

# SEX OFFENDER POLICY BOARD

Literature Review on Disclosing Registry Information to the Public

General Bibliography

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## **Introduction**

In 1990, Washington state became the first jurisdiction to authorize the release of sex offender information to the public. Since then, several amendments related to the disclosure of sex offender information have been enacted. Currently, Washington has limited their internet publication of information to those eligible convicted sex and kidnapping offenders who have been assessed as a Level II or Level III risk, while other states have variations on the information that they publish via the internet.

Generally, the disclosure of sex offender registration information to the public is found within the community notification provisions of a state's adopted Sex Offender Registration and Notification Act Laws (SORNA). Some also refer to the community notification portion of sex offender laws as "Megan's Laws" named after Megan Kanka, a girl in New Jersey who was raped and killed in 1994 by her neighbor, a convicted sex offender. States have various ways of distributing convicted sex offender registration information under the notification provisions. These methods are ordinarily referred to generally as "community notification" which can include community meetings, flyer distributions, and internet publication of registrant information. Thus, authors often look at the entire system of registration and notification or "community notification" generally, instead of internet public disclosure specifically.

This literature review attempts to identify the universe in which authors have discussed various aspects of public disclosure of sex offender information to the public, privacy-related issues, and the collateral consequences based on the disclosure of information.

## **Methodology**

To obtain information relevant to public disclosure of sex offender information, multiple sources were consulted including government publications, journal articles, news articles, and law review articles. Main databases consulted include: HeinOnline, SSRN.com, Sage Publications, and Google Scholar. Articles submitted by the Sex Offender Policy Board members were reviewed and generally included. The original bibliography from the 2009 Report to the Legislature was included.

Generally, the summarized articles represent those which identifiably contributed to the discussion of issues surrounding public disclosure of sex offender information. Other articles referenced in the general bibliography were reviewed and either did not add additional value to the enumerated section or were too stale to be considered in light of today's discussion. Other resources which were not reviewed in full, those in which the abstract was reviewed only, are listed at the bottom of the general biography. Articles which included *some* disclosure discussion but were specifically focused on recidivism, juveniles, or other topics were not summarized. Articles which were available for public view are linked within the citation.

## **Organization of Material**

The organization of this review includes six sections: 1) Public perception of community notification laws, 2) Comparative reviews of state practices related to community notification, 3) Treatment of sex offender laws by the courts and case law, 4) Offender privacy vs. the public's

right-to-know, 5) Collateral consequences and reintegration issues, 6) Notification as a false sense of security, and 7) Political Climate and Trends.

Generally, when asked about whether or not community notification, and/or public disclosure of sex offender information is important, the public responds affirmatively. In Washington state, residents polled have an awareness of the sex offender registry and believe it is valuable and makes offenders behave better.

In Washington state, disclosure of sex offender information follows what is called a “police-discretion” model. Although a sex offender is given a risk level assessment upon release, local sheriff’s offices may re-assess the offender when they come to register. Disclosure of registry information is often non-standard and the bounds are unclear. Law enforcement agencies are immune from civil liability for disclosure of information or non-disclosure of information. Although some other states have similar provisions, many employ different models and different standards of disclosure.

The U.S. Supreme Court has decided several cases related to sex offender registration and notification laws. Most notably, their decision in *State v. Doe*, set the tone for other states to determine that registration and notification laws were not punitive and therefore, could be applied retroactively. Other varied challenges have been successful, although none, to date, have held that an offender has a privacy right in light of the goals of disclosure to advance public safety.

Many articles reviewed discuss an offender’s right to privacy and assert, at the very least, that Level or Tier I offender information should not be disclosed because of they are at low risk to re-offend and therefore the state’s compelling interest to notify the public does not outweigh the offender’s right to privacy. Further, several articles suggest that laws should be reviewed to tailor the disclosure more appropriately to the level of risk due to fear of harassment and proven cases of vigilantism.

Why does reviewing the level of public disclosure of sex offender information important? Because the collateral consequences of having the information available by internet and other means results in actual harassment, barriers to employment, barriers to housing and stress and fear in the offender’s social network which are key to successful reintegration.

