
Megan's Laws: Wise Public Policy or Ill-Considered Public Folly?

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I. Introduction

Many state legislatures are struggling with the problem of recidivist sex offenders and the important public safety issues such persons present. Within the past ten years, states have enacted a number of laws in an effort to address public concerns about sex offenders. Examples of recent sex offender legislation includes measures as extreme as chemical castration¹ or the mandatory provision of blood samples for a DNA data bank,² the universally employed sex offender registration laws,³ community notification or public access statutes⁴ (sometimes referred to as "Megan's laws," after the New Jersey version), longer criminal sentences for first-time and repeat sex offenders,⁵ and involuntary civil commitment statutes for sex offenders⁶ (sometimes referred to as "sex predator" laws after the first such statute enacted in the State of Washington in 1990).

Although virtually all of these options—except longer prison sentences—raise important constitutional, practical and implementation questions, this article focuses on the state sex offender registration and notification statutes that exist in some form in every state. This article will only briefly address the constitutionality of these laws, a subject the author has examined at some length elsewhere.⁷ Rather than constitutional issues, this article focuses on some of the policy questions these laws raise, particularly the questions of whether the laws are effective and worth the cost. Part II contains an explanation of the federal government's role in encouraging the

states to enact these laws and a fifty state survey of sex offender registration and notification laws. Part II also identifies particular aspects of the statutes that may be especially relevant to the questions whether they are effective and practical. Lastly, Part III, after briefly discussing constitutional issues, addresses the policy and fiscal issues that these important state laws raise.

II. Overview of State Registration and Notification Laws

A. *The Federal Role in Sex Offender Registration and Notification*

In 1994, Congress enacted a statute to create federal guidelines and to provide financial incentives for the State to develop and implement sex offender registration programs.⁸ The statute requires the Attorney General to establish guidelines for sex offender registration programs.⁹ In particular, the statute specifies that sex offenders who have committed offenses against minors or sexually violent offenses are required to register with law enforcement authorities.¹⁰ The federal law also establishes guidelines for the registration process, including the type of information that should be required from registrants,¹¹ procedures for periodically verifying registrants' addresses and notifying authorities of changes in registrant information,¹² and the length of time those subject to such laws must continue to

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register.¹³ The statute further specifies that knowing noncompliance with registration laws by any person required to comply shall be criminally punishable in the state where non-compliance occurs.¹⁴ Federal regulations implementing the law make clear, however, that the federal requirements should be considered the minimum, and are not intended to prevent states from imposing additional or more restrictive requirements on sex offenders.¹⁵

With respect to community notification and public disclosure of registrant information, the original version of the federal law provided as follows:

(d) RELEASE OF INFORMATION.

The information collected under a State registration program shall be treated as private data except that—

(1) such information *may* be disclosed to law enforcement agencies for law enforcement purposes;

(2) such information *may* be disclosed to government agencies conducting confidential background checks; and

(3) the designated State law enforcement and any local law enforcement agency authorized by the State agency *may* release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.¹⁶

Thus, under the original version of the federal law, disclosure of the registrant information was limited primarily to law enforcement and

background check purposes, with some potential for local law enforcement officials in their discretion to disclose such information to the public. In no circumstances, however, was the release or disclosure of such information to the public mandatory.

Finally, two other provisions of the 1994 law merit mention. First, the federal law provides that “[l]aw enforcement agencies, employees of law enforcement agencies, and State officials shall be immune from liability for good faith conduct under” the statute.¹⁷ Second, the law gives the states “3 years from September 13, 1994, in which to implement” its requirements, “except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.”¹⁸ The penalty for failure to comply with the statute is the loss of 10% of certain federal funds a State would otherwise receive.¹⁹

In 1996, Congress twice amended the federal statute. First, in May, 1996, Congress amended the subsection of the statute regarding the release of registrant information to broaden the reasons for which disclosure could be made and to mandate the release of such information to the public in some circumstances. Thus, the current federal law both permits and requires greater disclosure and community notification than was permissible under the original version. The amended section reads as follows:

(d) RELEASE OF INFORMATION.—

(1) The information collected under a State registration program *may* be disclosed *for any purpose permitted under the laws of the State.*

(2) The designated State law

enforcement agency and any local law enforcement agency authorized by the State agency shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.²⁰

Given the financial penalties the federal law imposes on states failing to comply with its provisions,²¹ the 1996 amendment almost certainly will result in all fifty states adopting and implementing some form of sex offender community notification systems, just as they have now all enacted sex offender registration laws.

Second, in September, 1996, Congress enacted a statute requiring the federal government to create and maintain a national sex offender registration database.²² In particular, the statute requires the Attorney General to work with the Federal Bureau of Investigation (FBI) in establishing a national database and tracking the "whereabouts and movements" of registered sex offenders.²³ Generally, the federal system appears intended as a backup to—and compilation of—the information collected by the individual state sex offender registration systems. In the event that a particular state is deemed to lack a "minimally sufficient sexual offender registration program," the FBI essentially assumes primary responsibility for sex offender registration and community notification in

that state.²⁴

B. A Survey of State Sex Offender Registration and Notification Statutes

1. Introduction

One difficulty in evaluating the wisdom, effectiveness, and even the constitutionality, of state sex offender and registration statutes is that there is no uniform or model law. Although the federal financial incentives have resulted in all states enacting such laws, and some virtually uniform provisions in the laws, the federal guidelines leave much to the discre-

tion of the states. For example, the federal laws do not specify whether such laws shall be retroactive or prospective only, nor to whom or by whom notice of registration information is to be pro-

vided. Thus, although the state statutes share some general characteristics, they vary widely in their particulars. For that reason, this article attempts to summarize, in the table set forth below, the major provisions of the statutes of each of the fifty states and the District of Columbia.

2. A Fifty-State Survey

What follows is a self-explanatory table that summarizes major provisions of the states' sex offender registration and notification statutes:

[T]he federal laws do not specify whether such laws shall be retroactive or prospective only, nor to whom or by whom notice of registration information is to be provided



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State	Notification?	Type?	To Whom?	By Whom?	Constitutional	Immunity?
Alabama ALA. CODE § 13A-11-200 (1996).	No	Central registry.	Law enforcement for law enforcement purposes;	State Dept. of Public Safety, county sheriff's dept.	No decisions.	No.
Alaska ALASKA STAT. § 12.63.010 (Michie 1996).	No.	Central registry	Law enforcement; limited public access.	Dept. of Public Safety.	No decisions overturning statute, <i>but see</i> Rowe v. Burton, 884 F. Supp. 1372 (D. Alaska 1994) says that statute is likely to violate prohibition on <i>ex post</i> <i>facto</i> legislation.	No.
Arizona ARIZ. REV. STAT. ANN. § 13-3821 (West 1996); 1997 Ariz. Legis. Serv. 136 (West).	Yes.	Pursuant to guidelines established by Community Notification Guidelines Committee.	Community, law enforcement agencies.	Local law enforcement agencies, Dept. of Public Safety.	Yes. <i>See</i> , State v. Cameron, 916 P.2d 1183 (Ariz. App. 1996).	Yes: any person who provides or fails to provide information required by this section.
Arkansas ARK. CODE ANN. § 12-12- 901 (Michie 1995); 1997 Ark. Legis. Serv. 989 (West).	Yes.	Central Registry; other notification procedures not specified.	Public notification when necessary for public protection; law enforcement; victims before release.	Local law enforcement; Arkansas Criminal Information Center; Dept. of Corrections.	No decisions.	Yes: any public official, public employee, or public agency.
California CAL. PENAL CODE § 290 (West Supp. 1997).	Yes.	Manner not specified.	Public, if necessary for public protection; public & private schools & day cares if necessary for public protection.	Chief of Police, Dept. of Justice.	Yes: <i>See</i> People v. Fioretti, 63 Cal. Rptr. 2d 367 (Cal. Ct. App. 1997). No – for misdemeanor offenders. <i>See In re</i> Reed, 663 P.2d 216 (Cal. 1983); <i>In re</i> King, 204 Cal. Rptr. 39 (Cal. Ct. App. 1984).	Yes: law enforcement agencies, employees of law enforcement agencies, & state officials.
Colorado COLO. REV. STAT. ANN. § 18-3-412.5 (West 1996); 1997 Colo. Legis. Serv. H.B. 97-1084 (West).	Yes.	Central registry; other notification procedures not specified.	Limited public access when necessary for public protection or upon request and demonstration of need to know; notification to nursing care facilities upon request.	Local law enforcement.	No decisions.	Yes: state agencies & their employees, local law enforcement agencies & their employees.

