# Residency Restrictions for Sex Offenders:

# A Failure of Public Policy*

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

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

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

## ***The Horrors of the Most Despicable Crimes***

All of us are shocked, sickened, and saddened when some deranged man kidnaps, sexually assaults and murders a young child. My wife took our two pre-teen children for photographing,

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fingerprinting and had DNA samples taken for identification and inclusion in a national registry because of our own concerns.

Jimmy Ryce, nine years old, was taking the bus home from school on September 11, 1995, when he got off the bus along with 10 of his friends and began the one-block walk to his home. Juan Carlos Chavez blocked his way and forced him at gunpoint into his truck. Chavez took him to his mobile home, where he raped Jimmy. When Chavez heard helicopters overhead, and Jimmy ran for the door, Chavez shot Jimmy in the back and killed him.[2]

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

Sarah Lunde, 13 years old, was abducted, raped and murdered by a convicted sex offender.[4]

## ***Misperceptions about Sex Offenders***

Part of the difficulty in developing an effective public policy for dealing with convicted sex offenders is getting past incorrect information and wrong assumptions about sex offenses and the potential for sex offenders reoffending after conviction and release. From a review of the literature, I have identified four significant misperceptions:

### 1. The victim is usually a stranger

The reality is that most victims are family, friends or acquaintances of the sex offender. While there are a variety of statistics in the literature, the general consensus is that about 75% of the victims are known to the sex offender. More often than not, they are not strangers sought out at nearby schoolyards, playgrounds, and bus stops. While the most shocking of sex crimes involves the abduction of a young child -- a complete stranger to the sex offender -- who is then sexually abused and murdered, statistically this is an outlier. About 93% of victims of sex offenders know the perpetrator. About 34% are members of the family and another 59% are acquaintances, according to the Bureau of Justice Statistics.[5]

Similar statistics are reported by the offenders themselves. In one study perpetrators said that their victims were strangers in less than 30% of rape cases and in only15% for other sexual assaults.[6]

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

How common is this offense pattern of the abduction of a child, rape, and murder? The National Center for Missing and Exploited children in 2005 said that such cases are extremely rare -- in all about 100 per year.[7] By way of comparison, according to a National Highway Traffic Safety

Administration, in a 2004 report, drunk drivers killed over 500 children under the age of 15 in the year 2003. Parents or caregivers who physically abused or neglected their children caused 1,121 deaths in 2002, according to the Child Welfare League of America in 2003 report.[8] Some 1,800 children age 14 and under are killed in auto accidents each year.[9]

Misperceptions can be found on other fronts. How safe do you think school buses are without seat belts? We note that 23.5 million school children are transported by school bus every day, and last year there were only seven children killed in bus accidents.[10]

No one seems to know, however, just how much unreported sexual abuse of children occurs. When abuse goes unreported, state and local governments are obviously not able to implement remedial actions.

## 2. Recidivism is high among sex offenders

Sex offender legislation is driven by the public perception that high recidivism rates require the isolation of sex offenders. Actually, major studies by the federal governments in the United States and Canada found that sex offense recidivism rates are substantially lower than most people believe. The U.S. Department of Justice reviewed recidivism rates among 9,000 offenders three years following their release from prison and found that 5.3% reoffend. The Canadian government found a 14% average rate of recidivism among sex offenders from a sample of 30,000 followed over a four to six year period after their release.[11]

Even studies for periods as long as 15 years after release show the rate of recidivism to be remarkably low -- 76% were not rearrested for sex crimes. According to the Bureau of Justice Statistics, sex offenders have rates of recidivism among the lowest of all criminals.[12]

To give you some idea of how far off the mark people can be in their perceptions, here are just a few of the numbers from a definitive study reported on last year.[13] When asked what percentage of sex offenders commit another sex offense, the public offered a mean percentage of 74% and the median of 80% -- virtually the inverse of the reality.

The State of Ohio, Department of Rehabilitation and Correction, undertook a comprehensive study of recidivism over a 10-year period for sex offenders released in 1989.[14] That report found that most victims were young with almost half of them under the age of 13. Only 17% of the victims were total strangers. Those most likely to reoffend were rapists at 56.6%. Also likely to reoffend are pedophiles who molest boys.[15] Extra-familial child molesters returned at the rate of 29.2%. The least likely to reoffend were incest child molesters at 13.2% over the 10-year period.