Finally, the political climate is one of increased legislation and disclosure, not less. Strengthening sex offender registration and notification laws are politically attractive to legislators and the political cost to change direction is too great although the empirical evidence does not show that community notification reduces recidivism. The only change to lessen restrictions in recent years came in a California this year when the California Supreme Court ruled that residency restrictions as applied in San Diego were unconstitutional.

## I. Perception of the Public Related to Community Notification Laws

**Boyle, Douglas J., Laura M. Ragusa-Salerno, Andrea Fleisch Marcus, Marian R. Passannante, and Susan Furrer. "Public knowledge and use of sexual offender internet registries: Results from a random digit dialing telephone survey." *Journal of Interpersonal Violence* (2013): 0886260513511698.**

This study performed a review of approximately 1,000 New Jersey residents to determine public awareness, and use of, the New Jersey Sex Offender Internet Registry (NJSOIR). They reported that roughly 51% reported that knowledge of the site and that 17% had accessed the site. Of those who accessed the site, 68% reported that they took some preventative measures based on the information. The study concluded that the results suggest an intervention would increase the public awareness of the registries and provide specific preventative measures the public can take.

**McCartan, Kieran. "From a lack of engagement and mistrust to partnership? Public attitudes to the disclosure of sex offender information." *International Journal of Police Science & Management* 15, no. 3 (2013): 219-236.**

A review of focus groups in the UK about the limited public disclosure of sex offender information. The results produced three interconnected themes: 1) community attitudes to sexual abuse and sexual offenders, 2) attitudes to the structure of, regulation and functionality of the limited disclosure scheme; and 3) resentment surrounding applicant background checks and confidentiality. Participants were conflicted over the usefulness of, and need for, the public disclosure of sex offender information. In practice, the participants took one of two positions in respect to sex offender disclosure, those who wanted full disclosure and those who wanted no disclosure.

**Phillips, Dretha M. *Community notification as viewed by Washington's citizens*. Olympia, WA: Washington State Institute for Public Policy, 1998. Retrieved from: [http://www.wsipp.wa.gov/ReportFile/1281/Wsipp\\_Community-Notification-as-Viewed-by-Washingtons-Citizens\\_Full-Report.pdf](http://www.wsipp.wa.gov/ReportFile/1281/Wsipp_Community-Notification-as-Viewed-by-Washingtons-Citizens_Full-Report.pdf)**

In 1998, the author conducted a random digit-dialing of 400 Washington state residents in urban and rural areas regarding the state's community notification law. Nearly 80 percent of the respondents were familiar with the community notification law although only one-third were aware of released sex offenders living in their communities. More than six in ten residents agreed that community notification makes released sex offenders behave better than if no one in the community knew about them.

The vast majority of those surveyed felt safer knowing about sex offenders living in their communities. While about half of the respondents thought community notification makes it easy for citizens to take the law into their own hands and harass, threaten, or abuse the released sex offender, more than two out of three surveyed thought special care should be taken to prevent

such harassment. Overall, more than eight out of ten respondents indicated Washington's community notification law is very important.

**Lieb, Roxanne and Corey Nunlist. "Community notification as Viewed by Washington's Citizens" A 10-Year Follow-Up. Olympia, WA: Washington State Institute for Public Policy (2008). Retrieved from: [http://www.wsipp.wa.gov/ReportFile/1010/Wsipp\\_Community-Notification-as-Viewed-by-Washingtons-Citizens-A-10-Year-Follow-Up\\_Full-Report.pdf](http://www.wsipp.wa.gov/ReportFile/1010/Wsipp_Community-Notification-as-Viewed-by-Washingtons-Citizens-A-10-Year-Follow-Up_Full-Report.pdf)**

In 2007, the author conducted a follow-up survey of 643 Washington state residents using random digit dialing to determine the respondent's familiarity with, opinion of, and reaction to the law, as well as its purposes and importance. 81 percent of the respondents were familiar with the community notification law. Thirteen percent more respondents in 2007, than in 1998, were aware of one sex offender living nearby. Sixty-eight percent reported that they learned more about sex offenses and sex offenders because of community notification. Sixty-three percent of respondents agreed with the statement that community notification make sex offenders behave better. Seventy-eight percent of respondents indicated they felt safer knowing about convicted sex offenders living in their communities. Sixty percent disagreed with the statement "Alerting the community to the highest risk sex offenders will make citizens pay less attention to the risks posed by other sex offenders, such as those who may be known and trusted by the victim."

