From Innocent Boys To Dirty Old Men:
Amending The Sex Offender Registry To Actually
Protect Children From Dangerous Predators

Elizabeth B. Megale, Barry University
FROM INNOCENT BOYS TO DIRTY OLD MEN: AMENDING THE SEX OFFENDER REGISTRY TO ACTUALLY PROTECT CHILDREN FROM DANGEROUS PREDATORS

Elizabeth B. Megale

ABSTRACT:

The article initially focuses on the purposes of sex offender registries: (1) to make communities safer by informing the public (2) to discourage recidivism and reoffense; and (3) to aid law enforcement in the investigation of crimes. The sex offender registry fails to protect the public because it does not offer individuals any strategies for effectively using the information provided, it can actually hinder law enforcement in the investigation of crimes because it requires individuals to register even if they do not actually present a danger to society, and it does not discourage recidivism and reoffense because it stigmatizes people convicted of sex-related offenses making it harder to reintegrate into society. Therefore, sex offenders are more likely to return to those risky behaviors that are more likely to lead to recidivism and reoffense. This article offers practical solutions that would make the sex offender registry more practical and better suited for its purposes. It proposes that only persons who actually present a danger to society be required to register. Offenders should be allowed to transition from the tiers established in The Adam Walsh Act so as to eventually be removed from a publicly available registry. Sex offenders be continuously monitored while on the registry by specially trained to monitor only certain types of offenders. A publicly available registry should be either eliminated or limited in accessibility to lower the risk of members of the public misusing the information.

CONTENTS

I. INTRODUCTION ................................................................. 2
II. HISTORY/BACKGROUND .................................................. 5
III. PROBLEMS WITH SEX OFFENDER REGISTRATION .......... 13
   A. Recidivism and Reoffense ............................................ 15
   B. Victimology ................................................................. 17
   C. Rate of Sexually Violent Crime .................................... 18
   D. Problems Particular to the Sex Offender Registry .......... 18
      1. The registry fails to keep the public safe .................. 19
      2. The registry creates a stigma whereby individuals who are required to register are significantly disadvantaged in terms of seeking employment, credit, and quality housing .......... 22
      3. The registry requires individuals to register even when they do not create a danger to society as a whole ................................................................. 24
      4. Individuals who are registered are not subject to continued supervision by any government authority .................................................................................. 26
I. INTRODUCTION.

Jaycee Dugard was rescued from her kidnapper in August 2009, eighteen years after Phillip Garrido abducted her. Garrido was a convicted felon, a known danger to his community, and a registered sex offender. During the time he had Jaycee Dugard imprisoned in a compound he built in his backyard, he was subject to supervision under the probation and parole system of California. While she was held captive, parole officers saw Jaycee Dugard and at least one of her daughters on more than one occasion when they visited Phillip Garrido’s home; no one questioned the young girls’ presence, however. From 1991 until 2009, Phillip Garrido repeatedly sexually abused Jaycee Dugard and even fathered her two children.

Jaycee Dugard should never have been abducted, and she should never have been raped and tortured during the course of those eighteen years. All of the protections we believe in as a society – sex offender registries, probation, parole, police (to name just a few) – failed her. She

---

2 Id. Phillip Garrido was convicted of rape and placed on parole in 1988. Id.
3 Id.
4 Id.
was saved only because of a random encounter with a particularly concerned citizen who paid attention. It took eighteen years for someone to just pay attention.\textsuperscript{6}

At the other extreme, a seventy-nine year old man who was mistaken for a registered sex offender was bludgeoned to death with a baseball bat in May 2010.\textsuperscript{7} Robert Pascale entered the home of Hugh Edwards for the purpose of killing him because he believed Edwards was a sex offender.\textsuperscript{8} Allegedly, Michael Garay, a friend who had spent the afternoon drinking with Pascale and other neighbors and friends, had told Pascale that Edwards was a convicted sex offender. During that conversation, Pascale grabbed a baseball bat and went next door to beat Edwards to death. The victim had a similar name and birth date as a person listed on the sex offender registry; however, he did not actually have any criminal record at all.\textsuperscript{9} For Edwards, the registry failed him as well, but in a wholly different way than it failed Jaycee Dugard. Because of the inadequacies of the sex offender registry system, both Edwards and Dugard have lost innocence and life that cannot be replaced.\textsuperscript{10}

\textsuperscript{6}Id. Officials at the University of California took notice of Jaycee Dugard and her daughters when Phillip Garrido brought them onto campus. Finding the circumstances suspicious, these officials contacted Garrido’s parole officer to report the encounter with Garrido and the young girls. Soon thereafter Jaycee Dugard was rescued from her abductor. \textit{Id.}


\textsuperscript{8}Mistaken Sex Offender, supra note 7.

\textsuperscript{9}Id.

\textsuperscript{10}The State of California recently approved a $20 million dollar settlement to compensate Jaycee Dugard for the failures of the California probation and parole system. \textit{During Captivity}, supra note 1.
In today’s world, society is inundated with information intended to empower us to make better decisions and live better lives. This information, however, can also create a false sense of security because it provides confidence in our own abilities to use that information to our own advantage. We feel safer because we are more informed, and we believe this leads us to make better decisions. Information itself is not power, though; we only gain power when we understand how to use the information as a tool within our lives.

Herein rests the problem with the current operation of the sex offender registry system. The system was created primarily as a database of information readily available to the public; the public, however, is ill-equipped to valuably use this information on a day to day basis. At best, the registry solely informs, and at worst it enables a reckless member of society to irresponsibly use the information resulting in more harm than good. This is how Hugh Edwards managed to lose his life so violently.

The focus of this article is to first explain what the current purposes of the sex offender registry are. Next, this article will show how the current system does not further those purposes. Finally, this article proposes certain changes that will improve the way the sex offender registry system operates so that it will actually fulfill its purposes.

Section II below details the history of the sex offender registry from its beginning to its present state. It tracks the legislative history while providing the cultural context in which these laws were created. Section III dissects four primary problems the current registry system is suffering: (1) lack of adequate resources due to the fact that too many individuals who do not actually represent a societal danger are required to register; (2) lack of continued supervision of registrants once probation and parole periods end; (3) lack of practical information that would enable the public to actually protect itself from dangerous offenders; (4) lack of resources
dedicated to the rehabilitation of sex offenders so that actual dangers to society are reduced or even eliminated. Section IV proposes four solutions that will make the registry more useful: (1) eliminate mandatory lifetime registration for individuals convicted of sex offenses where they do not present a threat to society; (2) implement a system of continued supervision, similar to probation, so long as an individual is required to register as a sex offender; (3) require specialized training for supervisory officials; and (4) eliminate a publicly available database. Section V concludes the article by affirming the value of some sort of registry system that is tailored to fulfill its purpose.

