

## Commentary

# Residency Restrictions for Sex Offenders: A Failure of Public Policy

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### INTRODUCTION

The subject of local residency restrictions for sex offenders is not widely discussed among planners and others because sex offenses are abhorrent and the fear of ex-offenders is widespread. The number of sex offenders is large—by one report there are some 550,000 registered sex offenders nationally.<sup>1</sup> But as more local and state governments adopt residency restrictions, planners and their lawyers may find themselves at the center of the debate. What are the issues, what do we know, what has been the experience elsewhere, and how can we handle this seemingly intractable issue when it ultimately comes before us?

A few months ago I wrote a first version of this article for the newsletter of the Connecticut Chapter of the American Planning Association because I came to believe that we must understand the issues and develop policies to reduce recidivism and prevent further victimization. It is uncomfortable for me to write on this issue, but a recent Georgia Supreme Court decision and an appellate decision in New Jersey prompt me to address the issues for my fellow local government lawyers and planners.

Now that I have read as much of the literature as I could find and the

case law, I am convinced that residency restrictions do not reduce recidivism, do not offer any real protection for potential victims, are generally not legally defensible, and thwart efforts to reform offenders and return them to society. Indeed, residency restrictions likely increase the potential for reoffending. We must re-focus strategies to identify those most likely to reoffend and work aggressively on a targeted basis to restrict the movements of some of them, monitor them more closely, and treat all more effectively. We must be disciplined as planners and government lawyers to respond to sex offenses rationally, not emotionally.

### THE HORRORS OF THE MOST DESPICABLE CRIMES

All of us are shocked, sickened, and saddened when some deranged man kidnaps, sexually assaults, and murders a young child. My wife took our two preteen children for photographing and fingerprinting, and had DNA samples taken for identification and inclusion in a national registry because of our own concerns.

Jimmy Ryce, nine years old, was taking the bus home from school on September 11, 1995, when he got off

the bus along with 10 of his friends and began the one-block walk to his home. Juan Carlos Chavez blocked his way and forced him at gunpoint into his truck. Chavez took him to his mobile home where he raped Jimmy. When Chavez heard helicopters overhead, and Jimmy ran for the door, Chavez shot Jimmy in the back and killed him.<sup>2</sup>

Jetseta Gage was just 10 years old when she was kidnapped from her home in Cedar Rapids, Iowa, by a registered sex offender, and murdered. Her mother did not have a computer and had no access to the registry. The murderer, Roger Bentley, was known to the family and had been at the house recently to change the transmission in the family's minivan. Jetseta's mother had dated Roger Bentley's younger brother.<sup>3</sup> And Sarah Lunde, 13 years old, was abducted, raped, and murdered by a convicted sex offender.<sup>4</sup>

### MISPERCEPTIONS ABOUT SEX OFFENDERS

Part of the difficulty in developing an effective public policy for dealing with convicted sex offenders is getting past incorrect information and wrong assumptions about sex offenses and the potential for sex offenders reoffending

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1. National Center for Missing and Exploited Children, "Sex Offender Laws," 2006 (available at [www.missingkids.com](http://www.missingkids.com)).

2. Presley, Mari M. "Miki," *Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act: Replacing Criminal Justice with Civil Commitment*, FLORIDA STATE UNIVERSITY LAW REVIEW, 1999, Vol. 26:487, 487-516 (available at

<http://www.law.fsu.edu/journals/lawreview/frames/262/presfram.html>).

3. See [http://www.amw.com/missing\\_children/brief.cfm?id=3103](http://www.amw.com/missing_children/brief.cfm?id=3103).

4. *Sex Offender Admits Killing Girl, Police Say*, THE NEW YORK TIMES, April 18, 2005; (available at <http://www.nytimes.com/2005/04/18/national/18girl.html?fta=y>); See also [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6D5PLD/\\$file/SexOffendersTestimony.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6D5PLD/$file/SexOffendersTestimony.pdf).

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after conviction and release. From a review of the literature, I have identified four significant misperceptions:

**Misperception No. 1: The victim is usually a stranger.** The reality is that most victims are family, friends, or acquaintances of the sex offender. While there are a variety of statistics in the literature, the general consensus is that about 75 percent of the victims are known to the sex offender. Most victims are not strangers sought out at nearby schoolyards, playgrounds, and bus stops. While the most shocking of sex crimes involve the abduction of a young child—a complete stranger to the sex offender—who is then sexually abused and murdered, statistically this is an outlier. About 93 percent of victims of sex offenders know the perpetrator. About 34 percent are members of the family and another 59 percent are acquaintances, according to the Bureau of Justice Statistics.<sup>5</sup>

Similar statistics are reported by the offenders themselves. In one study perpetrators said that their victims were strangers in less than 30 percent of rape cases and in only 15 percent for other sexual assaults.<sup>6</sup>

This most common misperception, which many commentators refer to as “stranger danger,” can create the counterintuitive effect of having parents focus more on protecting their children from strangers, rather than protecting them from family and friends.

How common is this offense pattern of the abduction of a child, rape, and murder? The National Center for Missing and Exploited children in 2005 said that such cases are extremely rare—in all about 100 per year.<sup>7</sup> By way of comparison, according to a 2004 National Highway Traffic Safety Administration, drunk drivers killed more than 500 children under the age of 15 in the year 2003. Parents or care-

givers who physically abused or neglected their children caused 1,121 deaths in 2002, according to the Child Welfare League of America in 2003 report.<sup>8</sup> Some 1,800 children age 14 and under are killed in auto accidents each year.<sup>9</sup>

Misperceptions can be found on other fronts. How safe do you think school buses are without seat belts? We note that 23.5 million school children are transported by school bus every day, and last year there were only seven children killed in bus accidents.<sup>10</sup> No one seems to know, however, just how much unreported sexual abuse of children occurs. When abuse goes unreported, state and local governments are obviously not able to implement remedial actions.