Overall, the sexual recidivism rate for the group over 10 years was 11%. Treatment programs for paroled sex offenders worked best in reducing sex offense recidivism, cutting the rate of recidivism in half. The report concluded that more work needs to be done on risk assessment and the efficacy of treatment programs.

### 3. A Sex Offender Is a Sex Offender

Gertrude Stein's "A rose is a rose is a rose is a rose"[16] does not apply to sex offenders. There are horrible, violent, and despicable pedophiles, such as John Couey, who murdered nine-year-old Jessica Lunsford, to teenagers experimenting with sex, such as Wendy Whitaker.[17] Wendy Whitaker was a 17-year-old high school sophomore who had oral sex with a 15-year-old male classmate. In 1997, she pleaded guilty, received five years probation, and ended up on the state's sex offender registry. Now, because of the state's residency restrictions, at age 28 she can not live in many places. She has already had to move twice and has just been told by the local sheriff that she has to move a third time because the house she owns with her husband is within one of the restricted areas. As she says: "it's a recurrent nightmare. It's like a roller coaster. One minute, I'm okay, and then, I'm not. This time, I really thought everything was going to be all right."[18]

### 4. Community notification is highly effective in reducing recidivism

In one study of the public's perceptions of nine strategies for reducing sexual offenses, community notification scored the highest with 83% of those questioned in the study saying they believed it would be effective.[19] Unfortunately, there have been very few studies about the effectiveness of registration, but of the studies published, most could not identify any significant reduction in the rate of reoffending as a consequence of community notification.[20]

## *Responses to Concerns about Convicted Sex Offenders*

### 1. Registration

The best known of the registration laws – Megan's Law – was in response to the 1996 abduction, rape, and murder of seven year old Megan Kanka by a known sex offender in New Jersey. Two years before, the U.S. Congress had enacted legislation mandating that states create sex offender registries. That law (Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Act of 1994) was prompted by the 1989 kidnapping in Minnesota of Jacob Wetterling and the assumption that the crime – never solved – was committed by a sex offender. The Wetterling Act was amended after Megan Kanka's death to permit public disclosure of registry information. That community notification amendment is "Megan's Law."[21]

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

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

While registration may not be effective in reducing recidivism or in preventing child sexual abuse, the public's perception is that most sex offenders will reoffend and that Megan's Law will protect the public by providing the community with notice of the presence of convicted sex offenders. Some studies suggest that citizens do feel safer with such notification, but others report greater anxiety in having the information.[26]

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

Registration and notification have adverse consequences for sex offenders. Studies show that between one third and one half of sex offenders in Florida and Kentucky were threatened, harassed, and lost a job or a home or suffered property damage as a consequence of the disclosure of their past offense.[27] Families suffered as well with 19% of sex offenders reporting that disclosure of their offenses had negative effects on their family. A troubling 5 to 16% of the offenders said that they had been physically assaulted following public notification.[28] Of concern is the potential that the collateral consequences of community notification may contribute to increased recidivism by increasing instability, while decreasing the chances of successful employment and generally disabling sex offenders from effectively reentering the community as mainstream members.

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

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

On the other side of the ledger, however, 62% said that Megan's Law actually hurt their recovery by making it more difficult for them by causing stress in their lives. Shame and embarrassment because of Megan's Law led 58% of them to report that they stayed away from some activities. This exclusion from reentry into society was experienced by 54% of offenders who felt alone and isolated because of Megan's Law. Friends and close relationships were lost because of the notification, according to 50% of the offenders. The sense of hopelessness was suffered by 55% of the offenders.[29]

The National Association of Criminal Defense Lawyers opposes sex offender registration and public notification laws, but might begrudgingly accept them if sex offenders were classified on the basis of risk and proper due process was provided, with public or community notification available only for high-risk sex offenders.[30]

Registries cannot work if they are not accurate. One study in Florida suggests that more than half of the information on the Internet Registry is incorrect.[31] A 2003 report by the Boston Herald claimed that 49% of registered sex offenders could not be located in Massachusetts.[32]