II. HISTORY/BACKGROUND.

1994 marked the beginning of focused encouragement by the federal government upon states to enact legislation aimed at identifying sexual offenders for the purpose of protecting the community.\(^\text{11}\) Since then, numerous laws targeting sex offenders have been enacted. The typical pattern of new legislation begins with a sexually motivated crime, usually of a child, and generally involving a murder.\(^\text{12}\) Often times, the suspect is someone previously convicted of a sex crime, but the victim’s parents did not know about the offender’s presence.\(^\text{13}\) Next, media attention surrounds the case at both a local and national level.\(^\text{14}\) Following the attention, a legislator becomes involved, speaks with the victim’s family, and proposes legislation aimed at controlling sex offenders to prevent such heinous crimes from recurring.\(^\text{15}\) The laws are intended to further three main purposes: (1) deter sex offenders from reoffending; (2) provide law

\(^{13}\) Id. at 19-20.
\(^{14}\) Id. at 20.
\(^{15}\) Id.
enforcement with suspects when a sex crime is committed or suspected; and (3) enable members of the general public to protect themselves against dangerous sex offenders.16

The first federal legislation enacted was the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act, 42 U.S.C. §§14071 (“Wetterling Act”). It was passed by Congress in 1994 and called for states to implement a sex-offender registration program.17 States were strongly encouraged to adopt this Act because failure to do so would result in a ten (10%) percent forfeiture of federal funds for state and local law enforcement under the Byrne Grant Program of the United States Department of Justice.18 Thus, even though Congress could not constitutionally require states to implement a sex-offender registry, it achieved its goal of having all fifty states and Washington, D.C. employ a sex offender registry by simply tying receipt of federal funds to passage of the Act.19

The Wetterling Act generally set out minimum standards for state sex offender registration programs, and it was followed by the Jacob Wetterling Improvements Act passed in 1997 after both Megan’s Law and the Pam Lyncher Act.20 The primary focus of the Improvement Act was to encourage states to set procedures to register out of state offenders.21

In 1996, Congress passed Megan’s Law which required states to make information on sex offenders available to the public.22 In particular, the law provided that “the information collected

---

18 42 U.S.C. § 14071(g)(2).
20 The substance of these Acts is not particularly relevant in this Article as these Acts have been repealed and replaced by newer legislation. Analysis of the newer legislation is the focus of this Article, and the author only mentions the previous Acts to serve as general background information for the reader.
21 The Jacob Wetterling Improvement Act required offenders who moved out of state to register within the new state. Pub. L. No. 105-119, 111 Stat. 2440 (1997) (codified as amended in scattered sections of 42 U.S.C. 1471 (2006)) Also required offenders to register within the states they worked or attended school. Id.
under a State registration program may be disclosed for any purpose permitted under the laws of the State.”

Notably, only information relevant to protecting the public and about the specific person required to register is authorized for release under Megan’s Law. The victim’s identity is not to be released. Megan’s Law also requires the maintenance of “an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.” Via grants awarded by the Attorney General, States receive funding to improve the reporting of unidentified and missing persons; failing to comply reduces federal funding by ten (10%) percent. Also in 1996, Congress passed the Pam Lychner Sex Offender Tracking and Identification Act of 1996 to create a federal FBI data base for sex offenders. Years later, in 2000, the Campus Sex Crimes Prevention Act was passed requiring sex offenders to report their enrollment at or employment by any institutions of higher education. All of the legislation enacted from 1994 through 2000 focused on informing the public of the location and activities of potentially dangerous sex offenders.

In 2006, Congress voted to repeal the Wetterling Act and replace it with Adam Walsh Child Protection and Safety Act of 2006. The hallmarks of this Act include classifying sex-offenders

---

24 §14071(e)(2).
25 Id.
30 "The former Wetterling Act is currently entitled the Jacob Wetterling, Megan Nicole Kanka, Pam Lychner Sex Offender Registration and Notification Program.” Wright, supra note 12, at 32.
31 Id. (“The Adam Walsh Act is a response to the sexual assaults and murders of seventeen people which occurred over the last seventeen years: Jacob Wetterling (Minn., 1989), Megan Kanka (N.J., 1994) Pam Lychner (Tex., 1993); Jetseta Gage (Iowa, 2005), Dru Sjodin (N.D., 2003), Jessica Lunsford (Fla., 2005), Sarah Lunde (Fla., 2005), Annie Zyla (Wis., 1996), Christy Fornoff (Ariz., 1984), Alexandra Zapp (Mass., 2002), Polly Klaas (Cal., 1993), Jimmy Ryce (Fla., 1995), Carlie Brucia, (Fla., 2004), Amanda Brown (Fla., 1998), Elizabeth Smart (Utah, 2002), Molly Bish (Mass., 2000), and Samantha Runnion (Cal. 2002)”).
into one of three tiers and broadening public access to registry information. Title I of The Adam Walsh Act is as SORNA, the Sex Offender Registration and Notification Act; it encompasses a three-tiered approach to sex offender registration as represented in the following table.\(^{33}\)

<table>
<thead>
<tr>
<th>TIER</th>
<th>DEFINITION</th>
<th>SCOPE</th>
<th>DURATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Considered to be the least heinous sexually motivated offenses and defined as not a Tier I or Tier II offender.</td>
<td>Once a year, jurisdiction permitted to verify address and take a current photograph. Failure to register is a felony offense.</td>
<td>15 years (minimum)</td>
</tr>
</tbody>
</table>
| II   | Includes convictions for the following crimes:  
- Sex trafficking  
- Coercion and crimes of enticement  
- Transportation with the intent to engage in criminal sexual activity  
- Abusive sexual contact  
- Use of a minor in a sexual performance  
- Solicitation of a minor to practice prostitution  
- Production or distribution of child pornography | Every six months, jurisdiction permitted to verify address and take a current photograph. Failure to register is a felony offense. | 25 years (minimum) |
| III  | Considered to be the most heinous sexually motivated offenses such as: | Every three months, jurisdiction permitted to verify address and take a | Life |

\(^{32}\) 42 U.S.C § 16918(a) (2006). The statute provides:

(a) In General.--Except as provided in this section, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry. The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user. The jurisdiction shall also include in the design of its Internet site all field search capabilities needed for full participation in the Drug Sjodin National Sex Offender Public Website and shall participate in that website as provided by The Attorney General.

\(^{33}\) 42 U.S.C. § 16911(1)-(4) (2006). SORNA requires all jurisdictions to adopt registration requirements that are at least as strict as those established by SORNA. U.S. DEP’T OF JUST., REVIEW OF THE DEPARTMENT OF JUSTICE’S IMPLEMENTATION OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT. 12 (2008), http://www.justice.gov/oig/reports/plus/e0901/final.pdf. Thus, so, as long as each state requires at least or more than the minimum registration period, the states is in compliance.
A. State Laws.

Today, three of the fifty (50) states maintain a registry of sex offenders that follows the minimum guidelines set forth by the Adam Walsh Child Protection Act.\(^{34}\) Forty-eight states have registries that require automatic lifetime registration for certain first-time offenders.\(^{35}\) Additionally, forty-four states maintain registries permitting registration for some period of time less than life,\(^{36}\) and thirteen states have special juvenile sex offender registries.\(^{37}\)

<table>
<thead>
<tr>
<th>Item</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggravated sexual abuse (or conspiracy to commit)</td>
<td>§ 29-4005(1)(b) (LexisNexis 2010); Consol. (2010);</td>
</tr>
<tr>
<td>Sexual abuse (or conspiracy to commit)</td>
<td>(2010) (allowing application for removal from registry after 15 years under certain conditions);</td>
</tr>
<tr>
<td>Abusive sexual contact against child under thirteen</td>
<td>§ 13-3821(D) (2010);</td>
</tr>
<tr>
<td>Non-parental kidnapping of a minor</td>
<td>§ 34.166 (2010);</td>
</tr>
<tr>
<td>Current photograph.</td>
<td>§ 2950.07(B)(2)-(3)</td>
</tr>
<tr>
<td>Failure to register is a felony offense.</td>
<td>§ 29-11A-4(L)(2)</td>
</tr>
</tbody>
</table>


\(^{35}\) Idaho and Massachusetts do not require lifetime registration unless the offender is a recidivist. IDAHO CODE ANN. §18-8310 (2010); MASS. ANN. LAWS ch. 6, § 178G (LexisNexis 2010). Six states including Alabama, California, Florida, Missouri, Montana, and South Carolina require lifetime registration for all sex offenders. ALA. CODE § 15-20-33(a) (LexisNexis 2010) (requires all adult offenders to register for life but excludes minor); CAL. PENAL CODE § 290(b) (Deering 2010); FLA. STAT. ANN. § 775.21(6)(l) (2010); MO. REV. STAT. § 589.400(3) (2010); MONT. CODE ANN. § 46-23-506(1) (2010); S.C. CODE ANN. § 23-3-460(A) (2009).