Regarding potential harassment of sex offenders fifty-four percent of respondents thought community notification makes it easier for citizens to take harass, threaten or abuse the released sex offender. 78 percent thought special care should be taken to prevent such harassment. Eighty-four percent of respondents thought that notification could make it more difficult for a sex offender to rent a house, find a job, or establish a new life. Respondents were evenly split when asked if they favor or opposed changing the law so that juveniles could be removed from community notification at a judge's discretion. 80 percent of respondent's indicated that Washington's community notification law is very important.

## **II. Comparative Reviews of State Practices Related to Community Notification and Registries and a Review of Washington's Progression of Disclosure**

**Lieb, Roxanne & Milloy, Cheryl. "Washington State's Community Notification Law: 15 Years of Change," Washington State Institute for Public Policy. (2006). Retrieved from: [http://www.wsipp.wa.gov/ReportFile/936/Wsipp\\_Washington-States-Community-Notification-Law-15-Years-of-Change\\_Full-Report.pdf](http://www.wsipp.wa.gov/ReportFile/936/Wsipp_Washington-States-Community-Notification-Law-15-Years-of-Change_Full-Report.pdf)**

In 1990, Washington state became the first state to authorize the release of information regarding sex offenders to the public. Since that time the law was amended several times to expand its application and to increase citizen access to information. In 2002, the Legislature directed the Washington Association of Sheriffs and Police Chiefs (WASPC) to create a

statewide internet website and post information related to sex offenders assessed as a Level III risk. It was intended for the public to easily access information including name, relevant criminal convictions, address by the hundred block designation, physical description, and photograph. The site was also to provide mapping capabilities so the public could search for the released sex offender.

In 2003, the Legislature expanded the internet publication of information to Level II offenders. In 2005, the Legislature again expanded disclosure of sex offender information to include kidnapping offenders, reporting relevant information to schools the offender planned to attend and establishing “community protection zones.”

**Locke, Christina and Chamberlin, Dr. Bill F. “Safe From Sex Offenders Legislating Internet Publication of Sex Offender Registries,” 39 *Urb. Law I* (2007).**

The purpose of the article was to examine the statutory provisions of every state and the District of Columbia regarding the use of the Internet as a tool to administering Megan’s Law. The article discusses different types of community notification and characterizes them as “active” and “passive.” Internet distribution is considered “passive” notification. In 2006, the federal government created the Dru Sjodin National Sex Offender Website and all states, as of 2007, allow computer users access to individual profiles of sex offenders. State statutes which required internet dissemination often specified six types of data: 1) types of offenders, 2) registry information updates, 3) website security, 4) user registration requirements, 5) disclaimer requirements, and 6) provisions for publicizing the website.

Also at the time of publication, twenty-five states and the District of Columbia restrict the Internet to specific types of offenders. In twenty-one states, Megan’s Law statutes indicate that all sex offenders could be subject to having their personal information made available to the public via the Internet. A federal law passed in 2006 required that all state website display warnings of penalties for unlawful use of registry information.

**Wieder, Nori. “Sealing the Record: An Analysis of Jurisdictional Variations of Juvenile Sex Offender Record and Sealing Laws,” 24 *Health Matrix* 377 (2014).**

The author reviews four models that states follow regarding juvenile sex offender record sealing laws. Approximately one-quarter of states allow all juvenile records to be sealed. Another quarter of states prohibit all juvenile sex offender records from being sealed. The majority of states allow sex offender records to be sealed but leave the decision to the judge on a case-by-case basis. A minority of states permit some sex offenses to be sealed but exclude the records of the most heinous sex offenses from being sealed. Three states fail to address whether a juvenile is permitted to have his record sealed or not. The paper compares competing jurisdictions policies on sealing juvenile sex offender records.