## 2. Civil Commitment

The National Association of Criminal Defense lawyers opposes civil commitment for sex offenders following the completion of their sentences of incarceration because, according to the NACDL, civil commitment punishes offenders who have already paid their debt to society. If civil commitment is used at all, says the NACDL, full due process rights should be provided including the right to jury trial, the right to confront adverse witnesses, the right to present evidence, rules of evidence, a high burden of proof on the government, and a process for review and discharge with the burden of proof largely on the government.[33]

The least 16 states (Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, North Dakota, South Carolina, Texas, Virginia, Washington, and Wisconsin) have enacted civil commitment laws since 1990 that enable confinement and treatment of sex offenders following their incarceration.[34]

Assuming that there is a proper categorization of sex offenders to identify the most violent and dangerous all those most likely to reoffend and therefore requiring the closest supervision, there is an important role to be played by post-conviction civil commitment. As Professor Levenson says: "effective implementation of sex offender commitment statutes is necessary to enhance public safety while protecting offenders' rights to liberty and to limit the use of scarce resources to those cases in which the most restrictive and intensive interventions are required."

## 3. Electronic Tracking

Several states have tracking requirements for convicted sex offenders.[35] The research results are largely inconclusive.

## 4. Mandatory therapy and monitoring

David Finkelhor, of the Crimes against Children Research Center at the University of New Hampshire, advocates more frequent meetings with skilled probation officers as a way to monitor sex offenders.[36] Kim English of the Colorado Division of Criminal Justice advocates mandatory therapy in group residential settings.[37] Polygraph testing, along with electronic monitoring and maintenance of driving logs in some cases, are advocated by Professor Jill Levenson as ways to monitor sex offenders.[38]

## 5. Residency Restrictions

At least 21 states and over 400 local governments have adopted residency restrictions.[39] Most of them prohibit a sex offender from living within some distance, often 1,000 to 2,500 feet, from certain uses, particularly those where children congregate.

The state residency restrictions are sometimes called "Jessica's Laws" because they were enacted or made stricter after convicted sex offender John Couey in Florida kidnapped, raped and murdered nine-year-old Jessica Lunsford in 2005.[40] Florida's law, for example, provides for minimum 25-year sentence for any offender preying on a child 12 years and younger and lifetime electronic tracking.[41]

An extreme example of residency restrictions is found in Dyersville, Iowa, which prohibits any sex offender from living anywhere in the city. Mayor Jim Heavens defends the law as necessary to protect public safety and property values: "we consider this a crude tool, but at least we can do something. We're not trying to banish people."[42] The law is codified in chapter 49 of the city's ordinances and is available on the web.[43]

### a. Legal challenges to residency restrictions

There are only a few cases dealing with residency restrictions. The constitutionality of sex offender residency restrictions was addressed by the Eighth Circuit in Doe v. Miller, 405 F.3d 700 (8th Cir. 2005). The Eighth Circuit reversed the trial court's judgment invalidating registry requirements for Iowa's sex offenders. The court in reversing the decision acknowledged that the residency restrictions prevented sex offenders from living anywhere in some Iowa towns, with 77% of the residential units in the state rendered unavailable for sex offenders by action of the state law. The remaining residential units were largely on farms in rural areas.[44] The court rejected several legal theories attacking the restrictions, including ex post facto claims,

substantive due process, and procedural due process. Just how controversial the opinion was is reflected in the fact that five of the Eighth Circuit judges voted to hear the case en banc.

The Iowa Supreme Court in July of 2005 reversed an Iowa District Court decision declaring Iowa's restrictions unconstitutional.[45] In Seering v. Iowa, the Iowa Supreme Court held that the State's interest in protecting its citizens superseded a sex offender's right to freedom of residency. The 2000-foot buffer zone imposed statewide remains in effect today.