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Connecticut CONN. GEN. STAT. ANN. § 54.102 (West 1997); 1997 Conn. Leg. Serv. P.A. 97-183 (S.B. 649) (West).	No.	Central Registry.	Only access to registry for law enforcement agency and government agencies for confidential background checks; other persons may get access if such disclosure is deemed necessary.	Local law enforcement.	Yes. <i>See</i> Roe v. Office of Adult Probation, 125 F.3d 47 (2d Cir. 1997).	No.
Delaware DEL. CODE ANN. tit. 11, § 4120 (1995 & Supp. 1996).	No.	Registry entered into Delaware Criminal Justice Information System.	Local law enforcement; employer dealing with children may inquire if individual's name is in database.	State Superintendent of Delaware Police; Dept. of Justice; Dept. of Corrections; Dept. of Services to Children, Youth & Families; Dept. of Health & Social Services.	No decisions, <i>but see</i> E.B. v. Verniero, 119 F.3d 1077 (3rd Cir. 1997).	Yes: all elected public officials, public employees, and public agencies.
District of Columbia D.C. CODE ANN. § 24-1101 (1997).	Yes.	Central database; district police stations.	Metropolitan Police Dept.	No.	No decisions.	No.
Florida FLA. STAT. ANN. § 775.21 (West 1997); Fla. Stat. Ann. § 944.606 (West 1997); 1997 Fla. Laws ch. 97-299.55.	Yes.	Public record; 900 telephone number; Internet notice; hotline access for law enforcement.	community notification; law enforcement agencies.	Driver's License Office; Dept. of Law Enforcement; Chief of Police.	No decisions.	Yes: elected or appointed official, public employee or agency.
Georgia GA. CODE ANN. § 42-9-44.1 (1994).	No.	Central Registry.	Open for public inspection.	Sheriffs Dept.	No decisions.	No.
Hawaii HAW. REV. STAT. § 707 (Supp. 1995); 1997 Haw. Sess. Laws 316 (H.B. 108).	No.	Central registry, files also kept at county police stations.	Law enforcement agencies and government agencies conducting confidential background checks have access. Also, as necessary to protect public, public may have access to files.	Attorney General maintains registry; Attorney General and County Police Dept. keep files.	No decisions, <i>but see</i> Roe v. Office of Adult Probation, 1997 WL 546244 (2d Cir. 1997).	No.

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State	Notification?	Type?	To Whom?	By Whom?	Constitutional	Immunity?
Idaho IDAHO CODE § 18-8301 (Supp. 1996).	No.	Central Registry	Available upon request to law enforcement agencies; and provided to any person upon a written request including the name, d.o.b. and social security number of the person for whom the information is requested.	Idaho Dept. of Law Enforcement.	Yes. See State v. Zichko, 923 P.2d 966 (Idaho 1966).	No.
Illinois ILL. COMP. ANN. STAT. ch. 730, para 150/1 (Smith- Hurd 1996); 1997 Ill. Legis. Serv. P.A. 90-193 (West).	None for sex offenders except for law enforcement. Notification required for child sex offenders and murderers.	For sex offenders, database for law enforcement use; for child sex offenders and murderers, no specific type of notification described.	For child sex offenders and murders, schools, child care facilities, and the Dept. of Children and Family Services.	Division of Criminal Investigation maintains database; local law enforcement notifies.	Yes. See People v. Starnes, 653 N.E.2d 4 (Ill. App. 1995); People v. Adams, 555 N.E.2d 761 (Ill. App. 1990), aff'd, 581 N.E.2d 637 (Ill. 1991).	Yes: for any person who provides or fails to provide information relevant to the procedures set forth in this law.
Indiana IND. CODE ANN. § 5-2- 12-1 (West 1996).	Yes.	Central registry; computer disc available to law enforcement, paper copy given to others receiving notification.	All public and private schools, child care facilities, and state agencies that license individuals who work with children.	Indiana Criminal Justice Institute.	No decisions.	No.
Iowa IOWA CODE ANN. § 692A (West 1996); 1997 Iowa Legis. Serv. S.F. 281 (West).	No.	Central Registry.	Criminal or juvenile justice agencies, government agencies conducting confidential background investigations, and general public with proper request.	Dept. of Public Safety, Sheriff's Dept.	Yes: See State v. Pickens, 558 N.W.2d 396 (Iowa 1997); <i>In re</i> S.M.M., 558 N.W.2d 405 (Iowa 1997).	Yes: criminal & juvenile justice agencies, officials & employees, state agencies and employees.
Kansas KAN. STAT. ANN. § 22- 4901 (1995 & Supp. 1996); 1997 Kan. Sess. Laws ch. 181.	Yes.	State Law Enforcement Record System.	Open to public.	Kansas Bureau of Investigation; County Sheriffs.	No. See State v. Myers, 923 P.2d 1024 (Kan. 1996).	No.
Kentucky KY. REV. STAT. ANN. § 17.500 (Banks- Baldwin 1994).	No.	Central Registry	Not open to public inspection, only accessible by law enforcement in course of official duties.	Information Services Center of Kentucky State Police	No decisions.	No.

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Louisiana LA. REV. STAT. ANN. § 15:540 (West Supp. 1997); 1997 La. Sess. Law Serv. 1147 (S.B. 1368) (West).	Yes.	Central Registry, written notice.	Community notification when necessary for public protection; notice to Chief of Police and sheriff of area where offender resides, witnesses who testified, and any person specified in writing by prosecuting attorney..	Louisiana Bureau of Criminal Identification and Information, local law enforcement, Dept. of Public Safety and Corrections.	Yes. <i>See</i> State v. Calhoun, 669 So. 2d 1351 (La. Ct. App. 1996); State v. Sorrell, 656 So. 2d 1045 (La. Ct. App. 1995); State v. Bishop, 686 So. 2d 1020 (La. Ct. App. 1996); <i>but see</i> Lee v. State, 681 So. 2d 1020 (La. Ct. App. 1996) (holding that registration is unconstitutionally ex post facto).	Yes: elected officials, public employees, public agencies, criminal justice agencies.
Maine ME. REV. STAT. ANN. tit. 34-A, § 11101 (West 1996).	Yes.	Statute does not specify notification procedures.	Community notification if appropriate for public safety, law enforcement.	Dept. of Public Safety, Bureau of Identification, law enforcement agencies.	No decisions.	Yes: Comm. of Public Safety, Dept. of Public Safety, county jail, any other law enforcement agency, Commissioner of Mental Health and Mental Retardation, state mental health institute or the employees of officers of the foregoing.
Maryland MD. ANN. CODE art. 27, § 792 (1996).	Yes.	Central registry; written notice, including recent photograph.	Required notification to local law enforcement; permissible notification if requested in writing from the victim or victim's family, if minor, any witness, any person specified in writing by State's Attorney; permissible notification if necessary to protect the public interest: community & religious organization, and any other organization that relates to children or youth; any other person by written request.	Secretary of Public Safety & Correctional Services; local law enforcement.	No decisions.	Yes: elected public official, public employee & public agency.
Massachusetts MASS. GEN. LAWS ANN. ch. 6, § 178C (West 1997).	No.	Registry	Person making proper request.	Local law enforcement.	Yes. <i>See</i> Doe v. Weld, 954 F.Supp. 425 (D. Mass. 1996).	Yes: Public officials and other public employees.
Michigan MICH. COMP. LAWS ANN. § 28.722 (West 1997).	No	Database	Access for state and local law enforcement.	Law Enforcement Dept. maintains database.	No decisions.	No.

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State	Notification?	Type?	To Whom?	By Whom?	Constitutional	Immunity?
Minnesota MINN. STAT. ANN. § 243.166 (West Supp. 1997).	No.	Registry.	Law enforcement for law enforcement purposes.	Chief of Police or Sheriff of County.	Yes. See State v. Manning, 532 N.W.2d 244 (Minn. Ct. App. 1995); In re Welfare of C.D.N., 559 N.W.2d 431 (Minn. Ct. App. 1997).	No.
Mississippi MISS. CODE ANN. § 45-33- 1 (Supp. 1997); 1997 Miss. Laws ch. 454, S.B. No. 2800.	Yes.	Central Registry.	Community notification when necessary for public protection; access to law enforcement agencies.	Mississippi Dept. of Public Safety, local law enforcement agencies.	No decisions.	Yes: anyone who provides or fails to provide information under this chapter.
Missouri MO. ANN. STAT. § 566.600 (West 1996); 1997 Mo. Legis. Serv. 883 (West).	No.	Entered into Missouri Uniform Law Enforcement System (MULES); registration information of sexual predators released in accordance with rules promulgated by the dept. of public safety.	Sex offender and felony offender information available to all members of criminal justice system upon inquiry; information about sexual predators shall be released to public.	Chief Law Enforcement Officer.	No decisions.	No.
Montana MONT. CODE ANN. § 46-23- 501 (1995).	Yes.	Manner not specified.	Name of offender is public criminal justice information, other information is confidential criminal justice information; Dept. of Corrections can petition district court to release information to public.	Dept. of Corrections.	No decisions, <i>but</i> <i>see</i> Roe v. Office of Adult Probation, 1997 WL 546244 (2d. Cir. 1997).	No.
Nebraska NEB. REV. STAT. § 29- 4002 (1996).	No.	Central registry.	Law enforcement agencies.	Nebraska State Patrol.	No decisions.	Yes: law enforcement officers, their employees & state officials.
Nevada NEV. REV. STAT. § 207.151 (1995).	Yes.	Central registry; other notification procedures not specified.	Access to central registry for peace officers and law enforcement officers only; if child sex offenders, notification to Board of Trustees of County School District, teachers or school personal or other personal with approval of Board of Trustees.	Sheriff, Board of Trustees of County School District.	No decisions, <i>but</i> <i>see</i> Roe v. Office of Adult Probation, 1997 WL 546244 (2d. Cir. 1997).	Yes: Sheriff, Board of Trustees, Teachers & other education personnel.
New Hampshire N.H. REV. STAT. ANN. § 651-B:1 (1996).	Yes.	Law Enforcement Name Search System (LENS).	Law enforcement officials; if serious offender, organization where offender intends to reside.	Dept. of Safety Div. of State Police; law enforcement agencies.	Yes: See State v. Costello, 643 A.2d 531 (N.H. 1994).	Yes: anyone except sex offender.