**Misperception No. 2: Recidivism is high among sex offenders.** Sex offender legislation is driven by the public perception that high recidivism rates require the isolation of sex offenders. Actually, major studies by the federal governments in the United States and Canada found that sex offense recidivism rates are substantially lower than what most people believe. The U.S. Department of Justice reviewed recidivism rates among 9,000 offenders three years following their release from prison and found that 5.3 percent reoffend. The Canadian government found a 14 percent average rate of recidivism among sex offenders from a sample of 30,000 followed over a four- to six-year period after their release.<sup>11</sup>

Even studies for periods as long as 15 years after release show the rate of recidivism to be remarkably low—76 percent were not rearrested for sex crimes. According to the Bureau of Justice Statistics, sex offenders have rates of recidivism among the lowest of all criminals.<sup>12</sup>

To give you some idea of how far off the mark people can be in their perceptions, here is just one statistic from a definitive study reported last year: When asked what percent of sex offenders commit another sex offense, the public offered a mean percentage of 74 percent and the median of 80 percent, virtually the inverse of the reality.<sup>13</sup>

The Ohio Department of Rehabilitation and Correction undertook a comprehensive study of recidivism over a 10-year period for sex offenders released in 1989.<sup>14</sup> That report found that most victims were young, with almost half of them under the age of 13. Only 17 percent of the victims were total strangers. Those most likely to reoffend were rapists, at 56.6 percent. Also likely to reoffend are pedophiles who molest boys.<sup>15</sup> Extrafamilial child molesters returned at the rate of 29.2 percent. The least likely to reoffend were incest child molesters at 13.2 percent over the 10-year period. Overall, the sexual recidivism rate for the group over 10 years was 11 percent. Treatment programs for paroled sex offenders worked best in reducing sex offense recidivism, cutting the rate of recidivism in half. The report concluded that more work needs to be done on risk assessment and the efficacy of treatment programs.

**Misperception No. 3: A sex offender is a sex offender.** Gertrude Stein’s “A rose is a rose is a rose is a rose”<sup>16</sup> does not apply to sex offenders. Instead, the offenders range from horrible, violent, and despicable pedophiles, such as John Couey, who murdered nine-year-old Jessica Lunsford, to teenagers experimenting with sex, such as Wendy Whitaker.<sup>17</sup>

Wendy Whitaker was a 17-year-old high school sophomore who had oral

5. Levenson, Jill S., Yolanda M. Brannon, Timothy Fortney, and Juanita Baker, *Public Perceptions about Sex Offenders and Community Protection Policies*, ANALYSES OF SOCIAL ISSUES AND PUBLIC POLICY, Volume 7, Number 1, 2007 at 7.

6. *Id.*

7. Levenson, Jill S., and David A. D'Amora, *Social Policies*

*Designed to Prevent Sexual Violence: The Emperor's New Clothes?* CRIMINAL JUSTICE REVIEW, 2007, 168–199, at 179.

8. *Id.*

9. See <http://www.nts.gov/Surface/highway/childseat.htm>.

10. *Id.*

11. Levenson, Brannon, Fortney, and Baker, *supra* note 5 at 6.

12. *Id.*

13. *Id.* at 13.

14. State of Ohio, Department of Rehabilitation and Correction, *Ten-Year Recidivism Follow-up of 1989 Sex Offender Releases*, April 2001 (available at [http://www.drc.oh.state.us/web/Reports/Ten\\_Year\\_Recidivism.pdf](http://www.drc.oh.state.us/web/Reports/Ten_Year_Recidivism.pdf)).

15. Levenson and D'Amora, *supra* note 7.

16. *Sacred Emily* (1913) in *GEOGRAPHY AND PLAYS* (1922).

17. *Woman sues over ongoing sanctions for sex as a teen*, THE ATLANTA JOURNAL-CONSTITUTION, July 14, 2008, (available at <http://www.ajc.com/metro/content/printedition/2008/07/14/sexoffender.html>).

Of concern is the potential that the collateral consequences of community notification may contribute to increased recidivism by increasing instability.

sex with a 15-year-old male classmate. In 1997, she pleaded guilty, received five years probation, and ended up on Georgia's sex offender registry. Now, because of the state's residency restrictions, at age 28 she can not live in many places. She has already had to move twice and has just been told by the local sheriff that she has to move a third time because the house she owns with her husband is within one of the restricted areas. As she says: "It's a recurrent nightmare. It's like a roller coaster. One minute, I'm okay, and then, I'm not. This time, I really thought everything was going to be all right."<sup>18</sup>

**Misperception No. 4: Community notification is highly effective in reducing recidivism.** In one study of the public's perceptions of nine strategies for reducing sexual offenses, community notification scored the highest with 83 percent of those questioned saying they believed it would be effective.<sup>19</sup> Unfortunately, there have been very few studies about the effectiveness of registration; but of the studies published, most could not identify any significant reduction in the rate of reoffending as a consequence of community notification.<sup>20</sup>

## RESPONSES TO CONCERNS ABOUT CONVICTED SEX OFFENDERS

### Registration

The best-known of the registration laws—"Megan's Law"—was in response to the 1996 abduction, rape, and murder of seven-year-old Megan Kanka by a known sex offender in New Jersey.

Two years before, the U.S. Congress had enacted legislation mandating that states create sex offender registries. That law (Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Act of 1994) was prompted by the 1989 kidnapping in Minnesota

of Jacob Wetterling and the assumption that the crime—never solved—was committed by a sex offender. The Wetterling Act was amended after Megan Kanka's death to permit public disclosure of registry information. That community notification amendment is Megan's Law.<sup>21</sup>

There are 4,697 sex offenders listed in the state registry in Connecticut, where I live.<sup>22</sup> This list contains only offenders who have been convicted or found not guilty of certain offenses by reason of mental disease or defect.<sup>23</sup> The offenses include a wide range of crimes, from the most violent, such as rape, to second-degree sexual assault, which includes a high school senior at age 18 having sexual intercourse with his 15-year-old sophomore girlfriend—which by the way has a mandatory nine-month sentence.<sup>24</sup> This latter offense requires a 10-year registration.

Does registration and disclosure reduce recidivism and protect children from victimization? While only a few studies have been completed, none have shown significant, positive effects. The authors of the most recent analysis of the literature conclude: "In sum, thus far there is little empirical evidence that notifying communities about the presence of sex offenders results in enhanced community safety or that it aids in the prevention of child sexual abuse. An additional concern is the ability of state registries to maintain up to date records that can be helpful in prevention efforts."<sup>25</sup>

While registration may not be effective in reducing recidivism or in preventing child sexual abuse, the public's perception is that most sex offenders will reoffend and that Megan's Law will protect the public by providing the community with no-

tice of the presence of convicted sex offenders. Some studies suggest that citizens do feel safer with such notification, but others report greater anxiety in having the information.<sup>26</sup>

Various legal challenges have been raised concerning the constitutionality of public notification from registry systems, including claims based on privacy rights, ex post facto punishment, and due process. The due process issue—does the offender have the right to procedural due process before information is disseminated to the public?—was litigated to the U.S. Supreme Court in *Connecticut Department of Public Safety v. Doe* (2003).<sup>27</sup> The decision that the Constitution does not require a hearing prior to the disclosure of the information has led many other states to open up their registries to the public. Alaska's registration and notification law as applied to sex offenders who were sentenced before the enactment of the law was challenged as ex post facto punishment.<sup>28</sup> In that case the U.S. Supreme Court also upheld the government.

