org (accessed October 8, 2006).

145 Congressional Record, vol. 142, statement of Representative Melvin Watt (D-NC), September 25, 1996. The final vote in the House was 418-0. Congressional Record vol. 142, H10,354, 1996. The Senate passed Megan's Law by voice vote with unanimous consent.

146 US Department of Justice guidelines give states discretion as to what kind of information is relevant to protect the public, who among the public should be notified, and how such notification should be done. DOJ Guidelines, 64 Fed. Reg. 572, 582 (Jan 5, 1999).

147 Congressional Record, vol. 142. The final vote in the House was 418-0. The Senate passed Megan's Law by voice vote with unanimous consent.

unanimously passing the laws.[148] Megan's Laws passed with similar ease in other states; in Virginia, Illinois, and Washington, for example, they passed without a single "no" vote.[149]

Proponents of community notification framed it as a means by which to protect children from child molesters. Speeches featured stories of child victims who suffered serious abuse.[150] Yet Megan's Laws are not limited to individuals who have committed sexually violent crimes against children, who have abused children, or who have committed violent sex crimes against adults. Instead, in many states, community notification (just as registration per se) extends to individuals whose crimes bear a tenuous or no connection to either sex or violence.

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Advocates of community notification believe putting registry information directly in the hands of the public will enable them to take steps to protect their children or themselves from convicted sex offenders—presumed to be dangerous and strangers. As discussed above, most convicted sex offenders will not recidivate, sex offender registries include only a small percentage of people who will commit sex offenses in the future, and most offenders are not strangers to their victims.

Community notification occurs two ways: law enforcement officials may notify communities directly and states make sex offender registries available online.

Community Notification by Law Enforcement

> After the sheriff placed the flyers with [my husband's] face all over our neighborhood, neighbors stopped talking to us. People made copies of the flyer and passed it out in front of my son's school. They posted the flyers along my running trail. People came around at night and

148 Transcript, Florida State House of Representatives, "Debate and Vote on H.R. 1665," April 2, 1993; Transcript, Florida State Senate, "Debate and Vote on S. 56, Law.6," May 1, 1995.
149 "The General Assembly 1998 Session," *Virginian-Pilot* (Norfolk, VA), Mar. 4, 1998; David Heckelman, "House OKs Notice Law Covering Sex Offenders," *Chicago Daily Law Bulletin*, Nov. 3, 1995; David Heckelman, "Senate OKs Bill Linking Crime Measures, Storage-Tank Repairs," *Chicago Daily Law Bulletin*, Nov. 16, 1995; Debera Carlton Harrell, "Sex-Offender Notification Guidelines Set; Police Can Defer in Some Cases," *Seattle Post-Intelligencer*, May 30, 1990.
150 Daniel M. Filler, "Making the Case for Megan's Law: A Study in Legislative Rhetoric," *Indiana Law Journal*, vol. 76 (2001).

> pounded on our windows. We eventually moved to a more isolated neighborhood. We couldn't handle the humiliation.
> —Susan K., wife of a convicted sex offender[151]

> The police posted fliers notifying the neighbors that my son was a sex offender. He found it too hard to live in his apartment complex. We never told my son this, but the neighbors actually stood out in the hallway and applauded as my wife and I moved his stuff out of his apartment.
> —Bob K., whose son was adjudicated at age 14 for sexual contact with a minor[152]

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All 50 states require some form of direct community notification by law enforcement for offenders convicted of certain sex offenses who have been released from custody and have moved into a community. Most state laws do not provide guidance to the police regarding who to notify or the method of notification.

Some police departments and sheriff's offices hang posters in community centers and libraries, or send letters or postcards to homes within a certain distance of the registrant.[153] Others publish notices in the local newspaper or broadcast pictures and addresses of the registrants on television.[154] Some law enforcement officials fund non-governmental non-profits to inform the community about released registrants. In New York, for example, Parents for Megan's Law has a contract with the state to distribute information about registrants recently released from custody.[155]

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151 Human Rights Watch telephone interview with Susan K., November 2, 2006.
152 Email communication from Bob K. to Human Rights Watch, September 21, 2006.
153 Jennifer Kowalewski, "Madison Residents Fight Sex Offenders with Knowledge," *News Journal* (Mansfield, OH), June 14, 2005 (notification to neighbors within 1,200 feet of the registrant's address).
154 Tania Veldemor, "Boca Putting Sex Offenders on Television Channel 20," *Palm Beach Post*, June 15, 2005.
155 Parents for Megan's Law (PFML) is a "community and victim's rights organization dedicated to the prevention and treatment of sexual abuse through the provision of education, advocacy, counseling, victims services policy and legislative support services." Parents for Megan's Law, "Mission Statement," http://www.parentsformeganslaw.com/html/about.lassosee (accessed March 16, 2007). Human Rights Watch signed up to receive the Parents for Megan's Law email alerts. In the period between September 5, 2006 and January 12, 2007, Human Rights Watch received 26 email alerts from Parents for Megan's Law, including the information for 146 registrants recently released into either Suffolk or Long Island counties.

Under some state community notification schemes, law enforcement is authorized to disseminate information about registrants to a wide array of public and private entities and organizations. For example, in New Jersey, notices about high risk ("Tier 3") registrants are distributed to private residences, businesses, schools, and community organizations in the area(s) where the offender lives and works. For moderate risk ("Tier 2") registrants, notices are provided to schools and community organizations. Notification concerning low risk ("Tier 1") offenders is provided only to law enforcement.[156]

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Absent care in how notification is handled, law enforcement officials may inadvertently expand the scope of community notification beyond what is necessary to protect public safety, mislead the public about the actual risk a sex offender poses, and inflame community hostility and fear. When law enforcement notifies a community about the presence of a registrant by placing a notice in a local newspaper or on the local television station, for example, they expand notification to include more than those who live in close proximity to the offender.

Human Rights Watch spoke with a man convicted of possessing child pornography in 1996 who is subject to community notification laws in Florida:

> When we moved in, in 2004, the police put flyers all over my neighborhood. I saw him hanging them up. It was my picture, and a description of the crime I committed, and it directed them to [Florida's sex offender website]. Our neighbor made copies of the flyer, and started passing them out door-to-door. One of my neighbors works in my office, and soon the flyers were around the office as well. I was let go a few days after they appeared. One day, as my wife dropped my son to school, there were the flyers, being passed out by one of my neighbors. When my wife asked her, she said she had made copies of the ones the Sheriff posted. It was humiliating for all of us, and it just made me want to hide. We eventually moved from the neighborhood.[157]

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156 N.J. Stat. 2C:7-8(c).

157 Email communication from Daniel Y. to Human Rights Watch, August 11, 2005.

In addition to community notification laws, some courts and legislators have sought to notify the public about the presence of sex offenders through means that could deliberately expose the offender to public humiliation and degradation. A court in Georgia, for example, ordered J.B., a 59-year-old registrant, to put signs up on his property declaring that he is a child molester.[158] Lawmakers in at least two states have proposed requiring registrants to obtain special color-coded license plates—pink—on the theory that such plates would make them easily identifiable to children.[159]

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Law enforcement officials sometimes make little effort to accurately inform the community about the conduct that triggered registration for the offender and what safety risks he or she may pose. For example, Human Rights Watch spoke with an individual who had consensual sex with his 16-year-old girlfriend when he was 20. "I was convicted of statutory rape, but when the police notified the community I live in, they didn't make it clear the circumstances. My neighbors, who are family friends, told us that the police [officer] just said I raped a girl. They didn't explain that she was my girlfriend, that it was consensual, and that the judge, the prosecutor, and my probation officer consider me to be a low-risk offender. He just said that I raped a girl. That makes people think I am a monster."[160]

Human Rights Watch spoke with a mother in Texas who received a postcard notifying her that a convicted sex offender moved into the neighborhood: "They might as well have written it in a foreign language," she said. "The postcard the police sent to my home was a bunch of legalese—I couldn't understand what exactly this individual had done to get his name on the registry, and I had no idea what his criminal history

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158 Sharon E. Crawford, "Judge Orders Sex Offender to Post Signs on Property," *Macon Telegraph* (GA), August 25, 2004; *State v. Jordan*, 716 So.2d 36 (1998). In *Jordan*, the court ruled that a sex offender could not be forced as a condition of parole to place a sign on his lawn that identified him as a sex offender, but he could be so required under Louisiana's sex offender registration statute. The statute specifies that a sentencing court can require any kind of community notification it deems appropriate, "including but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect." LA.R.S. 15:542(B)(3).

159 Dave Wedge, "IMAPERV Plate Proposed: Advocates: Pink would Warn Kids to Stay Away," *Boston Herald*, June 10, 2005; "Lawmaker Wants Pink Plates Put on Cars of Sex Offenders," *Columbus Dispatch*, May 3, 2005. After opposition from Avon and breast cancer awareness organizations—whose signature color is pink, one state changed the proposed license plate color to fluorescent green. "Ohio Lawmakers Propose Fluorescent Green License Plates for Convicted Sex Predators," Associated Press, March 1, 2007.

160 Human Rights Watch telephone interview with Jason D., August 7, 2006.

meant for the safety of my family. Now I worry that if this guy does something to a child in the neighborhood, the police will blame the parents for not being vigilant enough, like 'we gave you fair warning, and you failed to heed our warnings.' But I don't understand the threat. I am not saying one doesn't exist, I just don't understand it."[161]

Minnesota's community notification law is one of the few laws that carefully prescribes how and to whom law enforcement officials can disclose information about released former sex offenders (see text box about Minnesota below).

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Internet Registries: Expanding Community Notification to the World

> My husband is being encompassed into a group which the general public is made to think contains only pedophiles, child molesters, and rapists. The descriptions on the web are very general and misleading. At the very least, our state should actually take the time to [assess] each case and determine those who should actually be listed rather than blanket cover everyone.
>
> —Heidi O., wife of a former prison guard convicted of inappropriately touching a female inmate[162]

Despite the rationale for community notification, online registries are not limited to offenders who have committed serious crimes, or are assessed to pose a significant risk of reoffending in the future. Nor is access to the registries limited to those who have a legitimate "need to know."

Some people insist that community notification via online registries does not invade a registrant's privacy because the registries contain information already in the public domain. This is an argument US courts have adopted in upholding community notification.[163] It is true that criminal records are available at courthouses for those

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161 Human Rights Watch telephone interview with Marie D., November 13, 2006.

162 Email communication from Heidi O. to Human Rights Watch, July 20, 2005.

163 *Connecticut Dep't of Public Safety v. Doe*, 123 S.Ct. 1160 (2003) ("any stigma or shame that resulted from the publication of a registrant's information came not from the "public display for ridicule … but from the dissemination of accurate [and public] information about a criminal record.").

who wish to inquire. But, as noted above, the online registries pull together, in an easily accessible fashion, information that is not usually part of one's criminal record.

State Internet Registries

> I knew the planned internet registry had gone online when my neighbor came to my home and asked if I was a pedophile, because she had entered our zip code to search the database, and my name and picture appeared.
>
> —Dave S., convicted in Oklahoma of possession of child pornography[164]

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Every state has a searchable state-wide website with information about individuals required to register as sex offenders. Anyone with access to the internet can access state sex offender online databases and find out who is a registered offender. The information provided online for each offender typically includes the crime that triggered the registration requirement, name, photograph, physical description, date of birth, and current address of the registrant (although a few state online registries provide only the zip code of the individual). Some states provide additional personal information for certain offenders, including the address of the registrant's employer and the make, model, and license plate number of any vehicle the registrant drives.[165] Draft federal regulations for the Adam Walsh Act encourage states to list a registrant's home telephone number and email address.[166]

Users of online registries can search by name to see whether a specific individual is registered, or can find out if there are any registered offenders in a particular neighborhood. The user need not live in the state whose registry is being searched, and states do not limit who can access the database. Those who search state and national databases can do so anonymously in every state except New York and

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164 Human Rights Watch telephone interview with Dave S., November 15, 2006.

165 For example, Indiana's online sex offender registry lists the home, work, and school addresses of the registrants, and has a function that allows someone to map the address. Indiana Sheriffs' Sex and Violent Offender Registry, http://www.insor.org/insasoweb (accessed July 18, 2007).

166 US Department of Justice, Office of Justice Programs (OJP), "National Guidelines for Sex Offender Registration and Notification: Proposed Guidelines," May 2007, http://www.ojp.usdoj.gov/smart/proposed.htm (accessed August 24, 2007).

Vermont, where those seeking to search the website must provide their names and addresses (which are kept confidential and seen only by state officials).[167]

Thirty-two states include every registrant who was convicted as an adult on their online database (this includes youths who were under 18, but convicted as adults).[168] Eighteen states (and the District of Columbia) exclude low- and, in some cases, medium-risk adult sex offenders from the internet registry.[169] Thirty-two states require some youth who were adjudicated as juveniles to be placed on the public registry.[170] The Adam Walsh Act now requires states to include on their online registries children age 14 or older at the time of the offense who were adjudicated delinquent in juvenile court, where the offense "was comparable to or more severe than aggravated sexual abuse, or was an attempt or conspiracy to commit such an offense."[171] (See section VII, "Sex Offender Laws and Child Offenders")

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Failure to Inform: Inaccurate and Missing Information

> The public needs to know there is a difference between a sexual OFFENDER and a sexual PREDATOR. You can't tell that from the website that my father is a sexual offender, but he is not a predator.
> —Emily L., daughter of a Florida registrant convicted of indecent exposure to a minor[172]

Most online registries do not provide information that will enable the user to understand the nature of the offending conduct or the likelihood that the offender will reoffend.

The online registries of 22 states and the District of Columbia reflect no discernable indication of the offender's level of dangerousness.[173] The other 28 state registries

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167 New York State Sex Offender Registry, http://criminaljustice.state.ny.us/nsor (accessed March 19, 2007); Vermont Criminal Information Center Sex Offender Registry, http://www.dps.state.vt.us/cjs/s_registry.htm (accessed August 29, 2007).
168 For a list of state online databases, see Appendix.
169 See Appendix for details.
170 Ibid.
171 Adam Walsh Act, Sec. 111 (8). However, "if the victim was at least 13 years old and the offender was not more than 4 years older than the victim" and the conduct was consensual, the conduct is not a sex offense for the purposes of this Act, and the offender is not included in the registration requirements. Ibid. at 111 (5)(C).
172 Email communication from Emily L. to Human Rights Watch, October 12, 2005.

reflect various strategies for suggesting dangerousness: at least nine indicate how long the offender is required to register;[174] at least two indicate that they include "only high level offenders";[175] at least five include a section describing the offense in detail;[176] at least seven use the terms "aggravated" or "habitual" to define more dangerous offenders;[177] at least two have a separate database for level two (medium risk) and level three (high risk) offenders;[178] and at least 15 states designate some offenders as "sexual predators," or "sexually violent predators"[179]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Only three state sites that Human Rights Watch could find provide the registrant's age at the time of the offense,[180] although all state registries provide the current age of the registrant. The lack of information about the offender's age can be extremely misleading. As the age of the registrant is updated every year, the age of difference between him and the victim becomes greater and greater. For example, Marcus A., who was convicted at 20 of having sex with his 15-year-old girlfriend, explained to Human Rights Watch that his state's sex offender website "lists my age, which is now forty-seven, and my victim's age, who I later married, as fifteen. It makes me look like a child rapist. I live alone now. I moved to a new neighborhood … and I worry that everyone will just think I am some dirty old man living alone who likes to have sex with children."[181]

Alabama, Minnesota, New Jersey, North Dakota and South Dakota are the only states Human Rights Watch found whose online registry provides crime descriptions that the general public may be able to understand (for example, "when male was 41,

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173 Alabama, Alaska, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Kansas, Louisiana, Maine, Michigan, Mississippi, Missouri, Nebraska, Ohio, Pennsylvania, Tennessee, Utah, Virginia, Washington D.C., West Virginia.

174 Arizona, Arkansas, Colorado, Delaware, Illinois, Indiana, Iowa, Kentucky, Wisconsin.

175 Maryland, Minnesota.

176 Alabama, Minnesota, New Jersey, North Dakota, South Dakota.

177 Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma.

178 Oregon, Rhode Island.

179 There is no uniform definition of these terms. State online registries list the definition of sexually violent or predatory offenders in various ways—and no two states are the same. For example, Colorado states that "SVPs [Sexually Violent Predators] are considered the highest risk sex offenders," while Maryland refers to "Sexually Violent Predators" as "Th[o]se registrants [that] have been convicted of a sexually violent offense. They have also been determined to be at risk of committing a subsequent sexually violent offense." Oregon states, "Sex offenders … have been designated as Predatory who have also been determined to present the highest risk of re-offending and to require the widest range of notification; or found to be a sexually violent dangerous offender."

180 Alaska, Illinois, Missouri.

181 Email communication from Marcus A. to Human Rights Watch, August 25, 2005.

raped 14 year old female").[182] The other registries either cite the statute under which the offender was convicted or quote directly from it. The user is left to wonder what such terms as "lewd and lascivious behavior," "indecent liberties with a child," or "crime against nature" actually mean and what the registrant actually did.

Florida's website is typical. It provides no detail about a registrant's crime beyond the name of the statute under which the registrant was convicted. One Florida registrant was convicted of "criminal sexual conduct in the fourth degree."[183] Someone not familiar with the law might believe the registrant had committed a sexually violent act, when in fact he had groped a 29-year-old woman at a clothing-optional music festival—conduct that while unacceptable does not make him a dangerous offender. At the other end of the spectrum is a Florida registrant whose conviction is listed as "sexual battery of a child by an adult."[184] While most users may well note that his crime involved a child, they would have no basis for knowing that he had had sex dozens of times with a 12-year-old boy.[185]

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As a Florida lawmaker advocating for the inclusion of more information on the state's website has pointed out: "Parents don't have time to be mini-detectives. I want to know the crime this person has been convicted of … so I know the difference between someone who was being mischievous and went streaking and someone who [has] … done horrible things to children."[186]

Whatever utility registries are supposed to have is further undercut by serious inaccuracies and gaps. In 2003, the Boston Herald reported that nearly half of the online registered sex offenders in Massachusetts could not be located because their listed addresses were no longer accurate.[187] Newspapers in Florida reported that almost half of the sex offenders on the state's internet registry were incarcerated,

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182 South Dakota Sex Offender Registry, http://sor.sd.gov/disclaimer.asp?page=search&nav=2 (accessed August 24, 2007).
183 Stephanie Slater, "Sex Offender Website Lacks Key Details, Lawmaker Says," *Palm Beach Post*, August 8, 2005.
184 Ibid.
185 Ibid.
186 Ibid. For reasons that are not clear—given the purpose of sex offender registries—the online registries in at least three states (Kansas, Montana, and Oklahoma) also include people who were not convicted of sex crimes. Kansas (K.S.A. §22-4904, 4902, 4909); Montana (Mont. Code Anno. §46-23-508, 504, 502); Oklahoma (57 Okl. Stat. §595, 593).
187 Maggie Mulvihill et al., "Special Report: State Losing Track of Sex Offenders; Monster Next Door," *Boston Herald*, November 5, 2003.

dead, or missing.[188] In Kentucky, researchers determined that approximately 25 percent of the addresses on the internet registry were incorrect.[189]

"Other Offender" Registries: What's in a Name?

In May 2006, the Illinois General Assembly passed legislation to create a registry for people who commit violent but non-sexual crimes against youth.[190] The registry provides the same kind of information that the sex offender registry does, and will be available to the public online.[191] According to a co-sponsor of the legislation, "We wanted to spare individuals convicted of violent but non-sexual crimes against youth from the stigma of being a registered sex offender."[192]

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Lance M., who was convicted of physically abusing a child in a crime that did not involve sexual assault sought to get his name excluded from the sex offender registry and placed on the separate violent offender registry precisely because, as he pointed out, "I didn't want people to think I was a sex offender."[193]

The change in the law was also supported by some child safety advocacy groups. Laura Ahern, executive director of Parents for Megan's Law noted at the time of the law's passage, "Somehow, if it's not only sex offenders [on sex offender registries], it takes away the impact and the ability for the community to recognize the type of danger they are dealing with."[194]

Does Community Notification Work?

> Currently, there is insufficient evidence to determine whether posting information about registered sex offenders on the internet is a valuable and effective public safety tool; however … the public feels that the internet registry provides important information that can be

188 Melanie Payne, "Sex Offender Site Criticized," *Southwest Florida News-Press*, December 18, 2005.
189 Richard Tewksbury, "Validity and Utility of the Kentucky Sex Offender Registry," *Federal Probation*, vol. 68(3) (2004).
190 §730 ILCS 154; Illinois State Police Child Murderer and Violent Offender against Youth Registry, http://www.isp.state.il.us/cmvo/ (accessed August 24, 2007).
191 Ibid.
192 State Representative John Fritchey (D-IL), co-sponsor of a bill to create a separate registry for people who commit violent but non-sexual crimes against youth. Ryan Keith, "Illinois May Create Violent Offender Registry," Associated Press, July 24, 2006.
193 Human Rights Watch telephone interview with Lance M., August 24, 2006.
194 Keith, "Illinois May Create Violent Offender Registry," Associated Press.

> used to protect families and expects such information to be a matter of public record.
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> —Findings of a special committee convened by the Vermont legislature to investigate the efficacy of internet registries[195]

Given the popularity and prevalence of community notification laws, surprisingly little research has been conducted on their impact. We know of no research that has sought to determine, for example, how parents have used information available to them, and whether it has changed the steps they take to protect their children either in general or against individual registered offenders. A few studies have sought to determine whether community notification reduces the reoffense rates of former offenders; none have established that they do.

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A 2005 study by the Washington State Institute for Public Policy found that the rates of felony sex recidivism declined by 70 percent after the adoption of broad notification laws in Washington State. The authors concluded, however, that while community notification "should not be ruled out as a factor" in the reduced recidivism, there were other factors that could have contributed equally or more so to the reduction, including the factors that caused a national and state decrease in crime rates generally, as well as the state's increased incarceration of sex offenders.[196]

An earlier study by the Institute concluded that community notification appeared to have little effect on sex offense recidivism. The researchers found no statistically significant difference in recidivism rates over a four-and-a-half-year period between sexually violent offenders subjected to notification in Washington State and those who had committed their crimes before the community notification laws went into effect. The researchers also found that most (63 percent) of the new offenses committed after community notification had been instituted occurred in the

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195 Vermont Legislative Council, "Sex Offender Supervision and Community Notification Study Committee Report," March 2005, http://www.leg.state.vt.us/reports/05SexOffender/report.pdf (accessed August 24, 2007), p. 11.