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New Jersey N.J. STAT. ANN. § 2C:7-1 (West 1995).	Yes.	Central Registry; other notification plan developed by Attorney General	3 Levels of Community notification: 1. If low risk of reoffense: law enforcement agencies in offender's area. 2. If moderate risk: organizations in offender's community, including schools, religious & youth organizations and local law enforcement. 3. If high, public notification. Public notification whenever necessary for public protection.	Superintendent of Police; New Jersey Law Enforcement.	Yes. <i>See</i> Artway v. Attorney General of State of N.J., 81 F.3d 1235 (3rd Cir. (1996); E.B. v. Verniero, 119 F.3d 1077 (3rd Cir. 1997).	Yes: elected public officials, public employees, & public agencies.
New Mexico N.M. STAT. ANN. § 29-11-A-2 (Michie Supp. 1996).	No.	Central Registry.	Law enforcement.	Dept. of Public Safety, County Sheriffs.	No decisions.	Yes: public employers, public employees & public agencies.
New York N.Y. CORRECT. LAW § 168 (McKinney 1996).	Yes.	Central registry; sub directories.	Local law enforcement, public may make request in writing. 3 Levels of Notification: 1. Low risk of reoffense: law enforcement agency with jurisdiction. 2. Moderate: law enforcement and notification to public of offender's approximate address and modus operandi. 3. High: law enforcement and notification of offender's exact address, M.O. and photo.	Division of Criminal Justice.	No. <i>See</i> Doe v. Pataki, 120 F.3d 1263. (2d Cir. 1997); New York v. Lyday, 1997 WL 369493 (N.Y. Sup. Ct. 1997).	Yes: public or private official, employee or agency.
North Carolina N.C. GEN. STAT. § 14-208.5 (1996).	No.	Police Information Network.	Law enforcement agencies.	Law enforcement agencies.	No decisions.	No.
North Dakota N.D. CENT. CODE § 12.1-32-15 (Supp. 1995).	Yes.	Central Registry.	Law enforcement agencies; public if public risk.	Attorney General, Dept. of Corrections & Rehabilitation, and local law enforcement.	No decisions.	Yes: law enforcement agency and its officials & employees.

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State	Notification?	Type?	To Whom?	By Whom?	Constitutional	Immunity?
Ohio OHIO REV. CODE ANN. § 2950.01 (Banks- Baldwin 1997).	Yes.	In writing to victim; access to central registry.	If sexual predator, then notice to victim if requested; registry open to law enforcement officers or authorized employee of Bureau of Criminal Identification & Identification. If habitual sexual offender convicted after enactment, court can require community notification as party of sentence.	Bureau of Criminal Identification and Investigation.	Yes. See State v. Douglas, 586 N.E. 2d 1096 (Ohio 1989).	Yes: Attorney General, Chief of Police, Marshall or other law enforcement officer of a municipal corporation, sheriffs, constable or chief of police of a township police dept., distr. police force and deputies, officers and employees of the above, prosecutor and officers and employees, supervising officer, & an officer or employee of the adult parole authority of the Dept. of Rehabilitation and Corrections.
Oklahoma OKLA. STAT. ANN. tit. 57, § 581 (West Supp. 1997); 1997 Okla. Sess. Law Serv. Ch. 260, H.B. 1729 (West).	Yes.	Central registry; other notification not specified.	Registry open to all public and private elementary schools, all licensed child care facilities, state agencies that license individuals to work with children, State Office of Personnel Management to screen person who may work with children, & other entities that provide services to children and request the registry. For Predatory sex. offenders, family of defendant, prior victims, resident neighbors, churches, community parks, schools, convenience stores, businesses and other places that potential victims and children may visit.	Local law enforcement agencies.	No decisions.	Yes: public officials, public employees, and public agencies.
Oregon OR. REV. STAT. § 181.585 (Supp. 1996); 1997 Or. Laws ch. 538 (S.B. 1078).	Yes.	Central registry; other notification procedures not specified.	Anyone appropriate: may include family, sponsor, residential neighbors & churches, community parks, schools, convenience stores, businesses & other places potential victims may frequent; any prior victims & any other person upon request, unless release of information would substantially interfere with rehabilitation. For sexual predators no longer supervised by an agency, names may be released to general public.	Community Corrections Agency, Dep. of State Police, Chief of Police, & sheriff.	Yes: See Gress v. Bd. of Parole & Post Supervisor, 924 P.2d 329 (Or. Ct. App. 1996).	Yes: public agency and its employees.

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Pennsylvania PA. STAT. ANN. tit. 42, § 9791 (West 1995).	Yes.	Manner not specified.	Neighbors, director of county children & youth service agencies, superintendent of each school district & equivalent official for private & parochial schools, director of each licensed day care center and preschool program, president of each college or community college, and to public upon request.	Chief Law Enforcement Officer.	Yes. See Van Doren v. Mazurkiewicz, 695 A.2d 967 (Pa. 1997).	Yes: PA state police, local law enforcement agencies & their employees; District Attorneys & their agents & employees, superintendents, administrators, teachers, employees, & volunteers engaged in supervision of children, directors & employees of county children & youth agencies, presents of colleges & universities, PA Bd. of Probation & Parole & its agents & employees, directors of licensed day cares & preschools.
Rhode Island R.I. Gen. Laws § 11- 37.1 (Supp. 1996).	Yes.	Notification procedures not specified.	3 levels of notification: 1. If risk of reoffense is low, agencies likely to encounter offender. 2. If moderate, above as well as organizations in community, schools, religious & youth agencies likely to encounter offender. 3. If high, above, as well as members of public likely to encounter offender. Also, information available to law enforcement agencies and government agencies conducting confidential background checks.	Law Enforcement agencies.	No decisions.	Yes: board of Review that determines sexually violent predator status and any member or agent thereof.
South Carolina S.C. CODE ANN. § 23-3- 400 (Law Co- op. 1996).	Yes.	Central registry.	Available to public upon written request; public notification if reasonable suspicion that decimation will deer criminal activity.	State Law Enforcement Division; County Sheriffs.	No decisions.	No.
South Dakota S.D. CODIFIED LAWS § 22- 22-31 (Michie Supp. 1996).	No.	Central registry.	All state, county and municipal law enforcement agencies; regional and national registries.	Chief of Police or Sheriff, Div. of Criminal Investigation.	No decisions.	No.



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Tennessee TENN. CODE ANN. § 40-39- 101 (Supp. 1996); 1997 Tenn. Pub. Acts 466.	Yes.	Central registry and written notice, electronic transmission or on-line access.	Local law enforcement in offender's current and previous residences and places of employment; when applicable, probation officer, parole officer, or other employee assigned responsibility for offender's supervision and release, Identification Division of FBI, and public if deemed necessary for public protection.	Tennessee Bureau of Investigation, local law enforcement agencies.	No decisions.	Yes: officers & employees of Tennessee Bureau of Investigation, officers & employees of local law enforcement, District Attorneys General & their employees, officers & employees of the courts, probation officers, parole officers, & other public officers & employees assigned responsibility for sexual offenders' supervised release into the community.
Texas TEX. REV. CIV. STAT. ANN. art. 6252-13C.1 (West Supp. 1997).	Yes.	Publication in newspaper, central database.	Public notice in newspaper, public access to database (except no access to picture, Social Security number, driver's license number and address).	Dept. of Public Safety, local law enforcement agencies.	Yes. <i>See</i> Perez v. State, 938 S.W. 2d 761 (Tex. Ct. App. 3 Dist. 1997).	Yes: any individual, agency or entity.
Utah UTAH CODE ANN. § 77-27- 21.5.	Yes.	Manner not specified.	Law enforcement agencies, State Office of Education.	Dept. of Corrections.	No decisions.	No.
Vermont VT. STAT. ANN. tit. 13, § 5401 (1996).	Yes.	Manner not specified.	Law enforcement agencies, government agencies conducting confidential background checks, school districts, victim by request, and other members of public exposed to danger.	Dept. of Public Safety, local law enforcement agencies.	No decisions, <i>but</i> <i>see</i> Doe v. Pataki, 120 F.3d 1263 (2d. Cir. 1997); Roe v. Office of Adult Probation, 1997 WL 546244 (2d. Cir. 1997).	Yes: law enforcement when notifying members of public exposed to danger under circumstanc es not enumerated.
Virginia VA. CODE ANN. § 19.2- 390.1 (Michie Supp. 1996).	No.	Central registry.	Upon official request, authorized officers or employees of a criminal justice agency, public, private or religious school, child welfare agencies, day care centers, and anyone seeking day care services.	State Police, Chief Law Enforcement Officer of the municipality.	Yes: <i>See</i> Kitze v. Commonwealth, 475 S.E. 2d 830 (Va. Ct. App. 1996).	Yes: local law enforcement officials.