\(^{36}\) Del. Code Ann. tit 11, § 4121(e)(1)(b)-(c) (2010) (limiting registration to 15 or 25 years under some circumstances); VT. STAT. ANN. tit. 13, §5407(e) (2010) (allows for registration to end after 10 years under certain circumstances); ME. REV. STAT. ANN. tit. 34, § 11225-A (1)-(2) (2009); 42 PA. STAT. ANN. §9795.1(1) (2010) (allowing for 10 year registration); OKLA. STAT. tit. 57, § 583(c)(1)-(2) (2010) (allowing registration for 15 or 25 years under some circumstances); 730 ILL. COMP. STAT. ANN. 150/7 (2010); ARK. CODE ANN. §12-12-919(b) (2010) (allowing application for removal from registry after 15 years under certain conditions); ARIZ. REV. STAT. § 13-3821(D) (2010) (duty to register ends at age 25 under some circumstances); ALASKA STAT. § 12.63.020(a)(2) (2010); MASS. ANN. LAWS ch. 6, § 178G (2010) (allows requirement to register to end 20 years after conviction under certain circumstances); IND. CODE ANN. § 11-8-8-19(a) (2010); COLO. REV. STAT. § 16-22-113(1) (2009); CONN. GEN. STAT. § 54-251(a) (2010); HAW. REV. STAT. ANN. § 846-E-10(c)-(d) (LexisNexis 2010); IDAHO CODE ANN. § 18-8310(l) (2010); IOWA CODE § 692A.106(1) (2010); KAN. STAT. ANN. § 22-4906(b) (2010); KY. REV. STAT. ANN. § 17.520(3) (2010); LA. REV. STAT. ANN. § 15:544(A)-(B) (2010); MICH. COMP. LAWS SERV. § 28.725(7) (LexisNexis 2010); MD. CODE ANN., CRIM. PROC. § 11-707(a)(4)(B) (LexisNexis 2010); MINN. STAT. § 243.166 (2010); MISS. CODE ANN. § 45-33-47(2)(a) (2010); N.C. GEN. STAT. § 14-208.7(a)(2) (2010); N.D. CENT. CODE, § 12.1-32-15(8)(a)-(b) (2010); N.J. STAT. ANN. § 2C:7-2(f) (2010); N.M. STAT. ANN. § 29-11A-4(L)(2) (LexisNexis 2010); NEV. REV. STAT. ANN. § 179D.490(2) (LexisNexis 2010); N.Y. CORRECT LAW § 168-h(1) (Consol. 2010); GA. CODE ANN. § 42-1-19 (LexisNexis 2010); OHIO REV. CODE ANN. § 2950.07(B)(2)-(3) (LexisNexis 2010); OR. REV. STAT. § 181.820 (2010); R.I. GEN. LAWS § 11-37.1-4(a) (2010); NEB. REV. STAT. ANN. § 29-4005(1)(b) (LexisNexis 2010); WASH. REV. CODE ANN. § 9A.44.140(1), (2) (2010); N.H. REV. STAT. ANN. §
states currently require juvenile sex offenders to register,\(^\text{38}\) and thirty-four states require offenders to register after conviction for misdemeanor crimes.\(^\text{39}\) Although many states require all sex offenders to register only after conviction, twenty-one states require registration where an individual has been found not guilty by reason of insanity or mental defect.\(^\text{40}\)


\(^{40}\) MO. REV. STAT. § 589.400 (2010); DEL. CODE ANN. tit 11, § 4121(a)(2) (2010); 730 ILL. COMP. STAT. ANN. 150/2(A)(1) (LexisNexis 2010); ARK. CODE ANN. § 12-12-905 (2010); MASS. ANN. LAWS ch. 6, § 178C
Because many sex offenders cannot be “cured,” the registry as a deterrent mechanism is ill-conceived. Empirical data suggests that sex offenders are the least likely criminals to reoffend or recidivate independent of the registration requirement. Evidence further suggests that the registry and residency restrictions actually serve to encourage recidivism rather than discourage it. 41 This is true because the registry creates a stigma whereby the convicted sex offender is not easily able to seek employment and housing. The offender is also often-times ostracized from family and friends because of the hardships associated with the registration requirement and the inherent residency restrictions. 42 Without the ability to reintegrate into society, the sex offender is often forced to socialize with other convicted sex offenders which is much more likely to lead to recidivism than where the convicted offender is permitted to move on with life.

The definition of “sex offense” in many states is overbroad and therefore defeats the purpose of assisting law enforcement with the investigation of sex crimes. Offenses such as public urination, streaking, adult prostitution, and consensual sex between teenagers may result in mandatory sex offender registration in some jurisdictions. 43 However, these “offenders” are not likely to escalate their crimes to commit “the horrific crimes that motivated the institution of

43 In a 2007 survey at least thirteen states required registration for public urination and at least twenty-nine states required registration for consensual sex between teenagers. Id.
registration requirements and community notification in the first place.” The diversion of police resources to supervise these individuals who don’t actually present a threat to society as a whole is counterproductive to the intent of the registry and in and of itself presents a danger to the public.

Although one of the purposes of the sex offender registry is to inform the public of the whereabouts of potentially dangerous sex offenders, privacy laws throughout the nation limit the substance of the information available to the public. Only ten states permit full disclosure regarding sex offenders and their cases. Thirty-eight states employ varying degrees of privacy regarding the sex offender providing protection of some personal information while disclosing “relevant” information to the general public. Only twenty-nine states specifically protect the privacy of the victims of sexually-based crimes even though the Adam Walsh Act provides that


45 Wright, supra note 12, at 36-37; Hamilton, supra note 44, at 12.

46 OKLA. STAT. ANN. tit. 57, § 584(l) (2010); 730 ILL. COMP. STAT. ANN. 152/120(a) (LexisNexis 2010); ARK. CODE ANN. § 12-12-913(b)-(c) (2010); IND. CODE ANN. § 36-2-13-5.5(a)-(b) (LexisNexis 2010); FLA. STAT. ANN. § 775.21(7)(a) (LexisNexis 2010); HAW. REV. STAT. ANN. § 846E-3(b) (LexisNexis 2010); IOWA CODE § 692A.121(b)(1) (2010); KAN. STAT. ANN. § 22-4909(a) (2009); OHIO REV. CODE ANN. § 2950.081(A) (LexisNexis 2010); S.D. CODIFIED LAWS § 22-24B-15 (2010).

“the identity of the victim shall not be released.”

Eleven states have statutory schemes that protect the privacy of juvenile sex offenders.

The current federal standard for state sex offender registries is The Adam Walsh Act, the successor to a convoluted hodgepodge of poorly written legislative acts. It is entirely inadequate to address the real dangers sex offenders represent in our communities. Although the Adam Walsh Act makes noble strides toward narrowing the scope of the registry to more directly address these dangers, it too fails because it is based upon misinformed and incorrect assumptions about the psychology of sex offenders and the nature of the danger they present.