196 Washington Institute for Public Policy, "Sex Offender Sentencing in Washington State: Has Community Notification Reduced Recidivism?" December 2005, http://www.wsipp.wa.gov/rptfiles/05-12-1202.pdf (accessed August 24, 2007), p. 1.

jurisdiction where notification took place, suggesting that notification neither deterred offenders nor motivated them to venture outside those jurisdictions.[197]

An investigation in 10 states led researchers to conclude that registration and community notification did not appear to yield systematic reductions in sex crime rates. In six states, sexual assault rates did not change significantly in the three years after the implementation of community notification and online registries. In three states there were significant reductions in sex crime rates. In one, the incidence of rapes increased.[198] Research in Wisconsin and Iowa also found no statistically significant impact from community notification laws in those states.[199]

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Finally, ongoing research in New Jersey suggests that the decline in sex crimes against children began several years before a community notification law went into effect in that state in 1994.[200] The study, funded by the federal government, is one of the first attempts to analyze whether there is a connection between the decline in reported sex abuse in the US and the implementation of community notification laws.[201] Human Rights Watch spoke with a researcher on the study, who cautioned that the results were preliminary—the result of six months of an 18-month project—and no conclusions should be drawn until the study is complete.[202]

Community notification may, however, contribute to earlier detection of reoffending by registered offenders. A 1995 study of offenders convicted of a sexually violent

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197 Donna Schram and Cheryl Milloy, Washington State Institute for Public Policy, "Community Notification: A Study of Sex Offender Characteristics and Recidivism," October 1995, http://www.wsipp.wa.gov/rptfiles/chrrec.pdf (accessed August 24, 2007).

198 Jeffrey Walker et al., Arkansas Crime Information Center, "The Influence of Sex Offender Registration and Notification Laws in the United States," 2005, http://www.acic.org/statistics/Research/SO_Report_Final.pdf (accessed August 24, 2007).

199 Richard Zevitz and Mary Ann Farkas, "Sex Offender Community Notification: Its Role in Recidivism and Offender Reintegration," *Criminal Justice Studies*, vol. 19(2) (2006), pp. 193-208 (No statistically different rate in recidivism among sexually violent offenders over five-year period). Geneva Adkins, David Huff, and Paul Stageberg, Iowa Department of Human Rights, Division of Criminal and Juvenile Justice Planning and Statistical Analysis Center, "The Iowa Sex Offender Registry and Recidivism," December 2000, http://www.state.ia.us/government/dhr/cjjp/images/pdf/01_pub/SexOffenderReport.pdf (accessed August 24, 2007). (No statistically significant difference among offenders subject to community notification compared to those who had not been).

200 Sam Wood, "N.J. Study Scrutinizes Megan's Law Effect: The Declining Trend of Sex Attacks against Children Began Several Years before the Measure Started in 1994, Researchers Weighing Expense," *Philadelphia Inquirer*, May 10, 2007.

201 Ibid.

202 Human Rights Watch telephone interview with Matt Shuman, press affairs officer, New Jersey Department of Corrections, May 10, 2007.

offense who were subject to community notification found that such individuals were arrested for new crimes (both sex-based and non-sex-based crimes) "much more quickly" than comparable offenders who were released without notification, although the overall recidivism rate at the end of a five-year period was nearly the same.[203] There is no way to tell whether a registry available only to law enforcement would have had the same effect.

Impact on Residents

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As noted above, we have not found research assessing how parents have used community notification about registered offenders to protect their children. A study on citizen attitudes toward sex offender laws found that notification actually increased some residents' anxiety because information about offenders was not accompanied by information about how to protect oneself or one's children from assault.[204] Human Rights Watch spoke with a mother in Kansas who received a postcard in the mail notifying her family that a convicted sex offender had moved into the neighborhood: "The card had the individual's picture, his crime—listed as aggravated indecent liberties with a child—the date of his crime, and where he lived. The card didn't tell me his level of dangerousness, or how I might be able to protect my kids. It just made me scared."[205] Residents in Wisconsin who were notified that a convicted child molester moved into the neighborhood experienced a "heightened sense of vulnerability," "a lack of control over the environment in which they lived," and a sense of "helplessness" and "anxiety about what the future might hold for the neighborhood."[206]

As Alison Feigh, a child safety specialist for the Jacob Wetterling Foundation, pointed out to Human Rights Watch, "If it is not done appropriately, community notification

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203 Schram and Milloy, "Community Notification: Recidivism," pp. 18-19. For the offenders subject to community notification, the medium rearrest period was 25 months after release from prison; for those not subject to community notification, it was 61 months. Ibid. The authors speculated that notification may have led the public to watch registered sex offenders more closely, resulting in earlier detection of criminal behavior. Ibid. p. 20.

204 A. A. Caputo, "Community Notification Laws for Sex Offenders: Possible Mediators and Moderators of Citizen Coping," *Dissertation Abstracts International*, vol. 61(9-B) (2001); A. A. Caputo and S.L. Brodsky, "Citizen Coping with Community Notification of Released Sex Offenders," *Behavioral Sciences & the Law*, vol. 22(2) (2004), pp. 239-252.

205 Human Rights Watch telephone interview with Donna L., September 29, 2006.

206 Richard Zevitz, "Sex Offender Placement and Neighborhood Social Integration: The Making of a Scarlet Letter Community," *Criminal Justice Studies*, vol. 17, no. 2 (2004), pp. 203-222, 212.

just raises fears without helping parents. No community notification is almost better than poorly done community notification."[207]

Is Community Notification Counterproductive?

Sex offender treatment experts point out that notification may exacerbate the stressors (for example, isolation, disempowerment, shame, depression, anxiety, and a disconnection from social supports) that can trigger relapse and reoffending in some former offenders.[208] As an individual convicted of molesting his nephew and subject to community notification told Human Rights Watch, "It's so shaming, sometimes I worry that I am not going to be able to hold myself together and be the healthy person I need to be for my family. My life is so unstable, upended each time notification goes out. Sometimes I want to just give up."[209]

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Rethinking Community Notification: Vermont as a Model

Vermont has a carefully tailored community notification law that limits notification to individuals who pose a high risk to the community, only for so long as they pose that risk, and on a need-to-know basis.

The online registry contains only offenders who have committed sexually violent crimes and "sexual predators," defined as offenders determined through an independent court proceeding to have a certain degree of compulsion to commit sexual crimes.[210] At present, only 282 out of 24,000 registered offenders in Vermont are listed on the state's sex offender website. According to an official with the Vermont Department of Public Safety, "By limiting the number of offenders who are subject to uncontrolled disclosure, the state hopes to make it easier for members of

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207 Human Rights Watch telephone interview with Alison Feigh, child safety specialist, Jacob Wetterling Foundation, September 8, 2006.

208 Jill Levenson and Leo Cotter, "The Effects of Megan's Law on Sex Offender Reintegration," *Journal of Contemporary Criminal Justice*, vol 21, no. 3 (2005), pp. 298-300. Richard Tewksbury, "Collateral Consequences of Sex Offender Registration," *Journal of Contemporary Criminal Justice*, vol. 21, no. 1 (2005), pp. 67-81; Human Rights telephone interview with Dr. Jill Levenson, October 11, 2006; and Human Rights Watch telephone interview with Dr. Robert Prentky, March 20, 2007.

209 Human Rights Watch telephone interview with Peter C., North Carolina, January 8, 2007.

210 Vermont Sex Offender Registry, http://www.dps.state.vt.us.cjsd/sd_registry.htm (accessed March 21, 2007).

the public to identify the individuals who pose the most significant risk, and to support offender treatment and reintegration into society."[211]

Members of the public can search the website by the offender's last name or can browse the records by geographical area.[212] The site discloses the offender's city of residence but does not provide his or her full address.[213] Information about other registrants who are not online can be obtained through local law enforcement offices. Members of the public who wish to get such information must first provide certain personal information (name, address, etc.) and state they have a public safety concern. The police do a background check on the person seeking the information, including the electronic verification of the seeker's license plate number. This provides a paper trail and a safeguard against vigilantism.[214]

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Unlike other states, which have had a difficult time keeping track of individuals required to register by law, Vermont officials say that 97 percent of offenders were in compliance with their registration requirement.[215]

A Model Registration and Community Notification Program: Minnesota

Minnesota has developed carefully tailored sex offender registration and community notification, the work of thoughtful deliberation by experts on sex offender management, victims' rights groups, and law enforcement officials.

In Minnesota, convicted sex offenders are assessed by a panel of experts before they are released from custody to determine whether they need to register, and if so, for how long. In addition, convicted sex offenders may appeal their registration status every two years to a panel of experts that includes law enforcement and treatment providers. The panel has the authority to reassess the convicted sex offender's level

211 Kate Fitch, National Society for the Prevention of Cruelty to Children (NSPCC), "Megan's Law: Does it Protect Children?" November 2006, http://www.nspcc.org.uk/Inform/publications/Downloads/meganslaw2_wdf48102.pdf (accessed August 24, 2007), p. 32.

212 Vermont Criminal Information Center Sex Offender Registry, http://www.dps.state.vt.us/cjs/s_registry.htm (accessed August 30, 2007).

213 Ibid.

214 13 V.S.A. §5411(c)-(d).

215 Kate Fitch, NSPCC, "Megan's Law," p. 33.

of dangerousness and adjust his or her registration requirements accordingly.[216] Minnesota's sensible approach, however, is now jeopardized by the Adam Walsh Act, which will require the state to adjust its registry requirements to reflect the Act's mandatory minimum amount of time certain offenders must stay on the registry.

At least 90 days before a sex offender is to be released, a group that by law includes a licensed sex offender treatment provider, a law enforcement official, and a caseworker who handles sex offenders, convenes to determine the risk that a particular sex offender will reoffend. They take into consideration a wide range of factors, including the circumstances of the sex offense which produced the conviction. The panel decides whether an offender will be subject to community notification. Minnesota also includes a "need-to-know" limitation on community notification. According to the law, "The extent of the information disclosed and the community to whom disclosure is made must relate to the level of danger posed by the offender, to the offender's pattern of offending behavior, and to the need of community members for information to enhance their individual and collective safety."[217]

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Low-risk offenders' information is given to law enforcement officials in the jurisdiction where the offender will reside, as well as to the victims of and any witnesses to the individual's offense. Moderate- to high-level risk offenders' information may also be given, as appropriate, to area schools, daycares, and healthcare centers, and the police may hold a community meeting to explain the risks a particular sex offender poses for the community.[218]

216 Minn. Stat. §243.166, 244.052.

217 Minn. Stat. §244.052, Subd. 4(a).

218 Minn. Stat. §244.052, Subd. 4(b); Subd. 4(c).

VII. Sex Offender Laws and Child Offenders

> It's a negative self-fulfilling prophecy when you label a child a sex offender. You place that kind of stigma on a kid and they tend to live up, or rather down, to those expectations.
> —Scott Smith, a therapist who treats children with sexual behavior issues[219]

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> How many of you would like a poor decision you made at the age of 13 to follow you around for the rest of your life?
> —Lacy L., a mother of a 13-year-old convicted as an adult for having sexual contact with his five-year-old cousin, speaking before a panel of Arizona state legislators[220]

> He knows nothing about sex. There is no way to explain [the accusation of sexual harassment] to him.
> —Michael V., whose five-year-old son was accused of sexually harassing a kindergarten classmate after he pinched her buttocks[221]

Teenagers and even young children who engage in certain sex-based conduct may find themselves subject to sex offender registration, community notification, and residency restriction laws. Some children are on registries because they committed serious sex offenses, such as forcibly raping a much younger child. Other children are labeled sex offenders for such non-coercive or nonviolent and age-appropriate activities as "playing doctor," youthful pranks such as exposing one's buttocks, and non-coercive teen sex.

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219 Human Rights Watch telephone interview with Scott Smith, MA, LCPC, P.G., Dover Counseling, Galesburg, Illinois, August 25, 2005.

220 Doug Ramsey, "Parents of Young Sex Offenders Say Arizona's Laws Too Strict," KTAR News, October 30, 2006.

221 "Boy, 5, Accused of Sex Harassment for Pinching Girl's Butt," *NBC4.com*, http://www.nbc4.com/news/10577111/detail.html (accessed December 20, 2006). According to the news report, 28 Maryland kindergarten students were suspended during the 2005-06 school year for "sexual offenses," including sexual assault, sexual harassment, and sexual activity. In November 2006 school administrators in Waco, TX gave a four-year-old pre-kindergarten student a suspension for allegedly rubbing his face in the chest of a female teacher's aide while hugging her. Ibid.

Subjecting children to sex offender laws originally developed for adult offenders is both unnecessary from a public safety perspective and harmful to the child.

The juvenile justice system acknowledges that children who break the law should be treated differently than adults, with a greater emphasis on rehabilitation, and that forcing them to carry the burden of a public criminal record for childhood mistakes serves neither them nor the community. The records of children caught up in the juvenile justice system can be expunged or sealed, or entered into the public record as an "adjudication" when the offender reaches the age of majority.[222] State sex offender registration laws, however, can trump juvenile offender laws. Children thus find themselves subject to the shame and stigma of being identified as sex offenders on online registries, in some cases for the rest of their lives. For example, Kevin A. was adjudicated at age 12 for performing a sex act on a child under 10. He told a journalist, "I was at school, at lunchtime, and one my best friends came up to me and asked me [about my name being found on the online sex offender registry after doing a Google search]. It sort of hit me off balance. It just gave me a feeling of I don't want to be there, knowing they know what I did wrong."[223]

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Every state requires children convicted in adult court of certain kinds of sex crimes to register as sex offenders. Thirty-two states include in their online registries—sometimes for life—youthful offenders who were convicted of specified offenses, regardless of whether they were adjudicated in adult or juvenile courts.[224] The Adam Walsh Act requires all states to include in their online registries offenders who were 14 or older at the time they committed specified offenses, or risk the loss of federal

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222 Most developed nations and every jurisdiction in the United States maintain two separate institutions with responsibility for adjudicating criminal charges—criminal courts for persons over a stipulated age of majority, and juvenile courts, for minors. Human Rights Watch, *For the Rest of Their Lives: Life without Parole for Child Offenders in the United States*, October 2005, http://hrw.org/reports/2005/us1005/, pp. 14-24; Human Rights Watch, *United States – Custody and Control: Conditions of Confinement in New York's Juvenile Prisons for Girls*, September 2006, http://hrw.org/reports/2006/us0906/; Franklin Zimring, *Confronting Youth Violence* (New York: Oxford University Press, 1998). In the past 30 years, state laws have cut back juvenile court jurisdiction in some serious cases, and there is an overall trend toward trying children in adult courts. Juvenile courts recognize that children's crimes should be treated differently than adult crimes. In theory, juvenile courts emphasize rehabilitation over punishment. Ibid.

223 "Kids as Young as 12 are Being Put on the Kansas Sex Offender Website," KAKE News, November 16, 2006.

224 Linda A. Szymanski, National Center for Juvenile Justice (NCJJ), "Megan's Law: Judicial Discretion over Requiring Juveniles to Register as Sex Offenders," March 2005.

funding for law enforcement resources.[225] Child offenders are not exempt from state and municipal residency restrictions; even while children they can be prohibited from living with their families in restricted areas.

Children as Sex Offenders

When he was 12 years old, Paul L. performed oral sex on his six-year-old cousin.[226] Paul pled guilty in adult court to one count of "criminal sexual conduct with a child under 13." Paul has been through an intensive sex offender treatment program. He is in group therapy and is in individual counseling. Paul's mother told Human Rights Watch that Paul is required to register with law enforcement for 25 years, although he is not subject to community notification. Still, the ordeal has had a significant effect on Paul. At 15, he is, in his mother's words, "terrified to date, because, as he told me, 'Mom, I must be a monster. No girl should want to be around me.'" Looking at the proliferation of residency restriction laws around the country, Paul's mother is also concerned about the future. "I am worried that if the state that says sex offenders can't be in certain places where children gather, that my child, who is technically a sex offender who molested a child, will no longer be able to go to school, or play with his friends, or go to church."

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The National Center on Sexual Behavior of Youth, a program of the Office of Juvenile Justice Programs, reports that adolescent sex offenders like Paul account for approximately one-third of all reported sex offenses against children.[227] According to the Bureau of Justice Statistics, 23 percent of all sexual assault offenders were under age 18 at the time of the offense. About 3.7 percent were under the age of 12. Indeed, a "detailed profile of offenders in sexual assault crimes shows that the single age with the greatest number of offenders from the perspective of law enforcement was age 14."[228]

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225 The Adam Walsh Act, Sec.118, 113, 111 (registration and online notice requirements) and Sec.125 (for withholding of funding).

226 Email communication from Paul L.'s mother to Human Rights Watch, September 14, 2006.

227 National Center on Sexual Behavior of Youth, "What Research Shows About Adolescent Offenders," July 2003, http://www.ncsby.org/pages/publications/What%20Research%20Shows%20About%20Adolescent%20Sex%20Offenders%20060404.pdf (accessed August 24, 2007); and Katrina Baum, BJS, "Juvenile Victimization and Offending, 1993-2003," August 2005, http://www.ojp.usdoj.gov/bjs/pub/pdf/jvo03.pdf (accessed August 24, 2007).

228 Howard Snyder, BJS, "Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics," July 2000, http://www.ojp.usdoj.gov/bjs/pub/pdf/saycrle.pdf (accessed August 24, 2007), p. 8.

Forty percent of the offenders against very young children (under the age of six) were themselves children; a similar proportion (39 percent) of offenders whose victims were age six to 11 were children.[229]

Many sex offenses committed by children resemble the many types of delinquent activities that the juvenile justice system is designed (in theory, if not always in practice) to enable teenagers to outgrow.[230] Most child sex offenders do not engage in aggressive or violent behavior. In a study of children arrested for committing sexual offenses, 59 percent of the offenses were categorized as indecent liberties (touching or fondling) and 27 percent as rape. The rest were arrested for what were described as non-contact offenses (public exposure).[231] In rape cases where the offender is under 18, the victim is likely to have been the same age as the perpetrator or older.[232]

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Human Rights Watch spoke with a young woman, Sharon D., now 23, who was convicted in Michigan of fondling her sister when Sharon was 10 and her sister was four. "I didn't really understand sex then, or what it meant to be sexually appropriate with someone, to respect their boundaries. I made a mistake, but it was a child's mistake, not an adult's mistake, and I think the distinction matters."[233]

A number of studies cite "nonsexual problems" as the biggest factor behind the commission of coercive, violent, or other serious sex crimes by child offenders.[234] According to the Association for the Treatment of Sexual Abusers, "poor social competency skills and deficits in self-esteem can best explain sexual deviance in children, rather than paraphilic interests and psychopathic characteristics that are more common in adult offenders. There is little evidence that … these youths engage

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229 Ibid., pp. 8-10, fig. 7.
230 Glen E. Davis and Harold Leitenberg, "Adolescent Sex Offenders, 101," *Psychology Bulletin* (1987), pp. 417-419.
231 Ibid.
232 Ibid.
233 Human Rights Watch telephone interview with Sharon D., August 18, 2006.
234 Mark Chaffin and Barbara Bonner, "'Don't Shoot, We're Your Children': Have We Gone Too Far in Our Response to Adolescent Sexual Abusers and Children with Sexual Behavior Problems?" *Child Maltreatment*, vol. 3, no. 4 (1998), pp. 314-316. Holly Smith and Edie Israel, "Sibling Incest: A Study of the Dynamics of 25 Cases," *Child Abuse & Neglect,* vol. 11, no.1 (1987), pp. 101-8.

in acts of sexual penetration for the same reasons as their adult counterparts."[235] The problems child sex offenders have that may have been a factor in their sex offending are frequently ones that are quite amenable to treatment, for example, conduct disorders, depression, and learning disabilities.[236] Mental health professionals who specialize in the treatment of children are hopeful about the prospects for success in treating child sex offenders and the possibility treatment offers for reducing reoffense.[237]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

There is relatively little research on recidivism by child sex offenders, either while they are still under the age of 18 or after they are deemed adults under the law. The research that exists supports the views of mental health treatment providers that "normal development wins out most of the time for these kids."[238]

Recent studies reveal low recidivism rates for child sex offenders. The Texas Youth Commission (TYC) followed a group of 72 young offenders who had committed violent sex crimes.[239] Three years after release from the TYC back to the community, only three (4.2 percent) had been rearrested for a sexual offense.[240]

An analysis of the reoffense rates of 300 male sex offenders from around the country who committed sex offenses when they were children found that, in a follow-up period of three to six years after they were released from custody, only 13 of the 300 (4.3 percent) had committed another sex offense.[241]

A study of 204 male child sex offenders and 41 female child sex offenders in Philadelphia found that one in 10 of the boys committed another sex offense within

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235 Association for the Treatment of Sexual Abusers (ATSA), "Position Statement: The Effective Legal Management of Juvenile Sexual Offenders," adopted by the ATSA Executive Board, March 11, 2000, www.atsa.com/ppjuvenile.html (accessed December 4, 2006).

236 B. Gordon & C.S. Schroeder, *Sexuality: A Developmental Approach to Problems* (New York: Plenum Press, 1995).

237 Theola S. Labbe, "New Approach to Young Offenders: Therapy Addresses Spate of Sex Crimes," *Washington Post*, January 9, 2005.

238 Human Rights Watch telephone interview with Dr. Robert Longo, a child psychiatrist who specializes in treating child sex offenders, August 1, 2005.

239 D. Leidecke and M. Marbibi, Texas Youth Commission, "Risk Assessment and Recidivism in Juvenile Sex Offenders: A Validation Study of the Static-99," 2000.

240 Ibid.

241 Donna Vandiver, "A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults," *Journal of Interpersonal Violence,* vol.21, no.5 (2006), pp. 673-688.

eight years of their 18th birthday. None of the female offenders committed another sex offense in the same period.[242] The researchers also found that having committed a sex offense as a juvenile was not a particularly strong predictor of committing a sex offense as an adult; indeed, boys with long (five or more) contacts with the police that did not involve sex offenses were twice as likely to commit sex offenses as adults than boys who had committed sex offenses but had fewer than five police contacts.[243]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Similar results showed up in a study of 47 male child sex offenders from Racine, Wisconsin: 8.5 percent of them committed a sex offense within five to 12 years after their 18th birthday, compared with 6.2 percent of males with any non-sex juvenile contact.[244] The study also found that a lengthy record of non-sex juvenile offenses was a better predictor of committing a sex offense as an adult than a record of a single juvenile sex offense.[245]

Examination of adult sex offender records in Philadelphia and Racine also revealed that few adult sex offenders had been convicted of sex offenses as children. In Philadelphia, only 8 percent of adult sex offenders had been juvenile sex offenders.[246] In Racine the figure was 4 percent.[247] Using juvenile sex crime records to predict who would become adult sex offenders would miss 92 percent to 96 percent of all adult male sex offenders.[248] These findings contradict the idea that requiring juveniles to register as sex offenders at all, much less for decades or a lifetime, makes a meaningful contribution to public safety.

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242 Franklin Zimring et al., "The Predictive Power of Juvenile Sex Offending: Evidence form the Second Philadelphia Birth Cohort Study," June 2007, pp. 13-14.
243 Ibid.
244 Frank Zimring et al., "Juvenile and Adult Sex Offending in Racine, Wisconsin: Does Early Sex Offending Predict Later Sex Offending in Youth and Youth Adulthood?" January 23, 2007.
245 Ibid., p. 23.
246 Zimring et al., "The Predictive Power," pp. 13-14.
247 Zimring et al., Alex Piquero, "Juvenile and Adult Sex Offending in Racine, Wisconsin," January 23, 2007.
248 Ibid., p. 14.