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Washington WASH. REV. CODE ANN. § 9A.44.130 (West Supp. 1997); 1997 Wash. Legis. Serv. ch. 113 (S.S.B. 5621) (West).	Yes.	Manner not specified.	Law enforcement agencies, and the public, when necessary for public protection.	Law Enforcement Agencies.	Yes. <i>See</i> State v. Ward, 869 P.2d 1062 (Wash. 1994); Roe v. Office of Adult Probation, 1997 WL 546244 (9th. Cir. 1997).	Yes: elected public officials, public employees, public agency, local law enforcement agencies & officials.
West Virginia W.VA. CODE § 61-8F-2 (Supp. 1996).	Yes.	Manner not specified.	Court may order release of information for public safety; notification to supervisor of each county & municipal law enforcement office in city & county where offender resides, child protective services office, all community or religious organization which regularly provide services in the county where the person will reside.	State Police.	No decisions.	Yes: elected public officials, public employees & public agencies.
Wisconsin WIS. STAT. ANN. § 175.45 (West Supp. 1996).	No.	Manner not specified.	Law enforcement agencies for law enforcement purposes.	Dept. of Justice.	No decisions.	No.
Wyoming WYO. STAT. ANN. § 7-19- 302 (MichieSupp. 1997).		Central registry; notice for high- risk offender through means specified in court order.	Court may assess risk level upon District Attorney's application. If risk of reoffense is low, only persons authorized to receive criminal history information; if moderate, above plus organization in community, including schools and religious organization; if high, public notice.	County Sheriff, Wyoming Division of Criminal Investigation.	Yes: <i>See</i> If no one knows what the offender looks like or precisely where the offender lives or exactly what offenses the offender committed in the past (or the circumstances surrounding those offenses), it is difficult to know what to protect against. Snyder v. State, 912 P.2d 1127 (Wyo. 1996).	No.
Pam Lyncher Sexual Offender Tracking & Identification Act of 1996, 1996 Cong. § 1675, <i>codified</i> at 42 U.S.C. § 14071.	Yes.	National database.	Public notification when necessary to protect the public; all federal, state, & local criminal justice agencies; governmental agencies conducting confidential background checks for employment purposes.	Federal Bureau of Investigation.	No decisions.	Yes: State & Federal Law Enforcemen t Agencies, State & Federal Officials.

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State	Registration?	Retroactive?	Length of Registration?	Relief from Reg.
Alabama	Yes: sex offenders.	Yes.	Life.	No.
Alaska	Yes: sex offenders	Yes.	For single offense: 15 years after discharge. For 2 or more offenses: lifetime registration.	No.
Arizona	Yes: child sex offenders, habitual offenders, and sexually violent offenders.	Yes.	Lifetime, unless juvenile, then until juvenile offender turns 25.	No.
Arkansas	Yes: sexually violent offenders, sex offenders & child sex offenders.	No.	Lifetime.	Yes.
California	Yes: sex offenders, kidnappers.	Yes.	Life.	Yes.
Colorado	Yes: all sex offenders.	Yes.	Life.	Yes.
Connecticut	Yes: persons convicted of sexual assault.	No.	10 years after term of sentence.	No.
Delaware	Yes: all sex offenders.	No.	15 years after release after petitioning court.	Yes.
District of Columbia	Yes: sex offenders, child sex offenders, sexually violent predators.	No.	Risk level 1: 10 years following release; Risk level 2: 15 years following release; Risk level 3: lifetime.	Yes, after 10 years.
Florida	Yes: sexual predators.	Yes.	10 years if petition approved by court.	Yes.
Georgia	Yes: sexual offenders.	Yes.	Until satisfactory completion of terms of parole.	No.
Hawaii	Yes: sec offenders who use violence, child sex offenders & repeat offenders.	Yes.	Life.	Yes.
Idaho	Yes: all sex offenders.	No.	Life.	Yes.
Illinois	Yes: sex offenders, child sex offenders and child murderers	No.	If adjudicated sexually dangerous, life. Other offenders, 10 years after release.	No.
Indiana	Yes: child sex offenders.	No.	10 years after release.	No.
Iowa	Yes: sex offenders, child sex offenders, violent sex offenders.	Yes.	10 years from date of placement on probation or parole.	No.
Kansas	Yes: sex offenders, kidnappers.	Yes.	1st offense: 10 years following discharge. 2nd offense: lifetime.	Yes.
Kentucky	Yes: sex offenders.	No.	10 years following discharge.	No.
Louisiana	Yes: sex offenders, sexually violent predators, & child predators.	No.	10 years following discharge.	Yes.
Maine	Yes: sex offenders	No.	15 years following discharge.	Yes.

Megan's Laws

State	Registration?	Retroactive?	Length of Registration?	Relief from Reg.
Maryland	Yes: child sex offenders.	No.	10 years following release, unless sexually violent offender, then after sentencing court determines that offender is no longer a threat.	No.
Massachusetts	Yes: sex offenders.	Yes.	For single offense, 20 years following discharge; if 2 or more offenses, lifetime registration.	Yes.
Michigan	Yes: sex offenders	No.	25 years for 1st offense, lifetime registration for subsequent offenses.	No.
Minnesota	Yes: sex offenders & kidnapers.	Yes.	10 years following discharge.	No.
Mississippi	Yes: offenders adjudicated twice or more for sex offense.	No.	Life.	Yes.
Missouri	Yes: felony offenders, sex offenders.	Yes.	Life.	No.
Montana	Yes: sex offenders, violent offenders.	No.	Life.	Yes.
Nebraska	Yes: sex offenders, kidnapers.	No.	10 years following discharge.	Yes.
Nevada	Yes: sex offenders, child sex offenders.	No.	Life	Yes.
New Hampshire	Yes: sex offenders, child sex offenders.	Yes.	Life for most severe offenders, 10 years for attempts & lesser violations.	Yes.
New Jersey	Yes: sex offenders.	No.	Life.	Yes.
New Mexico	Yes: sex offenders.	No.	20 years following discharge.	No.
New York	Yes: sex offenders.	Yes.	10 years from initial date of registration.	Yes.
North Carolina	Yes: sex offenders.	No.	Life.	Yes.
North Dakota	Yes: child sexual predators, sexual predators.	Yes.	10 years following discharge.	Yes.
Ohio	Yes: sex offenders.	Yes.	Life for sexual predators; 20 years following release for habitual sex offenders; 10 years following release for all others.	Yes.
Oklahoma	Yes: all sex offenders.	No.	10 years from date of registration, unless successfully complete sex offender treatment program of Dept. of Corrections, then 2 years.	No.
Oregon	Yes: predatory sex offenders.	No.	10 years following release, if successfully petition.	Yes.
Pennsylvania	Yes: sexually violent offenders.	No.	10 years following release.	No.

McAllister

State	Registration?	Retroactive?	Length of Registration?	Relief from Reg.
Rhode Island	Yes: sexually violent offenders, child predators.	Yes.	10 years following release.	Yes.
South Carolina	Yes: all sex offenders.	No.	Life.	No.
South Dakota	Yes: all sex offenders.	No.	10 years following release.	Yes.
Tennessee	Yes: sex offenders.	Yes.	10 years following release with successful petition.	Yes.
Texas	Yes: all sex offenders.	No.	10 years following release.	Yes.
Utah	Yes: all sex offenders.	No.	10 years following release.	No.
Virginia	Yes: sex offenders and offenders committing crimes against minors.	No.	Life.	No.
Vermont	Yes: all sex offenders.	No.	10 years following release.	Yes.
Washington	Yes: sex offenders and kidnaping offenders.	Yes.	If Class A felony, lifetime registration. If Class B felony, 15 years following discharge. If Class C felony, 10 years following discharge.	Yes.
West Virginia	Yes: all sex offenders.	Yes.	10 years following release.	No.
Wisconsin	Yes: sex offenders.	Yes.	15 years following release.	Yes.
Wyoming	Yes: all sex offenders.	No.	Lifetime, unless sex offense other than 1st or 2nd degree assault, then 10 years following release.	Yes.
Pam Lyncher Sexual Offender Tracking & Identification Act of 1996	Yes: sex offenders, sexual predators, sexually violent offenders.	No.	10 years following release unless 2 or more convictions or is a sexually violent predator or has been convicted aggravated sexual abuse, then must register for life.	No.

C. Common Provisions and Themes in the State Sex Offender Registration and Notification Statutes

1. Registration

With respect to sex offender *registration*, the states now uniformly impose such a requirement on the vast majority of sex offenders. Moreover, the registration statutes in some states now (and will in all states eventually) also include other offenders as well, such as kidnappers,²⁵ which the federal guidelines were amended in 1996 to cover.²⁶ In any event, statutes requiring that most sex offenders register upon their release and provide to law enforcement authorities certain basic information are now universal throughout the states.

Some aspects of the states' registration requirements and processes, however, vary considerably. For example, approximately twenty-eight states and the District of Columbia do not impose their registration requirements retroactively, while at least twenty-two states do so. The decision whether to apply the statutes retroactively or only prospectively is important for constitutional purposes, as discussed below, because retroactive application raises potential double jeopardy and *ex post facto* concerns. The retroactivity decision also is relevant to the policy question whether the registration laws are effective because there are thousands of currently incarcerated sex offenders who will be required to register upon their release only if the laws are applied retroactively.