## Taking claim

Residency restrictions are subject to constitutional challenge. The Supreme Court of Georgia handed down an important decision on November 21, 2007, in the case of Mann v. Georgia Department of Corrections, holding that a Georgia law prohibiting convicted sex offenders from living within 1,000 feet of a school, church, childcare facility or other place where children congregate caused an illegal regulatory taking.[46] What follows is paraphrased and quoted from the Georgia Supreme Court's summary of its decision.[47]

Anthony Mann, a convicted child molester, sued the state Department of Corrections in Clayton County Superior Court, challenging the constitutionality of Section 42-1-15 of the Official Code of Georgia, which restricts where sex offenders can live and work. When Mann and his wife purchased their current home in Hampton, Georgia, there were no prohibited facilities nearby, and he was in compliance with Georgia's Sex Offenders Statute. Similarly, when Mann entered into a business agreement as half owner and operator of a barbecue restaurant in Lovejoy, Georgia, there were no facilities nearby where children would possibly congregate. Subsequently, two different day care centers were built within 1,000 feet of his home and his business. His probation officer demanded that Mann physically remove himself from his business and his home or face arrest and revocation of his probation. Mann previously challenged the same statute, and the Supreme Court ruled against him. In that case, he was living at his parents' home at the time and paying no rent when a day care center opened within the restricted space.

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

The Court makes a distinction between its November 2007 ruling and its 2004 ruling in Mann's earlier case. "Although we earlier determined appellant's property interest in his rent-free residence at his parents' home to be 'minimal,' …we find appellant's property interest in the [current] residence he purchased with his wife to be significant." Furthermore, the statute "looms

over every location appellant chooses to call home, with its on-going potential to force appellant from each new residence whenever, within that statutory 1,000-foot buffer zone, some third party chooses to establish any of the long list of places and facilities encompassed within the residency restriction,… While this time it was a day care center, next time it could be a playground, a school bus stop, a skating rink or a church."

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

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

## Preempted by state law

A three-judge panel of the New Jersey Appellate Division of the Superior Court ruled on July 15, 2008, that New Jersey towns cannot ban sex offenders from living near schools, parks, or other places where children gather.[48] In ruling on the Cherry Hill and Galloway ordinances, appellate court judge Judge Joseph F. Lisa wrote that the ordinances "interfere with and frustrate the purposes of operation of the statewide scheme." In response to the decision, Mayor Bernie Platt of Cherry Hill said he was contemplating taking an appeal.

One of the two companion cases arose from the problems experienced by a 20-year-old college freshman at Richard Stockton College in Galloway Township. The student was a registered sex offender as a result of an offense committed against a 13-year-old girl when he was 15 years old. The Galloway ordinances prevented him from living in a college dorm. In Cherry Hill, two register sex offenders moved into a motel under a Section 8 payment plan with the approval of their parole officers, only to be told to move out by local authorities because they were too close to a high school. They were charged, convicted and fined for violating residency restrictions.

The executive director of the state chapter of the American Civil Liberties Union responded to the decision: "Megan's Law is already accepted as constitutional and as the states comprehensive approach to sex offenders. The residency requirements do not contribute to rehabilitation and may in fact undermine it."[49]

Yvonne Smith, the State Public Defender, filed an amicus brief in support of the plaintiff sex offenders: "you can't impose unrealistic burdens on people and expect them to reintegrate. They paid their debt to society and are under supervision."[50]

The court concluded:

> A comprehensive apparatus has been constructed to address, on a uniform and statewide basis, the underlying problem of dealing with CSOs [convicted sex offenders] who have completed serving their sentences and are released into the community. In varying degrees, these individuals have a likelihood of reoffending. Therefore, there is a need for protection of the public. At the same time, to minimize the risk of reoffending, there is a need to provide appropriate living accommodations for CSOs, with support systems provided by family members and others, reasonably proximate to employment, public transportation networks, and treatment programs, in order to provide stability for CSOs in these respects. The Legislature has chosen a system by which CSOs will be uniformly classified based upon their risk of reoffending, notification to the community will be tailored according to that risk, registration will be required to keep local law enforcement reprised at all times of the whereabouts of the CSOs, and parole officers will approve where CSOs may live and supervise their daily activities."...
>
> The statutory and regulatory scheme, viewed in light of the exclusionary effect of the ordinances, provides strong evidence that the ordinances substantially interfere with the ability of parole officers to carry out their statutorily mandated function of finding the most appropriate housing for CSOs. In many cases the most appropriate housing would be in a location prohibited by the residency restriction ordinances....
>
> We conclude that the residency restriction ordinances conflict with the policies and operational effect of the statewide scheme implemented by Megan's Law, which was intended, both expressly and impliedly, to be exclusive in the field. The subject matter reflects a need for statewide uniformity. The scheme chosen by the Legislature, refined by the judiciary, and firmly entrenched for more than a decade on the uniform statewide basis, is pervasive and comprehensive, thus precluding the coexistence of municipal regulation. The ordinances interfere with and frustrate the purposes and operation of the statewide scheme.[51]

## Banishment

A provocative criticism of residency restrictions is that they effectively banish convicted sex offenders from society.[52] Banishment in residency restrictions is a form of internal exile. Should the theory ever take hold in the courts, it is possible that the shift could be toward invalidation of the residency restrictions as being punitive, subject to attack as double jeopardy, and in some instances, ex post facto laws.