Jim T.'s story[249]

> As a mother, if we were talking about a true child molester, I may want to know these things, but we are talking about someone who made a mistake when he was a child. Jim's story is like a nightmare, where all the terrible things in the world, it all collides together.
> —Nina T., Jim's mother

When he was 15, Jim T. was convicted of molesting his younger sister starting when she was six and he was 10. Jim was accused of touching his sister's vagina multiple times, and forcing her to touch his penis multiple times. Jim was tried as an adult, convicted, and spent three years in a Maricopa County, Arizona jail, where he was assaulted on a number of occasions. He was released when he was 18. Jim was not able to participate in his high school graduation, so when he was released from jail, his parents bought a graduation cap and gown, and took a picture of Jim on the day he received his G.E.D. "We call it our fake graduation day picture. Looking at it, you would not guess all the pain surrounding this time in our lives."

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Jim is subject to community notification for life. He registers every 90 days, and each time he registers with the law enforcement officials, they, according to Jim's mother, "go door-to-door, put a flyer and tape it to his neighbors' door, and do this for a two-mile radius. We live a mile-and-a-half from Jim, so we are notified. On the flyers, they keep his age the same [current—meaning that he is now listed as age 20; his victim is listed as her age at the time of the abuse], and publish the vehicle he drives."

Jim lives in a small home his parents bought him. According to his mother, "He never goes outside, he never opens his shutters. He is horrified that his picture is posted in his neighborhood. He is horrified that his neighbors think he is a baby rapist."

Jim's mother says that he has been incarcerated three times for violating parole, but for things that have nothing to do with endangering the community—he was late to work, he was at a nursing home visiting his grandfather, and he was on a college campus.

249 Human Rights Watch telephone interview with Nina T., November 20, 2006.

Jim works in construction, because, through a friend, his mother was able to explain his situation to the company manager. The manager continues to employ Jim, despite his arrests.

Jim's mother says, "And yet, at the end of the day, even with a house and a job, Jim will talk to us at times about ending it all—committing suicide. I don't think he will, but, you never know."

Cited in U.S. V. Juvenile Male, No. 07-30290 archived on January 11, 2010

Consensual Teenage Sex

Some of the sexual behaviors by youth that lead to a sex offense conviction and the application of sex offender laws do not involve the sort of acts or intent normally associated with criminal offenses. Most child behavior experts agree that sexual experimentation is a normal part of a young person's development.[250] Some of the youthful offenders who are currently required to register as sex offenders were exploring their sexuality, or engaging in other typical adolescent behavior such as genital play or consensual sexual intercourse.

According to a survey conducted by the US Department of Health and Welfare, by age 14, more than one-third of the survey's respondents reported genital play with another youth under the age of 18, and about one-fifth had started having sexual intercourse.[251] By age 16, over 40 percent of both sexes report intercourse, and that rises to 55 percent for both boys and girls at age 17.[252] Child development experts agree that consensual sex play among children, including intercourse between teenagers, "is not psychologically harmful under ordinary circumstances and is probably a valuable psychosocial experience in developmental terms."[253]

Every state in the United States criminalizes sexual activity with someone below the "age of consent," a crime typically called "statutory rape." Legislators have created "Romeo and Juliet" exceptions to these laws so as to lessen or eliminate criminal

250 Robert Longo and D.S. Prescott, eds., *Current Perspectives: Working with Sexually Aggressive Youth and Youth with Sexual Behavior Problems* (Holyoke, MA: NEARI Press, 2006).
251 US Department of Health, Education, and Welfare, National Institute of Child Health and Human Development, "National Longitudinal Study of Adolescent Health," 2000.
252 Ibid.
253 Center for Disease Control, "Sexual Behavior Among High School Students—U.S. 1990," *Morbidity and Mortality Weekly Report* vol.40 (1992), pp. 885-88.

penalties for young people close in age who have non-coercive sex with each other. At least 39 states exclude at least some teenage voluntary sexual activity from the category of statutory rape, typically by either setting a minimum age for the defendant (for example, 16 or 17) and/or by specifying that there is no crime committed if the defendant is no more than a specified number of years older than the victim (typically between two and four years).

These exceptions still leave many teenagers at risk of being labeled as sex offenders for engaging in sexual conduct that is legal for adults. At least 28 states require registration as a sex offender for someone convicted of having consensual sex with another teenager, if the offender was either age 17 or two years older than the other party. In 11 states, there are no "Romeo and Juliet" exceptions; anyone who has sex with a person below the minimum age of consent is committing a crime and could, if convicted, be required to register as a sex offender.

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During research for this report, Human Rights Watch spoke with or came across the stories of a number of men and women who because of consensual teenage sex with willing partners must now register as sex offenders—in some cases for life—and suffer all the adverse consequences that come with that status. For example, in Georgia, a 26-year-old married woman was made to register as a sex offender for life and had to move from her home because it falls within an area in which sex offenders are prohibited from living, because as a teenager she had oral sex with a willing fellow high school student when she was 17 and he was 15.[254] It is difficult, if not impossible, to fathom what public safety purpose is served by subjecting her to registration, community notification, and residency restriction laws.

As one individual who was convicted of statutory rape at age 16 for having consensual sex with his 14-year-old girlfriend told Human Rights Watch, "We were in love. And now we are married. So it's like I am on the registry for having premarital sex. Does having premarital sex make me a danger to society? My wife doesn't think so."[255] A mother of a young man from Texas who has to register for having consensual sex at age 19 with his 14-year-old girlfriend noted, "Our family has been

254 Complaint - Class Action for Injunctive Relief, *Whitaker v. Perdue*, Civil Action No._____, June 20, 2006.
255 Human Rights Watch telephone interview with Kareem J., August 5, 2005.

devastated by this law that treats a young man in a consensual dating relationship the same as a violent rapist or a predator of young children."[256]

Case Study: Dan M.'s story[257]

I was convicted of statutory rape when I was 17. The girl was 15. Now I am in college. I register everywhere and every time I am suppose[d] to. I must register every 90 days. I must register between the hours of 8 and 5 Monday thru Friday before the 15th [of the] month. Right now I can handle that. I am a student, my hours are flexible, but once I start work, I will either have to work near the police office I register at to do it on my lunch hour or take time off from work.

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I get a call from the [college baseball] head coach to come to the office. My heart is in my throat. He takes me to the athletic director's office. The athletic director is beside himself. He tells me that an officer from the police station comes in to see him and that he says that we have a sex offender on campus that is on his baseball roster. He is angry. He says I must have lied on my application, because I checked no on my college application when it asked if I was ever convicted of a felony. I said I did not lie. [He was adjudicated and has no public criminal record]. I am not a felon. He says that being on the list makes me a felon. I said I'm not.

I am use[d] to my family confronting these people [who ask me about being on a sex offender list]. It is hard to tell people over and over. The looks on their faces are hard to read. You never know what they are really thinking until much later. Here I am in a new school. I know no one and very early on I have to explain my past to total strangers.

When my family and I go on vacation to visit relatives in other states I must always look up the law as to my duties regarding the list in a particular state. More than two weeks in New York I must register. More than three consecutive days in one county in Florida I must register. My parents moved to Arkansas. If you are in Arkansas you must register after 14 days. They take a statement and fingerprint you. It is always like starting it up all over again. I will be visiting my parents for more than 30 days in a year so I had to be assessed as to my level of risk to reoffend. I had to take a psychological test. I wanted to puke [the questions] were so disgusting. Is that the

256 Email communication from Janet Y. to Human Rights Watch, October 2, 2006.
257 Letter from Dan M. to Judge Nancy G. Edmunds, copy on file with Human Rights Watch.

type of person people think I am? I am not attracted to children, or dead people. I would never rape anyone. I respect women; I have three sisters, a mother, grandmothers, aunt and girlfriend who I love. I am a good person who made a bad decision with a peer 16 months my junior seven weeks after my 17th birthday. My coach might send me to New York next summer to play baseball. I will have to be assessed by them too. I will have to do this for another 23 years. That is how long I have to register.

Adjudicated Youth on Public Registries: Sealed Records "Unsealed" by Sex Offender Laws

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> I attempted to explain that I have no criminal history … to which they replied, "Well while we do not find any actual record of misconduct, you are on the sex offender registry, so that means that you have to have done something horrible."
>
> —Henry F., adjudicated at 17 in Michigan for having consensual sex with his 15-year-old girlfriend[258]

Sex offender laws can also trump other laws designed to enable young offenders to have clean public records and keep their misconduct private. Michigan provides a powerful example of this problem.

Case Study: Michigan

In Michigan children can be tried and convicted as adults, with the conviction entering the public record. The state created an alternative procedure, however, for youth between the ages of 17 and 21 who commit certain crimes, including sex offenses. Under the Holmes Youthful Trainee Act (HYTA), judges have the option of allowing a young offender to plead guilty, and if he or she completes the period of supervision without incident the conviction is never entered into the public record and the young offender keeps a clean record. The goals and benefits of the HYTA are, however, compromised by sex offender registration and community notification laws. Young sex offenders who accepted a plea deal under HYTA have found that they are nonetheless required to register as sex offenders.

A federal class action lawsuit has been filed contending that placing a HYTA youth's name on a public sex offender registry is akin to giving him a public criminal record.[259] One of the

258 Letter from Henry F. to Judge Nancy G. Edmunds, copy on file with Human Rights Watch.

plaintiffs is Sean C., who was adjudicated at 17 for having consensual sex with a girlfriend who was three weeks shy of 16, the age of consent in the state. At Sean's sentencing, the judge said,

> So, what should be the consequences for a 17-year-old who commits an offense under these circumstances, particularly one who's remorseful? By all accounts you are a reliable, bright and thoughtful young man, and there are many glowing statements about your personal qualities. So the question then becomes should this act of indiscriminate behavior on your part relegate you to the status of a convicted felon, and in my judgment that would not be fair .... Therefore, it is my decision that I will sentence you under the Holmes Youthful Trainee Act ....[260]

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Although Sean C. successfully completed his HYTA sentence, he is required to register as a sex offender and is included on the state's online registry. Sean wrote about his experience of being placed on the sex offender registry:

> I thought the whole purpose behind being sentenced under HYTA was so that I could start my life over, and basically be given a second chance. In my opinion, the registry is far worse and has a much bigger stigma attached to it than having a conviction on my record. A friend of mine was sentenced under HYTA for something which does not require registering and he can honestly say he has never been convicted of a crime and it does not show up anywhere else, to ruin his life.[261]

Plaintiffs in the lawsuit report that they have had problems finding employment, housing, access to education and other opportunities because they are included as sex offenders on the state's police and online registry.[262] They also report ostracism, harassment, and vigilantism.[263]

As Sean wrote to the court, "I was promised a clean start under HYTA, if I followed the rules. I followed the rules, but my name on the sex offender registry prevents me from having my clean break."[264]

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259 *John Doe and Samuel Poe v. Tadarial Sturdivant*, Sixth Circuit Court of Appeals No. 05-2631, Plantiff's Brief, July 25, 2006.
260 Ibid. at 4.
261 Ibid.
262 See affidavits of *Doe VI* (fired); *Doe V* (fired; denied housing); *Doe IV* (fired, unable to attend college); *Doe I* (denied employment); *Doe II* (evicted); *Doe IX* (expelled from law school); *Poe X* (unable to live with his child in subsidized housing); *Doe XI* (unable to coach or teach Sunday School). Also, *John Doe and Samuel Poe v. Tadarial Sturdivant*, Sixth Circuit Court of Appeals No. 05-2631; Amicus Curiae Brief of the ACLU of Michigan, July 25, 2006.
263 Ibid. *Doe VIII* (obscene materials sent to home and work); *Doe XVIII* (600-person lecture class informed that Doe was sex offender).
264 Ibid.

Rethinking Sex Offender Laws for Juvenile Offenders

It is questionable that any good comes from turning children and teenagers who have engaged in sexual misconduct into registered sex offenders whose photos and offenses are online for all to see. Requiring community notification for teenagers who have engaged in consensual sex with others seems particularly problematic. The public has a strong interest in making sure that those youth who are troubled and are at risk of reoffending receive the help they need to avoid engaging in such conduct again. Treatment and rehabilitation of children is rarely furthered by publicizing that they were adjudicated or convicted of a sex crime. Moreover, as noted above, since most adult offenders were never youthful sex offenders, requiring adults to register for crimes committed as youth contributes little to the public interest in identifying and monitoring people likely to engage in sex offenses.

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Human Rights Watch is not persuaded that there is ever a need to have child offenders register and subject them to community notification laws. The terms of an individual offender's post-adjudication supervision should be able to incorporate legitimate community safety precautions. However, if the law is going to authorize registration of children, no child should ever be required to register unless a court or authorized panel of experts determines he or she poses such a serious risk to public safety that other safety measures are insufficient and registration is necessary. Even then, a child who is registered should not be included on online sex offender registries. If the court or panel determines that some form of community notification is necessary, law enforcement should undertake to do so in a careful and limited way that would minimize the harm to the child while protecting public safety. Any registration requirement should also be periodically reviewed to ensure it remains necessary.

VIII. Consequences of Registration and Community Notification Laws for Registrants and Their Loved Ones

> Sleep is hard to come by. I stay up at night, worried that I can't find a job, worried that I can't find an apartment, worried that I am going to be killed like other sex offenders have been killed, worried that they will take away my family, won't let me see my children and grandchildren anymore.
>
> —Jessie K., registrant in California, convicted of sexual assault 23 years ago[265]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

While the public safety benefits of sex offender registration and community notification laws may be up for debate, the toll they have exacted upon registrants and their families is not. The damage is less from registration itself than from having their status as a registered sex offender disseminated to the community and, indeed, to the entire world. Being identified as a registered sex offender elicits public hostility, fear, and loathing—strong emotions that motivate conduct that all too often far exceeds legitimate safety precautions.

Registered sex offenders face ostracism, job loss, eviction or expulsion from their homes, and the dissolution of personal relationships.[266] They confront harassment, threats, and property damage. Some have endured vigilantism and violence.[267] A few have been killed. Many experience "despair and hopelessness;"[268] some have

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265 Email communication from Jessie K. to Human Rights Watch, June 15, 2006.

266 US Department of Justice, National Institute of Justice (NIJ), "Sex Offender Community Notification: Assessing the Impact in Wisconsin," December 2000, http://www.ncjrs.gov/pdffiles1/nij/179992.pdf (accessed August 24, 2007), p. 10. The study surveyed 30 sex offenders subject to community notification in Wisconsin. The results: 83 percent reported that notification resulted in "exclusion from residence," 77 percent reported "threats/harassment," 67 percent reported "emotional harm to family members," and being "ostracized by neighbors/acquaintances," and 50 percent reported "loss of employment." See also, Levenson and Cotter, "The Effects of Megan's Law on Sex Offender Reintegration," *Journal of Contemporary Criminal Justice*, vol 21, no. 3 (2005), pp. 298-300. Richard Tewksbury, "Collateral Consequences of Sex Offender Registration," vol.21, no.1 (2005), *Journal of Contemporary Criminal Justice*, pp. 67-81.

267 There has been no national survey on the extent of threats and assaults on registrants. Indeed, of those states that responded to Human Rights Watch's query, none had in place any formal mechanisms for receiving such reports. Most state registration officials we spoke to told Human Rights Watch that registrants could contact local law enforcement if they experienced any harassment or violence.

268 Levenson and Cotter, "The Effects of Megan's Law;" Tewksbury, "Collateral Consequences."

committed suicide.[269] These consequences extend beyond the individual offenders to their families as well.[270]

A recent study of the impact of community notification in Florida found that one-third to one-half of sex offenders subjected to community notification reported "dire consequences" such as the loss of a job or home, threats or harassment, or property damage.[271] About 16 percent of the registrants reported being physically assaulted.[272] About 19 percent of sex offenders reported that these negative consequences had affected other members of their households.[273]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Unnecessarily expansive community notification laws (especially when combined with residency restrictions, described in the next chapter) may drive more and more offenders underground, away from supportive services like sex offender treatment, and away from the supervision and monitoring of law enforcement. Harsh enduring consequences also provide little incentive for former offenders to live without offending. To the contrary, the laws may be a disincentive: as one registrant has said, "No one believes I can change, so why even try?"[274]

There are some people who say that such adverse consequences are the fault of the offenders—if they hadn't committed the crimes, they wouldn't be facing public hostility now. For example, a public official in Miami, Florida, in commenting on residency restrictions in his city, noted, "My main concern is the victims, the children that are the innocent ones that these predators attack and ruin their lives. No one really told them to do this crime."[275]

Yet everyone, even former sex offenders, has rights that should be respected and protected. Registration and community notification laws directly and all too often unnecessarily interfere with former offenders' rights to privacy. The invasion of their

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269 Registrant suicides (and other consequences) are chronicled on this website: http://www.geocities.com/eadvocate/issues/topic-pedophiles.html (accessed December 15, 2005).
270 Ibid.
271 Levenson and Cotter, "The Effects of Megan's Law," pp. 49-66.
272 Ibid.
273 Ibid.
274 Ibid.
275 John Pain, "Sex-Offender Restrictions Leave 5 Men Living Under Miami Bridge," Associated Press, April 8, 2007.

privacy in turn leads to violations of many other rights, including the rights to employment, housing, and personal safety.

Case study: Walter D.

> Walter D., 58, unknowingly solicited an underage prostitute in 1986, for which he was jailed in Washington State. Released from prison in 1992, he is required to register and his picture appears on the state online sex offender registry. Walter has tried to hold down a job as a computer technician, but he has been fired at least four times after colleagues found his profile on Washington State's online registry. Walter has a hard time finding landlords who will rent to him, and when he has found an apartment, within weeks flyers with his registry profile, downloaded from the online registry, appear all over his neighborhood. Walter told Human Rights Watch, "I will never be given a second chance. It doesn't matter how long I don't reoffend, I will always be a sex offender in everyone else's eyes."[276]

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Privacy

It is difficult to overstate the impact of community notification, particularly online registries, on the privacy of registered individuals and their families. Community notification makes readily available information that would otherwise be difficult to obtain. The lack of "need-to-know" restrictions on who can access the registries means registry information is available to all, regardless of why they want to see it and how they will use it. The breadth of information and extent of access all but eliminates the possibility that a former offender can move into a community and rebuild his or her life without notice.

Community notification does not just obliterate a registered person's privacy. Publicly identifying someone as a registered sex offender brands that person—in many people's eyes—as a dangerous and particularly loathsome person. The branding—which can last for a lifetime—has the entirely foreseeable result of making

[276] Human Rights Watch telephone interview with Walter D., December 4, 2006.

it very difficult (if not entirely impossible) for former offenders and their families to live peaceful, safe, stable, and productive lives.

US Supreme Court Justice Clarence Thomas described the invasive and damaging nature of registration and community notification:

> Widespread dissemination of offenders' names, photographs, addresses, and criminal history serves not only to inform the public but also to humiliate and ostracize the convicts. It thus bears some resemblance to shaming punishments that were used earlier in our history to disable offenders from living normally in the community. While the [majority] accepts the State's explanation that the Act simply makes public information available in a new way, the scheme does much more. Its point, after all, is to send a message that probably would not otherwise be heard, by selecting some conviction information out of its corpus of penal records and broadcasting it with a warning. Selection makes a statement, one that affects common reputation and sometimes carries harsher consequences, such as exclusion from jobs or housing, harassment, and physical harm.[277]

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Public identification as someone who committed a sex offense leads to a host of problems that are described throughout this report and are detailed as well below.

Employment

Being publicly identified through online registries as a sex offender restricts employment in several ways. With some employers mandated to check the sex offender registry, and many others implementing the checks as part of their private business policy, many sex offenders are finding themselves unable to secure and maintain a job. Our research shows that private employers are reluctant to hire sex offenders even if their offense has no bearing on the nature of the job. Offenders who tell prospective employers they are registered sex offenders are usually denied employment; those who fail to tell are eventually fired when employers find out—

277 *Smith v. Doe* 538 U.S. 84, 1156 (Thomas, C., concurring).

often through fellow employees who found the information through searching online sex offender registries.

The difficulty Carl B., convicted of possessing child pornography, has had in finding stable employment is typical of the stories of many registered offenders: "I have been unable to find decent employment and I doubt I will be able to. I have worked in a few bars as a bartender but someone always seems to find out although no one has said that is the reason. In one job I was fired just 2 days after receiving a raise and that seemed strange. That was also within a few days that someone posted my internet [sex offender] picture on my front door and in the community. The chances of me working for a company that offers insurance, retirement, etc. are quite unlikely."[278]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Some state laws place employment restrictions on sex offenders, prohibiting them from working in schools, childcare centers, child-oriented non-profit organizations, and other places where they may come into regular contact with children. These laws are typically directed at individuals who committed sex crimes against children. Laws barring persons convicted of sexually abusing children from working directly with children may be reasonable. For example, Virginia prohibits sex offenders convicted of sex crimes that involved children from working or volunteering at a school or daycare center.[279] But state employment restriction laws that bar all registered sex offenders—regardless of the nature of the crime—from employment where they may inadvertently come into contact with children effectively bar registered sex offenders from employment in large sectors of the economy.

Members of the community can also react so strongly to the presence of a registered offender on the job that employers will end up firing them. One employer fired his employee, a registered sex offender, from an office job involving no interaction with children, despite his good performance, because of the community's reaction. The termination letter stated, "Several neighbors and the sheriff have brought to my attention the criminal extent of your past. It is with regret that I must inform you of the loss of your job with us as of today. I hope you understand. You have put in a lot

278 Email communication from Carl B. to Human Rights Watch, February 16, 2005.
279 Va Code Ann. §18.2-370.4.

of valuable hours and have been a good hired man, and we appreciate that .... This was a hard decision for us, but we feel we have no choice in the matter. We will have no problem giving you a good recommendation in your quest for a new job."[280]

Community hostility towards employers who hire registered sex offenders is also reflected in the following case, recounted to Human Rights Watch by the mother of a registered offender:

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> [My son] is currently working with a construction group and is very happy with the occupation. Two weeks ago, someone on the street where he was working discovered that the boss of the group is a registered offender as well and freaked out by calling all the neighbors on the block to inform them of the situation. During the time the group had been working in this prestigious neighborhood, several of the neighbors had hired them for future work on their homes. After hearing from the woman, all of the jobs were canceled, which caused a huge gap in the guys' work schedule and in their paychecks. The overreaction was a big hit to my son and the others as they are just trying to make a living for their families and themselves. All of the men have served their time, still attend counseling every week and are watched carefully by the courts.[281]

Parole officers supervising former sex offenders also testify to the difficulty registrants have in finding work. An officer in Michigan told Human Rights Watch that "most employers, whether they are required by law or not, refuse to employ sex offenders, even if the crime the individual committed was not violent. They say it's bad for business. So now, I have a hard time lining up work for my sex offender parolees, so my parolees are stuck in halfway homes, unable to meet the full conditions of their parole."[282] An Arizona parole officer expressed similar concerns: "I have found it near impossible to find an employer willing to take a chance on a convicted sex offender."[283] As a parole officer in Florida told Human Rights Watch,

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280 Letter to Cliff M., a registered sex offender in Colorado, July 20, 2005, on file with Human Rights Watch.
281 Email communication from Sarah V., mother of a registered offender in Oklahoma, to Human Rights Watch, July 6, 2005.
282 Human Rights Watch telephone interview with a parole officer in Michigan who requested anonymity, December 5, 2006.
283 Human Rights Watch telephone interview with a parole officer in Arizona who requested anonymity, November 28, 2006.