Registration and notification have adverse consequences for sex offenders. Studies show that between one third and one half of sex offenders in Florida and Kentucky were threatened, harassed, and lost a job or home or suffered property damage as a consequence of the disclosure of their past offense.<sup>29</sup> Families suffered as well, with 19 percent of sex offenders reporting that disclosure of their offenses had negative effects on their family. A troubling five to 16 percent of the offenders said that they had been physically assaulted following public notification.<sup>30</sup> Of concern is the potential that the collateral consequences of community notification may contribute to increased recidivism by increasing instability, while decreasing the chances of

18. *Id.*

19. Levenson, Brannon, Fortney, and Baker, *supra* note 5 at 14.

20. Levenson, Jill, David D'Amora, and Andrea Hern, *Megan's Law and Its Impact on Community Re-Entry for Sex Offenders*, BEHAVIORAL SCIENCES AND THE LAW, July 2007, at 588.

21. See generally Levenson, D'Amora, and Andrea Hern, *supra* note 20.

22. As of January 17, 2008. When I looked at the list first in late December, it was 4,650, so it is up by 47 in just a month (available at <http://www.ct.gov/dps/cwp/view.asp?a=2157&q=294474>).

23. Conn. Gen. Stat. 54-250 through 54-261.

24. Conn. Gen. Stat. 53a-71; see also <http://www.cga.ct.gov/2007/rpt/2007-R-0322.htm>.

25. Levenson, D'Amora, and Hern, *supra* note 20 at 589.

26. Levenson, D'Amora, and Hern, *supra* note 20 at 590.

27. Conn. Dep't of Public Safety v. Doe, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003).

28. Smith v. Doe, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003).

29. Levenson, D'Amora, and Hern, *supra* note 20 at 590.

30. *Id.*

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successful employment and generally disabling sex offenders from effectively reentering the community as mainstream members.

Some of the numbers reported are troubling. Twenty-one percent said they lost their job because of notification and the same percentage reported being threatened or harassed by neighbors. Next in impact, 18 percent had their property damaged. Of the sex offenders who said their identity was revealed through community notification, 16 percent told researchers a person who lived with them had been threatened, harassed, assaulted, injured, or suffered property damage.

It is not all bad, however. Megan's Law caused 74 percent of these offenders to say that they were more motivated to not reoffend to prove to others that they were not a bad person. Some of them even found some understanding or empathy from others, with 58 percent saying that most people who knew that they were a convicted sex offender were supportive of their recovery efforts.

On the other side of the ledger, however, 62 percent said that Megan's Law actually hurt their recovery by causing stress in their lives. Shame and embarrassment because of Megan's Law led 58 percent of them to report that they stayed away from some activities. This exclusion from reentry into society was experienced by 54 percent of offenders who felt alone and isolated because of Megan's Law. Friends and close relationships were lost because of the notification, according to 50 percent of the offenders. The sense of hopelessness was suffered by 55 percent of the offenders.<sup>31</sup>

The National Association of Criminal Defense Lawyers (NACDL) opposes sex offender registration and

public notification laws, but might begrudgingly accept them if sex offenders were classified on the basis of risk and proper due process was provided, with public or community notification available only for high-risk sex offenders.<sup>32</sup>

Registries cannot work if they are not accurate. One study in Florida suggests that more than half of the information on the Internet Registry is incorrect.<sup>33</sup> A 2003 report by the *Boston Herald* claimed that 49 percent of registered sex offenders could not be located in Massachusetts.<sup>34</sup>

#### Civil Commitment

The NACDL opposes civil commitment for sex offenders following the completion of their sentences of incarceration because, the association says, civil commitment punishes offenders who have already paid their debt to society. If civil commitment is used at all, says the NACDL, full due process rights should be provided including the right to jury trial, the right to confront adverse witnesses, the right to present evidence, rules of evidence, a high burden of proof on the government, and a process for review and discharge with the burden of proof largely on the government.<sup>35</sup>

At least 16 states (Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, North Dakota, South Carolina, Texas, Virginia, Washington, and Wisconsin) have enacted civil commitment laws since 1990 that enable confinement and treatment of sex offenders following their incarceration.<sup>36</sup> Assuming that there is a proper categorization of sex offenders to identify the most violent and dangerous of those most likely to reoffend, and therefore requiring the

closest supervision, there is an important role to be played by postconviction civil commitment. As Professor Jill Levenson says: "effective implementation of sex offender commitment statutes is necessary to enhance public safety while protecting offenders' rights to liberty and to limit the use of scarce resources to those cases in which the most restrictive and intensive interventions are required."<sup>37</sup>

#### Electronic Tracking

Several states have tracking requirements for convicted sex offenders.<sup>38</sup> The research results are largely inconclusive.

#### Mandatory Therapy and Monitoring

David Finkelhor of the Crimes against Children Research Center at the University of New Hampshire encourages more frequent meetings with skilled probation officers as a way to monitor sex offenders.<sup>39</sup> Kim English of the Colorado Division of Criminal Justice advocates mandatory therapy in group residential settings.<sup>40</sup> Polygraph testing, along with electronic monitoring and maintenance of driving logs in some cases, are suggested by Professor Levenson as ways to monitor sex offenders.<sup>41</sup>

#### Residency Restrictions

At least 21 states and more than 400 local governments have adopted residency restrictions.<sup>42</sup> Most of them prohibit a sex offender from living within some distance, often 1,000 to 2,500 feet, from certain uses, particularly those where children congregate. The state residency restrictions are sometimes called "Jessica's Laws" because they were enacted or made stricter after convicted sex offender John Couey kidnapped, raped, and mur-

31. Levenson, D'Amora, and Hern, *supra* note 20 at 594-95.

32. National Association of Criminal Defense Lawyers, *Report of the Sex Offender Policy Task Force*, February 24, 2007.

33. Presentation by Levenson, Jill S., *Sexual Offenders: Risk, Recidivism and Social Policies*, National Association of Criminal Defense Lawyers, July 2006.

34. *Id.*, PowerPoint presentation citing Wisniewski, Meyers, & Wells, 2003.