Two other aspects of the states' registration laws also merit mention. First, the federal guidelines require that registration be for ten years following a first sexual offense and life following subsequent offenses.²⁷ Some states,

however, impose longer registration time periods, such as fifteen or twenty years following a first offense²⁸ or, in some cases, lifetime registration following a single covered sexual offense.²⁹ Second, although the federal guidelines do not specify any procedures for permitting sex offenders subject to registration to seek relief from the legal requirements, approximately thirty states and the District of Columbia provide some statutory mechanism for covered sex offenders to seek such relief, while twenty states do not.

2. Notification

On the question of community notification of, or public access to, registrant information the states' statutes are even more varied. As explained above, the federal law originally did not *require* any disclosure or notification,³⁰ but the 1996 amendments now require that registrant information be disclosed in order to protect the public safety, although the federal statute does not specify precisely what those circumstances are or how the disclosure or notification should be made.³¹ Thus, given the threat of losing significant federal funding, all states probably will have some form of community notification or public access in the near future. Given the lack of federal guidance, however, on what form those provisions should take, the choices the states make likely will differ considerably, as they already do in the states that currently have some form of disclosure, notification or access.

Virtually all, if not all, states permit registrant information to be accessed and shared between law enforcement authorities. Beyond that, however, the statutes vary drastically. Currently, approximately thirty states and the District of Columbia provide for community



notification or essentially public access to registrant information, although it is impossible to generalize about the scope and parameters of those statutory provisions. Some states permit such notice to the public at large, to neighborhoods, to prospective employers, to child care facilities, churches and schools, or some combination of these options. Approximately twenty states never permit affirmative notification to the community or public in any circumstance. Even so, some of those states permit disclosure to prospective employers or government agencies.

Finally, the states also vary with respect to how the registrant information is disseminated and by whom it is provided. Probably two-thirds or more of the states utilize some kind of central registry to collect and disseminate sex offender registration information. The federal government also is creating and will maintain a national database of such offenders. The entities, officials and agencies responsible, however, for disclosing registrant information vary from state to state and include state law enforcement agencies, sometimes including the attorney general's office or the department of corrections, as well as local police or sheriff's departments. This variation implicates another policy consideration, which is whether these statutes are more likely to be effective if the information collected is under centralized control or decisions about notification and disclosure are left to local discretion.

3. *Immunity for Public Officials and Citizens*

Lastly, most of the state sex offender registration and notification statutes immunize the state officials involved in administering the laws from civil liability. The presence of such immunity is not surprising because the federal

laws that create financial incentives to adopt and implement these statutes indicate that states should provide that "[l]aw enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct."³² The federal funding laws, however, do not directly immunize state officials. In other words, state officials do not have a form of federal immunity in this context. Rather, a state's failure to provide for civil immunity simply raises the possibility that federal funding might be lost, although the likelihood of that outcome seems relatively remote.

At least thirty states provide some immunity for at least some officials involved in administering these laws, but the precise contours of the immunity again varies from state to state. Most of these states immunize all public officials involved in the process in any way. Some, however, expressly immunize only law enforcement officials,³³ while others even appear to immunize private citizens.³⁴ Indirectly, at least, the presence or absence of civil immunity may bear on the policy questions regarding the effectiveness and propriety of these laws.

III. The Wisdom of State Sex Offender Registration and Notification Statutes

A. A Few Words on Constitutionality

Several constitutional challenges have been made to sex offender registration and community notification laws. For the most part, these challenges have failed,³⁵ especially with respect to registration requirements. The major challenges to date have included the following:

(1) double jeopardy — the argument is that these laws impose punishment for constitutional purposes and, thus, when applied retroactively to already convicted and sentenced sex offenders, violate double jeopardy principles;

(2) *ex post facto* — the argument is that these laws impose punishment for constitutional purposes and, thus, when applied retroactively to persons who committed their offense(s) prior to the laws' effective date, violate *ex post facto* principles;

(3) privacy — the argument is that these laws invade constitutionally protected privacy rights of sex offenders;

(4) cruel and unusual punishment — the argument is that these laws constitute cruel and unusual punishment, not unlike the historical practice of branding offenders;

(5) equal protection/substantive due process — the argument is that these laws unconstitutionally single out sex offenders for harsher treatment than other equally dangerous offenders, violating equal protection and substantive due process principles; and

(6) procedural due process — the argument is that these laws effect a deprivation of sex offenders' protected liberty interests that, at a minimum, requires the observance of certain procedural safeguards, possibly including an individualized hearing, representation by counsel, the opportunity to present evidence, and an appeal.

The author has elsewhere discussed the constitutional challenges to these laws in some detail,³⁶ and will only briefly address the constitutional aspects here. The primary constitutional issue the courts have addressed at this point is whether the registration, community notification and public access provisions impose punishment that, when applied retroactively, violates *ex post facto* principles. This challenge is, overall, probably the most substantial one, and the one that the Supreme Court of the United States almost certainly will have to resolve in the near future.

The other constitutional challenges, by any objective assessment, appear unlikely to

succeed, at least in general. For example, it is doubtful that adult sex offenders, whose convictions are a matter of public record, have any constitutional privacy right to keep such information from law enforcement officials or even the public.

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information from law enforcement officials or even the public. Nor is it at all obvious precisely what liberty interest or fundamental right sex offenders have in concealing such information. Without a protected liberty interest or fundamental right at stake, the equal protection, substantive and procedural due process challenges are almost certainly doomed. At a minimum, the state registration and notification statutes have a rational basis. Lastly, the kind of registration requirements typically imposed under these statutes hardly seems "cruel and unusual," even by contemporary standards. The same is generally true of notification and public access, although the case in that context is



strengthened slightly (though not nearly enough) by drawing an analogy to the colonial practices of branding and shaming criminal offenders.

Other than the question whether the notification and access statutes effectively punish sex offenders a second time when applied retroactively, the constitutional challenges to the state statutes do not appear serious or particularly substantial. And even that constitutional challenge disappears when the state statutes are applied prospectively. Thus, assuming the Supreme Court soon resolves the *ex post facto* issue, the continuing debate about sex offender registration and notification laws should focus on their effectiveness and the policy issues they raise, not constitutional concerns.

B. Effectiveness

A focal policy question in the long run should be whether sex offender registration and notification laws are effective in preventing sex crimes. The answer to that question may depend in large part upon what kind of information is provided to the community, how widely the information is disseminated or how easily it is available to parents, schools, and other persons and entities who might make use of it, and whether the information is available across jurisdictional lines, such as counties and states. All the information in the world will not prevent crimes if the people who need the information do not receive it or the offender can circumvent the warning process simply by traveling anonymously to another jurisdiction to commit sex crimes.

The states differ considerably with respect to the information they provide to citizens.

Some states, California being a good example, provide name, photograph, criminal history and zip code, but no address. Others, like Kansas, provide name, photograph and address, but not criminal history. The type of information provided may have a significant impact on how effective the laws are in practice. The California system primarily serves to warn those who recognize a photograph of a neighbor or co-worker, or potential employers or child-oriented organizations (such as the Boy Scouts, Little League, day care centers, schools or churches) that are conducting background checks of potential employees or volunteers.³⁷ The Kansas system, on the other hand, informs the public of the offender's precise location, but fails to provide neighbors with sufficient information to know what risks, if any, the offender may present.

In any event, sex offender registration and notification laws probably can be effective in protecting at least some potential victims in some circumstances. The paradigmatic example is notifying a neighborhood that a new neighbor is a convicted pedophile. In that instance, registration and notification probably will significantly reduce the likelihood that the offender will have the opportunity to commit sex crimes against any of the children in that neighborhood. The law would be effective in that situation because the people in the offender's immediate vicinity are aware of the offender's presence, background and precise identity (again, depending on exactly what information is provided to neighbors).

There are several problems with that scenario, however, as a complete justification for sex offender registration and notification laws. First, many, perhaps even a majority of, regis-

tered sex offenders may not be pedophiles since most registration statutes require virtually all sex offenders to register for crimes such as statutory rape (even between teenagers whose age differences may be only a year or two) or prostitution offenses. Thus, often the notification will not be for the benefit of vulnerable or gullible children. Indeed, many registered offenders will have no interest in committing sex crimes against children.³⁸ Furthermore, much of the child sexual abuse in this country is committed by adult family members or close family friends.³⁹ It seems unlikely that sex offender registration and notification laws will be terribly effective in that context, even when dealing with pedophiles.

Second, even in the scenario described above, it seems unlikely that the notification would necessarily provide any significant protection to children in other neighborhoods or in other jurisdictions. There is no prohibition on sex offenders leaving their neighborhood just like anyone else, and why should we expect that, if they have the desire to commit future offenses, they will not simply seek out children in a setting in which the offender's background and identity are unknown? On the other hand, even if the entire town is made aware of the offender's presence, is it realistic (if the town is of any size at all) to expect that such notice will really permit parents and others to be on their guard for the offender, especially if the offender is just one of several within the town?