### III. Treatment of Sex Offender Law by the Courts and Case Law

**Mancini, Christina & Mears, Daniel P. “U.S. Supreme Court Decisions and Sex Offender Legislation: Evidence or Evidence-Based Policy?” *103 J. Crim. L. & Criminology* 1115 (2013).**

The goal of the study was to supplement scholarship on the Court’s role in contributing to evidence-based crime and criminal justice policy as it relates to sex crime laws. The article reviews to what extent the Supreme Court makes reference to scholarly work in its decisions and how the Court uses and interprets research and the larger body of scholarship related to sexual offending. It reviews Sex Offender Laws nationally and cases that have impacted the laws. The study found that while the Court does include empirical research within its decisions it found substantial variation in their interpretation of the work. The conclusion offers that a further review of how judges review and use social science research, and an examination of the treatment of the research in lower court decisions may be helpful.

**“Sex Offender Registration and Notification in the United States: Current Case Law and Issues,” U.S. Department of Justice, (SMART) (September 2014). Retrieved at: [http://www.smart.gov/caselaw/handbook\\_sept2014.pdf](http://www.smart.gov/caselaw/handbook_sept2014.pdf)**

This article is the regular review by the SMART office on recent case law and issues surrounding SORNA implementation federally and statewide. It provides detailed information related to all of the federal databases which hold sex offender information and discusses unique situations related to military registration, Bureau of Indian Affairs and Immigration and Customs Enforcement. In 2003, the U.S. Supreme Court decided *State v. Doe*, which held that registration and notification, under the specific facts considered, were not punitive and therefore could be retroactively imposed. Several states have issued opinions that follow the holding in *Doe* to retroactively apply their sex offender laws. The article reviews other successful and unsuccessful legal challenges including six successful state challenges that have held that the retroactive application of the registration and notification laws violate their state constitutions, the unsuccessful challenge of need for a jury determination of the registration requirement under *Apprendi*, ineffective assistance of counsel challenges, and others.

### IV. Offender Privacy vs. Public’s Right-To-Know

**Kabat, Alan R. “Scarlet Letter Sex Offender Databases and Community Notification Sacrificing Personal Privacy For a Symbol’s Sake,” *35 Am. Crim. L. Rev.* 333 (Winter 1998).**

As a part of the review in assessing the issues related to the “Right to Privacy” contrasting with community notification, the author reviews some foundational law related to privacy and criminal offenders along with state-level responses to the issue. The author reviews right to privacy jurisprudence with a discussion of *Griswold v. Connecticut*, *Katz v. United*

*States, Paul v. Davis*, and *Whalen v. Roe*. Although the author concedes that there is no *per se* right of privacy for sex offenders, he argues that they should be afforded some constitutional level of privacy. The article reviewed the state of the notification laws and public disclosure in 1998 when there was limited availability of records and internet publication. Although the fundamental principles of the article are sound, the article is dated which makes much of the information stale.

**Preble, Johnna. “The Shame Game: Montana’s Right to Privacy for Level I Sex Offenders.” 75 *Mont. L. Rev.* 297 (2014).**

In Montana, there is a “heightened right to privacy” as the author describes it due to their state constitutional privacy provision found in Article II Section 10 which states “The right of individual privacy is essential to the well-being of a free society and shall not be infringed upon without the showing of a compelling state interest.” The author argues that because Level I offenders are low risk to re-offend as their definition that the burden placed on them to register for the public is outweighed by their right to privacy.