35. National Association of Criminal Defense Lawyers, *Report of the Sex Offender Policy Task Force*, February 24, 2007.

36. Levenson, Jill S., *Sexual Predator Civil Commitment: a Comparison of Selected and Released Offenders*, INTERNATIONAL JOURNAL OF OFFENDER THERAPY AND

COMPARATIVE CRIMINOLOGY, 48 (6), 2004 638-48.

37. *Id.* at 646.

38. See <http://www.npr.org/programs/morning/features/2006/oct/prop83/nclsgps.pdf>.

39. *Sex-offender residency laws get second look*, USA TODAY, February 26, 2007.

40. *Id.*

41. *Id.*

42. *Sex Offenders' Residency Restrictions*, OLR Research Report 2007-R-0380, May 23, 2007. Available at <http://www.cga.ct.gov/2007/rpt/2007-R-0380.htm>.

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dered nine-year-old Jessica Lunsford in Florida in 2005.<sup>43</sup> Florida's law, for example, provides for a minimum 25-year sentence for any offender preying on a child 12 years and younger and lifetime electronic tracking.<sup>44</sup> An extreme example of residency restrictions is found in Dyersville, Iowa, which prohibits any sex offender from living anywhere in the city. Mayor Jim Heavens defends the law as necessary to protect public safety and property values: "We consider this a crude tool, but at least we can do something. We're not trying to banish people."<sup>45</sup> The law is codified in chapter 49 of the city's ordinances and is available on the web.<sup>46</sup>

**Legal challenges to residency restrictions.** There are only a few cases dealing with residency restrictions. The constitutionality of sex offender residency restrictions was addressed by the Eighth Circuit in *Doe v. Miller*.<sup>47</sup> That appellate court reversed the trial court's judgment invalidating registry requirements for Iowa's sex offenders. The court in reversing the decision acknowledged that the residency restrictions prevented sex offenders from living anywhere in some Iowa towns, with 77 percent of the residential units in the state rendered unavailable for sex offenders by action of the state law. The remaining residential units were largely on farms in rural areas.<sup>48</sup> The court rejected several legal theories attacking the restrictions, including ex post facto claims, substantive due process, and procedural due process. Just how controversial the opinion was is reflected in the fact that five of the Eighth Circuit judges voted to hear the case en banc.

In July 2005, the Iowa Supreme Court reversed the Iowa District Court's decision declaring Iowa's restrictions unconstitutional.<sup>49</sup> In *State v.*

*Seering*, the Iowa Supreme Court held that the State's interest in protecting its citizens superseded a sex offender's right to freedom of residency. The 2,000-foot buffer zone imposed statewide remains in effect today.

**Taking claim.** Residency restrictions are subject to constitutional challenge. The Supreme Court of Georgia handed down an important decision on November 21, 2007, in *Mann v. Georgia Department of Corrections*,<sup>50</sup> holding that a Georgia law prohibiting convicted sex offenders from living within 1,000 feet of a school, church, child care facility, or other place where children congregate caused an illegal regulatory taking.<sup>51</sup> What follows is paraphrased and quoted from the Georgia Supreme Court's summary of its decision.<sup>52</sup>

Anthony Mann, a convicted child molester, sued the state Department of Corrections in Clayton County Superior Court, challenging the constitutionality of Section 42-1-15 of the Official Code of Georgia, which restricts where sex offenders can live and work. When Mann and his wife purchased their current home in Hampton, Georgia, there were no prohibited facilities nearby, and he was in compliance with Georgia's Sex Offenders Statute. Similarly, when Mann entered into a business agreement as half owner and operator of a barbecue restaurant in Lovejoy, Georgia, there were no facilities nearby where children would possibly congregate.

Subsequently, two different day care centers were built within 1,000 feet of his home and his business. His probation officer demanded that Mann physically remove himself from his business and his home or face arrest and revocation of his probation. Mann previously challenged the same statute, and the

Georgia Supreme Court ruled against him.<sup>53</sup> In that case, he was living at his parents' home at the time and paying no rent when a day care center opened within the restricted space.

In the 2007, 16-page opinion written by Presiding Justice Carol Hunstein, the court affirmed the part of the trial court's order involving Mann's business, but reversed the part involving his home. Under the statute, "it is apparent that there is no place in Georgia where a registered sex offender can live without being continually at risk of being rejected," the opinion says. The decision notes that unlike Alabama and Iowa, which have exceptions in their laws, in Georgia, sex offenders who comply with the law when they establish residency "face the possibility of being repeatedly uprooted and forced to abandon homes . . ." to remain in compliance. Under the Georgia law, a registered sex offender who refuses to move commits a felony punishable by no less than 10 years in prison.

The court makes a distinction between its November 2007 ruling and its 2004 ruling in Mann's earlier case.

Although we earlier determined appellant's property interest in his rent-free residence at his parents' home to be "minimal," . . . we find appellant's property interest in the [current] residence he purchased with his wife to be significant. Furthermore, the statute looms over every location appellant chooses to call home, with its on-going potential to force appellant from each new residence whenever, within that statutory 1,000-foot buffer zone, some third party chooses to establish any of the long list of places and facilities encompassed within the residency restriction, . . . While this time it was a day care center, next time it could be a playground, a school bus stop, a skating rink or a church.<sup>54</sup>

43. *Sex-offender residency laws get second look*, USA TODAY, February 26, 2007; see also <http://crime.about.com/b/2005/04/20/jessica-lunsford-was-raped-buried-alive.htm>.

44. <http://crime.about.com/b/2005/05/03/jessica-lunsford-law-signed.htm>.

45. *Sex-offender residency laws get second look*, USA TODAY, February 26, 2007.

46. <http://www.cityofdiersville.com/CityAdServ/Ordinances/Chapter49.pdf>.

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

48. See generally [http://prawfs-blawg.blogspot.com/prawfs-blawg/2005/08/sex\\_offender\\_re.html](http://prawfs-blawg.blogspot.com/prawfs-blawg/2005/08/sex_offender_re.html).

49. *State v. Seering*, 701 N.W.2d 655 (Iowa 2005).

50. *Mann v. Ga., Dep't of Corr.*, 282 Ga. 754, 653 S.E.2d 740 (Ga. 2007).

51. <http://www.gasupreme.us/pdf/s07a1043.pdf>.

52. [http://www.gasupreme.us/op\\_summaries/Nov\\_21.pdf](http://www.gasupreme.us/op_summaries/Nov_21.pdf).