III. PROBLEMS WITH SEX OFFENDER REGISTRATION.

Since the passage of The Adam Walsh Act, several articles have been written concerning some of the shortcomings of the statute. The authors of these articles have done an outstanding job of collecting and analyzing empirical data, and this Article seeks to use this empirical data to offer a realistic solution to the dangers presented by sex offenders and predators. Each of the authors concludes that federal legislation controlling sex offenders fails to accomplish any purported purposes of the laws. Central to understanding why these laws fail to protect society involves analysis of the misconceptions about sex offenses generally.

---

49 730 ILL. COMP. STAT. ANN. 152/121 (LexisNexis 2010); ARIZ. REV. STAT. § 13-3825(j) (LexisNexis 2010); ALA. CODE § 15-20-28(g)-(h) (LexisNexis 2010); IOWA CODE § 692A.121(2) (2010); N.C. GEN. STAT. § 14-208.29(a) (2010); N.M. STAT. ANN. § 29-11A-5.1(E) (LexisNexis 2010); OHIO REV. CODE ANN. § 2950.081(B) (LexisNexis 2010); OR. REV. STAT. § 181.592(2)(b) (2010); N.H. REV. STAT. ANN. § 651-B:7(III)(c)(5) (LexisNexis 2010); S.C. CODE ANN. § 23-3-490(D)(3)(4) (2009); TEX. CODE CRIM. PROC. ANN. art. 62.352(b) (2010).


52 Wright, supra note 12, at 26.

53 Hamilton, supra note 44; Tregligas, supra note 16; Wright, supra note 12; Farley, supra note 43; Nastassia Walsh & Tracy Velasquez, Registering Harm: The Adam Walsh Act and Juvenile Sex Offender Registration, 33 Chapion 20 (2009); Steven J. Constigliacci, Protecting Our Children From Sex Offenders: Have We Gone Too Far?, 46 FAM. CT. REV. 180 (2008).
According to Hamilton, “citizens view sexual deviance as qualitatively unique” which may be why sex offenses have such a disproportionate effect upon legislative decisions.\footnote{54} Society as a whole tends to fear and loathe sex offenders more than any other criminal. Because the registry now exists, awareness of sexually motivated crimes is increased; this awareness, however, is somewhat distorted.\footnote{55} For example, individuals assume that sex offenders always reoffend or recidivate. The public also mistakenly believes that sex offenders are more likely to be strangers to their victims. Another erroneous assumption is that sexual violence is on the rise and becoming more pervasive.\footnote{56}

Some studies indicate that the general public believes sexual violence has increased when it has actually decreased “by about one-third between 1998 and 2007.”\footnote{57} The general public also mistakenly believes sex offenders are more likely to reoffend and recidivate than other criminals.\footnote{58} Perhaps most interesting, the general public believes sex offenses are most commonly committed by strangers.\footnote{59} In reality, though, most sex offenses are committed by members of the family or close family friends.\footnote{60}

The following subsections (A), (B), and (C) provide the reader with empirical data that has been collected over the last twenty years. The reader should be mindful that these statistical figures may seem contradictory at times, and some studies seek simply to reconcile and make

\footnote{54} Hamilton, \textit{supra} note 44, at 5. \footnote{55} Id.; Wright, \textit{supra} note 12, at 26-27. \footnote{56} Id. \footnote{57} Id. \footnote{58} Hamilton, \textit{supra} note 44, at 5. \footnote{59} Id.; Wright, \textit{supra} note 12, at 26 (Massachusetts study in 1999 found recidivist rate of sex offenders to be the lowest when compared with non-sexual offenders). \footnote{60} Id.
sense of these seemingly contradictory finds. In depth analysis of the each of the factors affecting the statistical studies and sex offender recidivism is beyond the scope of this article.

A. Recidivism and Reoffense.

In order for any statistics on recidivism and rates of reoffense to be understood, the meaning of these terms must be clearly defined. Recidivism may be measured by either subsequent arrest, subsequent conviction, or subsequent incarceration. Measuring recidivism by subsequent arrest will result in a higher recidivism rate because individuals may be arrested for any number of reasons, even if those arrests do not ultimately result in conviction. Statistics based upon subsequent conviction tend to be much lower, but these statistics are perceived as more reliable, generally, because of the nature of the process. To obtain a conviction, a crime must be reported, investigated, prosecuted, and resolved by either judge or jury. Subsequent incarceration as a measure of recidivism does not appear to be the most reliable measure of whether a sex offender has reoffended with a new offense. An offender may be returned to prison if any condition of probation or parole is violated, including conditions that have absolutely nothing to do with any new criminal offense at all (i.e. consumption of

62 For a very detailed analysis of the various studies on sex offender recidivism and an explanation of base rates and comparisons, see Hamilton, supra note 44, and Wright, supra note 12.
63 As used in this article recidivism rates usually contemplate any crime regardless of sexual motivation, whereas reoffense means the commission of a new sexually-motivated offense. In interpreting the data as presented by the Center for Sex Offender Management as well as numerous other studies, this characterization is typical although not mandatory.
65 Id.
66 Id.
67 Id.
68 Id.
alcohol when prohibited by court order). Therefore, the reliability of the data depends on whether the study measures technical violations, new convictions, or both.\(^{69}\)

Only approximately 5.3% of registered sex offenders reoffend by committing a sex-related crime.\(^{70}\) More typically, sex offenders are either first-time offenders or they have avoided convictions for crimes that would require registration as a sex offender.\(^{71}\) By comparison, non-sex offenders had a rearrest rate twenty-five percentage points higher than sexual offenders.\(^{72}\) Other studies show similar results, although actual figures vary; sex offenders recidivate at much lower rates and are not as likely to reoffend by committing a new sex offense.\(^{73}\)

The type of sex offender is an important factor to consider in determining incidents of recidivism as well. For instance, incest offenders recidivate at a rate ranging between 4% and 10%.\(^{74}\) Rapists on the other hand tend to recidivate at rates varying anywhere between 7% and 35%.\(^{75}\) Child molesters with female victims recidivate at between 10% and 29% while those

\(^{69}\) Defining Recidivism, supra note 62.


\(^{71}\) Id. A 1994 study found “[t]he more prior arrests [the sex offender] had, the greater their likelihood of being rearrested for another sex crime after leaving prison. Released sex offenders with 1 prior arrest (the arrest for the sex crime for which they were imprisoned) had the lowest rearrest rate for a sex crime.” Id.

\(^{72}\) Id. Non-sex offenders are rearrested at a rate of 68% whereas sex-offenders are rearrested at a rate of only 43%.

\(^{73}\) LANGAN, supra note 68, at 1(study finding 95% of released sex offenders do not sexually reoffend); GENEVA ADKINS ET AL., IOWA DEP’T OF HUM. RIGHTS, THE IOWA SEX OFFENDER REGISTRY AND RECIDIVISM 10 (2000) (defining recidivism as reconviction or parole violation with a sample of over 400 sex offenders released or probationers), http://www.iowa.gov/dhr/cjjp/images/pdf/01_pub/SexOffenderReport.pdf. (study in Iowa finding recidivism rate of sex offenders to be 3 % after four years).


\(^{75}\) Id.
with male victims range between 13% and 40%. In looking at juvenile offenders, at least one study has found that juvenile sex offenders do not recidivate with sex offenses.

B. Victimology.

Even though society fears the unknown sex offender, research indicates the vast majority of sex offenses are committed by family or close friends of family. In other words, victims usually know their offender. A study conducted in 1999 estimated 150,000 children were at the time abducted. An overwhelming 78% of those children had been taken by family members while only 22% were taken by non-family members (including strangers). Only 115 of the 150,000 abducted children were victims of the type of kidnapping associated with sex-offender cases. In another study, of adult women and men who reported being sexually abused by children, only 15.7% of men and 10.8% of women reported that a stranger committed the childhood rape. Still another study reported that 90% of child rape victims are abused by a person known to them.