## As a human rights issue

The Human Rights Watch sees the problem as a conflict of rights between those of the citizenry to be free from sexual assault and the rights of all to privacy, housing, and dignity. Article 9 of

the International Covenant on Civil and Political Rights declares the rights of all to security of person, and that children have additional rights. Article 19 of the Convention on the Rights of the Child, for example, provides at Article 19:

> 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
>
> 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

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

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

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

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

The issues in returning sex offenders to the community are difficult for all concerned. The Human Rights Watch entitles its report on the subject "No Easy Answers."[53] The re-arrest rate of rapists for all crimes is not much different than for other types of offenders, but at 46% it is of legitimate concern. The re-arrest rate of rapists for rape within three years of release is only 2.5%. Those most like to recidivate are pedophiles that molest boys and rapists of adult women.[54] Does distancing help really help to reduce repeat offending? How long does it take to walk 1,000 feet, or take a bus, or drive a car?

Also, one study found the obvious -- people don't want to live near a sex offender. Home values went down an average of 4% within one-tenth of a mile of a sex offender's residence. "These results suggest that individuals have a significant distaste for living in close proximity to a known sex offender."[55]

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

## b. Criticism in the press

The New York Times has addressed the need to reject residency restrictions as ineffective and contraindicated in an editorial published on July 30, 2008, in response to the New Jersey appellate court decision finding that state law preempted local residency restrictions. The paper wrote:

> Fine-Tuning Megan's Law
>
> Megan's Law, which requires public notification when a convicted sex offender moves into a community, is named for Megan Kanka, a 7-year-old New Jersey girl who was killed by a released sex offender near her home in Hamilton Township in 1994. However useful, the law has always carried great potential for danger, and now a New Jersey court has taken a step toward making it a more sophisticated instrument of public safety.
>
> One danger has always been vigilantism. Child molesters living peaceably in a community after serving their time — and even some people mistaken for child molesters — have been beaten up or fired upon.
>
> A disturbing new development is the proliferation of local ordinances that go beyond the reporting requirements of legislation like Megan's Law by restricting where sex offenders may live. In some New Jersey towns, offenders cannot live within 2,500 feet of a school or playground. Often, the banned areas are so large as to effectively prohibit a sex offender from living anywhere in town.
>
> These bans can do more harm than good. They will not deter a determined predator. Many law enforcement officials, including parole officers, have observed that they tend to bunch sex offenders in drug-infested, rundown neighborhoods that are poorly suited for anyone trying to turn around a life.
>
> Two weeks ago, in a unanimous decision, a New Jersey appeals court ruled that such ordinances conflicted with the state's Megan's Law because they interfered with the broad discretion given to parole officers to decide where a sex offender may live. By arbitrarily ruling out certain areas, the judges suggested, the ordinances could deny offenders access to public transportation, treatment programs and employment. [56]
>
> Several state legislators now say they will try to amend the law to allow for residency limits. The courts in New York have upheld such bans and other states, including Oklahoma and Iowa, have adopted them.
>
> There's no reason for New Jersey to make the same mistake. We have long supported the registration requirement. But we also believe that officials should be aware that in the wrong hands, this information can lead to harassment or worse. And the decision about where a sex offender should live properly resides with law enforcement agencies.[57]

## b. Not effective

The major indictment of residency restrictions for sex offenders is that they do not reduce recidivism or provide any substantial additional protection for potential victims. One of the definitive studies is by the Colorado State Judiciary Committees of the Colorado Senate and House of Representatives promulgated as the "Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community."[58]

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

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

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

The Minnesota Department of Corrections undertook a study on residential proximity and recidivism.[59] The study tracked 224 recidivists released between 1990 and 2002 who were reincarcerated for a sex crime prior to 2006. Four criteria were used for the study: the re-offenders had to initiate contact directly with the victims, not through family relationships or acquaintances; the contact had to be within a mile of the offender's residence; the first contact location had to be near a school, park, day care center, or other prohibited area; and the victim had to be under age 18.