53. *Mann v. State*, 278 Ga. 442, 603 S.E.2d 283 (Ga. 2004).

54. *Mann v. Georgia*, 282 Ga. 754 at 10; slip opinion available at <http://www.gasupreme.us/pdf/s07a1042.pdf>.

A provocative criticism of residency restrictions is that they effectively banish convicted sex offenders from society.

We therefore find that OCGA § 42-1-15 (a) is unconstitutional because it permits the regulatory taking of appellant's property without just and adequate compensation. Accordingly, we reverse the trial court's ruling denying appellant's request for declaratory relief in regard to the residency restriction.<sup>55</sup>

The court concluded that the trial court did not err in rejecting his challenge to the statute's work restriction. "Although the statute's work restriction does directly deprive appellant of his right to work at the physical location of the business, there was no showing that appellant's property interest in the business depends on his physical presence." The court concluded that Mann "failed to establish that the economic impact of the work restriction, as applied to him, effected an unconstitutional taking of appellant's property interest in his business."

**Preemption claim.** A three-judge panel of the New Jersey Appellate Division of the Superior Court ruled on July 15, 2008, that New Jersey towns cannot ban sex offenders from living near schools, parks, or other places where children gather.<sup>56</sup> In ruling on the Cherry Hill and Galloway ordinances, Judge Joseph F. Lisa wrote that the ordinances "interfere with and frustrate the purposes of operation of the statewide scheme." In response to the decision, Mayor Bernie Platt of Cherry Hill said he was contemplating taking an appeal.

One of the two companion cases arose from the problems experienced by a 20-year-old college freshman at Richard Stockton College in Galloway Township. The student was a registered sex offender as a result of an offense committed against a 13-year-old girl when he was 15 years old. The

Galloway ordinances prevented him from living in a college dorm. In Cherry Hill, two registered sex offenders moved into a motel under a Section 8 payment plan with the approval of their parole officers, only to be told to move out by local authorities because they were too close to a high school. They were charged, convicted, and fined for violating residency restrictions.

The executive director of the state chapter of the American Civil Liberties Union responded to the decision: "Megan's Law is already accepted as constitutional and as the states comprehensive approach to sex offenders. The residency requirements do not contribute to rehabilitation and may in fact undermine it."<sup>57</sup>

Yvonne Smith, the state public defender, filed an amicus brief in support of the plaintiff sex offenders, writing: "You can't impose unrealistic burdens on people and expect them to reintegrate. They paid their debt to society and are under supervision."<sup>58</sup>

The court concluded:

A comprehensive apparatus has been constructed to address, on a uniform and statewide basis, the underlying problem of dealing with CSOs [convicted sex offenders] who have completed serving their sentences and are released into the community. In varying degrees, these individuals have a likelihood of reoffending. Therefore, there is a need for protection of the public. At the same time, to minimize the risk of reoffending, there is a need to provide appropriate living accommodations for CSOs, with support systems provided by family members and others, reasonably proximate to employment, public transportation networks, and treatment programs, in order to provide stability for CSOs in these respects. The Legislature has chosen a

system by which CSOs will be uniformly classified based upon their risk of reoffending, notification to the community will be tailored according to that risk, registration will be required to keep local law enforcement apprised at all times of the whereabouts of the CSOs, and parole officers will approve where CSOs may live and supervise their daily activities.

The statutory and regulatory scheme, viewed in light of the exclusionary effect of the ordinances, provides strong evidence that the ordinances substantially interfere with the ability of parole officers to carry out their statutorily mandated function of finding the most appropriate housing for CSOs. In many cases the most appropriate housing would be in a location prohibited by the residency restriction ordinances. . . .

We conclude that the residency restriction ordinances conflict with the policies and operational effect of the statewide scheme implemented by Megan's Law, which was intended, both expressly and impliedly, to be exclusive in the field. The subject matter reflects a need for statewide uniformity. The scheme chosen by the Legislature, refined by the judiciary, and firmly entrenched for more than a decade on the uniform statewide basis, is pervasive and comprehensive, thus precluding the coexistence of municipal regulation. The ordinances interfere with and frustrate the purposes and operation of the statewide scheme.<sup>59</sup>

**Banishment.** A provocative criticism of residency restrictions is that they effectively banish convicted sex offenders from society.<sup>60</sup> Banishment in residency restrictions is a form of internal exile. Should the theory ever take hold in the courts, it is possible that the shift could be toward invalidation of the residency restrictions as

55. *Id.* at 13.

56. G.H. v. Twp. of Galloway, 2008 WL 2726635 (N.J. Super. A.D. July 15, 2008), and Twp. of Cherry Hill v. James Barclay and Jeffrey Finguerri, Docket N. A-4036-06T1 decided July 15, 2008. See also, N.J. court: Towns can't ban sex offenders, The Associated Press, MSNBC.com, July 15, 2008.

57. N.J. court: Towns can't ban sex offenders, The Associated Press, MSNBC.com, July 15, 2008.

58. N.J. Towns sex-offender residency limits rejected, The Associated Press, July 15, 2008, <http://www.yahoo.com>.

59. G.H. v. Twp. of Galloway, 2008 WL 2726635 (N.J. Super. A.D. July 15, 2008). Slip opinion available at <http://lawlibrary.rutgers.edu/>

decisions/appellate/a4306-06.opn.html.

60. Carey, Corine A., *Banishment or Facilitated Reentry: Human Rights Perspective*, presentation at Association for the Treatment of Sexual Abusers (ATSA) Conference, Salt Lake City, November 17, 2005.

The Human Rights Watch recommends that there be no state or local blanket restrictions on entire classes of offenders, but that any restrictions be tailored to the individual offender as a condition of their release or probation.

being punitive, subject to attack as double jeopardy, and in some instances, ex post facto laws.

**Human rights issue.** The Human Rights Watch sees the problem as a conflict of rights between those of the citizenry to be free from sexual assault and the rights of all to privacy, housing, and dignity. Article 9 of the International Covenant on Civil and Political Rights (“ICCPR”) declares the rights of all to security of person, and that children have additional rights. Article 19 of the Convention on the Rights of the Child, for example, provides:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

At the same time all people should have their right to privacy protected. Article 17 provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 12 of the ICCPR makes it clear that people have the freedom to choose their own residence:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

The issues surrounding returning sex offenders to the community are difficult for all concerned. The Human Rights Watch calls its report on the subject “No Easy Answers.”<sup>61</sup> The rearrest rate of rapists for all crimes is not much different than for other types of offenders, but at 46 percent it is of legitimate concern. The rearrest rate of rapists for rape within three years of release is only 2.5 percent. Those most likely to recidivate are pedophiles that molest boys and rapists of adult women.<sup>62</sup> Does distancing really help to reduce repeat offending? How long does it take to walk 1,000 feet, or take a bus, or drive a car?