Among adults, victims are also more likely to know their abuser. In a 1995-1996 study, 61.9% of women reporting rape claimed an intimate partner violated them. Other reports

---

76 Id.
77 Wright, supra note 12, at 27. For a more in depth analysis of the recidivism rates for different types of sex offenders as well as a more detailed explanation of the various studies on sex offender recidivism and reoffense see Wright, supra note 12, at 26-27.
78 Hamilton, supra note 44, at 12
79 Id.; Wright, supra note 12, at 21.
80 Wright, supra note 12, at 22.
81 Id. at 23.
83 Id., supra note 12, at 22.
85 Id., supra note 12, at 22-23.
showed overwhelmingly that adult victims of rape knew their attacker. In fact, only 16.7% of women and 28.4% of men reported being raped by strangers.\textsuperscript{86}

C. Rate of Sexually Violent Crime.

Between 1998 and 2007, a study conducted by the U.S. Department of Justice shows that the rate of rape and sexual assaults had declined by about one third as compared to previous years.\textsuperscript{87} Among reported child sexual abuse cases, the rate declined by about 40% between 1992 and 2000.\textsuperscript{88} According to the researchers, several factors may explain the decline. First, actual incidents of child sexual abuse may have dropped.\textsuperscript{89} Some suggest the figures may have declined because of other reasons such as fear of continued victimization, reluctance to engage in the criminal prosecution process, or reliance upon the abuser for financial or other support. To the extent these other factors play a role in the declining numbers, this serves to highlight the fundamental flaws with legislation targeted at sex offenders. If victims are reluctant to report their abuse because of the fear of the consequences of entering “the system,” then “the system” is failing.

D. Problems Particular to the Sex Offender Registry.

Although The Adam Walsh Act makes significant strides toward bettering sex offender laws, in particular related to the sex offender registry, it still embraces some of the fundamental problems inherent in all of the Acts since the passage of The Jacob Wetterling Act. Particularly, the registry (1) fails to enable the public to protect itself from sex offenders; (2) creates a stigma whereby individuals who are required to register are significantly disadvantaged in terms of seeking employment, credit, and quality housing; (3) requires individuals to register even when

\textsuperscript{86} Id. at 23.
\textsuperscript{88} Wright, supra note 12, at 21.
\textsuperscript{89} Id. at 21 - 22.
they do not create a danger to society as a whole; and (4) does not provide for continued specialized supervision by any government authority beyond the probationary or parole period.

Although the constitutionality of the registry is certainly an issue worth discussing, it is beyond the scope of this particular article. This author recognizes that to a certain extent, the registry may be perceived as continued punishment for a crime. Arguably, since prison or probation serves as punishment and rehabilitation for a crime, continued punishment by way of registration for conviction of a sex offense is unconstitutional. For purposes of this Article, however, the author has chosen to focus upon analysis of the practical aspects of the registry without pondering the constitutional questions.

1. The registry fails to keep the public safe.

The registry purports to keep the public safe in three ways: (1) serving as a deterrent; (2) functioning as a tool in the investigation of sex crimes; and (3) providing information to the public so individuals can protect themselves from dangerous sex offenders. The registry fails in this regard for several reasons. First, the registry does not deter sex offenders from committing sex crimes either initially or as a reoffense. Second, the sparse information contained on the registry is often confusing to both police and members of society making it difficult, if not impossible, to predict who is likely to reoffend. Third, the vast majority of sex offenders are already known to their victims, and therefore the registry is not really providing any information about a dangerous, unknown sexual predator. This image of the dangerous,

---

90 The United States Supreme Court has rejected this argument in Kansas v. Hendricks, 521 U.S. 346, 371 (1997) at least in terms of civil commitment of sex offenders, commonly known as Jimmy Ryce laws. Notably, though, the Ohio Supreme Court recently held that reclassification of sex offenders under the three-tier system established by The Adam Walsh Act is unconstitutional under the *ex post facto* clause of the Constitution. State v. Bodyke, Slip Opinion No. 2010-Ohio-2424 (June 3, 2010).
unknown sexual predator is a hyperbole that evokes strong emotions but should not be taken literally.\textsuperscript{92}

Several recent studies throughout the nation suggest that the sex offender registry, notification policies, and residency restrictions serve no actual deterrent effect.\textsuperscript{93} A New Jersey study reported no correlation with registration and a reduction in reoffense rates.\textsuperscript{94} Another study out of New York reached similar conclusions finding no significant reduction in sex crimes by first-time or repeat offenders as a result of mandatory sex offender registration.\textsuperscript{95}

The registry also fails to provide pertinent information in an understandable format so that the public can actually use the information to stay safe. The registry database is organized around an offense-based classification system and is devoid of any strategies or advice to the general public explaining how to use the information to protect itself.\textsuperscript{96} Even law enforcement is ill-equipped to gauge which offenders are most likely to reoffend, much less reoffend by abusing a stranger.\textsuperscript{97} Few details other than the charge are made available on the registry.

Statistics have shown that, comparatively, very few victims of sex crimes do not know their abuser.\textsuperscript{98} Public perception is distorted in this regard because of the sensational media attention received in the wake of horrific sexual offenses against children by strangers. Although these types of cases are rare, the public is much more aware of them which has led to a national “moral panic.”\textsuperscript{99} Because most victims know their attacker, the registry is wholly inadequate to protect them from sexual abuse because they are already familiar with the offenders who have

\textsuperscript{92} Wright, supra note 12, at 21-22; Hamilton, supra note 44, at 4.
\textsuperscript{93} Tregilgas, supra note 16, at 736.
\textsuperscript{94} Id.
\textsuperscript{95} Id. at 733.
\textsuperscript{96} Levenson & Cotter, supra note 42, at 52. Citizens actually report increased anxiety because they do not know how to use the information on the registry effectively. Id.
\textsuperscript{97} Tregilgas, supra note 16 at 733.
\textsuperscript{98} Hamilton, supra note 44, at 12; Wright, supra note 12, at 21-22.
\textsuperscript{99} Wright, supra note 12, at 20.
access to them.\textsuperscript{100} Rather than being able to use the information to protect themselves, individuals often react by harassing, victimizing, discriminating against, and fearing registered sex offenders.\textsuperscript{101}

Moreover, in a study conducted by Tewksbury, he discovered that offenders “who have victimized children are more successful than other registered sexual offenders at hiding their status.”\textsuperscript{102} When sex offenders hide their status they necessarily isolate themselves from valuable support systems increasing the likelihood they will reoffend.\textsuperscript{103} As a result, the registry necessarily fails to meet the goal of enabling the public to protect itself against dangerous sex offenders.\textsuperscript{104}

In response, legislators and lobbyists have attempted to prevent sociopaths like Phillip Garrido from snatching our children by implementing laws like The Adam Walsh Act. These laws are fundamentally flawed, however, and this is why, since the passage of the Jacob Wetterling Act, Congress has enacted act after act.\textsuperscript{105} Each time a tragic kidnapping occurs, Congress enacts a new law to plug a perceived loophole; the problem is not that the Acts contain loopholes, however. The problem is that sex offender registration laws are insufficient to deter sex offenders from committing crimes. Moreover, these laws do not provide law enforcement or the general public with information that effectively assists in the prevention of crime.\textsuperscript{106} Therefore, the entire approach to sex offenders must be reconsidered from an entirely new perspective.

\begin{footnotes}
\item[100] Hamilton, supra note 44, at 12.  
\item[101] Tewksbury, supra note 42, at 68.  
\item[102] Id. at 75.  
\item[103] Id. at 76.  
\item[104] Id. (“Community awareness ‘is likely to be counterproductive. Censure may encourage retreat into denial and defensiveness.’”).  
\item[105] Wright, supra note 12, at 20.  
\item[106] The labor and expense of maintaining the registry and complying with the notification requirements present more of a burden than a benefit to law enforcement. Levenson & Cotter, supra note 42, at 52. 
\end{footnotes}
2. The registry creates a stigma whereby individuals who are required to register are significantly disadvantaged in terms of seeking employment, credit, and quality housing.