Here, in one sentence from the executive summary, is the dramatic conclusion of the study of 224 sex offenses by previously convicted sex offenders: "not one of the 224 sex offenses would likely have been deterred by a residency restrictions law."[60]

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

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

The study added some important details to the literature already available. Only 15% of the offenses took place in a public location; the rest were in the offender's home or similar residential location. Most of the victims, some 79%, were someone known to the offender. Half of the sex offender recidivists gained access to the victims through a collateral contact such as a girlfriend, wife, coworker, friend, or acquaintance, and 14% were biologically related to the victims.

The last sentence of the report states: "therefore, by making it more difficult for sex offenders to successfully re-enter society, housing restrictions might promote conditions that work against the goal of reducing the extent to which they recidivate sexually."[61]

Kansas and Florida each commissioned useful reports on the efficacy of general residency restrictions and both conclude that blanket residency restrictions are not effective and do not enhance community safety.[62] The Kansas reports states: "A tight web of supervision, treatment and surveillance may be more important in maintaining community safety than where a sex offender resides." Florida similarly concluded: "Despite widespread support and popularity, there is no evidence that residence restrictions prevent crimes or increase public safety. These laws may ironically interfere with their stated goals of enhancing public safety by exacerbating the psychosocial stressors that can contribute to reoffending.... Sex offenders rouse little public sympathy, but exiling them may ultimately increase their danger."

The Iowa County Attorneys Association criticism of Iowa's residency restrictions provides a useful summary of the arguments against generalized restrictions and offers suggestions for a more a targeted approach.[63] A discussion of an alternative offender-based model is found in the California report in its analysis of "Comprehensive Risk Assessment as a Means to Contain the Most Serious Sex Offenders.[64]

There is no scientific support in the literature for blanket residency restrictions. However, there is indicated a need for increased risk assessment of individuals with tailored programs which include highly restrictive interventions and monitoring for the most dangerous offenders. Connecticut planners may wish to review the literature and be prepared to answer the inevitable questions concerning blanket residency restrictions. Coping with sex offenders is best addressed by the state in individualized risk assessments, interventions, restrictions on movement, monitoring, treatment and refined definitions of offenders with some efforts to remove from the registry those who are not dangerous and highly unlikely to re-offend.

As you might expect, the National Association of Criminal Defense Lawyers oppose his residence restrictions on the grounds that they do not provide effective community protection and they threaten offender stability. Its report cites studies from Minnesota and Colorado and quotes from the Colorado study that residency restrictions "should not be considered as a method to control sexual offending recidivism."[65]

## d. Counter-intuitive results and unintended consequences

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

What most people do not realize is how such restrictions perniciously make matters worse. These counter-intuitive results and unintended consequences include adverse impacts on employment, housing, family integrity, treatment, and human dignity[66]

An unintended consequence of the residency restrictions, which destabilize families and separate offenders from their families and children who depend on them, is the potential for children or their parents, to avoid further instability, to fail to report sexual abuse by household members. This leaves the children vulnerable and without access to therapeutic services.[67]

If one local government observes that a neighboring government has instituted sex offender residency restrictions that limit severely or entirely preclude a sex offender living in the neighboring municipality, what do you imagine might happen? A reasonable expectation is that those sex offenders are going to "spill over" to the area with no restrictions. So the community with no restrictions adopts its own sex offender residency restrictions, causing an effect which continues to push on outward.[68]

## e. Reconsideration of public policy

Not all of these residency restrictions have been adopted and blindly defended. Some policymakers raised questions about the efficacy of such restrictions. Oklahoma State Representative Lucky Lamons, a police officer of 22 years who describes himself as a "lock-'em-up kind of guy," wants to ease the restrictions in Oklahoma that require sex offenders to live 2,000 feet from a school or day care center. The distance requirement, he argues, forces many offenders out into the rural areas where they cannot get treatment and are difficult to track. He also questions whether blanket residency restrictions are useful because they fail to categorize and separate the violent offenders who are likely to reoffend from the rest of the convicted sex offenders whom are unlikely to repeat sex offenses. As Representative Lamons said: "we need to focus on people we're afraid of, not mad at."[69]