One study found the obvious—people don’t want to live near a sex offender. Home values went down an average of four percent within one-tenth of a mile of a sex offender’s residence. “These results suggest that individuals have a significant distaste for living in close proximity to a known sex offender.”<sup>63</sup> The Human Rights Watch recommends that there be no state or local blanket restrictions on entire classes of offenders, but that any restrictions be tailored to the individual offender as a condition of their release or probation.

**Criticism in the press.** The *New York Times* has addressed the need to reject residency restrictions as ineffective and contraindicated in an editorial published on July 30, 2008, in response to the New Jersey appellate court deci-

sion finding that state law preempted local residency restrictions.

... A disturbing new development is the proliferation of local ordinances that go beyond the reporting requirements of legislation like Megan’s Law by restricting where sex offenders may live. In some New Jersey towns, offenders cannot live within 2,500 feet of a school or playground. Often, the banned areas are so large as to effectively prohibit a sex offender from living anywhere in town.

These bans can do more harm than good. They will not deter a determined predator. Many law enforcement officials, including parole officers, have observed that they tend to bunch sex offenders in drug-infested, rundown neighborhoods that are poorly suited for anyone trying to turn around a life.

Two weeks ago, in a unanimous decision, a New Jersey appeals court ruled that such ordinances conflicted with the state’s Megan’s Law . . .

Several state legislators now say they will try to amend the law to allow for residency limits. The courts in New York have upheld such bans and other states, including Oklahoma and Iowa, have adopted them.

There’s no reason for New Jersey to make the same mistake. We have long supported the registration requirement. But we also believe that officials should be aware that in the wrong hands, this information can lead to harassment or worse. And the decision about where a sex offender should live properly resides with law enforcement agencies.<sup>64</sup>

**Ineffective.** The major indictment of residency restrictions for sex offenders is that they do not reduce recidivism or provide any substantial additional protection for potential victims. One of the definitive studies is by the Colorado State Judiciary Committees of the Colorado Senate and House of

61. *No Easy Answers—Sex Offender Laws in the U.S.*, HUMAN RIGHTS WATCH, Volume 19, No. 4(G), September 2007, available at <http://hrw.org/reports/2007/us0907/us0907web.pdf>; see also [http://correction-sentencing.blogspot.com/2007\\_01\\_01\\_archive.html](http://correction-sentencing.blogspot.com/2007_01_01_archive.html).

62. *The Impact of Residency Restrictions on Sex Offenders and Correctional Practices: A Literature Review*, August 2006, available at

[http://www.nacdl.org/sl\\_docs.nsf/issues/SexOffenderResources#factsheets](http://www.nacdl.org/sl_docs.nsf/issues/SexOffenderResources#factsheets).

63. Linden, Leigh, and Jonah Rockoff, *There Goes the Neighborhood? Estimates of the Impact of Crime Risk on Property Values from Megan’s Law*, National Bureau of Economic Research, Working Paper 12253, May 2006.

64. Available at <http://www.nytimes.com/2008/07/30/opinion/30wed3.ht>

<ml?scp=1&sq=sex%20offender&st=cse>.

Half of the sex offender recidivists gained access to the victims through a collateral contact such as a girlfriend, wife, coworker, friend, or acquaintance, and 14 percent were biologically related to the victims.

Representatives promulgated as the “Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community.”<sup>65</sup>

The report concludes that high-risk sexual offenders living in shared living arrangements had significantly fewer violations than those living in other arrangements, even though this type of residence had significantly more high-risk sex offenders. The report speculates that the group setting is supportive. We suspect that this is much like a group home for recovering alcoholics and substance abusers, particularly the larger ones where a person in recovery has more opportunities to find supportive peers. The report recommends shared living arrangements as a “viable living situation for high-risk sex offenders living in the community.”

Though the study did not specifically analyze the location of residences relative to their proximity to schools and child care centers, it observed that in urban areas, children are everywhere. There are few places where an offender can be physically isolated, and sex offenders without residential restrictions appear to be widely dispersed with no effect on reoffending. The study concludes that “placing restrictions on the location of correctionally supervised sex offender residences may not deter the sex offender from reoffending and should not be considered as a method to control sexual offending recidivism.”

The report also recommended that “efforts should be made to ensure that the sex offender’s support in the home is positive in order to aid in his or her treatment.” It was observed that those who had good support were less likely to offend.

The Minnesota Department of Corrections undertook a study on resi-

dential proximity and recidivism.<sup>66</sup> The study tracked 224 recidivists released between 1990 and 2002 who were reincarcerated for a sex crime prior to 2006. Four criteria were used for the study: the reoffenders had to have initiated contact directly with the victims, not through family relationships or acquaintances; the contact had to be within a mile of the offender’s residence; the first contact location had to be near a school, park, day care center, or other prohibited area; and the victim had to be under age 18.

One sentence from the executive summary provides the dramatic conclusion of the study of 224 sex offenses by previously convicted sex offenders: “Not one of the 224 sex offenses would likely have been deterred by a residency restrictions law.”<sup>67</sup>

First, the report concludes that it is not residential proximity but rather social or relationship proximity that matters with respect to sexual recidivism. This is consistent with the fact that the large majority of victims are not strangers. The report found, for example, that some offenders gained access to children by courting the mother of the children.

Second, direct contact offenders are more likely to go to an area relatively close to their home (within 20 miles), but far enough away (more than a mile) so that they will not be recognized.

The study added some important details to the literature already available. Only 15 percent of the offenses took place in a public location; the rest were in the offender’s home or similar residential location. Most of the victims, some 79 percent, were someone known to the offender. Half of the sex offender recidivists gained access to the victims through a collateral contact such as a girlfriend, wife,

coworker, friend, or acquaintance, and 14 percent were biologically related to the victims.