Sex offender registry requirements almost always contemplate some sort of residency restriction as convicted sex offenders are generally prohibited from living near schools and other areas where children congregate. Although the intent of the registry may be to shame offenders to discourage them from reoffending, offenders generally react differently to the stigma. In fact, the dynamics of the registry stigma typically result in creating a feeling of helplessness in the offender which would actually increase the chance the offender will reoffend.

In a study conducted by Tewksbury in 2005, he measured the stigma experienced by registered sex offenders in a number of categories as represented by the following table:

### Negative Experiences Resulting From Registration (in percentages)

<table>
<thead>
<tr>
<th>Experience</th>
<th>Total Sample</th>
<th>Metropolitan</th>
<th>Nonmetropolitan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss of job</td>
<td>42.7</td>
<td>38.3</td>
<td>47.4</td>
</tr>
<tr>
<td>Denial of promotion at work</td>
<td>231</td>
<td>20.00</td>
<td>26.3</td>
</tr>
<tr>
<td>Loss/denial of place to live</td>
<td>45.3</td>
<td>43.3</td>
<td>47.4</td>
</tr>
<tr>
<td>Treated rudely in public place</td>
<td>39.3</td>
<td>33.3</td>
<td>45.6</td>
</tr>
<tr>
<td>Asked to leave a business</td>
<td>11.1</td>
<td>8.3</td>
<td>14.0</td>
</tr>
<tr>
<td>Lost a friend who found out about registration</td>
<td>54.7</td>
<td>20.0</td>
<td>59.6</td>
</tr>
<tr>
<td>Harassed in person</td>
<td>47.0</td>
<td>40.0</td>
<td>54.4</td>
</tr>
<tr>
<td>Assaulted</td>
<td>16.2</td>
<td>16.7</td>
<td>15.8</td>
</tr>
</tbody>
</table>

107 Hamilton, supra note 44, at 9.
108 Tewksbury, supra note 42, at 68.
109 Id. at 69.
110 Id. at 75.
Similar results arose in a study conducted by Levenson. The researchers noted that while some positive benefits may arise because of sex offender registries and notification procedures, the vast majority of sex offenders feel despair, lose the ability to provide for their families, and suffer harassment alongside their entire families. The stigma goes beyond just the sex offender – it includes their wives, children, and other family, too. From a psychological perspective, sex offenders engage in sexually deviant behaviors often because they have unmet emotional needs or have themselves suffered some form of abuse which has not been treated. When offenders engage in appropriate activities within their communities, they are less likely to reoffend. Conversely, when sex offenders are stigmatized and alienated from their communities, they are much more likely to reoffend. Therefore, the stigma makes them more dangerous.

The registry interferes with reintegration, rehabilitation, and deterrence of sex offenders because it prevents the building of healthy relationships between the offender and friends and family. The offender is also disadvantaged in maintaining employment and housing within his community. The current model fails because it is focused more on isolation and removal of offenders rather than investing in creating employment, therapeutic, and reintegration

| Received harassing/threatening telephone calls | 28.2 | 26.7 | 29.8 |
| Received harassing/threatening mail           | 24.8 | 21.7 | 28.1 |

111 Levenson & Cotter, supra note 42, at 58.
112 Levenson & Cotter, supra note 42, at 52.
113 Id.
114 Id. at 62.
115 Id.
116 Id.
117 Id.
118 Hamilton, supra note 44, at 13.
119 Id.
opportunities.\textsuperscript{119} The empirical data suggests that the nature of the registry has the potential to motivate and encourage offenders to become positive and successful members of society. This potential is not yet realized, though; therefore, the registry system must be modified to maximize its deterrent and rehabilitative potential.

3. \textit{The registry requires individuals to register even when they do not create a danger to society as a whole.}

Most states requiring sex offenders to register define the term “sex offense” broadly. Relatively minor offenses such as urinating in public or consensual sex with an underage person may result in a person being labeled a sex offender.\textsuperscript{120} These offenses, however, do not present a real danger to society. Therefore, the stated goal of protecting the public, and in particular children, from dangerous sexual predators is not accomplished by requiring all persons convicted of sex-related offenses to register.

Society is afraid of the largely mythical “dangerous, unknown sexual predator.”\textsuperscript{121} The vast majority of registered sex offenders, however, do not fit the profile of the “dangerous, unknown sexual predator.”\textsuperscript{122} The law has reacted as if the “media image of violence committed by the stranger lurking in the bushes [is] the most common violent and common form of rape.”\textsuperscript{123} By focusing on this image, legislators have created a net so vast that offenders who are not likely to reoffend are nonetheless required to register.

Among research studies, incest offenders, rapists, child molesters, and exhibitionists are among the most analyzed categories. One study observed that “sex offenders may commit other

\textsuperscript{119} Id. at 9.
\textsuperscript{120} Tregilgas, \textit{supra} note 16, at 732.
\textsuperscript{121} Wright, \textit{supra} note 12, at 21-22; Hamilton, \textit{supra} note 44, at 4.
\textsuperscript{122} Id.
\textsuperscript{123} Wright, \textit{supra} note 12, at 24.
types of offenses, [but] other types of offenders rarely commit sex offenses." This is one reason that statutory rapists or offenders convicted of minor crimes such as urinating in public are not likely to reoffend with a sex offense. As explained in Section III, infra, the results of studies on reoffense and recidivism rates can appear contradictory; what is clear, however, is that researchers are concerned with studying sex offenders who present a danger to society. Society does not regard all types of sex offenders as dangerous. Since one of the purported goals of the registry is to inform the public of dangerous sexual predators so it can protect itself, it is pointless to inform the public about sex offenders that do not present a threat and whom the public does not fear. Moreover, since a person convicted of statutory rape or urinating in public is highly unlikely to reoffend by committing a sex offense, the registry can serve no deterrent purpose for that offender.

The costs associated with requiring offenders who are not truly dangerous to society to register is tremendous. Law enforcement resources are also severely taxed diminishing its capacity to protect the public from truly dangerous sex offenders. The magnitude of the responsibility created by the registry forces law enforcement to make uninformed judgments about which offenders are likely to reoffend because it simply cannot closely monitor all offenders. As related to the issues raised in subsections 1 and 2 immediately preceding, this approach is increasingly detrimental as it encourages a shift toward incapacitation of the offender as opposed to actual rehabilitation.

---

125 Cite to section of paper
126 Levenson & Cotter, supra note 42, at 50.
127 Tregilgas, supra note 16, at 732 (stating offenses that require registration such as public urination and statutory rape pose no real risk to public safety).
128 Id. at 741.
129 Hamilton, supra note 44, at 9.
Requiring offenders to register when society does not fear them is counterproductive to the entire purpose of the registry. The resources diverted by these individuals could be reinvested into programs designed to protect society from those offenders who actually do present a danger. The category-based approach to the registry, therefore, is too broad, and it must be more carefully tailored to address public concerns and fears, protect the public, and deter future sex offenses.