"We have to find ways to find appropriate jobs for sex offenders, in a way that will both protect the public and also help sex offenders successfully reintegrate into society."[284]

The inability to find and keep work can lead to despair and hopelessness. Lyndon G., who was convicted of child molestation and is registered in Alabama, told Human Rights Watch, "I have given up hope of finding a job, which makes me give up hope of succeeding out of prison."[285] A registrant in California, who pled guilty to a misdemeanor sex offense in 2001, told Human Rights Watch about his five-year struggle to find and maintain employment: "I have since given up looking for work. When I am honest I feel humiliated time and again."[286]

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Making it difficult for former sex offenders to find and keep gainful employment is counterproductive for public safety. Structured, full-time employment is a cornerstone of nearly all re-entry programs for offenders. According to the Center for Sex Offender Management, "Research has shown that meaningful employment can provide a stabilizing influence by involving offenders in pro-social activities and assisting them in structuring their time, improving their self-esteem, and meeting their financial obligations."[287]

Employment contributes to the likelihood that people who have previously committed crimes, including sex crimes, will not reoffend.[288] A 2001 risk assessment study by Virginia's Criminal Sentencing Commission found employment to be a major factor affecting whether paroled sex offenders relapse and reoffend: sex offenders who had been unemployed or not regularly employed were found to recidivate at higher rates than sex offenders who experienced stable employment.[289] Another recent study showed that former sex offenders who committed subsequent

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284 Human Rights Watch telephone interview with a parole officer in Florida who requested anonymity, March 28, 2007.
285 Email communication from Lyndon G. to Human Rights Watch, January 5, 2006.
286 Email communication from Matt W. to Human Rights Watch, February 28, 2005.
287 CSOM, "Time to Work: Managing the Employment of Sex Offenders under Community Supervision," January 2002, http://www.csom.org/pubs/timetowork.pdf (accessed August 24, 2007), p. 1.
288 P. Gendreau, T. Little, and C. Goggin, "A Meta-Analysis of the Predictors of Adult Criminal Recidivism: What Works," *Criminology*, vol. 34 (1996), pp. 575-607.
289 Virginia Criminal Sentencing Commission, "Assessing Risk Among Sex Offenders in Virginia," January 15, 2001, http://www.vcsc.state.va.us/sex_off_report.pdf (accessed August 24, 2007).

offenses were more likely to be unemployed.[290] According to a different study, the only factors associated with reduced reoffending among sex offenders were the combination of stable employment and sex offender treatment.[291]

Threats to Employment: Tom K.'s Story[292]

Fifteen years ago, Tom K. committed a sex offense and was required to register in the state of Florida. He was sentenced to two years house arrest and five years probation, from which he was released in 1990. He subsequently moved to New Mexico [NM] with his family, because of his wife's job. Tom told Human Rights Watch,

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

"In December of 2001, we became the proud parents of a baby boy. Tragically, [my wife] died 3 hours after delivery leaving me to raise my son alone.

"Recently, in May of 2004, with changes to the NM law, I was forced to register in NM.

"As a professional composer/arranger I write music for the local high school marching band. I write this music at my home studio. I then deliver it to the band director, and the band director rehearses the music with the students. I have no contact whatsoever with the students. I should point out that I am not under any restrictions regarding contact with minors, so there should not be any concern to begin with. This commissioning represents a significant portion of my income. I should also point out that my work is paid for out of the private account of the band booster organization. Public funds are not used to reimburse my services. However, one woman has mounted a crusade saying that my involvement puts children in danger. This woman [who learned about my status as a registered sex offender from the online registry] has several times now tried to force the band and the school to sever their business arrangement with me. To this end, the woman in question has obtained copies of the handwritten arrest record from fifteen years ago (through the [Freedom of Information Act]), created a typed out version of it, and distributed it throughout my community. She has also called meetings of "concerned citizens" in

290 R. Karl Hanson and Andrew Harris, Department of the Solicitor General of Canada, "Dynamic Predictors of Sexual Offense Recidivism," 1988, http://ww2.ps-sp.gc.ca/publications/corrections/199801b_e.pdf (accessed August 24, 2007).
291 Candace Kruttschnitt, Christopher Uggen, and Kelly Shelton, "Predictors of Desistance among Sex Offenders: The Interactions of Formal and Informal Social Controls," *Justice Quarterly*, vol. 17, no. 1 (2000), pp. 61-87.
292 Email communication from Tom K. to Human Rights Watch, January 11, 2006.

an effort to essentially try and remove me from the community. This same woman has also mounted a campaign to get the band director fired in an effort to keep me from writing the music and therefore diminishing my ability to earn a living.

Members of the community have protested several performing groups in which I participate, requesting that they be denied access to the use of public facilities."

Vigilante Violence

> I just want my son back.
>
> —Shirley Turner, mother of a convicted sex offender murdered by a stranger who looked up his address on Maine's online sex offender registry.[293]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Information provided by state online sex offender registries, as well as information provided during community notification by law enforcement, is not just used by private citizens to determine what streets their children can walk on, or whom to avoid. Neighbors as well as strangers harass, intimidate and physically assault people who have committed sex offenses. At least four registered sex offenders have been killed.

Richard R. was convicted in 1986 of molesting his step-daughter. In 1999 Richard was released from a New Jersey state prison. About two weeks later, notification went out to the community. A short time later, neighbors started throwing garbage on Richard's lawn, and people rang his doorbell late at night and ran away. On another occasion, someone drove by Richard's home and yelled out, "Stop fucking little girls! I'm going to kill you!" Late one evening Richard heard a knock on his front door. Richard looked through the door's window and did not see anyone. When Richard opened the door, a man who had been crouching down in front of the door stood up. The man was wearing a ski mask and carried a handgun. He pointed the gun at Richard and said, "If you don't get out of this neighborhood I'm going to kill you." The man turned and fled. A few days later, Richard moved out of the community.[294]

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293 Human Rights Watch telephone interview with Shirley Turner, October 11, 2006.

294 *A.A. v. State of New Jersey*, CA: No. A-002153-0441, Appellant's Brief.

One of the fundamental obligations of government is to put in place measures to protect the lives and safety of those within its jurisdiction. This duty to protect extends to people who have been convicted of crimes, including sex offenses. When public officials affirm the importance of public safety, that public includes disfavored people living in the community. Indeed, when public officials and law enforcement know a particular individual or group is likely to be or is being targeted for harassment or violence by private actors, they must take appropriate measures to protect them, even when that means standing up to widespread community sentiments. In the case of former sex offenders, such measures should include limiting access to online registries, carefully limiting community notification efforts, and taking steps to signal forcefully to the community that harassment and violence are unlawful and will be prosecuted.[295]

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For a case challenging community notification laws, New Jersey public defenders collected over a hundred affidavits from people convicted of sex offenses who experienced vigilante violence soon after their whereabouts were made available to the public, either through the internet registry or some other community notification scheme.[296] Registrants speak of having glass bottles thrown through their windows; being "jumped from behind" and physically assaulted while the assailants yelled "You like little children, right?"; having garbage thrown on the lawn; people repeatedly ringing the doorbell and pounding on the sides of the house late at night; being struck from behind by a crowbar after being yelled at by the assailant that "People like you who are under Megan's Law should be kept in jail. They should

295 The United States ratified the International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (1966), 999 U.N. T.S. 171, entered into force March 23, 1976, on June 8, 1992. The UN Human Rights Committee, which oversees the implementation of the ICCPR, has noted that under the Covenant, states must protect their residents "not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights." Moreover, public officials violate their obligations under the Covenant when they permit or fail "to take appropriate measures or to exercise due diligence to prevent, punish, investigate, or redress the harm caused by such acts by private persons or entities." UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N.Doc. CCPR/C/21/Rev.1/Add.13 (2004), http://www1.umn.edu/humanrts/gencomm/hrcom31.html (accessed June 19, 2006), para. 8.

296 Through New Jersey's internet registry, the public may, without restriction, obtain access to the following information about registrants who have been deemed to be at moderate or high risk of reoffense, and for whom a court has ordered community notification: the offender's name and any aliases used; any sex offense committed, with a brief description; the offender's assessed risk of reoffense; the offender's age, race, sex, date of birth, height, weight, hair, eye color and distinguishing marks; a photograph of the offender; a description of the offender's car and license plate number; and the street address, zip code, municipality and county in which the offender resides.

never let you out. People like you should die. When you leave tonight, I am gonna kill you." Among the affidavits are stories like this one:

In 1998, six years after H.M., convicted for molesting a child, was released from prison, notification about his crime was distributed to his community in New Jersey. The very same day that notices went out, members of the public began to harass and threaten H.M. Although the notices were distributed only to H.M.'s neighbors, local newspapers were provided with the information and they published stories about H.M.'s presence in the community. A few days later, H.M. received an anonymous letter that read "We'll be watching you asshole." This message was spelled out using letters cut out from a magazine. Late that same evening, someone fired five shots from a high caliber handgun into H.M.'s home. Several bullets almost hit one of H.M.'s family members. The shooting generated additional publicity and by 4:30 in the afternoon the next day, a crowd of about 250 people had gathered in front of H.M.'s home. The stress of these events caused H.M. to fear not only for his own safety, but also for the safety of his family. He checked himself into a hospital and was placed on suicide watch. According to H.M., community notification "is a far worse punishment than jail ever was."[297]

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Reviewing the record of such incidents, the Third Circuit Court of Appeals concluded "they happen with sufficient frequency and publicity that registrants justifiably live in fear of them."[298]

A mother described to Human Rights Watch what happened to her son, a convicted sex offender living in Colorado, when neighbors found out about his status: "A few teens on their bikes were riding by [her son's home] and yelled to his wife 'Someone should burn their house down.' My son was released [from prison] … and sure enough, about a week later someone did burn their house down while they were asleep in their beds." Her son and his wife were able to make it out alive.[299]

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297 *A.A. v. State of New Jersey*, CA: No. A-002153-0441, Appellant's Brief.
298 *E.B. v. Verniero,* 119 F.3d 1077, 1102 (3d Cir. 1997).
299 Email communication from Betty L. to Human Rights Watch, February 10, 2005.

A convicted rapist from Georgia spoke to Human Rights Watch about the effect of community notification on his family. When the registrant, Donald V., was released from prison in 1994 he went to stay with his parents, who were elderly. One morning, his mother woke up and went outside to get the paper. On the driveway, someone had written in a black "tar-like" substance, "FUCK YOU RAPIST" in letters that spanned the entire driveway. "It took months for it to fade away, even though we tried to wash it off every weekend or so for a number of months."[300]

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A number of convicted sex offenders have been targets of violence from strangers who take it upon themselves to "eliminate" sex offenders from communities. In April 2003, Lawrence Trant stabbed one New Hampshire registrant and lit fires at two buildings where registrants lived. When he was arrested, police found a printout of New Hampshire's sex offender internet registry, with checkmarks next to the names of those already targeted.[301]

In 2006, four convicted sex offenders moved into a home near Donald Keegan in New York state. Later that year Keegan was arrested for plotting to blow up the home where the offenders were living. Police found a concoction of paint thinner and road flares in Keegan's garage that they believe Keegan planned to use to kill the offenders.[302] Subsequently, two of the four offender residents moved from the home.[303]

In August 2005, a man shot and killed two registrants in Bellingham, Washington.[304] The assailant, Michael Anthony Mullen, posed as a federal agent and gained access inside the home that two registrants shared, under the guise of warning them that they were on a "hit list" on the internet.[305] Messages appearing on blogs days after the double murder praised Mullen's actions. "Two down," one poster wrote, "Let's

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300 Human Rights Watch telephone interview with Donald V., August 11, 2006.

301 Gary Hunter, "Ex Con 'Helps Police' By Trying to Murder Sex Offenders," *Prison Legal News*, June 2004, p. 7. Trant was sentenced to 10-30 years in prison after pleading guilty to attempted murder of two registrants. He told a reporter that he was "morally justified" in doing what he did. "I think I'm a good guy; I don't think I should receive this kind of punishment. I thought people would accept it. But I was wrong. I hope I've done a service to the community … These guys are sexual terrorists. "Man Anticipates Support, not Jail, for Attacking Pedophiles," *Portsmouth Herald* (NH), May 6, 2005.

302 Corey Kilgannon, "Threats of Violence as Homes for Sex Offenders Cluster in Suffolk," *New York Times*, October 9, 2006.

303 Ibid.

304 Kira Millage, "Charges Filed in Double Homicides," *Bellingham Herald*, September 9, 2005.

305 Kira Millage, "Suspect Sought after Double Homicide in City," *Bellingham Herald*, August 28, 2005.

hope he continues his meetings with offenders in his city without interference from the boys in blue."[306] The writer continued, "The public must often do what our elected officials will not."[307]

Despite well-documented and publicized cases of harassment and vigilante violence against registered sex offenders, Human Rights Watch found only 14 states and the District of Columbia that have statutes that specifically prohibit the misuse of registry information for purposes of harassment, discrimination, or acts of vigilantism.[308] In those states where misuse of information is prohibited, persons who misuse the information may be subject to prosecution.

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In addition to state laws prohibiting harassment, some states have specific legislation allowing a registrant to bring a civil action against the person misusing the database information.[309] New Jersey and California prohibit the use of registry information to deny registrants housing, credit, education, health insurance, loans, and credit.[310]

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306 Ibid.

307 Ibid.

308 California, Cal Pen Code §290.4(c); Connecticut, Conn. Gen. Stat. §54-258a; Idaho, Idaho Code §18-8326(2007); Hawaii, HRS §846E-3(g); Kentucky, KRS §17.580(3); Massachusetts, ALM GL ch.6, §178N; Mississippi, Miss. Code Ann. §45-33-51; New Jersey, N.J. Stat. §2C:7-16(b); New York, NY CLS Correc §168-q(2); Pennsylvania, 42 Pa.C.S. §9798.1(b)(2); South Carolina, S.C. Code Ann §23-3-510; Utah, Utah Code Ann. §77-27-21.5(22); Vermont, 13 V.S.A. §5411a(h)(2007); Virginia, Va. Code Ann. §9.1-919(2007); and Washington D.C. D.C. Code §22-4011(d).

309 See, for example, New York, NY CLS Correc §168-q(2); Michigan, MCLS §28.730.

310 New Jersey, N.J. Stat §2C:7-16(c); California, Cal Pen Code §290.4(d)(2).

Shirley Turner Loses a Son[311]

Shirley Turner, clutching her son William Elliott's photograph, is consoled by her husband Paul. © 2006 Jim Evans / Waterville (Maine) Morning Sentinel

In April of 2006, a young man from Nova Scotia, Canada, shot and killed two convicted sex offenders living in Maine whose information he had found on the internet registry.[312] The assailant shot himself as police attempted to capture him.[313] One of the victims was 24- year-old William Elliot, convicted at age 19 of having consensual sex with his 15-year-old girlfriend.[314] His mother, Shirley Turner, said, "Without the registry, he would still be alive today. I would still have him." She spoke to Human Rights Watch about the crime.

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"William had a girlfriend. He was 19 and she was 15 [three weeks from being 16, the age of consent in Maine]. Her parents found out, and William was convicted of statutory rape. William was in prison for about two years. When he was released, I told him he could live in my home with me, but he wanted to prove he was an adult, and he bought a trailer and moved to a small town next to mine.

"William did okay adjusting to life after prison. He was always a quiet and really sweet person, and he mostly kept to himself. He didn't really have any neighbors, because his trailer was in the woods. He liked it, it was quiet. William was working in construction.

"One day, I came home from work, and my husband told me sit down. I sat down, and he told me that William had been killed. My husband found out on the evening news. William had been killed that morning, but the police had not come by to tell us … I thought, as William's mother, the police should have come to tell me first before his name was on the news.

"It took me a bit to understand the details. A young man came to William's home. This man didn't know William, but he found his information on Maine's sex offender registry. The man

311 Human Rights Watch telephone interview with Shirley Turner, October 11, 2006.
312 "Sex Offender Murderer Kills Self," Associated Press, April 17, 2006.
313 Ibid.
314 John R. Ellement and Suzanne Smalley, "Sex Crime Disclosure is Questioned: Maine Killings Refuel Debate Over Registries," *Boston Globe*, April 18, 2006.

thought William was a pedophile. The man shot William in the face. William was found in his doorstep, so they think the man just shot him right after William opened the door.

"It is impossible to make sense of any of this. Once, I asked William what he wanted to be when he grew up. He said he didn't know, but that he wanted to be known as a person who shook everyone's hand and smiled at everyone he met. That is how people who knew William would describe him. He was not a violent person, but he was killed because someone thought he was."

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At least 40 state online sex offender registries warn users against misusing information they obtain from the internet. In the other 10 states, Human Rights Watch could not locate a warning (see Appendix for sites). The line between harassment and legitimate reproduction of internet information is not clear. Only one state (Utah) that Human Rights Watch could find specifically prohibits any reproduction of registry information (for example, printing a copy of the registrants information from the internet and reposting or distributing it), an action that can certainly lead to harassment. But at least four states now have "click to print" options apparently designed to facilitate printing out individual flyers with the picture, name, and address of registered offenders.[315] And at least one state, Texas, uses language on its online registry that seems to encourage widespread dissemination of the information: "The information provided through this Web site is open record. It may be used by anyone for any purpose."

Living Peacefully at Home

> I have not felt safe living here since that night in February when someone in the night left that poster [of my husband's online profile] on my porch, and then banged on all our windows. Now all we want to do is move.
>
> —Linda L., wife of a California registrant[316]

Former sex offenders have an extremely difficult time finding and keeping homes. In some cases, neighbors find their names via online registries or through community

315 Alabama, Florida, Illinois, Missouri.

316 Letter from Linda L., wife of a California registrant, to Human Rights Watch, May 21, 2005.

notification by law enforcement and begin campaigns to force registered sex offenders out of their neighborhoods. Private landlords do not want to rent or sell to them; federally funded public landlords are prohibited from doing so. As discussed in the next chapter, residency restriction laws force them to move from or prohibit them from moving into countless communities.

Community Hostility

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Community members have used the notification information they have been provided about registered sex offenders in their area to both discourage sex offenders from moving into their neighborhoods, and to encourage those who already live there to leave. By far the most common tactic has been to print information from the internet about sex offenders and post copies of these printouts throughout the neighborhood.

Many registered former offenders told Human Rights Watch how neighborhood flyers forced them and their families to move. One former offender, convicted of a misdemeanor sex crime, described what happened in his case: "Shortly after I moved into an upscale neighborhood in [Ohio], the neighbors found out my situation and delivered a 40+ page packet to all 200 homes in the subdivision of court records, newspaper clippings, etc. A few weeks later they sent around another packet, about 28 pages, with more information, including a whole host of newspaper clippings about property values. We received several letters telling us to move and some people even came to our door to tell us to move. Someone even sent a flyer to my wife at her place of employment, an act the prosecutor deemed as harassment although they did nothing to find the culprit (no fingerprints were taken from the letter). We had to move. We couldn't stand the shaming."[317]

In some instances, the stigma of being a registered sex offender affects not just the registrant's employment but that of family members as well. The wife of Ted P., a registrant from Michigan, had worked for a company for five years. One of her co-workers found Ted P.'s name on the state's website (for a conviction that happened 15 years earlier). The co-worker "told the other employees and started giving my wife

317 Email communication from Marcus T. to Human Rights Watch, July 4, 2005.

a hard time." The job became so difficult that she decided to resign and look for other employment[318]

In Florida several people posted printouts from the state's sex offender website identifying their new neighbor, Sam Z., as a sex offender. They repeatedly plastered the running route of Sam Z.'s wife and their son's bus stop with copies of the printout. Their campaign of harassment succeeded in driving the family from the neighborhood. The family sold the home they had built themselves and moved to another community, where they again faced overt hostility, as Sam Z.'s wife explained to Human Rights Watch:

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> We built another home similar to the one we sold [in a remote area not far from where they had moved] … We also added an 8 ft. privacy fence, a security system, a gated entry w/ keypad, and a surveillance system. When we first started building [the new home], our neighbors met with the homeowners' association of our new home and discussed ways to eradicate us from the neighborhood. Several neighbors took part in posting flyers on trees, mailboxes, and poles. A police officer along with three others pulled Jeff's original records, made copies, and distributed them throughout the neighborhood. I met with the Chief Inspector of the County and aired my concerns. He spoke with an Officer and, immediately after that meeting, there were no other problems in the neighborhood. No one speaks to us with the exception of one couple but no one has threatened us with weapons directly or vandalized our home.
>
> We are praying that we can live here without future harassment. I purposely drive my son to and from school so there are no problems on the bus or at the bus stop with other parents. My son socializes with other students who do not live in our neighborhood.
>
> The monetary loss [of buying a new home] is nothing compared to the emotional toll it's taken on my family. I know I've aged in the last three years

318 Email communication from Ted P. to Human Rights Watch, July 21, 2005.

> considerably. I look at pictures of our wedding and cannot believe I looked that way only three years ago. My hair is turning gray, the lines on the face are so pronounced. I've gained weight. My son has become more withdrawn and stays on his computer most of the time.[319]

Private and Public Landlords

Private landlords increasingly require criminal background checks from prospective tenants and refuse to rent to those with criminal records. Registered sex offenders have a particularly difficult time finding landlords willing to rent to them. As one registrant told Human Rights Watch, "I have been turned down from a number of apartments. When I asked one landlord why I was rejected (because I have a good credit and rental history) he said he checked the online registry and saw me listed. He told me he does that search for all his tenants."[320] In an effort to exclude "dangerous sex offenders" from regular public housing, federal law prohibits anyone subject to lifetime registration on a state sex offender registries from admission to public housing.[321]

Cited in U.S. v. Juvenile Male, No. 07-50290 archived on January 11, 2010

With no one willing to rent to them, particularly when the registered offender has been the recipient of a lot of media attention, many registered sex offenders face homelessness. Some local law enforcement officials have tried to help sex offenders from becoming homeless. When they fail, they improvise. A local sheriff in Oregon spent months searching for a landlord willing to rent to Bruce E., a registered sex offender with a mental health diagnosis. He was unsuccessful, so in the end the county spent $45 for a camping tent with an army surplus cot. "Transitional housing"

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319 Email communication from Diane Z. to Human Rights Watch, June 1, 2005.