The last sentence of the report states: “Therefore, by making it more difficult for sex offenders to successfully re-enter society, housing restrictions might promote conditions that work against the goal of reducing the extent to which they recidivate sexually.”<sup>68</sup>

Kansas and Florida each commissioned useful reports on the efficacy of general residency restrictions and both conclude that blanket residency restrictions are not effective and do not enhance community safety.<sup>69</sup> The Kansas reports states: “A tight web of supervision, treatment and surveillance may be more important in maintaining community safety than where a sex offender resides.” Florida similarly concluded: “Despite widespread support and popularity, there is no evidence that residence restrictions prevent crimes or increase public safety. These laws may ironically interfere with their stated goals of enhancing public safety by exacerbating the psychosocial stressors that can contribute to reoffending. . . . Sex offenders rouse little public sympathy, but exiling them may ultimately increase their danger.”

The Iowa County Attorneys Association criticism of Iowa’s residency restrictions provides a useful summary of the arguments against generalized restrictions and offers suggestions for a more targeted approach.<sup>70</sup> A discussion of an alternative offender-based model is found in the California report in its analysis of “Comprehensive Risk Assessment as a Means to Contain the Most Serious Sex Offenders.”<sup>71</sup>

There is no scientific support in the literature for blanket residency restrictions. However, there is an indi-

65. Colorado Department of Public Safety, Division of Criminal Justice, Sex Offender Management Board, available at <http://dcj.state.co.us/odvsom>.

66. Minnesota Department of Corrections, *Residential Proximity & Sex Offense Recidivism in Minnesota*, April 2007, available at <http://www.doc.state.mn.us>.

67. *Id.* at 2.

68. *Id.* at 2.

69. See report from Kansas Department of Corrections, available at <http://www.dc.state.ks.us/publications/sex-offender-housing-restrictions>; there is a comprehensive report to the Florida State Legislature on *Sex Offender Residency Restrictions*, available at [http://www.nacdl.org/sl\\_docs.nsf/issues/sexoffender\\_attachments/\\$FILE/Levinson\\_FL.pdf](http://www.nacdl.org/sl_docs.nsf/issues/sexoffender_attachments/$FILE/Levinson_FL.pdf). A review of

the literature is found in <http://www.library.ca.gov/crb/06/08/06-008.pdf>. The National Association of Criminal Defense Lawyers (NACDL) has a website with information, including the NACDL Sex Offender Task Force Policy Report (February 24, 2007) at [http://www.nacdl.org/sl\\_docs.nsf/issues/SexOffenderResources#factsheets](http://www.nacdl.org/sl_docs.nsf/issues/SexOffenderResources#factsheets).

70. Statement of Sex Offender Residency Restrictions in Iowa,

February 2006. <http://www.cacj.org/PDF/2006/Statement%20on%20Sex%20Offender%20Residency%20Restrictions.pdf>.

71. *The Impact of Residency Restrictions on Sex Offenders and Correctional Practices: A Literature Review*, August 2006, at 27, available at [http://www.nacdl.org/sl\\_docs.nsf/issues/SexOffenderResources#factsheets](http://www.nacdl.org/sl_docs.nsf/issues/SexOffenderResources#factsheets).



Most of downtown Tulsa, Atlanta, and Des Moines are totally off-limits for sex offenders because of the many schools and day care centers from which there are separation requirements.

cated need for increased risk assessment of individuals with tailored programs that include highly restrictive interventions and monitoring for the most dangerous offenders. Planners may wish to review the literature and be prepared to answer the inevitable questions concerning blanket residency restrictions. Coping with sex offenders is best addressed by the state in individualized risk assessments, interventions, restrictions on movement, monitoring, treatment, and refined definitions of offenders with some efforts to remove from the registry those who are not dangerous and highly unlikely to reoffend.

As you might expect, the National Association of Criminal Defense Lawyers oppose residence restrictions on the grounds that they do not provide effective community protection and they threaten offender stability. Its report cites studies from Minnesota and Colorado and quotes from the Colorado study that residency restrictions “should not be considered as a method to control sexual offending recidivism.”<sup>72</sup>

**Counter-intuitive results and unintended consequences.** Most people, we hope, do not advocate and support residency restrictions because they are mean-spirited and want to further punish offenders, though there is some of this inherent in such restrictions. The driving force behind residency restrictions is the mistaken belief that the restrictions are highly effective in reducing recidivism and limiting additional victimization, especially of children.

What most people do not realize is how such restrictions perniciously make matters worse. These counterintuitive results and unintended consequences include adverse impacts on

employment, housing, family integrity, treatment, and human dignity.<sup>73</sup>

An unintended consequence of the residency restrictions that destabilize families and separate offenders from their families and children who depend on them is the potential for children or their parents to avoid further instability by failing to report sexual abuse by household members. This leaves the children vulnerable and without access to therapeutic services.<sup>74</sup> If one local government observes that a neighboring government has instituted sex offender residency restrictions that severely limit or entirely preclude a sex offender living in the neighboring municipality, what do you imagine might happen? A reasonable expectation is that those sex offenders are going to “spill over” to the area with no restrictions. So the community with no restrictions adopts its own sex offender residency restrictions, causing an effect that continues to push outward.<sup>75</sup>

**Reconsideration of public policy.** Not all of these residency restrictions have been adopted and blindly defended. Some policy makers raised questions about the efficacy of such restrictions. Oklahoma State Representative Lucky Lamons, a police officer of 22 years who describes himself as a “lock-’em-up kind of guy,” wants to ease the restrictions in Oklahoma that require sex offenders to live at least 2,000 feet from a school or day care center. The distance requirement, he argues, forces many offenders out into the rural areas where they cannot get treatment and are difficult to track. He also questions whether blanket residency restrictions are useful because they fail to categorize and separate the violent offenders who are likely to reoffend from the rest of the convicted sex offenders who are

unlikely to repeat sex offenses. “[W]e need to focus on people we’re afraid of, not mad at,” Lamon said.<sup>76</sup>

Part of the problem is that some of these sex offenders have disappeared, failing to report their addresses to avoid the restrictions that are often more than an inconvenience. Sometimes they have given false addresses, in part because they say they cannot otherwise find a place to live.<sup>77</sup>

The restrictions are so all-encompassing in some areas that there is virtually no place for such an offender to live. Most of downtown Tulsa, Atlanta, and Des Moines are totally off-limits for sex offenders because of the many schools and day care centers from which there are separation requirements.<sup>78</sup>

If you ever watched Fox network’s television series *America’s Most Wanted*, you would know the host, John Walsh. Even he—and what more authoritative source can there be?—questions the residency restrictions: “You can’t paint sex offenders with a broad brush.” He notes that residency laws cannot be enforced without causing tens of thousands of the country’s 600,000 registered sex offenders to remove themselves from the lists by not reporting or falsely reporting their locations to avoid the residency restrictions.<sup>79</sup>

The Iowa County Attorneys Association, in its “Statement on Sex Offender Residency Restrictions in Iowa,” in 2006 “strongly” urged the General Assembly and the governor to amend the state statute to include measures that would be more effective in protecting children and reduce the “unintended unfairness to innocent persons.”<sup>80</sup> The ICAA, in reviewing the research and literature, observed that there is no correlation between res-

72. National Association of Criminal Defense Lawyers, *Report of the Sex Offender Policy Task Force*, February 24, 2007, citing Colorado Department of Public Safety, *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community*, 2004.