Third, unless the community is given spe-

cific information that includes the offender's photograph, address and sex offense history, which is not always the case under these state laws, the notification may have minimal effect. If no one knows what the offender looks like or precisely where the offender lives or exactly what offenses the offender committed in the past (or the circumstances surrounding those offenses), it is difficult to know what to protect against. Names and photographs alone have some value, primarily to alert employers conducting background checks of registered sex offenders applying for a job at a school or day care or other situation that might provide the opportunity for future crimes.⁴⁰ Even in that

If no one knows what the offender looks like or precisely where the offender lives or exactly what offenses the offender committed in the past (or the circumstances surrounding those offenses), it is difficult to know what to protect against.

context, however, the usefulness of a list of registered offenders depends upon the offender providing accurate information to potential employers and upon employers' diligence in checking

potential employees against the sex offender registry.

Indeed, a significant policy question is whether sex offender registry information will actually get to the people who might make use of it. In many states, there is no affirmative notification by state officials, or such notification is extremely limited.⁴¹ Instead, sex offender registration information is available either in a central database that can be accessed by computer or the information is compiled locally (usually by county). In many states, citizens must either request a copy of the list by telephone or make a trip to the sheriff's offices to obtain a copy.

The tradeoffs in this context are fairly clear. Affirmative notification (sometimes door-to-door in a neighborhood into which a high risk sex offender is moving) greatly increases the community's awareness of the risks but it also increases the likelihood of paranoia and protest and vigilantism. On the other hand, systems that rely upon affirmative conduct by private citizens to access the information reduce the likelihood of harassment but also make it far more likely that many people will never learn about the presence of even high risk sex offenders in their neighborhoods.⁴² The other tradeoff in this context is cost. It is relatively costly to send law enforcement officers door-to-door to notify neighbors of the presence of a convicted sex offender.⁴³ Central databases, however, may be comparatively cheap to establish and maintain.

C. Practical Considerations

An important fiscal question is at what cost the states can create, implement and maintain sex offender registration and notification systems. The costs of these laws take many forms, including monitoring and enforcement costs, potentially significant administrative and process costs, and the costs imposed on released sex offenders, innocent citizens mistakenly identified as sex offenders, and the law enforcement officials who are obligated to protect them, when the offenders or innocent citizens are the victims of harassment and vigilante justice.

As pointed out above, sex offender registration and notification laws cannot be effective if the registrant information is not current and comprehensive. It is also clear already, however, that law enforcement officials face

significant monitoring costs in this context. The preliminary problems are making sure that sex offenders register in the first place⁴⁴ and that the information they provide is accurate and complete.⁴⁵ Those are not insignificant practical problems, but they may pale in comparison to the problem of *maintaining* accurate information. Indeed, keeping registrant information current is no small task, especially when registered offenders may have strong incentives to evade the laws' requirements.⁴⁶ It is very costly and time-consuming to have law enforcement officials verify addresses on a regular basis. Even a ninety-day time period between verification, however, may permit many sex offenders to flee the jurisdiction and commit offenses elsewhere against an unsuspecting community.

Thus, in this context, there is a serious question whether we are willing to devote the necessary law enforcement resources to the essentially administrative task of constantly verifying and updating sex offender registrant information. Without such an effort, these laws are likely to be terribly ineffective. Moreover, without sufficient monitoring and periodic verification, innocent people will be harassed and targeted for vigilante justice because the community mistakenly believes that a sex offender lives at a particular address.⁴⁷

Another cost consideration is the process for implementing registration and notification requirements. Some states, New Jersey for example, require state officials to follow a fairly elaborate procedure for assessing the risk presented by each individual sex offender and tying registration requirements and notification provisions specifically to that assessment.

Such an assessment may involve a panel composed of several state or private individuals, a hearing that may include the presentation of evidence and the participation of legal counsel, and possibly even an appeal of the risk assessment decision. If the Supreme Court ultimately concludes that such an elaborate, time-consuming and expensive process is constitutionally required, then sex offender registration and notification laws may be prohibitively costly and burdensome, at least for some states.

Finally, there is a risk, though impossible to evaluate, that private citizens will engage in vigilantism and unlawfully hound, harass and torment registered sex offenders who have completed their sentences and been released. Initial anecdotal evidence actually suggests that lawless action, such as the commission of serious property or person crimes against registered sex offenders, has been relatively rare.⁴⁸ But the threat of such conduct is real, and the threat alone imposes costs not just on the sex offenders themselves, but also upon law enforcement officials, persons who happen to be mistaken for registered offenders, and society at large. Presumably, conscientious law enforcement officials recognize and will attempt to fulfill their legal obligations to protect all private citizens, including released sex offenders, from criminal activity. There remains a serious question, however, whether juries will be prepared to convict concerned parents who, for example, unlawfully harassed a convicted pedophile.

From a law enforcement standpoint, making an entire community aware of the presence and location of a sex offender may result in additional patrol, protection, investigation and possibly prosecution costs, in order to prevent

the commission of crimes against these natural "targets" of public ire. Moreover, law enforcement officials and private citizens also will have to deal with cases of "mistaken identity," which already have occurred, where neighbors engage in punitive measures against someone they believe to be a registered sex offender but who actually is not. Absent very strict and frequent monitoring of registered sex offenders' addresses, these cases inevitably will arise, and perhaps with more frequency than will be tolerable.

Another consideration regarding the costs associated with sex offender registration and notification laws is the impact these laws have on the sex offenders themselves. If the community is always notified of an offender's presence, address, offense history and so forth, can the offender successfully reintegrate into society upon release from prison?⁴⁹ Although reintegration may be more difficult in some situations than in others, it is not at this time clear that sex offenders who have served their sentences and been released cannot succeed at some level in becoming productive members of society, even with state registration and notification laws.

For example, there is no reason to believe that an employer would never hire a convicted sex offender under any circumstances. Moreover, the fact that certain employers (for example, those whose businesses involves children) would not hire pedophiles hardly seems an undesirable consequence of sex offender registration and notification laws. Rather, although these laws may make life after prison somewhat more difficult for some sex offenders, negative public reaction to a sex offender's past history is simply an unavoid-

able consequence of being convicted of such crimes.

In general, the evidence does not suggest that released sex offenders can find nowhere to go upon their release.⁵⁰ On the other hand, it is fair to ask whether the purpose of state registration and notification laws is served if neighbors, employers, and others make life so miserable for a released sex offender that the person simply moves elsewhere without notifying authorities.⁵¹ Sooner or later, those sex offenders end up in someone else's neighborhood, and often the new neighborhood will be unaware of the offender's history.

IV. Conclusion

Although sex offender registration and notification laws are important public safety measures, they raise serious and debatable policy questions. The ultimate policy questions in this context are whether sex offender registration and notification laws are effective. Do these laws actually prevent sex crimes? Are the laws justified on a cost-benefit basis? Sex offender registration and notification laws probably can be effective, at least some of the time for some potential victims, depending on both the circumstances and the specific requirements of the laws. In other instances, however, these laws almost certainly are wholly ineffective, and they can be quite costly to implement. Although those facts do not invalidate the laws as a constitutional matter, they do raise serious questions about the cost-benefit calculus in this context.

In any event, sex offender registration and notification laws are no substitute for time-honored methods of dealing with and preventing sex crimes. These laws are terribly weak

and ineffective in comparison to incapacitating sex offenders for long periods of time by prosecuting and incarcerating them. It seems unlikely that the public or the courts will be seriously disturbed by the constitutionally unassailable notion of incarcerating child molesters, rapists and other violent sex offenders for long periods of time—even for life—for either repeat or perhaps even first offenses.

Ultimately, as a public safety measure, there is simply no substitute for individual and parental vigilance. Nothing is more likely to prevent sex crimes than individual vigilance in avoiding potentially dangerous situations and parental vigilance in monitoring and supervising the whereabouts and activities of children. That is not to say that individuals or parents are somehow "at fault" or "responsible" if they or their children are the victims of a sex crime, not by any means. But, at the end of the day, there is only so much that law enforcement officials and statute books can do to protect us from each other.

In the final analysis, sex offender registration and notifications laws probably are constitutional, but they are neither simple nor necessarily cheap to implement effectively. Unfortunately, there is no single or simple panacea for the risks that sex offenders and other criminals present in our society.