320 Human Rights Watch telephone interview with Tom M., November 13, 2006.

321 42 USCS § 13663 (2004) explicitly purports to deny 'dangerous' sex offenders from such housing, but in fact, requires Public Housing Authorities (PHA) to deny eligibility to anyone listed on a state sex offender registry for life. Many PHAs go beyond federal law and ban all sex offenders from living in public housing. In 1999, a Washington State local PHA found that three of its public housing residents were convicted sex offenders. Because it interpreted federal law to mean that sex offenders were ineligible for housing assistance, the PHA sought to evict Mr. Demmings, a convicted sex offender who had been living without incident in the development since 1996 and was compliant with his treatment plan. Demmings argued both that he posed no risk to other tenants, and that he suffered from a documented mental illness. While the court expressed sympathy and "applaud[ed] his successful rehabilitation," *Housing Authority v. Demmings*, 2001 Wash. App. LEXIS 2276 (Wa. Ct. App 2001), 3-4, it affirmed Demmings' eviction nonetheless. The court concluded its opinion by noting, "The rule is harsh as to all sex offenders who increasingly struggle to find housing upon their release … The rule is, however, reasonable." Ibid., p. 9.

for Bruce E. was, as a result, a tent in a yard behind the jail with a tin can for a toilet.[322] Bruce E. was moved to a $155-a-week motel when he contracted pneumonia after a period of cold weather.[323] Rory W., a convicted sex offender who completed his prison sentence, was housed in a tent outside of downtown Bellingham, Washington when he was unable in 2003 to find a place to live in the community.[324]

In Suffolk County, New York, officials have resorted to placing sex offenders in county-owned trailers that will be moved periodically around the county.[325] The officials explained their policy, "Finding housing resources for sex offenders in nonresidential areas is very difficult, so the trailer allows us to create housing in a nonresidential area."[326] A social worker who works with convicted sex offenders expressed reservations about the plan: "Its going to be a challenge, because every now and then they will be moved and have to figure out how to get to work. If people start showing up late for work, they can get fired."[327]

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Housing and Public Safety

Individuals released from prison who have stable housing may be less likely to reoffend than their counterparts.[328]

Human Rights Watch knows of no studies that specifically address the connection between reoffending by sex offenders and housing. Nevertheless, those who work closely with convicted sex offenders believe it plays an important factor in their

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322 Andrew Kramer, "Oregon Houses Paroled Sex Offender in Tent," Associated Press, August 4, 2003.
323 "Sex Offender Kept in Tent Gets Pneumonia," Associated Press, November 17, 2003.
324 "Sex Offender Living in Tent," *Bellingham Herald*, August 8, 2003.
325 Brandon Rain, "Sex Offenders Moved from Neighborhoods—by the Trailer," *Newsday*, February 16, 2007.
326 Ibid.
327 Ibid.
328 For example, a 2004 study tracked almost 50,000 individuals who were released from New York State prisons and returned to New York City between 1995 and 1998. Eleven percent of these individuals entered a city homeless shelter, and 33 percent of that group were reincarcerated within two years of their release. Shelter use, both before incarceration and after release, was associated with an increased risk of return to prison: risk of reincarceration increased 23 percent with pre-release shelter stay, and 17 percent with post-release shelter stay. Stephen Metraux and Dennis P. Culhane, "Homeless Shelter Use and Reincarceration Following Prison Release: Assessing the Risk," *Criminology & Public Policy*, vol. 3, no. 2 (2004), pp. 201-222. A national study found that two-thirds of former prisoners who did not have stable housing recommitted crimes within the first 12 months of release, whereas only one-quarter of those who obtained housing reoffended in the same time frame. Jeremy Travis, Amy L. Solomon, and Michelle Waul, The Urban Institute, "From Prison to Home: The Dimensions and Consequences of Prisoner Re-entry," June 2001, http://www.urbaninstitute.org/UploadedPDF/from_prison_to_home.pdf (accessed August 24, 2007).

reintegration. For example, New Hampshire's chief parole and probation officer concluded recently that sex offenders readjust to society better when they have access to "employment, housing, family support, [and] social interaction."[329]

Suicide and Despair

> I thought of suicide because I felt people were talking bad about me. Maybe some people want for me to die. Maybe that's what this law is about, to cause enough stress on the offender so he will take his own life.
>
> —Frankie A., registrant in Texas convicted of possessing child pornography[330]

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A number of the sex offenders and their family members with whom Human Rights Watch spoke talked of ending the ordeal of sex offender laws and the consequences that flow from it by taking their own lives.

One sex offender told Human Rights Watch that despite being employed, and suffering no overt threats from his neighbors, he "fear[s] that with the changing laws and the views of all sex offenders being dangerous, this may change. I am constantly haunted by this and it has left me to live a shell of a life. It has made it very difficult to make friends, do the things I used to enjoy, and has left me with suicidal thoughts nearly every day. Luckily, I am talking with professionals for my mental health, but the thoughts are still there."[331]

One mother said of her son, convicted of a statutory rape offense for having sex with his girlfriend several years his junior, "[He is] failing in all areas of life and … has often said that he should just kill himself. I do believe that there are already young men who have committed suicide and sadly, who like my son felt that a lifetime sentence for a youthful offense is just too damning … I do believe … that if I cannot

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329 Mark Hayward, "Registered Sex Offenders in the Community: From Prisoners to Pariahs," *Union Leader*, June 4, 2006.
330 Email communication from Frankie A. to Human Rights Watch, January 5, 2005.
331 Email communication from Jarrod B. to Human Rights Watch, July 22, 2005.

get help soon that I will lose him and not to a prison, but to the ultimate absolute: death."[332]

The daughter of a Florida registrant told Human Rights Watch, "My father also became extremely depressed and I am often afraid of him ending his life. Everything has been taken away from him and it must be so hard. The future looks grim. It seems like each month, another living restriction is placed for offenders."[333]

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Justin F. died of a drug overdose shortly after being told he would have to register as a sex offender. He was prosecuted, along with three other teenage boys, for statutory rape in Michigan after a 14-year-old girl's parents found their daughter's "sex diary," which detailed sexual encounters the girl had had with over 20 partners between the ages of 14 and 20. Initially, the four defendants in the sex diary case were spared registration requirements when the judge allowed them to enter a guilty plea to the lesser offense of seduction.[334] However, subsequent changes to Michigan law required registration for the charge of seduction, and the four young men were required to register.

Justin F.'s parents said that they believed that "learning he would live as a marked man came as a shock."[335] After his death, Justin F.'s parents pledged to work to "make the sex-offender list more meaningful." "The sex offender list was created so that people could know if there is a predator in their neighborhood," Justin F.'s father said. "Justin was not a predator, he was not a threat to anyone, and he should not have been on that list."[336]

Clovis Claxton, a developmentally disabled 38-year-old from Florida who lived with his parents, killed himself after neighbors posted laminated reproductions of his entry on the state's online sex offender registry throughout his neighborhood.[337]

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332 Email communication from Brenda H. to Human Rights Watch, July 21, 2005.
333 Letter from Elizabeth L. to Human Rights Watch, October 12, 2005.
334 "Teens get Probation in Sex Case," Associated Press, October 22, 2002.
335 Marsha Low, "Oakland Youth in Sex Diary Case Found Dead; Parents Blame Overdose," *Detroit Free Press*, March 23, 2004.
336 Ibid.; Carolyn Starks and Jeff Long, "Abuser Killed Self, Family Says," *Chicago Tribune*, May 27, 2005 (registrant took his own life after he was taunted by neighbors and his home was set ablaze).
337 Cara Buckley, "Town Torn over Molester's Suicide," *Miami Herald*, April 23, 2005; Daniel Ruth, "Who was the Rape Threat to the Town?" *Tampa Tribune*, April 27, 2005.

Whoever posted the signs, however, had altered them, scrawling the words "Child Rapist" on them. Claxton was, in fact, not a child rapist. At 20, he had the mental capacity of a 10-to-12-year-old due to meningitis as a child, and he pled guilty to inappropriately touching an eight-year-old neighbor.[338] None of this information, however, was reflected on the registry.

After seeing the signs, Claxton had called the local police, telling then that he was frightened that he would be harmed; he also threatened suicide.[339] The morning after he called the police, Claxton was found dead of an apparent suicide, with one of the flyers lying next to him.[340]

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"I think this is a clear example of an unintended consequence which can occur when we go beyond what we call police protocol when handling sex offenders," the local sheriff told a newspaper. But the county commissioner, who initially proposed the idea of public posting, said that people had a right to know who their neighbors were. "I don't blame his death to the signs," he told the press. "That (death) doesn't deter me from the proposal to do the best job of informing people in their neighborhoods … [it] has in no way removed my efforts."

The local paper reported that many of Claxton's neighbors were saddened by his death, but others, "who did not want their names published, said they were glad there was one fewer sex offender to worry about."[341]

338 Ibid.
339 Ibid.
340 Ibid.
341 Mabel Perez, "Sex Offender Found Dead: Family says Flyers Led to Apparent Suicide," *Star Banner* (Florida), April 22, 2005.

IX. Residency Restriction Laws

> My intent personally is to make it so onerous on those that are convicted of these offenses … they will want to move to another state.
> —Georgia State House Majority Leader Jerry Keen, co-sponsor of a bill, signed into law, which prohibits sex offenders in Georgia from living within 1,000 feet of schools, daycares, churches, playgrounds, and bus stops[342]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

> The proliferation of these types of restrictions is making it more difficult for communities to fulfill their mandate of helping offenders make a successful re-entry into society.
> —Paul Olney, research associate for the Center for Sex Offender Management[343]

As detailed above, registered offenders may be hounded from their homes by angry neighbors or denied housing by private and public landlords. But their right to establish and maintain homes in which they can live with their families is also threatened by a growing number of state and municipal laws that expressly forbid them from living near places where children gather. At least 20 states have enacted laws that prohibit certain sex offenders from living within a specified distance of schools, daycare centers, parks, and other places where children congregate (for a list of residency restriction statutes by state, see Appendix).

In addition, hundreds of municipalities (in states with and without residency restriction statutes) have also passed similar ordinances prohibiting registered sex offenders from living within specified distances of places where children congregate. The least restrictive distance requirement is in Illinois (500 feet), but most common are 1,000- to 2,500-foot boundaries.

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342 Dick Pettys, "Republicans Unveil First Draft of Proposed Sex Offender Law," Associated Press, September 28, 2005.
343 Kavan Peterson, "Anti-Sex-Offender Zoning Laws Challenged," *Stateline.org*, December 9, 2006, http://www.stateline.org/live/details/story?contentId=163253 (accessed January 15, 2007).

Public officials have discovered that by increasing the length of the restrictions and expanding the list of the places that trigger a residency restriction (in addition to schools and daycare centers, pet stores, movie theatres, public parks, and swimming pools are being added) they can create "sex offender-free zones."[344] Some laws prohibit registered offenders from "loitering" within designated areas.[345] Legislators have even proposed banning offenders from entering or working in certain public areas, such as shopping malls and municipal buildings.[346]

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Although all the residency restrictions are keyed to distances from areas in which children congregate, only four states that Human Rights Watch knows of limit their residency restriction laws to persons convicted of sex offenses involving child victims.[347] In the other states and municipalities, residency restriction laws apply to all registered offenders, regardless of whether their crimes involved children.

The number of residency restrictions in the US continues to grow, in part because of the horrific abduction, rape, and murder of nine-year-old Jessica Lunsford in 2005. The man convicted of Jessica's murder is John Couey, a convicted child molester who lived within sight of Jessica's home.[348] Jessica's father has advocated for "Jessica's Law," which, among other things, calls for residency restrictions for sex offenders. In 2006 alone, at least 10 states and a number of municipalities adopted or enhanced laws restricting where sex offenders could live.

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344 Miami Beach, FL and Davie, FL, became the first jurisdictions to prohibit by local ordinance registered sex offenders from living within the jurisdiction's limits. Several other cities in Florida have followed. Lori Sykes and Sallie James, "Dania Moves to Tighten Limits on Sex Offenders: Ordinance Wins Tentative Approval," *Florida Sun-Sentinel*, June 15, 2005. Also, Annysa Johnson, "Two Suburbs Weigh Measures to Bar Sexual Predators," *Milwaukee Journal Sentinel*, February 15, 2005 (the Oak Creek and Franklin suburbs are just outside of Milwaukee). A new law in Binghamton, NY prohibits sex offenders "from being a quarter mile from any school, daycare center or park. That leaves few islands where they can live, and because they are not allowed to travel through the other areas, they are effectively banned from the city." Marnie Eisenstadt, "80+ Sex Offender Bills: Will any Make Us Safer?" *The Post Standard* (Syracuse, NY), June 12, 2005.

345 For example, in Michigan, MCLS §28.734 applies a penalty to registered sex offenders working, loitering, or residing within a student safety zone.

346 Megan Woolhouse, "City Advances Revised Sex-Offender Limits: Wide Limits Posed in Marlborough," *Boston Globe*, May 8, 2007, http://www.boston.com/news/local/articles/2007/05/08/city_advances_revised_sex_offender_limits/ (accessed June 21, 2007); Megan Woolhouse, "Offender Plan Draws Questions," *Boston Globe*, March 29, 2007.

347 Illinois, 720 ILCS 5/11-9.3(b-5); Indiana, Burns Ind. Code Ann. §35-42-4-11; Iowa, Iowa Code § 692A.2A(1); Tennessee, Tenn. Code Ann. § 40-39-211(a).

348 Curt Anderson, "Jury Votes for Death Penalty for Killer of 9-year-old Jessica Lunsford in Florida," Associated Press, March 14, 2007; Jim Ross, "Judge: Couey confession out," *St. Petersburg* Times, June 30, 2006. See also, The Jessica Marie Lunsford Foundation, http://www.jessicamarielunsford.org (accessed January 15, 2007).

The inability of convicted sex offenders to find housing when they are released from prison has become a significant barrier to their successful reintegration into society. This is particularly problematic for registrants who have limited resources, or for those who because of work, community, or family obligations want to live in particular locations. Residency restrictions prevent offenders from living in the areas closest to jobs and public transit, since schools, daycare centers, and parks are often built in the center of main residential areas of cities and towns.

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Registrants and their family members have found that in some cities there is literally nowhere they are allowed to live.[349] For example, a study in Orange County, Florida, which has a 1,000-foot restricted buffer zone around attractions, bus stops, daycares, parks, and schools, found that only 5 percent of the city's residential areas were outside the residential restriction zone.[350] Max C., who is on the Georgia sex offender registry, told Human Rights Watch that because of that state's residency restrictions, "I can honestly say that I have nowhere to live in the community I have lived in for 30 years."[351] An Iowa sex offender was found living with his family of three in a car on an abandoned farm property because residences in the small farm towns were either off-limits or too expensive.[352] In Florida, a 2004 survey of sex offenders found that half of the respondents reported that residency restrictions had forced them to move from a residence in which they were living, and 25 percent were unable to return to their residence after their conviction.[353] Nearly half reported that residency restrictions prevented them from living with supportive family members.[354] Recently, newspapers have reported that in Miami, five sex offenders are living under a bridge—with the state's approval—because the residency restrictions in their county made it impossible for them to find housing.[355]

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349 Susan Miller, "Doubts Emerge over Sex Offender Buffers," *Palm Beach Post*, June 16, 2005; Joe Kollin, "Pines Favors Extending Ban on Sexual Offenders," *Florida Sun-Sentinel*, June 9, 2005 ("The revised measure that they approved specifically requires the distance to be measured from property lines rather than doors. This increases the area where offenders are banned.").

350 Paul A. Zandbergen and Timothy C. Hart, "Reducing Housing Options for Convicted Sex Offenders: Investigating the Impact of Residency Restriction Laws Using GIS," *Justice Research and Policy*, vol. 8 no.2 (2006).

351 Human Rights Watch telephone interview with Max C., September 14, 2006.

352 *State v. Seering*, 701 N.W. 2d 655, 660 (Iowa 2005). The court noted that Seering was ejected from the farm property.

353 Jill Levenson and Leo Cotter, "The Effects of Megan's Law on Sex Offender Reintegration," *Journal of Contemporary Criminal Justice*, vol 21, no. 3 (2005), pp. 298-300.

354 Ibid.

355 John Pain, "Sex Offender Restrictions Leave 5 Men Living Under Bridge in Miami," Associated Press, April 8, 2007.

A mother of a Florida registrant told Human Rights Watch about her son's search for housing after he was released from prison:

> My husband and I wanted him to come live with us for awhile, while he got adjusted to life on the outside and got on his feet. He was not allowed to do so because we live within 1,000 ft. of a school bus stop. So he had to go to a different county, where he had no support system. He was placed in a dirty disgusting motel because it was the only place he could find to live. It was next door to a XXX nudie place. He had to be in his motel room from 6pm until 7am daily. He could not attend church services and church support groups due to this time constraint. He was very lonely and depressed. The motel was very expensive and between that and paying for probation and counseling, he was finding himself further and further in the hole financially. He eventually started drinking again and violated parole by staying out too late.[356]

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Residency laws even preclude registered offenders from living in homeless shelters within the restricted area. A Texas registrant told Human Rights Watch,

> I was homeless—I went to two homeless shelters—told them the truth—I was a registered sex offender—I could not stay. No one helps sex offenders I was told. The 3rd shelter I went to—I did not tell them. I was allowed to stay, November 2002 I was to register again—my birthday. If I told them I lived at a shelter—I would be thrown out—if I stayed on the streets I would not have a [sic] address to give—violation. So I registered under my old address—the empty house, which was too close to a school. Someone called the police—told them I did not live at that address anymore—! I was locked up, March 2003. I was given a 10-year sentence for failure to register as a sex offender.[357]

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356 Email communication from Cindy P. to Human Rights Watch, July 4, 2005.
357 Letter from William K. to Human Rights Watch, September 12, 2005.

Some public officials want to limit sex offenders' access to emergency shelters. A Tampa sheriff is sending "letters to registered sex offenders and predators, urging them to plan now for a safe place to stay in the event of a hurricane." When a colleague asked whether the county should plan to offer alternative emergency accommodations, the sheriff told the local paper, "I think my answer was no, they can take care of themselves … As far as spending resources to have some school or jail special for them, I think there are other people more needy of our resources." If a sex offender is found in a hurricane shelter, the sheriff vows that the offender "could be arrested as a violation of the conditions of his release."[358] The state now directs registrants to report directly to prison in case of a hurricane. Six registrants stayed in prisons during July 2005 hurricanes.[359]

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Residency restrictions are justified as a means of "taking away a portion of the opportunity for sex offenders to reoffend."[360] While residency restriction laws are popular, there is little evidence that they make sense or that they make children safer from sexual violence. Indeed, the experience of several states suggests the laws are counterproductive as well as unnecessary and profoundly unjust.

Iowa

> We made a mistake.
>
> —Republican Iowa state legislator, on the state legislature's support of a 2,000-foot state-wide residency restriction[361]

In 2002 Iowa legislators passed a law prohibiting registered offenders whose victims were minors from living within 2,000 feet of any school or child care center.[362] Violators face up to two years in prison and a $5,000 fine.[363]

Legal challenges delayed it from taking effect until 2005, when a federal court of appeals declared the law constitutional. The restrictions apply regardless of the

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358 Shannon Colavecchio-Van Sickler, "Hillsborough Shelters Shut out Sex Offenders," *St. Petersburg Times*, June 16, 2005.
359 "Sex Offenders Banned from Storm Shelters," Associated Press, August 7, 2005.
360 "Court Hears Sex Offender Challenge," *Iowa City Press-Citizen*, April 1, 2004.
361 Human Rights Watch telephone interview with an Iowa lawmaker who requested anonymity, August 14, 2006.
362 Iowa Code § 692A.2A(1) (2006).
363 Ibid.

length of time a former offender has lived offense-free in the community— and the restrictions remain in place for life.[364] The restrictions apply to all individuals convicted of a sex offense against a child, regardless of whether the conviction required them to register as a sex offender. The only exception to the law is that offenders do not have to move from their residences if they had been living there before the law was enacted.[365]

The Iowa law has had the effect of excluding sex offenders from entire communities, driving them underground or across state lines to municipalities without residency restrictions. For this reason, some of the toughest and most vocal critics of Iowa's residency restrictions are law enforcement officials.

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As one law enforcement official points out, "We've taken stable people who have committed a sex crime and cast them out of their homes, away from their jobs, away from treatment, and away from public transportation. It's just absolutely absurd what these laws have done, and the communities are at greater risk because of it."[366]

The Iowa County Attorney's Association asserts that the state has lost track of over half its registered sex offenders since the restrictions went into effect.[367] Lynn County, Iowa Sheriff Don Zeller reports that his county had 435 sex offenders registered in 2002. After the residency restriction went into effect in 2005, 114 moved, 74 have been charged with violating the ordinance, and others disappeared. "We went from knowing where about 90 percent of them were. We're lucky if we know where 50 to 55 percent of them are now … the law created an atmosphere that those individuals can't find a place to live."[368]

Douglas Dykstra, a probation and parole supervisor for the Iowa Department of Corrections says that many individuals can be safely supervised in the community without distance restrictions. "You can't take any law and blanketly apply it to

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364 Ibid.
365 Ibid.
366 Sean Murphy, "Experts Say Sex Offender Zones Problematic," Associated Press, November 9, 2006.
367 Human Rights Watch telephone interview with Corwin Ritchie, executive director, Iowa County Attorney's Association, September 11, 2006.
368 Sea Stachura, "The Consequences of Zoning Sex Offenders," Minnesota Public Radio, April 25, 2006.

everybody, because people are different and pose different degrees of risk to the community," Dykstra said. "To all of a sudden up the ante and treat everyone as if they are the highest risk is not really a wise use of resources."[369]

The county attorney of Dubuque, Iowa, Fred McCaw, worries about the law's inflexibility: "The law doesn't take into account the ones that have behaved themselves for however many years and have done the rehabilitation programs and are now contributing members of the community. None of that is considered."[370]

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In January 2006 the Iowa County Attorney's Association issued a statement opposing Iowa's 2,000-foot sex offender residency restriction law, citing the fact that the law "does not provide the protection that was originally intended and that the cost of enforcing the requirement and the unintended effects on families of offenders warrant replacing the restrictions with more effective protective measures."[371] Iowa resident Zane S., who was convicted of child molestation in 1997 and released in 2003, explained to Human Rights Watch why the law led him to leave the state. "When I was released, I went to live with my grandmother, who is sick. I thought I could help take care of her. But then the zoning law went into effect and, because I moved in with my grandma after 2002, I could not stay there—she is too close to a daycare. There was nowhere I could live legally in the county that I could afford. A group of sex offenders were thinking about living in a trailer park at the edge of town, but I didn't think that would be good for my recovery. So I had to leave my grandma. I decided to go live in Nebraska, because there were no residency restrictions."[372]

Registrants in Des Moines, Iowa's largest and most densely populated city, have had a particularly hard time finding housing outside the sex offender-free zones created

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369 Emily Block, "Authorities Say New Sex Offender Law Flawed: Residency Limits Could be an 'Enormous' Waste of Time for Those Enforcing Them," *Telegraph Herald* (Dubuque, IA), September 8, 2005.

370 Ibid.

371 "Statement on Sex Offender Residency Restrictions in Iowa," Iowa County Attorney's Association press release, December 11, 2006, http://www.iowa-icaa.com/ICAA%20STATEMENTS/Sex%20Offender%20Residency%20Statement%20Dec%2011%2006.pdf (accessed January 15, 2007).

372 Human Rights Watch telephone interview with Zane F., October 23, 2006.

by the residency restriction law. In effect, sex offenders who have committed crimes against children are zoned out of Des Moines.