73. See generally <http://www.library.ca.gov/crb/06/08/06-008.pdf>.

74. Levenson, Jill S., *Sex Offender Residence Restrictions*, SEX OFFENDER LAW REPORT, Civil Research Institute.

75. *Id.*

76. *Sex-offender residency laws get second look*, USA TODAY, February 26, 2007.

77. *Id.*

78. *Id.*

79. *Id.*

80. Iowa County Attorneys Association, *Statement on Sex Offender Residency Restrictions in Iowa*, December 11, 2006.

The statement noted that 80 to 90 percent of sex crimes against children are committed by a relative or acquaintance, and are not against strangers in the types of places from which residency restrictions are based.

idency restrictions in reducing sex offenses against children or improving the safety of children, and there is no support in the literature for the view that children are more likely to be victimized by strangers in the locations from which separation is required. The statement noted that 80 to 90 percent of sex crimes against children are committed by a relative or acquaintance, and are not against strangers in the types of places from which residency restrictions are based. They noted increasing homelessness among sex offenders and the disappearance of sex offenders from state registries as a consequence of the residency restrictions.

The county attorneys expressed concern about the extraordinary demands on limited law-enforcement resources as a consequence of these restrictions. Part of the problem, they noted, was that the categories of crimes to which these restrictions apply are too broad. Interestingly, they point out that “a significant number of offenders have married or have been reunited with their victims; and, in those cases, the residency restrictions are imposed on the victims as well as the offenders.”<sup>81</sup>

The county attorneys are also concerned that sex offenders cannot live with family members on whom they depend for help in their daily needs. The 2,000-foot zones are “so extensive that realistic opportunities to find affordable housing are virtually eliminated in most communities,” a situation that is exacerbated by the lack of transportation in more rural areas to which sex offenders are forced and even more strict regulations by cities and counties. According to the Iowa County Attorneys Association, one unintended consequence of the severe residency restrictions is that alleged offenders are less likely to confess to their crimes. Such plea agreements are often driven by the need to protect

youthful victims from having to testify at trials. As a consequence of these agreements, sex offenders are often not held fully accountable and do not get into rehabilitation programs.

The county attorneys have several suggestions:

- Create “child safe zones” around schools and child care centers and other such locations and prohibit offenders from going there except with approval, such as when their own children are there
- Restrictions should be based on offenses against children under age 14, not minors under 18
- State statutes should control over local ordinances
- Any restrictions should be based on classification of offenders and should apply only to those most likely to pose an actual risk
- Treatment during an incarceration and afterward should be adequately funded
- Education and enforcement should endeavor to keep all children safe and should refocus on keeping victims with their families and circle of acquaintances.<sup>82</sup>

#### CONCLUSIONS

Sex offenses are abhorrent. They often involve violence and the victims are often children. It is human and normal that we should react so viscerally to the truly shocking reports of the worst of these crimes.

Public policy makers have responded to the public’s concerns about sex crimes by mandating and increasing the length of time for incarceration, creating registries, opening notification to the general public, ordering civil commitment, requiring treatment of convicted sex offenders, and imposing residency restrictions on them.

The effectiveness of the registries has been eroded by a combination of the

widespread public access to the information and by residency restrictions that are often so onerous that convicted sex offenders fail to report their whereabouts so as to avoid being restricted out of most housing opportunities. To be effective, self-reporting must be enhanced by reducing the availability of registry access to the general public and entrusting law enforcement authorities to decide when and to whom notification is given based on the potential for the convicted sex offender to reoffend. Additionally, residential restrictions should be largely eliminated for most of sex offenders.

A key issue that has not been resolved satisfactorily in most states is the proper assessment and classification of sex offenders to separate those who are highly likely to reoffend, such as pedophiles and rapists of adult women, from those who are unlikely to ever reoffend, including teenagers whose convictions are based on what is essentially sexual experimentation and noncontact sex offenses where the offender can be helped with individualized treatment.

Civil commitment can be a highly effective way of monitoring high-risk convicted sex offenders and those programs should be expanded when defensible classification systems are in place.

Electronic monitoring, such as GPS tracking, is expensive and its effectiveness is questionable in some cases.

However, high-risk convicted sex offenders might be subject to such tracking as part of an orchestrated system of techniques designed to limit their mobility and access to potential victims. It must be remembered that the large majority of victims are family or acquaintances of the offenders and no electronic tracking can do much to prevent that type of victimization.

Individualized treatment programs, especially for those most likely to reoffend, appear to hold promise.

81. *Id.*

82. *Id.*

At a minimum, residency restrictions should be limited to that class of offenders who are the most dangerous and most likely to recidivate.

Residency restrictions are subject to serious challenge. There is no convincing evidence that they have any effect in reducing recidivism. On the other hand, there are compelling and statistically significant survey results demonstrating the counterproductive, counterintuitive effects of residency restrictions and the unintended consequences that may already be increasing the chances that convicted sex offenders will reoffend. Residency restrictions will not stop an offender from victimizing a family member or acquaintance in their home or in their neighborhood and will not keep an offender from getting access to a stranger. In addition, residency restrictions create great stress for the convicted sex offender; separate the convicted sex offender from family and friends; isolate the offender from mainstream society, work, and effective treatment programs; and continue to punish the offender after he or she has paid the price with incarceration and postincarceration completion of their sentences.

At a minimum, residency restrictions should be limited to that class of offenders who are the most dangerous and most likely to recidivate. Registries should be limited in time for most classes of offenders which in turn will enable them to avoid residency restrictions (and social banishment) even under existing laws. Under the existing laws, those convicted sex offenders subject to residency restrictions should have the right to appeal those restrictions and get relief for good cause shown.

Planners and government lawyers have a responsibility to help educate public officials and the general citizenry as to the facts of sex offenses, recidivism among convicted sex offenders, and effective postconviction actions that can be taken to reduce recidivism, protect potential victims, and move the convicted sex offender back into mainstream society.



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