Notes

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1. See, e.g., Victoria Slind-Flor, *Permanent Cuffs For Molesters?*, NAT'L. L.J., Jan. 27, 1997, at A6 (discussing California's chemical castration law which took effect January 1, 1997, and plans for legislative proposals to require all convicted child molesters to wear permanent wrist cuffs identifying them as such); *Montana Oks Drug 'Castration' For Sex Offenders*, KAN. CITY STAR, Apr. 27, 1997, at A7. Georgia also recently approved chemical castration of sex offenders and Missouri is seriously considering such legislation. The American Civil Liberties Union has declared that it will challenge the California law on constitutional grounds. See Mark Hansen, *Cruel and Unusual?*, A.B.A. J. Apr. 1997, at 18.
2. See, e.g., *Rise v. Oregon*, 59 F.3d 1556 (9th Cir. 1995) (upholding against ex post facto challenge an Oregon law requiring convicted murderers and sex offenders to surrender blood samples for a state DNA data bank).
3. See, e.g., Stephen R. McAllister, *The Constitutionality of Kansas Laws Targeting Sex Offenders*, 36 WASHBURN L.J. 419, 425 n.42 (1997) [hereinafter McAllister, *Constitutionality of Kansas Laws*] (citing and discussing state registration statutes); Stephen R. McAllister, "Neighbors Beware": *The Constitutionality of State Sex Offender Registration and Notification Laws*, 29 TEXAS TECH L. REV. 97 (1998) [hereinafter McAllister, *Neighbors Beware*]; see also *infra* Part II.
4. See, e.g., McAllister, *Constitutionality of Kansas Laws*, *supra* note 3, at 426-27 (citing and discussing state notification/public access statutes); McAllister, *Neighbors Beware*, *supra* note 3, at 97 (1998); see also *infra* Part II.
5. Other possible options in this context include indeterminate sentences for repeat sex offenders or extended probation or parole periods, two responses receiving serious consideration in Great Britain, where there is apparently strong public sentiment that something must be done about pedophiles. See *Pedophiles Get Out*, THE ECONOMIST, June 21, 1997, at 58-59. Yet another possibility is the attachment of special requirements as a condition of probation or parole for convicted and released sex offenders. See generally Lenore H. Tavill, Note, *Scarlet Letter Punishment: Yesterday's Outlawed Penalty is Today's Probation Condition*, 36 CLEV. ST. L. REV. 613 (1988); Jeffrey C. Fillick, Note, *Signs of the Times: Scarlet Letter Probation Conditions*, 37 J. URBAN & CONTEMP. L. 291 (1990); Rosalind K. Kelley, Note, *Sentenced to Wear the Scarlet Letter: Judicial Innovations in Sentencing--Are They Constitutional?*, 93 DICK. L. REV. 759 (1989).
6. See, e.g., KAN. STAT. ANN. § 59-29a01-29a17 (1996) (the "Kansas Sexually Violent Predator Act") (upheld against constitutional challenge in *Kansas v. Hendricks*, 117 S. Ct. 2072 (1997)); WASH. REV. CODE § 71.09.00-.230; WIS. STAT. § 980 (1997); MINN. STAT. § 253B.02, subd. 18b (1998); CAL. WELF. & INST. CODE § 6600 (West 1998); ARIZ. REV. STAT. ANN. § 13-4601-4613 (West 1997). There is an older form of sex offender civil commitment statute, still on the books in some states, but generally not used with frequency today, called "sexual psychopath" laws. See, e.g., V. Woerner, Annotation, *Statutes Relating to Sexual Psychopaths*, 24 A.L.R.2d 350 (1952) (describing such laws and cases addressing them). The sexual psychopath laws, which the Supreme Court generally has upheld against constitutional challenge, see *Minnesota ex rel. Pearson v. Probate Court*, 309 U.S. 270 (1940); *Allen v. Illinois*, 478 U.S. 364 (1986), differ from the most recent generation of sex offender commitment statutes, however, in that they provide for civil commitment *in lieu of* incarceration or punishment, rather than a combination of the two.
7. See McAllister, *Neighbors Beware*, *supra* note 3, at 97; see also McAllister, *Constitutionality of Kansas Laws*, *supra* note 3, at 436-42.
8. See generally *The Violent Crime Control and Law Enforcement Jacob Wetterling Act*, 42 U.S.C. § 14071 (1994).
9. See *id.* § 14071(a)(1).
10. See *id.* § 14071(a)(3)(A), (B).
11. See *id.* § 14071(b)(1). This information generally will include name, residence address, and possibly photographs and fingerprints if not already possessed by law enforcement officials.
12. See *id.* § 14071(b)(3)-(5).
13. See *id.* § 14071(b)(6). The statutory requirements are registration for 10 years following a first sexual offense, and for life following subsequent sexual offenses.
14. See *id.* § 14071(c).
15. See Proposed Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act, 60 Fed. Reg. 18,613 (1995) ("states that wish to achieve compliance with the Jacob Wetterling Act should understand that its requirements constitute a floor for state registration systems, not a ceiling . . .").
16. 42 U.S.C. § 14071(d) (1994) (emphasis added).



17. *Id.* § 14071(e).
18. *Id.* § 14071(f)(1).
19. *See id.* § 14017(f)(2)(A).
20. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (emphasis added).
21. *See* 42 U.S.C. § 14071(f)(2) (1994).
22. Pam Lyncher Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093.
23. *Id.* § (2)(b).
24. *Id.* § (2)(c).
25. *See, e.g.*, KAN. STAT. ANN. § 22-4902(a)(3)(A) (Supp. 1997). Some states also define murderers as "offenders" under the registration statutes, *see, e.g., id.* § 22-4902(d)(1)-(3), which is not required under the amended federal guidelines. *See infra* note 26.
26. *See* Final Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 62 Fed. Reg. 39,009. The federal statutes also specify certain categories of sex offenders who must be required to register, 42 U.S.C. § 14071(a)(3)(A) & (B) (1997), and various kinds of information they must be required to provide as part of the registration process. *See id.* § 14071(b)(1).
27. *See* 42 U.S.C. § 14071(b)(6) (1997).
28. *See* ALASKA STAT. § 12.63.020 (Michie 1996) (15 years); DEL. CODE ANN. tit. 11, § 4120(a) (Supp. 1996) (15 years); ME. REV. STAT. ANN. tit. 34-A, § 11121(2)(A)&(B) (West 1996) (15 years); MASS. GEN. LAWS ANN. ch. 6, § 178G (West 1997) (20 years); MICH. COMP. LAWS ANN. § 28.725(3) (1997) (25 years); N.M. STAT. ANN. § 29-11A-5(D) (Michie Supp. 1996) (20 years); WASH. REV. CODE ANN. § 9A.44.140(1)(a)-(c) (West Supp. 1997) (15 years, if offense was class B felony); WISC. STAT. ANN. § 175.45(5)(a)-(d) (West Supp. 1996) (15 years).
29. *See* ALA. CODE § 13A-11-200 (1996); 1997 ARK. LEG. SERV. 989 § 19 (West); ARIZ. REV. STAT. ANN. § 13-3821 (West 1996); CAL. PENAL CODE § 290(a)(1) (West Supp. 1997); COLO. REV. STAT. ANN. § 18-3-412.5(1) (West 1997); 1997 HAW. SESS. LAWS 316 (H.B. 108) § 2(1); IDAHO CODE § 18-8305 (Supp. 1996); 1997 MISS. SESS. LAWS Ch. 454 (S.B. No. 2800); MO. ANN. STAT. § 566.600 (Vernon 1996); 1997 Mo. Leg. Serv. H.B. 883 (Vernon); MONT. CODE ANN. § 46-23-506 (Smith 1995); NEV. REV. STAT. § 207.151 (1995); N.J. STAT. ANN. § 2C:7-1 (West 1995); N.C. GEN. STAT. § 14-208.5 (1996); S.C. CODE ANN. § 23-3-460 (Law. Co-op. 1996); VA. CODE ANN. § 19-2-390.1 (Michie Supp. 1996).
30. *See* 42 U.S.C. § 14071(d) (1997).
31. *See* Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (emphasis added); 42 U.S.C. § 14071(d)(2) (Supp. 1997).
32. *Id.* § 14071(e).
33. *See* N.D. CENT. CODE § 12.1-32-15(11) (Supp. 1995); OHIO REV. CODE ANN. § 2950.12 (Banks-Baldwin Supp. 1997); VA. CODE ANN. § 19.2-390.1(c) (Michie Supp. 1996); VT. STAT. ANN. tit. 13, § 5412 (1996).
34. *See* ARIZ. REV. STAT. ANN. § 13-3825(F) (West 1996); ILL. COMP. STAT. ANN. 730/152-130 (West 1996); 1997 Miss. Laws Ch. 454, S.B. No. 2800, § 5; N.H. REV. STAT. ANN. § 651-B:7VIII (1996); N.Y. CORRECT LAW § 168r (McKinney 1996); TEX. REV. CIV. STAT. ANN. art. 6252-13c.5(a) (West Supp. 1997).
35. *See* cases cited in the Table above.
36. *See, e.g.*, McAllister, *Neighbors Beware*, *supra* note 3; McAllister, *Constitutionality of Kansas Laws*, *supra* note 3, at 436-42.
37. *See, e.g.*, Gloria Gonzales, *Few Area Residents Use Megan's Law Database*, L.A. DAILY NEWS, July 24, 1997 at SV1 (noting that several organizations dealing with children, such as the Boy Scouts, soccer leagues, Little League, youth church groups and day care centers, were taking advantage of the sex offender database in California).
38. *Cf.* Sharon Lamb, *False Remedies Hinder Child Sex Abuse Prevention*, COM. APPEAL (Mem. TN), June 22, 1997 at B4 (Megan's laws group "all kinds of perpetrators of sexual abuse together into a certain type that in actuality makes up a small percentage of all abuse cases").
39. *See id.* ("Researchers today tell us, however, that children are much more likely to be abused by a family member, close friend of the family or an adolescent boy who has never served time for a sexual offense.").
40. *See, e.g.*, Tina Dirmann, *Molesting Reports Stir Phone Calls: Coach's Name Found on Offender Database*, PRESS-ENTERPRISE (Riverside), Sept. 27, 1997, at B1 (reporting that a popular Little League coach had been arrested for child molestation after a league member discovered the coach's name, photograph and criminal history in the California sex offender database and several boys later came forward, alleging that the coach had sexually molested them).
41. *See, e.g.*, Gil Smart, *Protecting Whom? In Theory*,

Megan's Law Protects Children From Child Molesters. In Practice, Pennsylvania's Law May not Achieve that Goal, LANCASTER NEW ERA, Sept. 28, 1997, at A1 (pointing out that, under the Pennsylvania law, police have no obligation to provide notice of sex offenders unless the person has been officially designated a "sexually violent predator" and that, even then, affirmative notice is only given to those who live within 250 feet of the sex offender.).