All sex offenders required to register must provide a home address, but because of the residency law, some sex offenders do not have a home. Law enforcement officials in Des Moines have resolved this conundrum by allowing individuals to register as homeless, as long as they specify a location.[373] When users go to Iowa's online registry, they may be surprised to see a registrant's address listed as "on the Raccoon River between Des Moines and West Des Moines," "behind the Target on Euclid," or "underneath the I-80 bridge."[374] The areas are industrial, polluted, noisy, full of debris, and, in one case, right next to an active railroad track.[375] A Des Moines law enforcement officer explained to Human Rights Watch, "We don't expect that the registrants are actually living under the bridge, its just one of the few places where they are legally allowed to admit they are living, and so they list that as their address, and go live someplace else."[376] The officer estimated that city police had lost track of at least 300 sex offenders who were registered as living in Des Moines before the residency restriction went into effect.[377]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

373 Human Rights Watch telephone interview with an officer in the Des Moines, IA police department who requested anonymity, August 14, 2006.

374 Ibid.

375 On January 1, 2007, Human Rights Watch visited addresses in Des Moines, IA, that seemed to indicate an offender was officially living in a non-residential area of the city.

376 Human Rights Watch telephone interview with an officer in the Des Moines, IA police department.

377 Ibid.

Gavin D.'s Story

In 1999 Gavin D. grabbed and twisted the flesh of a 12-year-old girl's buttocks during a girls' softball game he was coaching. "I had some anger issues to work out, and I took out my anger at the game on this girl," Gavin told Human Rights Watch.[378] "I know that what I did was wrong, and I take full responsibility for what happened." Thirty-one at the time, Gavin had a full-time job at a warehouse, and lived in a home in Dubuque with his wife and two young children. Gavin agreed to plead guilty to "Indecent Contact with a Child," an aggravated misdemeanor.[379] In exchange, Gavin would be placed on probation for two years, with the understanding that if he successfully completed treatment his record would be expunged.

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Under Iowa law at the time, Gavin was required to register as a sex offender, but would not be subject to community notification. "The judge said he felt funny about me being registered because he thought I was low-risk, but because my offense was against a child, I was required to register with the police," Gavin said. In 2001, Gavin successfully completed the terms of his probation. According to his probation officer, in her recommendation to the judge, Gavin "appears to have gained insite [sic] into his offending behavior and has been an active participant in the [sex offender treatment] group."[380]

When Iowa passed its residency restriction law, Gavin was subject to it as a registered offender who had committed a sex offense against a child. Gavin was also added to the public registry, pursuant to a provision of the residency restriction law that required all persons subject to those restrictions to be on the public registry.[381]

In 2005, after Iowa's highest court upheld the constitutionality of the residency restrictions, Gavin went to the Sheriff to see whether he would have to move. "The Sheriff told me he was sorry, but we couldn't stay in our home, because we bought it after 2002 and so we couldn't get an exemption from the law."

Gavin and his wife decided that he would move out, and she and the children would stay in the home. Gavin could not find a place to live in Dubuque that was affordable

378 Human Rights Watch telephone interview with Gavin D., September 18, 2006.

379 Iowa Judicial Department of Correctional Services, "Discharge Report" of Gavin D., copy on file with Human Rights Watch.

380 Ibid.

381 Ibid.

and in compliance with the residency restrictions. He decided to move across the border to Wisconsin, to live in the basement of a friend, where he has lived for over a year.

Because the residency restriction law only prohibits Gavin from sleeping in his home, not from visiting there, Gavin spends as much time there as possible. "I can be there 23 hours a day if I stay awake. On the weekends I stay there as long as I can keep my eyes open. I just want to be with my kids as long as possible. I at least always wait to leave until they have gone to bed, and I try to leave Wisconsin to get back home to them before the kids wake up. I don't get much sleep, but I need to be a father to my children.

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 14, 2010

"My nine-year-old son is starting to figure out that something is not quite right with Dad. He thinks there is something wrong with me. Sometimes he wakes up in the middle of the night, and he asks for me, and my wife has to tell him I am not there.

"I just can't understand why I can't just live with my kids. I have not reoffended, and it's been seven years. But because of this law, I may never live with my family again." Human Rights Watch asked Gavin if he had ever considered not registering. "It's tempting," he said. "But believe it or not, I am a guy that respects the law. I want to get back home, but I won't break the law to do it."

Oklahoma

Iowa is not the only state experiencing increased difficulties keeping track of sex offender registrants after residency restrictions have been enacted. Recently, Oklahoma City law enforcement officials reported that since a 2005 state residency restriction law went into effect, banning offenders from living within 2,000 feet of a school or daycare, less than 16 percent of the Oklahoma City area is available for sex offenders to live, and most of that consists of land surrounding industrial areas that does not have residential housing. As of 2006, nearly 200 offenders have dropped off the state registry.[382] "We recognize that's directly attributable to these laws," said Mark Pursley, a senior probation officer with the Oklahoma Department of

382 Murphy, "Experts Say Sex Offender Zones Problematic," Associated Press.

Corrections who specializes in the supervision of sex offenders. "[The law has] raised the bar too high."[383]

Georgia

In 2006, Georgia passed a sex offender zoning law which would prohibit any registered sex offender from living within 1,000 feet of places where children gather, including bus stops and places of religious worship.[384] One of the state senators sponsoring the bill asserted that his goal was to make Georgia a sex offender-free state. "We want them all out of here," Georgia House Majority Leader Jerry Keen said. "If it becomes too onerous and too inconvenient, they may just want to live somewhere else. And I don't care where, as long as it's not in Georgia."[385]

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Before the law could go into effect, the Southern Center for Human Rights and the American Civil Liberties Union of Georgia filed a class-action lawsuit to enjoin the state from enforcing the law, especially as applied to places of religious worship and bus stops, because it would have the effect of virtually "banning the state's 11,000 registered sex offenders from living in Georgia."[386] Among the plaintiffs who would have to leave their homes under the law is an elderly man with Alzheimer's, living in a nursing home; a blind man; a disabled man; a woman convicted as a teenager of statutory rape for having consensual sex with her teenage boyfriend; and a woman convicted as an accessory to statutory rape for allowing two teenagers, one of whom was her child, to have sex in her home.[387] In July 2006 the judge issued an order enjoining the state from enforcing the bus stop provision of the Georgia law. As of July 2007 the rest of the restrictions are in effect, banning registered offenders "from living within 1,000 feet of schools, child care facilities, churches, swimming pools, and areas where minors congregate, including public and private parks, recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, and

383 Ibid.
384 GA Code Ann. § 42-1-15 (2007).
385 *Whitaker et al. v. Perdue et al.*, CA no. 4:06-140-CC, Brief in Support of Motion for Temporary Restraining Order, June 22, 2006, p. 9.
386 Ibid., p. 1.
387 Ibid.

similar facilities providing programs or services directed towards persons under 18."[388]

Human Rights Watch spoke with John A., who was convicted of rape in 1984 and who has spent the past 20 years working at a faith-based shelter for homeless men.[389] His home near the shelter fell within 1,000 feet of a church and he was unable to find another place to live that was affordable and within a reasonable distance from his workplace. John A. has become a devout Christian since his conviction for rape, and he wanted to continue to work for a Christian organization. He told Human Rights Watch, "I did not see how it would be possible to continue to live in Georgia and be allowed to work with Christian-based shelters." He thought about moving to another state, "but I had a feeling that Georgia will not be the last state to pass a law restricting where sex offenders can live." With the support of his mentor, the Rev. Jim Lewis, who runs a number of faith-based community programs, John A. applied to become a missionary in Costa Rica. He was accepted and he left the United States in August 2006.[390]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Human Rights Watch also spoke with another person in Georgia subject to the residency restrictions, a man in his 70s who had been convicted of molesting his granddaughter a decade ago. The residency restriction law forced him to leave his home and he moved to a trailer in a wooded area outside of Atlanta, Georgia. "I couldn't afford to move to a trailer park. I didn't know where to go. I feel like there is no other place I can go except here. But here I am isolated. I don't have easy access to the world. What if I fall down and break my hip? I will admit that at first I considered not registering, going underground. But I wanted to do the right thing, whatever that is in this situation, and so I am trying to abide by the law."[391]

Sheriffs in Georgia, who are responsible for enforcing the residency restrictions, are not uniformly supportive of the law. "I think anyone who knows anything about tracking and monitoring sex offenders would not support this law," one county

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388 Email communication from Sarah Geraghty, attorney for the plaintiffs, Southern Center for Human Rights, to Human Rights Watch, January 4, 2006.
389 Human Rights Watch telephone interviews with John A., June 15, 2006 and August 11, 2006.
390 Ibid.
391 Human Rights Watch telephone interview with Ralph F., August 11, 2006.

sheriff told Human Rights Watch. "It's going to be a disaster for us. We are certainly going to lose track of the sexually violent offenders."[392]

California

In November 2006 California voters by a large measure (70 percent) passed Proposition 83, a ballot initiative that, among other things, prohibits any registered sex offender from living within 2,000 feet of any school, daycare facility, or place where children gather.[393] The law applies to all 90,000 of the state's registered sex offenders.[394]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Proponents of Proposition 83 argued that residency restrictions are a tool to keep "dangerous child molesters … away from our children and monitored for life."[395] A rebuttal by the California Attorneys for Justice argued that Proposition 83 "ignores the sad lessons learned by other states … that [residency restriction] laws should be repealed because they have proven to be ineffective, a drain on crucial law enforcement resources, and far too costly to taxpayers."[396] The rebuttal also pointed out that "proponents claim that the law is directed at 'child molesters' and 'dangerous sex offenders,' but … would apply far more broadly: even to those convicted of misdemeanor, nonviolent offenses."[397]

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392 Human Rights Watch telephone interview with a Georgia county sheriff who requested anonymity, August 9, 2006.
393 California Proposition 83: "Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute," passed by voters November 7, 2006.
394 Ibid. Proposition 83 also lengthens prison and parole terms for repeat and violent offenders and requires some convicted sex offenders to undergo satellite monitoring for life, by wearing a tracking device (GPS) on their ankle. State analysts estimate the provision will cost taxpayers at least $88 million a year, with some estimates as high as $300-450 million. GPS units cost approximately $3,500 each and have a total lifespan of six to nine months. Therefore, they would have to be replaced one to two times a year. If all registered sex offenders in California are required to wear the GPS unit, as required by Proposition 83, the annual cost for GPS hardware could range from $300-700 million, depending on how often the hardware needs to be replaced. GPS units lose reception like cellular telephones. They must be recharged every 6-12 hours. Each loss of reception or low-battery failure sends a false alarm to dispatchers who must alert law enforcement and decide whether to respond to the call. California Coalition against Sexual Assault (CALCASA), "Proposition 83 CALCASA Position Paper," 2006, http://www.calcasapublicpolicy.org/?page_id=58 (accessed January 2, 2007); and testimony from California probation and parole officials before the California High Risk Sex Offender Taskforce, July 14, 2006. Another provision makes sexually violent predators eligible for indefinite commitment to state mental hospitals. These aspects of the statute have not been challenged.
395 Governor Arnold Schwarzenegger, San Diego County District Attorney Bonnie Dumanis, and Harriet Salarno, president, Crime Victims United of California, "Argument in Favor of Proposition 83," appearing on the November 7, 2006 ballot.
396 Carleen R. Arlidge, president, California Attorneys for Criminal Justice, "Rebuttal to Argument in Favor of Proposition 83," appearing on the November 7, 2006 ballot.
397 Ibid.

Opponents of Proposition 83 included the California Coalition against Sexual Assault (CALCASA), a state-wide coalition of 84 rape crisis centers and sexual assault prevention programs. Calling the law "a shortsighted approach to sex offender management that will place California communities in greater danger," CALCASA believes the law will "waste valuable resources on sex offenders who are unlikely to reoffend, while leaving a deficit of treatment, supervision, and focus on offenders who *we know* should be receiving more intense scrutiny."[398]

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Before the election, analysts from the California Research Bureau[399] concluded the residency restrictions limit would effectively prohibit registered offenders from living in many California cities. In August 2006 it released a study on the impact of residency restrictions in other states that have them.[400] The report found that parole officers in those states have trouble finding housing for sex offenders just released from prison, and warned that the new law may actually place communities at greater risk by leaving some offenders homeless and driving others underground and off the registries.[401]

A federal judge temporarily enjoined enforcement of Proposition 83, pending the conclusion of a suit challenging the constitutionality of the law.[402] The suit was filed by an anonymous plaintiff, John Doe, whose sex offense occurred decades ago and who has lived in the same community for 20 years.[403] In granting the temporary restraining order, the judge said, "'John Doe' has been a law-abiding and productive member of the community since his conviction and will suffer irreparable harm if forced to comply with Proposition 83."[404]

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398 CALCASA, "Proposition 83 CALCASA Position Paper."

399 The California Research Bureau (CRB) is a nonpartisan research service that provides reports to the Governor and his staff, to both houses of the legislature, and to other elected state officials. See http://www.library.ca.gov/html/statseg2a.cfm (accessed March 23, 2007).

400 Marcus Nieto and Prof David Jung, CRB, "The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review," http://www.library.ca.gov/crb/06/08/06-008.pdf (accessed January 21, 2007). The report was issued at the request of California State Assembly member Mark Leno, who is the Chair of the Public Safety Committee.

401 Ibid.

402 *Doe v. Schwarzenegger et al.*, CA no. 06-cv-06968-JSW, Temporary Restraining Order to Show Cause Why Relief Should Not Be Granted, November 8, 2006.

403 Ibid.

404 Ibid.

After the court order, then-California Attorney General Bill Lockyer declared that Proposition 83's residency restrictions were not meant to be retroactive even though the law's language would cover offenders who registered prior to its enactment.[405] As CALCASA noted, "[Supporters of Proposition 83] cannot argue that the initiative … only affects future offenders and at the same time argue that it will protect the community from the threat of offenders currently in our community."[406] A federal judge eventually ruled that Proposition 83 may not be applied retroactively, meaning that those offenders living in the community prior to when the residency restriction law went into effect are not subject to the restriction.

Cited in U.S. v. Juvenile Male, No. 07-30290 archived on January 11, 2010

Local Ordinances

An estimated 400 municipalities have enacted local zoning ordinances restricting where sex offenders can live within their boundaries.[407] At least 113 municipalities in New Jersey alone have local residency restrictions.[408] For example, the township of Jackson, New Jersey, restricts sex offenders from living within 2,500 feet of any park or playground, movie theater, or amusement park (Jackson is home to the Six Flags Great Adventure Park).[409] In Florida, where more than 60 municipalities have residency restriction ordinances, registered offenders cannot live within specified distances of parks, playgrounds, churches, libraries, bus stops or any other place where minors normally congregate. In Snellville, Georgia, the city council implemented an ordinance banning sex offenders from living within 2,500 feet of any school, over twice the distance of the restricted area under the state's residency restriction law.[410]

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405 David Kravets, "Judge: Lockyer is Changing Interpretation of Sex Offender Law," Associated Press, November 27, 2006.
406 CALCASA, "Proposition 83 CALCASA Position Paper."
407 Nieto and Jung, CRB, "The Impact of Residency Restrictions," p. 21.
408 "Tracking Sex Offenders: Town by Town Summary of Local Restrictions," *Home News Tribune* (NJ), March 5, 2006.
409 "Township Adopts Ordinance to Create Residency Restrictions for Convicted Sex Offenders," *Atlantic Highlands Herald* (New Jersey), October 20, 2005.
410 John Ghirardini, "No Room in the City for Sex Offenders, Council Toughens Living Restrictions," *Atlanta-Journal Constitution*, May 21, 2006.

Do Residency Restrictions Protect Public Safety?

As a city council member who supported restrictions for his district acknowledged, "If we can get these people out of our community, it's not that these crimes won't happen, [i]t's just that they won't happen in my community."[411]

There is no evidence, however, that these laws do in fact diminish crimes against children. For registered offenders, the main impact of the laws may be simply to drive them underground or to uproot them from their families and communities. Iowa's experience with residency restrictions has caused at least one state to resist enacting such laws. In November 2006 lawmakers in Kansas decided not to adopt residency restrictions after reviewing evidence that Iowa's law had doubled the number of registered offenders unaccounted for since it took effect.[412]

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Residency restriction laws reflect an assumption that former offenders are most likely to commit new offenses against children who gather near where they live—either because the proximity of children tempts them or simply because they are easier to access. But this assumption is not borne out by research. The Colorado Department of Public Safety found that convicted child molesters in Colorado who reoffended while on probation were randomly scattered throughout the geographical area, and did not seem to live closer than non-recidivists to schools or child care centers.[413] A small study by the Minnesota Department of Corrections found that the proximity of a former offender's residence to schools or parks was not a factor in recidivism. In fact it found the opposite: sex offenders who recidivated were more likely to travel to another neighborhood to seek victims. During the study period, the only two recidivist acts of child sexual assault committed in parks on unknown victims occurred several miles away from the offenders' homes.[414]

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411 John-Thor Dahlburg, "Limits on Sex Offenders Spread in Florida," *Los Angeles Times*, July 5, 2005.
412 Kansas Department of Corrections, "Twenty Findings of Research on Residential Restrictions for Sex Offenders and the Iowa Experience with Similar Policies," 2006, http://www.dc.state.ks.us/SOHR/Twenty_Findings_on_Restrictions_for_Sex_Offenders.htm (accessed June 21, 2007).
413 Colorado Department of Public Safety, "Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community," March 15, 2004, http://dcj.state.co.us/ors/pdf/docs/FullSLAFinal.pdf (accessed June 20, 2007).
414 Ibid.

Most recently, a 2007 study by the Minnesota Department of Corrections analyzed the sexual reoffense patterns of 224 sex offender recidivists released between 1990 and 2002 to determine whether the crimes would have been prevented by residency restrictions.[415] The study found that residential proximity had very little impact on a recidivist's opportunity to reoffend. More than half the recidivists, 113, came into contact with their victims not through residential proximity but through "social or relationship proximity" to the individual.[416] The most common example was that of a male offender who came into contact with his child victim(s) in the course of dating their mother.[417]

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A few years before Proposition 83 was passed, a California newspaper reviewed the criminal histories in a one-year period of nearly 500 released sex offenders who lived near schools and daycare facilities to see whether they had tended to commit new abuses against children they lived near.[418] The newspaper found that former offenders were not tempted into new offenses by proximity to children, and that only one of the 500 convicted sex offenders was arrested during the year, and that was for committing a parole violation and not another sex crime.[419]

Residency restrictions may also be counterproductive from a community safety perspective. As evident in the experience of Iowa and Oklahoma, residency restrictions can push former offenders into homelessness and transience, interfering with effective tracking, monitoring, and close probationary supervision.[420] If registrants are forced to move to rural areas to find affordable places in which they can legally live, they may find themselves with diminished access to employment and treatment options, both of which help reduce reoffending.[421] Sex offenders with positive, informed support systems—including stable housing and social networks—have significantly lower criminal and technical violations than sex offenders who had

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415 Minnesota Department of Corrections, "Level Three Sex Offenders Residential Placement Issues: 2003 Report to the Legislature," January 2003, http://www.leg.state.mn.us/docs/2003/mandated/030175.pdf (accessed June 20, 2007).
416 Ibid., p. 2.
417 Ibid.
418 Lois Gormley, "Where are Valley Sex Offenders?" *The Desert Sun* (Palm Springs, CA), June 13, 2004.
419 Ibid. The article indicated the rearrest was for a parole violation and did not specify what the violation entailed.
420 Jill S. Levenson, Civil Research Institute, "Sex Offender Residence Restrictions," 2005.
421 Ibid.

negative or no support.[422] Yet residency restrictions upend such support and stability. A survey of 135 sex offenders in Florida revealed that housing restrictions increased isolation, created financial and emotional stress, and led to decreased stability.[423]

As a psychologist who specializes in treating sex offenders noted, "Residency restrictions meant to protect the community may instead lead to banished sex offenders coming to believe their essential identity is as a sex offender, which then stimulates reoffense."[424]

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Impact on Family Unity

Human Rights Watch spoke to a number of families who were no longer able to live together because of residency restrictions.

Doug E., a registrant in Oklahoma, spoke to Human Rights Watch about his family's decision to live separately rather than try to find affordable and safe housing outside the prohibited zone for sex offenders: "I want to live with my wife and kids very much. But I didn't want to make my kids move to a bad situation, a bad part of town. I didn't want them to leave school, and I didn't want my wife to have to give up our family home—the only one we have ever had. So I moved to the edge of town."[425]

Another registrant subject to residency restrictions in Michigan discussed the financial stress of trying to keep two households, "I could only find a place to live at a seedy motel, and I was not dragging my family there with me. The kids cry when I leave at night, and my wife worries sick that I have to stay away at night. This restriction only makes us more stressed. I think if I could just fall asleep next to my wife, with my kids in the house, everything would work out okay."[426]

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422 Colorado Department of Public Safety, "Report on Safety Issues," p. 15.
423 Ibid.
424 Human Rights Watch telephone interview with Dr. Jill Levenson, September 13, 2006.
425 Human Rights Watch telephone interview with Doug E., September 18, 2006.
426 Human Rights Watch telephone interview with James O., June 23, 2006.

Rethinking Residency Restrictions

Residency restrictions that apply to whole categories of sex offenders should be abolished. This does not mean that limitations cannot be placed on where former offenders may live. Residency restrictions for convicted sex offenders should be determined on a case-by-case basis, for example by courts or probation and parole officers, and be subject to periodic review. The restrictions should be reasonably tailored to such factors as the specific crime the offender committed; an assessment of his or her employment, family and other support systems; the nature of supervision and treatment the offender is receiving; and the length of time the individual has lived in the community offense-free. For former offenders who are not subject to probation or parole supervision, states could create expert panels to undertake similar periodically reviewed assessments to determine whether any type of residency restriction is warranted for a particular individual and for how long.

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Other Countries and Sex Offender Laws

The United States is one of just eight countries that have sex offender registries, and the only country besides South Korea known to have community notification provisions. Australia, Canada, France, Ireland, Japan, and the United Kingdom have sex offender registries that are kept by the police. The European Union (EU) has voiced approval of the United Kingdom's sex offender registry, and has encouraged EU Member States to implement registries "throughout the EU." Victims' rights groups in Australia, the United Kingdom, and Japan are advocating for community notification laws. Singapore is also considering a system of sex offender registration and community notification modeled on the US as well.[427] Human Rights Watch knows of no other country besides the United States with residency restriction laws for sex offenders.

Lawmakers in the United Kingdom recently considered and rejected adopting community notification laws, noting the United States' experience with vigilante violence and the lack of proven effectiveness.

427 Women's rights advocates in Singapore have recently been calling for the establishment of a sex offender registry. Theresa Tan, "Aware Calls for Stiffer Laws on Child Sex Abuse," *The Straits Times* (Singapore), September 9, 2006.

X. Human Rights and Sex Offender Laws

Governments have an obligation to protect people and take appropriate steps to safeguard the lives of those within its jurisdiction to protect them from violence. One element of that duty is to take measures to deter and prevent crime.[428] They must do so, however, within a human rights framework, which places restrictions on those measures that infringe on the human rights guaranteed to all. A person's conviction of a crime does not extinguish his or her claim to just treatment at the hands of government.

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Sex offender laws interfere with a panoply of protected rights: the rights to privacy,[429] to family[430] and home,[431] to freedom of movement and liberty (including the right to

428 The European Court of Human Rights (ECtHR) has explicitly noted that the gravity of the harm that may be caused to the victims of sexual violence places states under a duty to take measures to protect people from such harm. *Stubbings and Others v. the United Kingdom*, Judgment of October 22, 1996, Reports 1996-IV, paras. 62-64.