Part of the problem is that some of these sex offenders have disappeared, failing to report their addresses, so as to avoid the restrictions which are often more than an inconvenience. Sometimes they have given false addresses, in part because they say they cannot otherwise find a place to live.[70]

The restrictions are so all-encompassing in some areas that there is virtually no place for such an offender to live. Most of downtown Tulsa, Atlanta, and Des Moines are totally off-limits for sex offenders because of the many schools and daycare centers from which there are separation requirements.[71]

If you ever watched Fox network's television series "America's Most Wanted," you would know the host, John Walsh. Even he -- and what more authoritative source can there be -- questions the residency restrictions: "you can't paint sex offenders with a broad brush." He notes that residency laws cannot be enforced with tens of thousands of the country's 600,000 registered sex offenders disappearing from the lists as a result of the residency restrictions.[72]

The Iowa County Attorneys Association, in its "Statement on Sex Offender Residency Restrictions in Iowa," in 2006 "strongly" urged the General Assembly and the Governor to amend the state statue to include measures which would be more effective in protecting children and reduce the "unintended unfairness to innocent persons."[73] The ICAA, in reviewing the research and literature observed that there is no correlation between residency restrictions in reducing sex offenses against children or improving the safety of children, and there is no support in the literature, for the view that children are more likely to be victimized by strangers in the locations from which separation is required. The statement noted that 80 to 90% of sex crimes against children are committed by a relative or acquaintance, and are not against strangers in the types of places from which residency restrictions are based. They noted increasing homelessness among sex offenders and the disappearance of sex offenders from state registries as a consequence of the residency restrictions. The county attorneys expressed concern about the extraordinary demands on limited law-enforcement resources as a consequence of these restrictions. Part of the problem, they noted was that the categories of crimes to which these restrictions apply are too broad. Interestingly, they point out that "a significant number of offenders have married or have been reunited with their victims; and, in those cases, the residency restrictions are imposed on the victims as well as the offenders."[74]

The county attorneys are also concerned that sex offenders cannot live with family members on whom they depend for help in their daily needs. The 2000-foot zones are "so extensive that realistic opportunities to find affordable housing are virtually eliminated in most communities," a situation that is exacerbated by the lack of transportation in more rural areas to which sex offenders are forced and even more strict regulations by cities and counties.

According to the Iowa County Attorneys Association, one unintended consequence of the severe residency restrictions is that alleged offenders are less likely to confess to their crimes. Such plea agreements are often driven by the need to protect youthful victims from having to testify at trials. As a consequence of these agreements, sex offenders are often not held fully accountable and do not get into rehabilitation programs.

The county attorneys have several suggestions:

- Create "child safe zones" such as around schools and child care centers and prohibit offenders from going there except with approval, such as when their own children are there
- Restrictions should be based on offenses against children under age 14, not minors under 18
- State statutes should control over local ordinances
- Any restrictions should be based on classification of offenders and should apply only to those most likely to pose an actual risk
- Treatment during an incarceration and afterward should be adequately funded
- Education and enforcement should endeavor to keep all children safe and should refocus on keeping victims with their families and circle of acquaintances.[75]

Kansas and Florida each commissioned useful reports on the efficacy of general residency restrictions and both conclude that blanket residency restrictions are not effective and do not enhance community safety .[76] The Kansas reports states: "A tight web of supervision, treatment and surveillance may be more important in maintaining community safety than where a sex offender resides." Florida similarly concluded: "Despite widespread support and popularity, there is no evidence that residence restrictions prevent crimes or increase public safety. These laws may ironically interfere with their stated goals of enhancing public safety by exacerbating the psychosocial stressors that can contribute to reoffending.... Sex offenders rouse little public sympathy, but exiling them may ultimately increase their danger."

The Iowa County Attorneys Association has been critical of that state's residency restriction and their statement provides a useful summary of the arguments against generalized restrictions and offers suggestions for a more a targeted approach.[77] A discussion of the alternative of an offender-based model is found in the California report in its analysis of "Comprehensive Risk Assessment as a Means to Contain the Most Serious Sex Offenders.[78]

## Conclusions

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

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

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

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

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

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

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

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

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

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

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