Strict scrutiny analysis requires the law to be narrowly tailored to serve a compelling state interest. Montana’s courts decided issues related to *ex post facto* application and a different state constitutional provision that requires a full restoration of rights after termination of state supervision for any offense against the state in *State v. Mount*, 78 P.3d 829 (Mont. 2003). The court found that the state’s sex offender registration laws were to be nonpunitive in nature and that although Mount’s right to privacy was implicated by having to register, the state had a compelling interest to protect the public. The court also decided *State v. Brooks*, 289 P.3d 105 (2012) which held that it was not a violation of the violent offender’s (not sex offender’s) rights to require him to register because the laws are even more narrowly tailored for violent offenders because they generally require registration for less time. The author argues that when the legislature intentionally created different level of offenders, based on their risk of re-offense, it indicates that they should not all be treated the same way.

**Trinkle, Catherine A. “Federal Standards for Sex Offender Registration: Public Disclosure Confronts the Right to Privacy,” 37 *Wm. & Mary L. Rev.* 299 (1995).**  
<http://scholarship.law.wm.edu/wmlr/vol37/iss1/11>.

This article reviews the Federal Registration Act and an analysis of its constitutionality in relation to the strict standard burden when it comes to a right to privacy. It opines that the statute has a low threshold for triggering release of public disclosure information and should be reviewed to narrow the list of offenders subject to privacy right amendments to the greatest possible degree. The Act should also allow offenders to petition for release from duty to register upon an adequate showing of rehabilitation. (p. 334-335).

**Turner, Chrisandrea L. “Convicted Sex Offenders vs. Our Children, Whose Interests Deserve the Greater Protection?” 86 *Ky. L. J.* 477 (1997-1998).**

This note looks at registration and community notification laws, the four basic models for community notification laws, arguments in favor of community notification laws, successful and

unsuccessful constitutional challenges, and public policy arguments against the laws. It comments that the “police-discretion” model, which Washington state is considered to be, provides very little guidance as to the quantity of information to be released, the manner in which the police are to release it or the circumstances which call for its release. Abuse by law-enforcement is a possibility and immunity from civil liability damages unless acting in gross negligence or bad faith allows for inconsistent dissemination.

The author explains that there are two major limitations on the right to privacy that make it difficult for convicted sex offenders to successfully argue against disclosure. “The first is that the facts must truly be private to avoid publication and matters of public record are not private facts. The right of privacy will not be infringed when the publication concerns a matter of legitimate public interest. If a court considers the information provided by the convicted sex offender a matter of public record, then a right-to-privacy claim will be defeated.” This article also highlights the risk of vigilantism and reviewed several incidents from Washington state as an example.

**Weiss, Debra L. “The Sex Offender Registration and Community Notification Acts Does Disclosure Violate an Offender’s Right to Privacy?” *20 Hamline L. Rev.* 557 (Winter 1996).**

The article reviews the development of the right to privacy through various Supreme Court cases. It also reviews jurisprudence that imposed limitations on privacy as a fundamental right. The article explores case law surrounding privacy and confidentiality and discusses the *Nolley* test which reviews the right to privacy versus governmental interests. The article discusses sex offender registration and notification laws at the time, in 1996, and looks at many models including what is described as *The Police Discretion Model: Washington*. The author explores different states’ privacy challenges to Megan’s Law including an examination of Washington’s *State v. Ward* which found that the release of information must be supported by the evidence that the offender poses a threat to the community because disclosure is to prevent future harm, not punish past offenses and that the information be relevant and necessary to the protection of the community, based on the degree of harm the offender poses to the community. Finally the article reviews the negative impacts of Notification Measures on the Community and the Offender including real estate values, stigma to the offender, and vigilantism. Several of the examples of vigilantism are cited from Washington state.

## **V. Collateral Consequences and Reintegration Issues**

**Carpenter, Catherine L. “Against Juvenile Sex Offender Registration,” *82 U. Cin. L. Rev.* 747 (2013-2014).**

This article reviews the competing goals of the juvenile justice system compared with treatment of juvenile sex offenders. It discusses the stigma of registration and the long-lasting punishment of complying with registry requirements. The article looks at the difference between the practical reality of juvenile offenses vs. adult offenses (e.g. Romeo and Juliet offenses requiring the same registry consequences as an adult’s child molestation offense). The

prevailing and fundamental policies of child registration and public notification run counter to the prevailing and fundamental policies of rehabilitation and confidentiality of the justice system. The author maps the argument of 'Cruel and Unusual Punishment' under the Eighth Amendment for child registration.