429 The International Covenant on Civil and Political Rights (ICCPR), to which the US is a State Party, protects against "arbitrary or unlawful interference with [anyone's] privacy, family, home or correspondence," article 17.

430 Article 23 of the ICCPR provides that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the state," and that all men and women have the right "to marry and to found a family." The right to found a family includes the right "to live together." The UN Human Rights Committee, which oversees the implementation of the ICCPR, has set out, in General Comment No. 19: Protection of the Family, the right to marriage and equality of the spouses, article 23, 27/07/90, that the right to found a family "implies the possibility to live together." The Convention on the Rights of the Child (CRC) G.A. res. 44/25. annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, requires, in Article 9 (1) that State Parties "ensure that a child shall not be separated from his or her parents against their will," allowing for exceptions only where "separation is necessary for the best interests of the child" and where such a determination has been made by "competent authorities subject to judicial review." Article 10 (2) establishes a child's "right to maintain on a regular basis, save in exceptional circumstances[,] personal relations and direct contacts with both parents." The United States signed, but did not ratify, the CRC on February 16, 1995, meaning that while it is not a party to the Convention, it cannot take measures that would defeat the object and purpose of the treaty (see article 18 of the Vienna Convention on the Law of Treaties).

431 The right to housing is recognized in the Universal Declaration of Human Rights. Also, The International Covenant on Economic, Social, and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 49, U.N. Doc. A/6316 (1966), U.N.T.S. 3, entered into force January 3, 1976, provides that everyone is entitled to "adequate" housing (art. 11(1)). The United States signed, but did not ratify, the ICESR on October 5, 1977. Adequacy must be evaluated from multiple perspectives, including security of tenure, affordability, and location. ICESCR General Comment 4 (1991), para. 7: "Adequate shelter means … adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities—all at a reasonable cost." The UN Committee on Economic, Social, and Cultural Rights has emphasized that no one shall be subject to housing discrimination, irrespective of their status. "The right to adequate housing applies to everyone …. Furthermore, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status, and enjoyment of this right must not be subject to any form of discrimination." ICESCR General Comment 4 (1991), para 6.

work[432] and to reside where one chooses[433]), and to physical safety and integrity (including protection from harm by private as well as public actors).[434] None of these rights are absolute. But laws that infringe upon them must be necessary to serve a legitimate public interest, the relationship between the interest and the means chosen to advance it must be a close one, and the laws must be the least restrictive possible. For example, as the UN Human Rights Committee, which assesses compliance with the International Covenant on Civil and Political Rights (ICCPR), has stated with regard to limiting the right to movement:

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> [I]t is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.[435]

If a state action restricts a right, it can only do so to the extent consistent with "the provisions, aims, and objectives of the Covenant" and only to the extent "reasonable in the particular circumstances."[436] Reasonableness is achieved if the restriction is "both proportional to the end sought and … necessary in the circumstances."[437]

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432 The ICESCR recognizes the right to work and to an adequate standard of living in articles 6 and 11.

433 Article 12 of the ICCPR recognizes the right to liberty of movement and freedom to choose one's residence. Under article 12(3) of the ICCPR, a state may limit this freedom only insofar as it is necessary for the protection of the rights of others, national security or public order, or public health or morals. These limitations must be expressly provided for by the law and must be strictly construed.

434 The UN Human Rights Committee, in its general comments to the ICCPR, notes that States have an obligation to protect their citizens from private actors: "The positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the state, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights." UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant. UN States are in violation of their obligations under the ICCPR where they are found to be "permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate, or redress the harm caused by such acts by private persons or entities."

435 General Comment 16/32, in ICCPR/C/SR.749, March 23, 1988, para. 4. *Nicholas Toonen v. Australia*, Human Rights Committee, 50th Sess., Case No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992, para. 8.3. Although the Committee was addressing freedom of movement, the criteria it enunciated apply for all protected rights.

436 Ibid.

437 Ibid.

The Siracusa Principles on the Derogation from the International Covenant on Civil and Political Rights (Siracusa Principles) were formulated to clarify when and to what extent a state can limit a human right affirmed by the ICCPR, and how to measure whether the restriction of the right is proportionate to the public safety concern.[438]

The Siracusa Principles emphasize that limitations on individual rights are to be narrowly construed.[439] Under the Siracusa Principles, interference with an ICCPR freedom: (1) must not jeopardize the essence of the right concerned;[440] (2) must further a legitimate aim in a manner proportionate with that aim;[441] (3) must be subject to the possibility of challenge to and remedy against its abusive application;[442] and (4) must not be imposed in an arbitrary manner.[443] The Human Rights Committee has held that a lack of consideration for "personal circumstances" when depriving citizens of a fundamental right is prohibited under the ICCPR.[444] The Committee also stated that the ICCPR did not allow rights to be taken away "based solely upon the category of the crime for which the offender is found guilty."[445]

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The principle of "proportionality" as it applies to assessing the legitimacy of restrictions imposed on human rights is used to ensure that rights are not denied arbitrarily, and that any human rights restrictions are rational and evidence-based.

Special Rights of Child Offenders

International law recognizes that juvenile offenders require special protection. The Convention on the Rights of the Child (CRC) and the ICCPR prohibit arbitrary or

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438 U.N. Doc. E/CN.4/1985/4, Annex (1985); "The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights," *Human Rights Quarterly*, vol. 7, no. 1 (February 1985).
439 Ibid.
440 Siracusa Principle 2.
441 Siracusa Principle 10.
442 Siracusa Principle 8.
443 Siracusa Principle 7.
444 *Mr. Rawle Kennedy v. Trinidad and Tobago*, Communication No. 845/1998, U.N. Doc. CCPR/C/74/D/845/1998 (2002), para. 7.3, http://www1.umn.edu/humanrts/undocs/845-1998.html (accessed June 19, 2006).
445 *Eversley Thompson v. St. Vincent and the Grenadines*, Communication No. 806/1998, U.N. Doc. CCPR/C/70/D/806/1998 (2000), para. 8.2, http://www1.umn.edu/humanrts/undocs/806-1998.html (accessed June 19, 2006).

unlawful interference with a child's privacy.[446] This prohibition, along with other international legal guarantees of treatment with dignity, respect, and protection from cruel, inhuman or degrading treatment, underlie the minimum standards for privacy set forth in the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). These minimum standards require that every child's privacy be respected at all stages of the juvenile justice process, including with regard to dissemination of a child offender's criminal record, and that safeguards be taken during transport to shield children and protect them from "insult, curiosity and publicity in any form."[447]

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A Human Rights Analysis of US Sex Offender Laws

Protection of public safety is unquestionably a legitimate aim. But US registration, community notification, and residency restriction laws are neither proportional to nor necessary to further that goal, nor are they the least restrictive measures possible consistent with the goal.

Registration

Registration requirements have not been carefully drafted in a way which balances the duty to protect individuals from sexual violence with the basic human rights of an individual who has committed a sex crime and is released into the community. The examination of registration requirements in this report reveal that they are overbroad, often severely impacting people who committed minor nonviolent offenses, including acts such as public or indecent exposure, and consensual sex by teenagers.

Even for people who have committed serious offenses, that fact alone is not determinative of their future dangerousness to society, nor can that factor be the basis on which an individual is effectively stripped of their rights. Yet, with only a few exceptions, states have not established processes by which registration

446 Article 16 of the CRC, following closely the language of article 17 of the ICCPR, states "(1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation. (2) The child has the right to the protection of the law against such interference or attacks."

447 Administration of Juvenile Justice ("The Beijing Rules"), adopted November 29, 1985, G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985) ("The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling.").

requirements are keyed to an individualized determination of whether a particular offender poses a risk of future reoffending. Moreover, the requirement to register continues long after the point at which the offender poses negligible risk of reoffense.

In contrast, registration in the United Kingdom takes more care to strike the balance between the duty to protect society from sexual violence and the post-release rights of former offenders. By having a limited registration scheme which requires certain personal information to be retained only by the police, the United Kingdom's sex offender registry has been held to not impermissibly infringe on the right to privacy and other rights.

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The European Court of Human Rights and UK Sex Offender Registration

The European Court of Human Rights (ECtHR) has considered three challenges to the United Kingdom Sex Offenders Act 1997 from persons convicted of sex offenses that required them to register information with the police, including their name, date of birth, home address, and any changes of name or home address. There was no public access to the registration in question and no notification requirement. The court found that no evidence was presented to it to suggest that individuals were at risk of public humiliation or attack as a result of the obligations to register with police under the Act.

The court considered that the requirement to provide the information to the police "amounts to an interference with his private life." However, the measures were "in accordance with the law" and "pursue legitimate aims, namely the prevention of crime and the protection of the rights and freedoms of others." The court then considered whether they are "necessary in a democratic society," that is, proportionate to the aims pursued.

The court examined the proportionality of the measures on the basis that the interference with private life extended only to the requirement to register with the police. The court found that the interference was proportionate, in light of the gravity of the harm that may be caused to the victims of sexual offenses and in the absence of evidence presented to it that the individuals were at risk of public humiliation or attack as a result of this form of registration. The court left open the possibility that if evidence was presented that suggested attacks on registered individuals were connected in any way with the registration process in question, that individuals were

at risk of public humiliation or attack, or that the requirement to register would lead to information that is not already publicly available becoming known to the media or the general public, its assessment as to its proportionality or interference with other rights would be different.[448]

Community Notification

Most of the damage to the rights of sex offender registrants occurs because of community notification, both because the laws directly interfere with their ability to live private lives with their families and because the laws have generated public responses that have led to harassment and violence.

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Current community notification laws, while ostensibly enacted with the goal of promoting public safety, are neither necessary nor proportionate to that goal. Most notification laws simply reproduce the over-breadth of registration requirements, providing information to the public about people who pose little or no risk. Further, they ensure universal access to registration information, so that people who have no legitimate need-to-know have access to the information on state sex offender registries. This universal dissemination subjects former offenders and their families to needless stigma and hostility.

Residency Restrictions

Laws that prohibit convicted sex offenders from moving to designated areas otherwise open to residential use and that banish them from existing homes in such areas cannot be squared with human rights principles.

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448 ECtHR, *Adamson v United Kingdom*, Application 4223/98, Decision of January 26, 1999. A previous application, *Ibbotson v. UK*, No. 40146/98 (October 21, 1998), had been considered inadmissible on similar grounds by the now-defunct European Commission on Human Rights (which was replaced on November 1, 1998 by the current full-time European Court of Human Rights), and in *Massey v. United Kingdom*, Application No. 14399/02, Partial Decision on Admissibility, April 8, 2003, the Court also had to consider, amongst other complaints, that registration was an interference with Massey's private life and that the registration requirement is automatic, with no assessment or review of the necessity of registration in his particular case. The Court applied the reasoning in *Adamson* in declaring that part of the application inadmissible.

On a number of occasions, the ECtHR has addressed human rights challenges to residency restrictions applied against particular individuals. The court's rulings reflect the importance of assessing necessity and proportionality on an individualized basis.

For example, the court considered the case of a Dutch citizen who had "repeatedly and overtly" used hard drugs in a designated emergency area (high crime area) of Amsterdam, who had received several orders prohibiting him from the area but had nevertheless returned to the area to use hard drugs in public, and who consequently was banned from this area for 14 days.[449] In this case, the court found that the restriction was proportionate because it: (1) was limited in duration; and (2) did not result in undue hardship to the drug abuser, as he did not work or live in the area in question and was still able to collect his social security benefits and mail from the area. But the ECtHR did not accept residency restrictions in a case in which the Italian police placed a suspected mafia member under special supervision that included severe restrictions on his freedom of movement for three years.[450] The Court ruled that although the measures pursued legitimate aims (namely, the maintenance of public order and the prevention of crime), they failed to fulfill the requisite condition of being "necessary in a democratic society" to achieve those aims, because there was insufficient concrete evidence to show "that there was a real risk that [the suspect] would offend."[451]

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Sex Offenders Laws in US Courts

With few exceptions, judges have upheld sex offender laws, rejecting procedural due process challenges, equal protection, banishment, and ex post facto claims, and arguments that such laws violate fundamental rights, including the right to privacy.[452]

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449 *Landvreugd v. The Netherlands*, 37331/97, June 4, 2002.

450 *Labita v. Italy*, 26772/95, April 6, 2000.

451 Ibid.

452 For example, in US law: *Dean v. Texas*, 60 S.W.3d 217 (Tx Ct App. 14th Dist 2001) and *Degrijzev v. Pataski*, 2004 US Dist. LEXIS 2260 (both holding that registration scheme does not violate *ex post facto* clause of US constitution because it is not punitive); *A.A. v. New Jersey*, 341 F.3d 206 (2003) (rejected registrant's privacy challenge because purpose of the registration statute was not to humiliate); and the following cases in which the court found that registration and notification requirements turn on conviction, not a determination of dangerousness, and no protected liberty interests are at stake. *Milks v. Florida*, 894 So.2d 924 (S.C. Florida 2005), certiorari denied, 2005 US Lexis 6201 (Oct. 3, 2005); *Haskell v. Maine*, 2003 US Dist. LEXIS 6384

Community Notification

The US Supreme Court has twice upheld state (Alaska and Connecticut) community notification laws.[453] The specific constitutional issues raised in the cases differed, but in both cases the Court failed to grapple forthrightly with the practical implications of community notification. It gave little weight to the shaming and stigma that inevitably and necessarily accompany community notification, and overlooked the unnecessarily broad scope of the statutes with respect to both who is required to register and who may access the registry.[454] Lower courts have similarly failed to acknowledge the serious rights violations that accompany community notification laws. For example, with regard to the privacy rights violated by community notification laws, a federal court noted, "a state's publication of truthful information that is already available to the public does not infringe the fundamental constitutional rights of liberty and privacy."[455]

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Dissenting justices have acknowledged the significant consequences of community notification. For example, Justice Ginsburg noted community notification's "onerous and intrusive obligations" on the offender, the resulting "profound humiliation and community-wide ostracism," its resemblance to historical practices of shaming, reliance upon convictions rather than present dangerousness, and the law's "excessiveness in relation to its non-punitive purpose."[456]

Former offenders in a number of cases have claimed that sex offender registration and notification laws impermissibly infringe on protected rights. After concluding

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(Maine 2003); *Allen v. Dretke*, 2004 US Dist. LEXIS 5308 (Texas 2004); *Gunderson v. Hvass*, 339 F.3d 639 (Minnesota 2003); *Fullmer v. Michigan Department of State Police*, 360 F.3d 579 (2004); *Doe v. Tandeske*, 361 F.3d 594 (Alaska 2004). But see *In re Ronnie A.*, 585 S.E.2d 311 (Sup. Ct. S.C. 2003) (no violation of due process where youth, under 12 at the time of his crime, required to register because registration information about juveniles is not made public by the law).

453 *Smith v. Doe*, 123 S.Ct 1140 (2003) and *Connecticut Department of Public Safety v. Doe*, 123 S.Ct. 1160 (2003). The Court has declined to review any of the sex offender cases that have come before it since, including a challenge to the Iowa residency restrictions law that prevents sex offenders from living within 2,000 feet of parks or other places where children might be expected to congregate. *Doe v. Miller*, 405 F.3d 700 (8th Cir. Iowa 2005), motion for stay denied, 418 F.3d 950, petition for certiorari denied, 2005 US Lexis 8630 (November 28, 2005).

454 Ibid., at 100.

455 Ibid., at 1343-45.

456 Ibid., at 104. The trial court in the Connecticut case also noted the overly broad nature of the notification scheme: "Connecticut's [sex offender] web site makes information available to more people than is necessary to achieve its public safety and enforcement goals .... The website makes information available to millions of people who will never come to the state or otherwise come into contact with the registrant. *Doe v. Lee*, 132 F. Supp. 2d57, 69 (D. Conn. 2001).

that fundamental rights were not, in fact, implicated by the laws, the courts did not subject them to close scrutiny, nor did they question the laws' proportionality. For example, a registrant in Tennessee argued that the state's registration law "depriv[ed] him of his constitutional rights of privacy and employment, and the right to be free from stigma, without due process of law."[457] The Sixth Circuit Court of Appeals, however, refused to recognize a privacy right in this context as a fundamental right.[458] Similarly, residents in Florida challenged that state's sex offender registration law, arguing that the law infringed on their right to associate with their families, the right to be free from threats, and their right to find and/or keep employment and housing.[459] The appellate court ruled that none of these are fundamental rights.

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Under US constitutional jurisprudence, if a fundamental right is not involved (and absent discrimination), courts will not require regulations to be anything more than "rationally" related to a legitimate public purpose, and the rationality test is easily satisfied unless a law is utterly irrational.

Residency Restrictions

The United States Supreme Court has yet to consider the constitutionality of residency restrictions. Federal and state courts have, for the most part, upheld these laws against challenges that the restrictions are unconstitutionally overbroad[460] and vague;[461] permit a regulatory taking without just compensation;[462] interfere with the right to contract;[463] and violate substantive due process rights to housing,[464] the Ex

457 *Cutshall v. Sundquist*, 193 F.3d466, 478 (6th Cir. 1998), certiorari denied, 529 US 1053 (2000).
458 Ibid.
459 *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005), cert. denied, 126 S.Ct 624 (US 2005).
460 *Mann v. State*, 603 S.E. 2d 283, 286 (Ga. 2004); *People v. Leroy* , 828 N.E.2d 769, 784 (Ill. App. Ct. 2005); *Seering I*, No. Crim. AGINOO6718, 2003 WL 21738894, at 14 (Iowa Dist. Ct. April 30, 2993), 701 N.W.2d 665 (Iowa 2005).
461 *Mann*, 603 S.E.2d, at 286.
462 Ibid., at 285.
463 *Doe v. Petro*, No. 1:05-CV-125, 2005 WL 1038845, at 5 (S.D. Ohio May 3, 2005).
464 *Petro*, 2005 WL 1038846, at 1, 5; *Miller I*, 298 F. Supp. 2d 844, 871-76 (S.D. Iowa 2004), 405 F.3d 700 (8th Cir. 2005); *Leroy*, 828 N.E. 2d at 776-77; *Seering I*, 2003 WL 21738894, at 4-9.

Post Facto Clause against retroactive punishment,[465] and the Eighth Amendment ban on cruel and unusual punishment.[466]

The Eighth Circuit Court of Appeals unanimously upheld the Iowa residency restriction statute, concluding that residency restrictions are a form of civil regulation, and that keeping sex offenders a certain distance from where children gather was rationally related to the legitimate legislative goal of protecting children.[467] The court found that the federal constitution does not include a "right to live where you choose."[468] The Court rejected the registrants' contention that the law violated their fundamental right to live with their family members, because the law only limited where registrants could live, not with whom—any impact on the family was only incidental or unintended.[469] Although, as the dissent in the case noted, Iowa's residency restriction law leaves "so few legal housing options that many offenders face the choice of living in rural areas or leaving the state,"[470] the majority court refused to lend such consequences any legal significance.

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Sex offenders have challenged the rationality of residency restrictions by pointing to a lack of evidence that the exclusion zones enhance children's safety.[471] Courts have conceded that the efficacy of the restrictions is unproven[472] but have responded that the legislature deserves broad discretion to deal with potentially dangerous situations.[473] No court applying rational basis review has held that residency

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465 *Petro*, 2005 WL 1038846, at *2; *Miller I*, 298 F. Supp. @d at 866-71; *Lee v. State*, 895 So. 2d 1038, 1041-44 (Ala. Crim. App. 2004); *Thompson v. State*, 603 S.E. 2d 233, 234-36 (Ga. 2004); *Denson v. State*, 600 S.E. 2d 645, 647 (Ga. Ct. App. 2004); *Leroy*, 828 N.E. 2d at 778-79; *Seering I*, 2003 WL 21738894, at 10-12.

466 *Miller I*, 298 F.Supp.2d at 879-80; *Leroy*, 828 N.E. 2d at 784; *Seering I*, 2003 WL 21738894, pgs 13-14.

467 Ibid.

468 Ibid.

469 *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), at 710.

470 Ibid., at 724 (Melloy, J. dissenting).

471 For example, *Miller II*, 405 F.3d, at 714 ("[Plaintiff sex offenders] contend ... that the statute is irrational because there is no scientific study that supports the legislature's conclusion that excluding sex offenders from residing within 2,000 feet of a school or child care facility is likely to enhance the safety of children.").

472 Ibid., at 714 (describing target of statute as "an area where precise statistical data is unavailable and human behavior is necessarily unpredictable"); *Leroy*, 828 N.E.2d at 777 ("[T]he record is bare of any statistics or research correlating residency distance with sex offenses ...."); *Seering II*, 701 N.W.2d 655, 665 (Iowa 2005) ("[T]estimony revealed that the two- thousand-foot restriction was not necessarily a perfect protection against this threat ....").

473 For example, *Miller II*, 405 F.3d , pg. 715 ("The legislature is institutionally equipped to weigh the benefits and burdens of various distances, and to reconsider its initial decision in light of experience and data accumulated over time."); *Leroy*, 828 N.E.2d at 776-77 ("[T]he state has broad powers, subject to constitutional confines, to avert potentially dangerous

restrictions are an unreasonable means to achieve the state's legitimate purpose of protecting children.[474]

US Courts, Juveniles and Sex Offender Laws

Courts have not been notably more protective of the rights of juveniles subjected to registration and community notification laws than they have of adults. Some juvenile offenders have challenged registration and notification on the basis that those laws open their records to public view, whereas criminal law has generally permitted children to have their juvenile records kept confidential or expunged.

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Federal courts have recognized the validity of the argument that juveniles have a protected liberty interest in the confidentiality of their records, but have yet to overturn any laws because that interest has been violated. One court specified that the issue of confidentiality was immaterial in that particular jurisdiction, mainly because disclosure of juvenile information under its community notification law was limited to law enforcement,[475] implying that if notification went beyond law enforcement, it would violate juveniles' expectation of privacy. Another federal court held that juveniles have a particularized liberty interest in the established policy of "setting aside" their criminal records.[476] However, the court stopped short of finding community notification an impermissible violation of this particularized liberty interest for all juveniles.[477] Rather, it held that procedures to determine who would be subject to notification must consider juveniles' heightened liberty interests.[478]

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situations."); *Seering II*, 701 N.W.2d, 665 (noting that risk of recidivism posed by sex offenders is high and explaining that a perfect fit "is not necessary to meet the rational basis standard.").

474 See *Miller II*, 405 F.3d, 716 ("[W]e are not persuaded that the means selected to pursue the State's legitimate interest are without rational basis."); *Leroy*, 828 N.E.2d, 777 ("[W]e conclude that by prohibiting child sex offenders from living within 500 feet of a playground or [similar] facility … subsection (b-5) also bears a reasonable relationship to the goal of protecting children from known child sex offenders and sets forth a reasonable method of furthering that goal."); *Seering II*, 701 N.W.2d, 665 ("We believe there is 'a reasonable fit between the government interest' of preventing sex offenders from re-offending and the residency restriction statute, 'the means utilized to advance that interest.'") (quoting *State v. Hernandez-Lopez*, 639 N.W.2d 226, 238 (Iowa 2002)).