4. *Individuals who are registered are not subject to continued supervision by any government authority.*

Following prison and probationary sentences, sex offenders are often released from supervision yet they are required to maintain their sex offender registration current. As noted by numerous studies, however, registration alone provides little incentive or structure conducive to sex offender rehabilitation and reintegration. Without continued supervision, offenders are also less likely to receive therapy to learn how coping mechanisms to avoid sexually deviant behaviors in the future.

Requiring sex offenders to register without any accompanying supervision decreases the likelihood that the offender will successfully reintegrate into society. As a society, we have already decided that punishment for sex offenses in terms of prison and probation should not exceed a particular period of time for any given offense. The requirement to register, however, can last a lifetime. To the extent that registration results in collateral consequences as explained in the previous three subsections, the registry presents a form of continued punishment. By

---

130 Pursuant to SORNA, offenders may have to register for life or a period of years less than life. 42 U.S.C. § 16915(a) (2006) (ranging from fifteen years to life depending on offense).

131 Hamilton, supra note 44, at 12-13; Wright, supra note 12, at 21-23.

132 Levenson & Cotter, supra note 42, at 51.

133 The U.S. Supreme Court does not agree that the registry is a punishment, at least to the extent that it does not constitute an *ex post facto* law. Notwithstanding, the collateral consequences actually do punish offenders above
eliminating job opportunities, education, rehabilitation programs, and therapy to offenders, we
are not only preventing them from reintegrating into society, but we are actually pushing them
toward reoffending.\textsuperscript{134}

Many states, such as Florida, require lifetime registry and do not provide for release from
the registration.\textsuperscript{135} There is no consideration of individual risk-assessment or success at
remaining offense-free after conviction.\textsuperscript{136} In fact, absolutely no individualized thought is given
to whether an offender must register because all sex offenders, regardless of dangerousness, are
required to register. Once an offender is released from probation, no supervisor continues to
interact with the offender to continue assessing the risk of reoffending or the need for removal
from the registry.\textsuperscript{137} Without periodic review, a sex offender can retreat, hide, and create an
environment to facilitate commission of a new sex offense.\textsuperscript{138} On the other hand, periodic visits
from a supervisory official would likely deter, or at the very least, detect unusual behaviors that
threaten the public. Because the registry is not used in conjunction with a system that supervises
the registered sex offenders, it cannot in an of itself protect the public or deter offenders from
committing sex crimes. Therefore, the current approach must be altered.

\begin{flushright}
and beyond the actual punitive sentence the offender receives. Kansas v. Hendricks, 521 U.S. 346, 371 (1997);
\end{flushright}  
\textsuperscript{134} Levenson & Cotter, supra note 42, at 61.  
\textsuperscript{135} Fla. Stat. §775.21(l) (requiring sexual predator to maintain registration for life).  
\textsuperscript{136} Id. (requiring a full pardon for offender to be removed from registry); Tregilgas, supra note 16, at 733,  
\textsuperscript{137} Hamilton, supra note 44, at 6 (stating methods used to manage sex offenders are “SPV commitment laws,
registration requirements, and registry restrictions”).  
\textsuperscript{138} Tewksbury, supra note 42, at 78-79.
IV. SOLUTIONS.

A. Eliminate the registry requirement for every individual convicted of a “sex offense.”

As discussed in Section IV(a) above, every person convicted of a sex offense does not necessarily present a danger to society.\(^{139}\) In particular, misdemeanor offenses such as indecent exposure and urinating in public should not result in a requirement of sex offender registration because these acts do not present a threat or danger to the general public.\(^{140}\) Additionally, individuals convicted of statutory rape where both parties consented to the sex act should not be required to register as sex offenders because the general public does not fear any threat from a person convicted of this type of offense.\(^{141}\) Juvenile sex offenders likewise should not be required to register because they are not likely to present lifelong threats to society, at least as related to sex-related offenses. Society fears the “dangerous” sexual predator, and that is the only type of offender who should be subjected to registration requirements.

Even for those individuals convicted of more egregious sex offenses, lifetime registry is generally unwarranted because rehabilitation, counseling, and psychotherapy may actually work.\(^{142}\) In other words, when an individual has been rehabilitated, requiring registry serves absolutely no purpose since the individual no longer presents a danger to society. Continued registration by sex offenders who are not dangerous depletes resources necessary to monitor other offenders who actually are a danger to the safety and well-being of our communities.

\(^{139}\) See infra, Section II, discussing the purpose of the sex offender registry is to protect society from dangerous sex offenders by providing information on the location of sex offenders within the United States.\(^{140}\) In a 2007 survey at least thirteen states required registration for public urination. Tregilgas, supra note 16, at 732.\(^{141}\) In a 2007 survey at least twenty-nine states required registration for consensual sex between teenagers. Id.\(^{142}\) Although many offenders may not be amenable to any form of treatment, a large portion of offenders would be amenable to treatment at least to the extent that they are unlikely to reoffend.
Ideally, the requirement to register as a sex offender should be flexible and assessed on a case by case basis with periodic individual reviews to determine whether continued registration is necessary in any particular case. The following table illustrates this model:

<table>
<thead>
<tr>
<th>CONVICTION</th>
<th>REGISTRATION REQUIREMENT</th>
<th>REASONING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any Juvenile Sex Offense</td>
<td>Never</td>
<td>Juveniles should not be required to register on any sex offender registry because their crimes and offenses are confidential. In fact, in the interest of confidentiality, juvenile offenders are not typically afforded jury trials (unless tried as adults). Also, rather than resulting in a “conviction,” juvenile offenses result in adjudications of delinquency. Thus, to require sex offender registry imposes a lifelong punishment for an offense that is not even considered a crime when the child has not even had the benefit of a jury trial.</td>
</tr>
<tr>
<td>Statutory Rape</td>
<td>Never</td>
<td>Most states recognize consensual sex with a minor as a sex offense based on the premise that minors cannot consent to sex. Lifetime punishment for engaging in a consensual physical relationship is hardly just and also counterintuitive. In general, individuals who engage in consensual sex with minors do not present a threat to society. These individuals are not likely to rape, kidnap, molest a child, or commit any other similarly egregious sex act. Therefore, it serves no purpose to require these individuals to register as sex offenders, and in fact diverts resources that are necessary to protect against actual sexual predators and offenders.</td>
</tr>
<tr>
<td>Misdemeanor Sex Offenses (exposure, urinating in public, etc.)</td>
<td>Rebuttable presumption never</td>
<td>In general, a misdemeanor offense should not result in lifetime punishment as a sex offender. Most of these types of offenses result from poor decisions rather than a malicious</td>
</tr>
</tbody>
</table>
sexual act. If there is evidence that a person has intentionally engaged in some sort of sexual behavior aimed at harming any member of society, then some term of registry *may* be appropriate. To overcome the presumption of non-registry the prosecutor would be required to establish the offender intended to harm society by the purported sexual act. The time period for registry should not exceed the maximum sentence permitted for the act itself.

| Felony Sex Offenses | Determined on a case by case basis | Upon conviction for a sex offense, the offender should submit to a psychological evaluation to determine the threat posed to society. Although not an exact science, this evaluation would provide a guideline for the court to use in determining the appropriate sentence and registry period. In general, the registry period should not exceed the maximum sentence associated with any particular crime. Additionally, the court should periodically reevaluate the offender to ensure the required registry time remains appropriate in light of changing circumstances. |

The registry itself should be arranged in tiers with the most dangerous sexual predators monitored most intensely and reevaluated more often than those in the lower tiers of the registry.