**Lasher, M. & McGrath R.J. "The impact of community notification on sex offender reintegration: A qualitative review of the research literature." *International Journal of Offender Therapy and Comparative Criminology*, 56(1) 6-28 (2012).**

In a review of eight individual surveys on SORN's impact on sexual offenders subject to it, the authors found that 8 percent of sex offenders reported physical assault or injury, 14 percent reported property damage, 20 percent report being threatened or harassed, 30 percent reported job loss, 19% reported loss of housing, 16 percent reported a family member or roommate being harassed or assaulted and 40-60 percent reported negative psychological consequences.

**Periman, Deborah. *Revisiting Alaska's Sex Offender Registration and Public Notification Statute*, Alaska Justice Forum 25(1-2): 2-5. (Spring 2008-Summer 2008). Retrieved at: [http://justice.uaa.alaska.edu/forum/25/1-2springsummer2008/c\\_asora.html](http://justice.uaa.alaska.edu/forum/25/1-2springsummer2008/c_asora.html)**

Alaska's registry is an offense-based system and was one of relatively few states to require Internet dissemination of registration information for all offenders. The author argues that the Sex Offender Registration and Notification Laws rest were created on the premise that the registration and notification systems advance public safety but empirical research does not support the premise (citing Tewksbury & Lees, 2007). Instead of making the public safer, the system triggers consequences such as unemployment, instability and enhanced risk of recidivism. The Alaska Supreme Court in *Doe v. State*, 92 P.3d 398, 410 (Alaska 2004) noted the "potentially destructive practical consequences that flow from registration and widespread governmental distribution of disclosed information" are grave.

**Vandiver, Donna M., Kelly Cheeseman Dial, and Robert M. Worley. "A Qualitative Assessment of Registered Female Sex Offenders Judicial Processing Experiences and Perceived Effects of a Public Registry." *Criminal Justice Review* 33, no. 2 (2008): 177-198.**

The study reviewed the effect the sex offender registry had on female sex offenders in two states. It talked to female offenders from Illinois and Texas and found that every respondent reported at least one negative effect as a result of being identified on the public registry.

**Yoder, Steven. *Collateral Damage: Harsh Sex Offender Laws May Put Whole Families at Risk*, AlJazeera America, August 27, 2015. Retrieved at: <http://america.aljazeera.com/articles/2015/8/27/harsh-sex-offender-laws-may-put-whole-families-at-risk.html>**

The author looks at some individual sex offenders and the actual collateral consequences to their families, this includes the inability to live together as a family based on the residency requirements and the ability to find affordable housing, a recount of a report

published in 2009 which studied 600 families and found significant impacts on housing and harassment of offenders and their kids, and the isolation of feeling like when a member of family is on the registry, the whole family is.

**Zevitz, Richard G., and M. A. Farkas. "Sex offender community notification: Managing high risk criminals or exacting further vengeance." *Pogrebin, M eds (2004): 114-123.***

An in-depth study of Level III sex offender's experiences within Wisconsin's community notification law. They interviewed thirty Level III offenders in thirteen counties about their face-to-face registration experience, and about their experiences with the community notification and the impact it had on their lives and the lives of their families. The study found that while a handful of interviewees claimed that some registration requirements serve as a safeguard for them, most offenders either experienced the loss of employment and housing or the ongoing fear of such things. Offenders expressed that there is a large amount of stress on their families which the authors say strains the network of supportive relationships and in turn, successful integration.

## **VI. Sex Offender Notification as a False Sense of Security**

**Amyot, Vanessa. "Sex Offender Registries: Labelling Folk Devils," *55 Crim. L. Q. 188 (2009-2010).***

The article reviews the origin of sex offender laws in the United States and Canada and registry and notification requirements in federally and locally in Canada. The author explores the critiques of notification laws which include: a false sense of security for the community, fear of harassment and vigilantism, and their overall effectiveness. The article reviews different challenges to registry and notification provisions under Canadian law. Finally, the author reviews the political context in which these laws were passed by equating it to the theory of "moral panic" explored by Stanley Cohen in 1972. A moral panic begins with a perceived threat to society, which is amplified by the media who create and circulate stereotypical "folk devils" as serious threats to society. These highly politicized crime issues create a political environment which often exaggerates the threat and makes policy that does not allow governments to tailor their responses to the issue. The article explores alternatives to sex offender registries which include changing the one-size-fits-all approach, restorative justice approach focusing on offender reintegration, and public education.