475 *In re Appeal* in Maricopa County Juvenile Action No. JV-132744, 933 P.2d 1248 (Ariz. Ct. App. 1996).

476 *Doe No. 1 v. Williams*, 167 F.Supp. 2d 45, 64 (D.D.C. 2001).

477 Ibid.

478 Ibid.

XI. Conclusion

> One of the things sex offenders know is what the world thinks of them. They know most people are driven by fear, and that fear is driven by ignorance. Convicted sex offenders released into the community are trying to work through it on their end, trying to be good citizens, but it's hard to get the community to live up to its end of the bargain.
> —Barbara Johnson, supervisor, Sex Offender Program for the County of Pima, Arizona[479]

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> We have sat and been quiet for so long, but it's time now to say, "It's time for there to be some changes. These kids have to be free." They made a huge mistake, but should they be punished for the rest of their lives?
> —Nancy D., mother of a registrant[480]

Human rights protections and guarantees create a duty to protect children—and everyone—from sexual abuse and to hold accountable those who commit acts of sexual violence. For Human Rights Watch, criticizing sex offender laws and demanding that public officials take more care in how they address the problem of sexual violence reflects our commitment to protecting all members of society from sex crimes. There is, however, no inherent contradiction between protecting the rights of children and protecting the rights of former offenders. Both are protected if registration is limited to former offenders who have been individually assessed as dangerous, and only for so long as they pose a high or medium risk of reoffending; if community notification is restricted on a need-to-know basis to those who genuinely can benefit from knowledge about dangerous former offenders in their midst; and if residency restrictions are imposed, if at all, only as part of individual supervision measures established on a case-by-case basis and periodically reviewed, and with child offenders exempted from sex offender laws unless a panel determines them to

479 Human Rights Watch telephone interview with Barbara Johnson, July 6, 2006.
480 Human Rights Watch telephone interview with Nancy D., December 11, 2006.

be of significant risk to the community. We urge legislators and the public to support reform to sex offender laws along these lines.

Human Rights Watch also urges legislators and the public to expand their efforts to prevent sexual violence beyond punitive monitoring and information dissemination measures targeting former offenders. Comprehensive approaches to the prevention of sex crimes against children would entail making sure parents have the tools they need to detect signs of adults with sex behavior problems, to help teach their children about warning signs, and to find the support they need for healthy parenting. Efforts to prevent child sexual abuse and to provide for early interventions with children and families at risk must be strategically examined and strengthened.

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Broad-based community notification and residency restriction laws are not the panacea to stopping sexual violence. Those who care about ending sex crimes must demand that policymakers reject one-size-fits-all laws to address sex abuse and begin to invest the political and financial resources in policies that actually work.

Appendix

Online Sex Offender Registry Warning Text by State

State	Warning Text
Alabama	THE INFORMATION PROVIDED ON THIS SITE IS INTENDED FOR COMMUNITY SAFETY PURPOSES ONLY AND SHOULD NOT BE USED TO THREATEN, INTIMIDATE, OR HARASS. MISUSE OF THIS INFORMATION MAY RESULT IN CRIMINAL PROSECUTION.
Alaska	Using information from this site to commit a crime may result in criminal prosecution.
Arizona	THE INFORMATION PROVIDED ON THIS SITE IS INTENDED FOR COMMUNITY SAFETY PURPOSES ONLY AND SHOULD NOT BE USED TO THREATEN, INTIMIDATE, OR HARASS. MISUSE OF THIS INFORMATION MAY RESULT IN CRIMINAL PROSECUTION.
Arkansas	This information is made available for the purpose of providing the public information concerning Level 3 and Level 4 Registered Sex Offenders who may reside in your area. Anyone who uses this information to commit a criminal act against another person is subject to criminal prosecution.
California	The information on this web site is made available solely to protect the public. Anyone who uses this information to commit a crime or to harass an offender or his or her family is subject to criminal prosecution and civil liability.
Colorado	Extreme care should be exercised when using any information obtained from this website.
Connecticut	ANY PERSON WHO USES INFORMATION IN THIS REGISTRY TO INJURE, HARASS OR COMMIT A CRIMINAL ACT AGAINST ANY PERSON INCLUDED IN THE REGISTRY OR ANY OTHER PERSON IS SUBJECT TO CRIMINAL PROSECUTION.
Delaware	None
DC	Unlawful use of this information to threaten, intimidate, harass, or injure a registered sex offender will not be tolerated and will be prosecuted to the full extent of the law.
Florida	It is illegal to misuse public records information regarding a sexual predator or a sexual offender as defined by Florida Statutes and to secure a payment from such a predator or offender; to knowingly distribute or publish false information relating to such a predator or offender and to misrepresent such information as being public records information; or to materially alter public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication. Section 775.21(10)(c), Florida Statutes.
Georgia	None
Hawaii	Any person who uses the information in this registry to injure, harass, or commit a criminal act against any person included in the registry may be subject to criminal prosecution, civil liability, or both.
Idaho	The information in the sex offender registries is provided only for the purpose of protecting the public. It is not to be used for the purpose of harassing or intimidating anyone. A person who uses registry information to commit a criminal

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	act against another person is subject to arrest and prosecution under section 18-8326 or 18-8413, Idaho Code.
Illinois	Anyone who uses this information to commit a criminal act against another person is subject to criminal prosecution.
Indiana	Information in this registry may not be used to harass or threaten sex offenders or their families. Harassment, stalking, or threats may violate Indiana law.
Iowa	Any actions taken by you against these subjects, including vandalism of property, verbal or written threats of harm or physical assault against these subjects, their families or employers can result in your arrest and prosecution.
Kansas	Any person who uses information obtained through this website to threaten, intimidate or harass another, or who otherwise misuses the information may be subject to criminal prosecution and/or civil liability.
Kentucky	UNDER KRS 525.070 AND 525.080, USE OF INFORMATION FROM THIS WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEB SITE.
Louisiana	Any person who uses information contained in or accessed through this Website to threaten, intimidate, or harass any individual, including registrants or family members, or who otherwise misuses this information, may be subject to criminal prosecution or civil liability.
Maine	Use of this information to threaten, intimidate, or harass any registrant or any other person may result in criminal prosecution.
Maryland	The information presented on this Web site should not be used in any manner to injure, harass, or commit a criminal act against any individual named in the registry, or residing or working at the reported address. Any such action could subject you to criminal prosecution.
Massachusetts	Information shall *not* be used to commit a crime or to engage in illegal discrimination or harassments of an offender. Any person who uses information disclosed pursuant to M.G.L. C. 6 §§ 178C - 178P for such purposes shall be punished by not more than two and one half (2 ½) years in a house of correction or by a fine of not more than one thousand dollars ($1000.00) or both (M.G.L. C.6, § 178N). In addition, any person who uses Registry information to threaten to commit a crime may be punished by a fine of not more than one hundred dollars ($100.00) or by imprisonment for not more than six (6) months (M.G.L. C. 275 § 4).
Michigan	Extreme care should be exercised in using any information obtained from this web site.
Minnesota	None
Mississippi	It is not the intent of the Legislature that this information be used to injure, harass, or commit a criminal act against persons named in the registry, their families, or employers. Anyone who takes any criminal action against these registrants, including vandalism of property, verbal or written threats of harm or physical assault against these registrants, their families or employers is subject to criminal prosecution.
Missouri	None
Montana	Anyone who uses this information to injure, harass or commit a criminal act against any person may be subject to criminal prosecution.
Nebraska	Sex offender registry information shall not be used to retaliate against the

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	registrants, their families, or their employers in any way. Vandalism, verbal or written threats of harm are illegal and will result in arrest and prosecution.
Nevada	Under the provisions of state law and as further defined by the State Attorney General, this information is provided for general public safety. A person is authorized to use this information only to protect him/herself or a child who may be at risk. The release of this information to the public is meant to assure public protection, not to punish the offender. It is illegal to use information obtained through this web site to commit a crime against a registered sex offender or to engage in discrimination or harassment against a registered sex offender. Anyone who uses this information to commit a criminal act against another person is subject to criminal prosecution and/or civil action.
New Hampshire	None
New Jersey	Public access to registry information is intended solely for the protection of the public, and should never be used to threaten, intimidate or harass another. (See "Prohibitions on Misuse of Registry Information" below.)
New Mexico	The information provided is intended for community safety purposes only and should not be used to threaten, intimidate, or harass. Without a fingerprint comparison, there is no guarantee an individual identified in the response is in fact the individual in question.
New York	Anyone who uses this information to injure, harass, or commit a criminal act against any person may be subject to criminal prosecution.
North Carolina	This information is made available for purposes of protecting the public, for keeping them informed and for allowing them to take proactive measures to ensure safety in their communities. Use and/or misuse of this information by individuals, groups or entities to commit criminal acts (to include, but not limited to, threats, intimidation, stalking, harassment) against other persons is subject to criminal prosecution.
North Dakota	Any actions taken by persons against these subjects, including vandalism of property, intimidation, harassment or verbal or written threats of harm against these subjects or their families, landlords, or employers, are not acceptable, and will likely result in arrest and prosecution of those persons.
Ohio	None
Oklahoma	None
Oregon	Under the provisions of state law this information is provided for general public safety. A person is authorized to use this information only to protect him/herself or a child who may be at risk. The release of this information to the public is meant to assure public protection, not to punish the offender. It is illegal to use information obtained through this web site to commit a crime against a registered sex offender or to engage in discrimination or harassment against a registered sex offender. Anyone who uses this information to commit a criminal act against another person is subject to criminal prosecution and/or civil action.
Pennsylvania	ANY PERSON WHO USES THE INFORMATION CONTAINED HEREIN TO THREATEN, INTIMIDATE, OR HARASS THE REGISTRANT OR THEIR FAMILY, OR WHO OTHERWISE MISUSES THIS INFORMATION, MAY BE SUBJECT TO CRIMINAL PROSECUTION OR CIVIL LIABILITY.
Rhode Island	Information contained on this Web site should not be used to threaten or harass any identified individual as such conduct may be prohibited under the general laws of Rhode Island.

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South Carolina	None
South Dakota	ANY PERSON WHO USES INFORMATION CONTAINED IN OR ACCESSED THROUGH THIS WEBSITE TO THREATEN, INTIMIDATE, OR HARASS ANY INDIVIDUAL, INCLUDING REGISTRANTS OR FAMILY MEMBERS, OR WHO OTHERWISE MISUSES THIS INFORMATION, MAY BE SUBJECT TO CRIMINAL PROSECUTION. A violation is a Class 6 felony and the violator could be sentenced to the South Dakota State Penitentiary for up to two years and could be fined up to $4,000.
Tennessee	The Tennessee Bureau of Investigation cannot guarantee the accuracy of this information. It should be noted that offenders may have moved without notification. Therefore, this information should not be used in any manner to injure, harass, or commit a criminal act against any person named in the registry. Any such action could subject you to criminal prosecution.
Texas	None
Utah	Pursuant to Utah Code Ann. Section 77-27-21.5(22)(b) and (c), members of the public are not allowed to publicize the information or use it to harass or threaten sex offenders or members of their families; and harassment, stalking, or threats against sex offenders or their families are prohibited and doing so may violate Utah criminal laws.
Vermont	Any person who uses information in this registry to injure, harass, or commit a criminal offense against any person included in the registry or any other person is subject to criminal prosecution.
Virginia	None
Washington	THE INFORMATION PROVIDED ON THIS SITE IS INTENDED FOR COMMUNITY SAFETY PURPOSES ONLY AND SHOULD NOT BE USED TO THREATEN, INTIMIDATE, OR HARASS. MISUSE OF THIS INFORMATION MAY RESULT IN CRIMINAL PROSECUTION.
West Virginia	This information is provided in the interest of public safety and should be used only in order to take appropriate precautions. The information accessed through the use of this website may not be used to threaten, intimidate or harass registered sex offenders and violations of law will be investigated by the West Virginia State Police.
Wisconsin	It is not the intent of the Legislature that this information be used to injure, harass, or commit a criminal act against persons named in the registry, their families, or employers. Anyone who takes any criminal action against these registrants, including vandalism of property, verbal or written threats of harm or physical assault against these registrants, their families or employers is subject to criminal prosecution.
Wyoming	ANY PERSON WHO USES INFORMATION CONTAINED IN OR ACCESSED THROUGH THE WYSORS WEBSITE TO THREATEN, INTIMIDATE, OR HARASS ANY INDIVIDUAL, INCLUDING REGISTRANTS OR THEIR FAMILY MEMBERS, OR WHO OTHERWISE MISUSES THIS INFORMATION, MAY BE SUBJECT TO CRIMINAL PROSECUTION, OR CIVIL LIABILITY UNDER FEDERAL AND/OR STATE LAW.

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List of Sex Offender Registries by State

State	Website
Alabama	http://community.dps.alabama.gov/Pages/wfWelcome.aspx
Alaska	http://www.dps.state.ak.us/sorweb/Sorweb.aspx
Arizona	https://az.gov/webapp/offender/main.do
Arkansas	http://www.acic.org/Registration/index.htm
California	http://meganslaw.ca.gov/
Colorado	http://sor.state.co.us/
Connecticut	http://www.ct.gov/dps/cwp/view.asp?a=2157&Q=294474&dpsNav=
Delaware	http://sexoffender.dsp.delaware.gov/
DC	http://mpdc.dc.gov/mpdc/cwp/view,a,1241,Q,540704,mpdcNav_GID,1523,mpdcNav,|.asp
Florida	http://offender.fdle.state.fl.us/offender/Search.jsp
Georgia	http://services.georgia.gov/gbi/gbisor/disclaim.html
Hawaii	http://sexoffenders.ehawaii.gov/sexoff/
Idaho	http://isp.state.id.us/identification/sex_offender/
Illinois	http://www.isp.state.il.us/sor/
Indiana	http://www.insor.org/insasoweb/
Iowa	http://www.iowasexoffender.com/
Kansas	http://www.kansas.gov/kbi/ro.shtml
Kentucky	http://www.kentuckystatepolice.ky.gov/sor.htm
Louisiana	http://lasocpr1.lsp.org/
Maine	http://sor.informe.org/sor/
Maryland	http://www.dpscs.state.md.us/onlineservs/sor/
Massachusetts	http://sorb.chs.state.ma.us/
Michigan	http://www.mipsor.state.mi.us/
Minnesota	http://www.doc.state.mn.us/level3/search.asp
Mississippi	https://por.state.mn.us/
Missouri	http://www.mshp.dps.mo.gov/MSHPWeb/PatrolDivisions/CRID/SOR/SORPage.html
Montana	http://www.doj.mt.gov/svor/
Nebraska	http://www.nsp.state.ne.us/sor/find.cfm
Nevada	http://www.nvsexoffenders.gov/
New Hampshire	http://www.egov.nh.gov/nsor/
New Jersey	http://www.state.nj.us/njsp/info/reg_sexoffend.html
New Mexico	http://www.nmsexoffender.dps.state.nm.us/
New York	http://www.criminaljustice.state.ny.us/nsor/
North Carolina	http://ncfindoffender.com/
North Dakota	http://www.sexoffender.nd.gov/
Ohio	http://www.esorn.ag.state.oh.us/Secured/p1.aspx
Oklahoma	http://www.sde.state.ok.us/sexregistry.htm
Oregon	http://sexoffenders.oregon.gov/
Pennsylvania	http://www.pameganslaw.state.pa.us/

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Rhode Island	http://www.paroleboard.ri.gov/sexoffender/agree.php
South Carolina	http://services.sled.sc.gov/sor/
South Dakota	http://sor.sd.gov/disclaimer.asp?page=search&nav=2
Tennessee	http://www.ticic.state.tn.us/SEX_ofndr/search_short.asp
Texas	https://records.txdps.state.tx.us/DPS_WEB/Sor/index.aspx
Utah	http://www.cr.ex.state.ut.us/community/sexoffenders/
Vermont	http://www.dps.state.vt.us/cjs/s_registry.htm
Virginia	http://sex-offender.vsp.virginia.gov/sor/
Washington	http://ml.waspc.org/
West Virginia	http://www.wvstatepolice.com/sexoff/websearchform.cfm
Wisconsin	http://offender.doc.state.wi.us/public/
Wyoming	http://attorneygeneral.state.wy.us/dci/so/so_registration.html

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Criteria for Presence on an Online Sex Offender Registry by State

State	Criteria for Online Registry	
	Includes Everyone Convicted As an Adult	Excludes Low and/or Medium Risk Offenders
Alabama	X	
Alaska	X	
Arizona		X
Arkansas		X
California		X
Colorado		X
Connecticut	X	
Delaware	X	
DC		X
Florida	X	
Georgia	X	
Hawaii		X
Idaho	X	
Illinois	X	
Indiana	X	
Iowa	X	
Kansas	X	
Kentucky	X	
Louisiana	X	
Maine	X	

Maryland	X	
Massachusetts		X
Michigan	X	
Minnesota		X
Mississippi	X	
Missouri	X	
Montana	X	
Nebraska		X
Nevada		X
New Hampshire	X	
New Jersey		X
New Mexico		X
New York		X
North Carolina	X	
North Dakota		X
Ohio	X	
Oklahoma	X	
Oregon		X
Pennsylvania	X	
Rhode Island		X
South Carolina	X	
South Dakota	X	
Tennessee	X	
Texas	X	
Utah	X	
Vermont		X
Virginia	X	
Washington		X
West Virginia	X	
Wisconsin	X	
Wyoming		X

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Sex Offender Residency Restriction Statutes by State

State	Residency Restrictions	Code/Statute
Alabama	May not reside or work within 2,000 feet of school or childcare facilities.	Code of Ala. §15-20-26(a)
Arkansas	A level 3 or 4 (most serious) sex offender cannot live within 2,000 feet of schools or daycare facilities.	A.C.A. §5-14-128(a)
California	A sexually violent predator and serious paroled sex offender cannot live within one-fourth of a mile of a school.	California Wel & I nst Code §6608.5(f); Cal Pen Code §3003
Florida	A sex offender whose victim is under 18 years old cannot live within 1,000 feet of schools, parks, playgrounds, and public school bus stops, or where children congregate.	Fla. Stat. §947,1405(7)(a)(2)
Georgia	No sex offender may reside, work, or loiter within 1,000 feet of any school, childcare facility, church, school bus stop, or where minors congregate.	O.C.G.A. §42-1-15
	Mandates that no registered sexual offender will be allowed to reside, loiter or work within 1000 feet of an area where minors congregate. Defines "where minors congregate" as schools, churches, day care centers, public swimming pools, neighborhood centers, gymnasiums, and school bus stops, skating rinks, recreation facilities, public and private parks, and playgrounds.	Georgia H 1059, Signed by governor on April 30, 2006
Idaho	Prohibits registered sex offenders from loitering or residing within 500 feet of a school with children under eighteen. Provides exceptions for parents dropping transporting their children, students meeting the definition of sex offender enrolled in school, parents attending parent teacher conferences, and for dropping off food, mail, or other delivery.	Idaho Code §18-8329
Illinois	A child sex offender may not reside or loiter within 500 feet of a school.	720 ILCS 5/11-9.3(b), (b-5)
Indiana	Prohibits sex offenders from residing within 1,000 feet of a school, public park, or youth program shelter. Also prohibits residence within one mile of the victim's residence.	Burns Ind. Code Ann. §11-13-3-4(g)(2)

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Iowa	A sex offender whose victim was a minor may not reside within 2,000 feet of a school or childcare facility.	Iowa Code §692A.2A
Kentucky	A sex offender may not reside within 1,000 feet of a school, childcare facility, and public playgrounds.	KRS §17.545
Louisiana	A sexually violent predator and sex offenders whose offense involved a minor may not reside within 1,000 feet of a school, daycare facility, playground, public or private youth center, public swimming pool, or free standing video arcade facility; in addition, sex offenders whose offense involved a minor may not step foot within 1,000 feet of any of the above mentioned facilities.	La. R.S. 14:911, 15:538
Michigan	A sex offender cannot reside within 1,000 feet of any school safety zone; applies a penalty to persons working, loitering, or residing within a student safety zone.	MCLS §28.733, 28.734, 28.735
Mississippi	Prohibits registered sex offender from residing within 1,500 feet of school or child care facility. Exempts those with such residence before July 1, 2006 and persons who or a minor or ward under a guardianship.	Miss. Code Ann. §45-33-25(4)
Ohio	A sex offender cannot reside within 1,000 feet of any school or child-care facility.	ORC Ann. 2950.034
Oklahoma	It is unlawful for a registered sex offender to reside within a 2,000 feet radius of a school, playground, park, or childcare facility.	57 Okl. St. §590
South Dakota	A sex offender cannot reside or loiter within feet 500 feet of schools, public parks, playgrounds, or public pools.	S.D. Codified Laws §22-24B-22, 22-24B-24, 22-24B-27, 22-24B-28
Tennessee	No violent sex offender or sex offender who se victim was a minor can reside within 1,000 feet of schools, childcare facilities, public park, playground, recreation center, or public athletic field.	Tenn. Code Ann. §40-39-211
Virginia	Prohibits certain sex offenders from residing within 500 feet of a school or child daycare center.	Va. Code Ann. §18.2-370.1-3
Washington	A sex offender convicted of a serious offense with a high risk assessment	Rev. Code Wash. §9.94A.030

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	(Levels II and III) cannot reside within 880 feet of any school.	
West Virginia	A paroled sex offender cannot reside within 1,000 feet of a school or childcare facility.	W.Va. Code §62-12-26(b)

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No Easy Answers

Sex Offender Laws in the US

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No Easy Answers is the first comprehensive study of US sex offender registration, community notification and residency restriction laws, their public safety impact, and the effect they have on former offenders and their families. It concludes the laws are poorly crafted and misguided, failing to protect children from sex crimes but making it nearly impossible for former offenders to rebuild their lives.

In many states, everyone convicted of a sex crime must register and the requirement can last for life. The requirements are overbroad in scope and overlong in duration. As a result, there are more than 600,000 registered sex offenders, including individuals convicted of consensual sex between teenagers, prostitution, and public urination, as well as those who committed their only offenses decades ago.

Unfettered public access to online sex offender registries exposes registrants to harassment, ostracism, and even violence, with little evidence that this form of community notification protects anyone from sexual violence.

Residency restrictions prohibit former offenders from living within a designated distance (anywhere from 500 to 2,500 feet) from places where children gather. The restrictions have the effect of banishing former offenders from entire towns, forcing them to live far from homes, families, jobs, and treatment, and hindering law-enforcement supervision. The restrictions may have no impact on the likelihood of recidivism.

Sex offender laws reflect public concern that children are at grave risk of sexual abuse by strangers who are repeat offenders. The real risks children face are quite different: statistics demonstrate that most sexual abuse of children is committed by family members or persons known and often trusted by the victim, and by someone who has not previously been convicted of a sex offense.

The laws also reflect the widely shared but erroneous belief that sex offenders continually repeat their offenses. Authoritative studies, however, indicate that three out of four adult offenders do not reoffend.

Patty Wetterling holds a picture of her son, Jacob Wetterling. Jacob was abducted by a stranger near his home in St. Joseph, Minnesota, when he was 11 years old, and is still missing. This photo was taken to mark the one-year anniversary of Jacob's abduction. Ms. Wetterling is currently a child safety advocate who works to prevent sexual violence against children.

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