42. The preliminary anecdotal evidence suggests that citizens generally have not paid much attention to nor taken advantage of the opportunity to request a list of sex offenders or access a central database by computer. See, e.g., Naftali Bendavid, *As Debate Rages, States Labor To List Sex Offenders; Ethical, Practical Ills Beset Registries*, CHI. TRIB., Sept. 29, 1997, at 1 ("Even when offenders do register, few among the public take advantage of the lists. In Chicago, a city of nearly 3 million, just 50 or so residents checked the list in a 12-month period, police say."); Bill Bryan, *Public Gets List of Sex Criminals: Interest is Lukewarm, Missouri Officials Say*, ST. LOUIS POST-DISPATCH, Aug. 29, 1997, at 1A ("Missouri's registered sex offenders went public Thursday, but the public didn't take much notice"); Andrew Buchanan, *Few Look at Child Sex Offenders; Only Slight Interest Even After Incidents*, CHI. TRIB., May 4, 1997, at 1.

43. See, e.g., Lee Romney & Geoff Boucher, *Deputies Warn Residents About Child Molester; Public Safety: About 40 Detectives Knock on Doors in Rancho Santa Margarita, Spreading Word of 'High-Risk' Offender*, L.A. TIMES, June 18, 1997, at B1 (describing how, in order to notify a neighborhood that a convicted child molester was moving into the area, about 40 detectives passed out fliers and went door-to-door for an entire day, beginning at 7:00 a.m. and continuing well into the evening).

44. See, e.g., Bendavid, *supra* note 42, at 1 ("In Illinois, just 8,742 of the 14,775 sex offenders who are required to register, or roughly 60 percent, have actually done so.").

45. See, e.g., Kevin O'Hanlon, *Sexual Offenders Telling Sheriffs Fake Addresses*, CLEVELAND PLAIN DEALER, Sept. 25, 1997, at 9B; Mike Kennedy, *Some Addresses Wrong in Lists of Sexual Offenders, Officials Say; Counties Say Glitches in New System Have Led to Faulty Information*, KAN. CITY STAR, Sept. 19, 1997, at C4; William C. Lhotka & Bill Bryan, *Police Work to Verify Sex Offender Addresses; Many on Lists Have Moved or Provided*

Wrong Information, ST. LOUIS POST-DISPATCH, Sept. 5, 1997, at 14A; *Sex Offender List Prints Wrong Addresses*, FLA. TODAY, June 27, 1996, at 4A; *Database of Sex Offenders Riddled With Inaccurate Locations*, LAW VEGAS REV.-J., July 16, 1997, at 7B (California Attorney General Dan Lungren's "office estimated that between 35 percent and 40 percent of the local information was wrong"; in Los Angeles County, the information for "about two-thirds of the sex offenders" was wrong; in Orange County, "something less than 50 percent of the locations listed for sex offenders in that jurisdiction were wrong"; and in San Bernardino County, "229 of the 500 names checked" had incorrect information).

46. Opponents of the laws have often complained that the practical effect of community notification will be to drive sex offenders "underground" so that neither law enforcement authorities or the general public will have any idea where they are. See, e.g., *Database of Sex Offenders Riddled with Inaccurate Locations*, LAS VEGAS REV.-J., July 16, 1997, at 7B (American Civil Liberties Union official asserting that "One of the unintended effects of Megan's Law is that a group of former sex offenders are starting to go underground to avoid the registration process"). And, certainly, there already have been examples of sex offenders who simply moved without informing authorities, as the laws require, and then committed sex offenses in their new neighborhood. See, e.g., Mary Callahan, *SR Police: Sex Offender Not Registered*, SANTA ROSA PRESS DEMOCRAT, Sept. 23, 1997, at B1 (sex offender arrested for several sex crimes had been living in the community for "some months" without telling authorities he had moved from previous registration address).

47. See, e.g., Associated Press, *Couple Mistaken for Sex Offenders When Address Appears on Registry*, FLA. TODAY, May 4, 1997, at 9A ("The neighborhood was friendly to new tenants Mike and Jody Lumpkins, until state officials last week mistakenly identified their trailer as the home of a convicted sex offender" (describing situation that arose in Junction City, Kansas)); Associated Press, *Sex Offender List Prints Wrong Addresses*, FLA. TODAY, June 27, 1997, at 4A ("Amy McGee worries that vandals who think there's a child molester in the neighborhood might target her home. After all, her address is listed on the state's public registry of sex offenders. Trouble is, the offender listed at that Peoria home doesn't live there anymore" (describing situation that arose in

Peoria, Illinois)).

48. News reports suggest that registered sex offenders with some frequency have been the targets of neighborhood protests, *see, e.g., infra* note 51, and sometimes hate mail, or messages or notes posted on mailboxes and the like. *See, e.g.,* Tony Rizzo, *Relatives Fall Victim to Sex Laws: Offenders' Families Have Been Harassed by Taunts and Hate Mail*, KAN. CITY STAR, Nov. 1, 1994, at A1 (describing such incidents in the Kansas City, Kansas metropolitan area). Other acts of vigilantism, however, have constituted serious crimes. *See, e.g.,* *Vigilantes Suspected in Firebombing: Covina Victim Has Record of Sex Crimes*, SAN DIEGO UNION & TRIB., July 12, 1997, at A3 (describing incident in which sex offender's van was firebombed); Jay Richards, *Two Are Indicted in Mistaken Attack on Carbon Man*, ALLENTOWN MORNING CALL, Apr. 27, 1995, at B2 (reporting on the indictment of two men on burglary and conspiracy charges following an incident in which they broke into a house where a sex offender lived but mistakenly beat another man).

49. *See, e.g.,* Bendavid, *supra* note 42, at 1 (stating that many therapists believe sex offenders need help and treatment, not humiliation, and that some sex offenders will be driven underground or away from such options if the public learns of their past and harasses them).

50. There may, however, be extreme instances in which an offender with no family, friends, or other support feels so lost and terrified about the possibility of reentering society that, instead, the offender may purposefully violate the registration laws, for example, in order to remain in state custody. *See, e.g.,* *Molester with Nowhere to Go Rejailed/Parolee Lacks Home, Cannot Register Address as Required by 'Megan's Law'*, HARRISBURG PATRIOT & EVENING NEWS, Aug. 17, 1997, at A4 (describing paroled child molester who walked out of prison with his arms outstretched to state troopers who arrested him and returned him to jail because efforts to find the offender a place to live had failed and, without an address, he could not comply with the registration law).

51. *Cf.* Editorial, *Danger in Abusing Megan Laws: Risk to Society is Greater if Sex Offenders are Driven Underground*, L.A. TIMES, Sept. 22, 1997, at B4 ("Forcing a high-risk sex offender to go elsewhere might seem a fine idea, but what about some other neighborhood forcing such a person into the vicinity of your home?"); Gordon Dillow, *Hounded Out, to Whose Street Do Molesters Go?*, ORANGE COUNTY REG., June 19, 1997,

at B1 (describing how an Arizona trial judge made it a condition of a child molester's probation that the molester leave the State of Arizona). That neighbors will indeed attempt to force sex offenders to move out of their neighborhood appears beyond dispute, even this early in the life of the Megan's Laws. *See, e.g.,* *Parents Protest to Oust Molester from Community: Neighbors Collect Signatures On Petitions*, SACRAMENTO BEE, July 8, 1997, at B3 (describing one neighborhood's efforts to force a child molester to move elsewhere); *Convicted Child Molester Loses Job*, L.A. DAILY NEWS, Jan. 16, 1997, at N10 (reporting that child molester whose presence in the community was protested by neighbors had been fired by his employer and probably would end up on welfare, unable to collect enough money to move somewhere else); *Protesting Unwanted Neighbor/In Farmingdale, Fear and Outrage Over Sex Offender*, NEWSDAY, March 15, 1997, at A17 (reporting on a community's efforts to force a child molester to leave town by holding protests outside the offender's home and distributing fliers throughout the community); Mimi Ko Cruz, *Molester's Neighbors Protest Outside Placentia Apartment Complex*, L.A. TIMES, Mar. 16, 1997, at B4 (similar story and situation); Thao Hua, *Sex Offender Moves Following Threat of Protest*, L.A. TIMES, May 9, 1997, at B4 (child molester temporarily moved in with relatives while searching for a home outside Los Angeles following neighbors' threats to protest his presence).