**\*Prescott, J.J. "Do Sex Offender Registries Make Us Less Safe?" *35 Regulation 48 (2012-2013).***

The author describes how "SORN" laws, which include sex offender registration and notification became the norm without any systematic study of their consequences. He posits that an "avalanche of evidence" suggests that notification may be criminogenic. He also suggests that the logic offered by most SORN advocates ignores the potentially significant, yet unintended, consequences which can have an impact on facets of an offender's behavior."

**Yung, Corey Rayburn. "The Ticking Sex-Offender Bomb," 15 J. Gender Race & Just. 81 (2012).**

The article compares the War on Sex Offender rhetoric to the War on Terrorism and laws based on the notion that the offender is a ticking time bomb poised to re-offend. The author explores the stranger danger myth, sex-offender recidivism myths, lumping of all types of offenders together (Sex-Offender Homogeneity), and the power of rhetoric in framing the issue within the media and even in court decisions. The author briefly reviews the framework related to state and federal sex-offender laws and their general restrictions, along with exceptions carved out through case law (See *Smith v. Doe*, *United States v. Husted*, *United States v. Pitts*, *United States v. Comstock*, *Lambert v. California*). The author concludes that what is needed is a reorientation of genuine concern society has about certain forms of sexual violence. Instead of focusing on strangers who commit a small percentage of child molestations, people can learn to turn toward family members and friends who are alone with their children.

## **VII. Political Climate and Trends**

**\*Carpenter, Catherine L, and Beverlin, Amy E. "The Evolution of Unconstitutionality in Sex Offender Registration Laws," 63 Hastings, L.J. 1071 (2011-2012).**

This is a comprehensive 65 page article on registration and notification and their effects on offenders. It reviews the trend for the demand for more personal information to be submitted to registries and expanding notification requirements. "Today, however, these controlling principles have been replaced by a new paradigm: Residents of any community are entitled to great amounts of information about all sex offenders without regard to their likelihood of re-offense." (See Indiana's Registration Scheme which makes information on all sex offenders available to the general public without restriction regardless of risk). The author reviews how the trend of accessibility of offender information, while attempting to start cautiously, has ended in disclosure of detailed information by website. Along with a review of residency restrictions, GPS monitoring, the article reviews the subsequent challenges to the laws with commentary on potential future outcomes. The Article concludes by offering that "...ramped-up registration schemes, designed to appease a fearful public, are no longer rationally connected to their regulatory purpose, thus transforming the legislation into criminal penalties cloaked in civil rhetoric." (p.63).

**Haskins, Shelly. *Is Alabama's Sex Offender Registry Necessary or Pointless?* April 7, 2015. Retrieved at:**

**[http://www.al.com/opinion/index.ssf/2015/04/are\\_sex\\_offender\\_registries\\_ef.html](http://www.al.com/opinion/index.ssf/2015/04/are_sex_offender_registries_ef.html)**

The author consults three different opinions about the usefulness of registries in light of the California opinion on unconstitutional residency restrictions. The Executive Director of the National Children's Advocacy Center said that he agrees that registries haven't proven to be effective in fighting child sex abuse; the Madison County Chief Deputy said the registry is a useful law-enforcement tool and for peace-of-mind of citizens, and an advocate for sex offender

reform says that the registry doesn't work because it promotes stranger-danger while a child is more likely to be abused by a family member or friend.