As individuals progress through rehabilitative therapy, they may transfer into the lower tiers until they eventually earn release from the registry. The transfers would occur by court order after review of the case and psychological evaluation of the offender. The evidence would need to show that the offender presents less of a threat to society warranting transfer to a lower tier. To be removed, the evidence would need to establish the offender no longer presents a threat to society.
This modification to the tier system established by The Adam Walsh Act provides positive incentives to sex offenders encouraging them to seek rehabilitative therapy, and it rewards their progress in a meaningful way. More importantly, it eliminates the negative reinforcement created by mandatory lifetime registration for people who are not dangerous to society. Additionally, by limiting the number of individuals on the registry and creating a way for registrants to come off the registry, law enforcement can concentrate efforts on those offenders who are dangerous to society as a whole. As a result, society is better protected.

B. Require continued supervision of offenders while listed on the sex offender registry.

Although some states employ supervisory officers to monitor the activities of registered sex offenders,\footnote{“At least 17 states have enacted lifetime supervision for some sex offenders.” NGA Center for BEST PRACTICES, Managing Convicted Sex Offenders in the Community 6 (2008), http://www.nga.org/Files/pdf/0711SEXOFFENDER BRIEF.PDF.} most states do not. Even in those states that do actively supervise sex offenders, the resources are significantly taxed by the overwhelming number of individuals required to register as sex offenders. As explained in Section III, infra, the current database model provides little actual protection to society as a whole because it depends on the members of society to proactively seek out information for themselves. The registry provides barebones and confusing information, and it is entirely devoid of strategies for the public to understand and use the information in any meaningful way.

Rather than placing the burden on individual members of society to seek out information from the sex offender registry database, the government should be charged with protecting society from dangerous sex offenders. To adequately protect members of society and maintain a registry that serves a purpose beyond singling out individuals for past crimes, it is important to create specialized supervisors to interact with members of the registry.
Supervisors would be required to have personal contact with members of the registry periodically to ensure compliance with treatment as well as to verify the accuracy of the reported information. Close supervision over registered individuals would likely result in a lower recidivism rate because offenders are less likely to re-offend because of lack of opportunity. Also, supervisors would be more aware of the behavior patterns of the people they monitor, so in turn they would likely be aware of any aberrant behavior endangering society.

C. Require specialized training for supervisory officials.

The terms “sex offender” and “sexual predator” are broad characterizations that encompass many different sex-related crimes. These terms attempt to simplify the complex psyches of persons who commit sexually-driven crimes. By creating two broad categories, we ignore the individual needs of offenders and preclude any ability to actually rehabilitate and reintegrate them back into society.

Under this proposed model, supervising officers would receive assignments of individuals convicted of similar offenses. For example, a supervising officer may monitor people convicted of only date rape, another officer monitors people convicted of child abduction, another officer monitors those convicted of child molestation of a family member. Specialization is necessary because the psychology of different types of sexually-motivated criminals requires individualized attention. No one person can be an expert in the psychology of all these types of criminals; by focusing on one type of offender, however, supervisory officers become more familiar with patterns of behavior and warning signs so they are better equipped to protect society from dangerous criminals.
D. Eliminate a publicly available database or limit access.

The database model fails to protect the public in two ways. First, it requires the public to actively search for information and interpret the complicated results in isolation and without explanation. Second, it does not offer any strategies or tools the public can use to actually protect itself. In fact, it is much more likely that a person will overreact to information contained on the registry than effectively use it for protection purposes.

Recall Hugh Edwards who was savagely beaten because someone mistakenly believed he was a registered sex offender. In April 2005, Stephen Marshall killed two registered sex offenders after searching Maine’s sex offender registry; one of his victims was a registered sex offender because as a nineteen-year-old boy he had consensual sexual relations with a fifteen-year-old girl. Outside of Seattle, two registered sex offenders were killed in 2005. Law enforcement suspected vigilantism motivated the killing. In 2004, Lawrence Trant attempted to murder two registered sex offenders listed on the New Hampshire sex offender registry. Incidents such as these will become more frequent as the sex offender registry becomes more easily accessible. The government is distributing highly inflammatory information without appropriate context into the hands of unsophisticated individuals who are ill-equipped to process the information in a socially appropriate manner.

If the model proposed within this article is followed, a public registry will become unnecessary because the government will employ supervisory officials to monitor the behaviors

---


and activities of registered sex offenders. Those supervisory officials will be specially trained as
described in the immediately preceding section, the community will be alerted in the event of an
acute threat, and registered sex offenders will be more closely controlled than they are now.

By protecting the registry against public access, registered sex offenders are also more
likely to rehabilitate and reintegrate into society. They will find employment and housing more
readily available. With employment and housing, the need to engage in criminal behavior is
significantly reduced thereby reducing the chance these persons will reoffend. The ability to
obtain credit also reinforces integration back into society as it facilitates the ability to find
appropriate housing and engage in normal day-to-day life activities.

As a practical matter, it also makes it easier for people convicted of sex offenses to create
families of their own and move past the poor decisions of their past. Although the goals of
criminal law are to rehabilitate, punish, deter, and vindicate, for individuals who have already
served their sentence the registry does not assist in the most important way: rehabilitation.
Through the legislature, society has agreed that certain sex offenses do not warrant a lifetime of
punishment of incarceration; however the sex offender registry does create a type of lifetime
punishment.

As an alternative, a publicly available registry could still be maintained, but with more
limited access by the public. Establishing a center of information where individuals would have
to physically go to obtain information lowers the risk that an emotionally-charged person will
search the internet and then go on a killing spree. Forcing a member of the general public to go
to a center to obtain information on registered sex offenders requires that person to carefully
consider the value of the information. Employees of the center are also available to answer
questions, explain information, and inquire as to the motives of the citizen in seeking the
information. These employees can also offer strategies for how to process and use the information found on the registry.

Eliminating the public registry, or substantially limiting access to it, allows a fresh start for individuals convicted of a sex offense. Because of the supervisory officers monitoring the progress of these offenders, the risk to society is substantially decreased. Moreover, the self-confidence and satisfaction created by a truly fresh start also serves as a catalyst for continued rehabilitation and reintegration into society.

V. CONCLUSION.

As a civilized society, we should expect to live safely without fear of losing our children to kidnappers and rapists. As a practical matter, though, we know that our children are at risk daily. To the extent that a sex offender registry can provide protection, it should be implemented. A database of raw information, however, is inadequate to actually protect any child from being abducted and abused.

Probation and parole officers require much more specialized training to appropriately monitor individuals currently required to register. This specialized training will help these officials stay alert and notice signs and behaviors that signal when a registered sex offender is presenting a danger to the community. Additionally, probation and parole officers should not be preoccupied with supervising individuals who do not really present a danger to society. In other words, a registered sex offender should be a person of a very particular profile rather than someone who has engaged in a sexual act that, while criminal, does not actually hurt society as a whole. For example, a person convicted of statutory rape or some lewd and lascivious acts should not necessarily be required to register as a sex offender. By limiting the registry, we
would enable supervisory officials to focus their attention on potential risks and more readily respond to actual dangers.

Finally, the registry should be more than just a database of information that the public can use out of context. Information in the hands of any individual person is not necessarily a positive. Hugh Edwards is a testament to the risks to society when a person makes a mistake about who is actually registered as a sex offender. Certainly law enforcement should have access to at least a private bank of information about convicted sex offenders; the public arguably should have access to certain information. This information should be divulged in a more structured environment where members of the public can ask questions about the information, and where the individual’s purpose and motive for obtaining the information can be ascertained.

The sex offender registry was always meant to empower the public to protect itself against the dangers of sexual abuse. The only way that it can fulfill this purpose is to tailor it to more accurately supervise offenders to ensure they don’t reoffend and to educate the public about what the information on the registry actually means.