**Logan, Wayne. "Megan's Law as a Case Study in Political Stasis," 61 *Syracuse L. Rev.* 371 (2011).**

The author opened the article with an examination of Washington's Community Protection Act of 1990, citing the law as "hugely significant." It noted the community notification provision which had an intent section that discussed a sex offender's reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. It speaks to the national laws and comments on the state of Adam Walsh Act (AWA) state compliance at the time. The article also reviews the political attractiveness and catalysts that make sex-offender legislation possible. The politics of dehumanizing the offender and personalizing the effects of sex offender crimes feed the political backdrop of decision making. The author concludes that the above-factors, along with some other considerations lead to political stasis when it comes to these laws. The political cost associated with change is too great, and the lack of desire to question the status quo with empirical data proves to reinforce the stasis.

**Mather, Kate and Kim, Victoria. "California eases Jessica's Law Restrictions on Some Sex Offenders," *Los Angeles Times*, March 26, 2015. Retrieved at:**

**<http://www.latimes.com/local/crime/la-me-jessica-law-20150327-story.html>**

The article recounted the decision by the California Supreme Court which ruled the sex offender residency restrictions as applied in San Diego County unconstitutional. It recounted some of the outraged responses by advocates of Jessica's Law and criticized what was characterized as a unilateral move by the Department of Public Safety (DPS) to apply the ruling statewide as "puzzling." DPS would review approximately 6,000 cases to determine whether their cases should be modified and whether the residency restrictions had a nexus to the parolee's offense, criminal history, and/or future criminality.

**Neyfackh, Leon. *California's Sane New Approach to Sex Offenders And Why No Other State is Following Its Example*, [www.slate.com](http://www.slate.com) (April 2, 2015). Retrieved at:**

**[http://www.slate.com/articles/news\\_and\\_politics/crime/2015/04/california\\_s\\_sane\\_new\\_approach\\_to\\_sex\\_offenders\\_and\\_why\\_no\\_one\\_is\\_following.html](http://www.slate.com/articles/news_and_politics/crime/2015/04/california_s_sane_new_approach_to_sex_offenders_and_why_no_one_is_following.html)**

This article interviews an author in response to the actions that California's Department of Public Safety took to allow some sex offenders to live within 2,000 feet of schools and parks, pursuant to a California Supreme Court decision which found the residency restrictions unconstitutional as applied in San Diego. The subject of the article discusses that discussion related to changing these laws has mostly remained in academia and the legal community vs. legislative bodies, that stranger danger is an insignificant problem related to sexual offending, and that this is the first time she can remember that states have been more lenient vs. more punitive toward sex offenders.

**Rodriguez, Rachel. “The Sex Offender Under the Bridge Has Megan’s Law Run Amok?” 62 *Rutgers L. Rev.* 1023 (Summer 2010).**

This note focuses on reforming Megan’s Laws to achieve sex effective sex offender management and deterrence, while simultaneously minimizing the potential for constitutional challenges. The article generally looks at the history of Megan’s laws, growing trends towards stricter sex offender restrictions, collateral consequences and some constitutional related to the provisions. The article looks at some effectiveness studies and ultimately argues that laws should be more tailored to target only truly predatory offenders. The article did not focus on internet notification or public disclosure of records so the review is not detailed.

**Schwartz, Robert G. “Time to Revisit Sex Offender Registration Laws,” 29 *Crim. Just.* 43 (2014-2015).**

The article is a review of unintended consequences and constitutional challenges to sweeping registration laws with a specific focus on the disparate impacts on juveniles. The author explores the opinions of several courts which have found provisions of their sex offender laws unconstitutional including a trial court ruling which found Pennsylvania’s SORNA implementation retrospectively and prospectively as applied to juveniles (*In the Interest of J.et al.*, CP-67—JV—0000726-2010, York Court of Common Pleas, filed Nov. 4, 2013) and Ohio’s Supreme Court ruling that struck the state’s automatic, lifetime registration notification requirements for public registry of juveniles as violative of due process and cruel and unusual punishment. (*In re C.P. 967 N.E. 2d 729 (Ohio 2012)*). The author concludes that the current state of SORNA, which includes lifetime registration for juveniles, contradicts the also current research which establishes that ‘juveniles are different.’

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