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Recalibrating the Sex Offender Registration System

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NOTE

RECALIBRATING THE SEX OFFENDER REGISTRATION SYSTEM

ERIN SCHOENBECK BYRE*

Forward:

“Amen, I say to you, whatever you did for one of these least brothers of mine, you did for me.” Matthew 25:40.

This paper must be approached with an open mind and heart. All individuals, regardless of what they have done, are humans with emotions, family members, and a desire to improve their lives. While sex offenders are often referred to as the least among us—they are still humans—which instills in them the God-given right to be treated with dignity. Their actions must be reprimanded, but their dignity cannot be destroyed.

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* J.D. Class of 2020 University of St. Thomas. This article is dedicated to Ariel Bishop—one of the strongest women I know.

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I. INTRODUCTION

Sex offender registries were enacted to eliminate a societal issue—sexual assault. The original legislation attempted to balance the competing interests of the survivors, society, and sex offenders in an effort to arrive at a fair, balanced solution. However, in recent years, federal legislation has moved away from its original policy goals. The result has been an expansive sex offender registration scheme, which impinges upon both states’ and sex offenders’ rights. Legislation enacted to protect society from a dangerous few now captures a vast group of individuals, many of whom pose little threat of reoffending. Current legislation improperly uses states’ resources and prevents non-dangerous offenders from reintegrating into society. Federal legislation must be repealed to allow states to create their own systems that respect all parties’ interests and achieve the federal legislation’s original goal of preventing sexual offenses.

This paper examines how the registration schemes moved away from their original goals and critiques the Adam Walsh Child Protection and Safety Act. It then acknowledges the involved parties’ interests and offers recommendations for maximizing the parties’ needs.

II. OVERVIEW OF FEDERAL SEX OFFENDER LEGISLATION

In 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act (Wetterling Act).¹ This act was the federal government’s first step towards establishing its current expansive sex offender registration system. The act mandated states to follow a loose

1. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1993).

set of guidelines when creating their sex offender registries.² If states failed to meet these guidelines, they faced losing 10 percent of a grant allocated under the Omnibus Crime Control and Safe Streets Act of 1968.³ The Wetterling Act limited its registration requirements to individuals who were deemed sexually violent predators and those who committed acts against minors. For this limited group of individuals, their registration requirement lapsed after ten years, or for some, a court determination. The offenders' information was treated as "private data" with law enforcement releasing the information only if it deemed it "necessary to protect the public."⁴ Under the act, states were allowed the flexibility to craft registries that fit into their budgets and met their unique citizens' needs.

Following the Wetterling Act, federal legislation began to restrict states' flexibility and expand the costs of implementation and upkeep. The expansions included requiring mandatory public notification;⁵ requiring offenders to register in the states where they work, reside, and attend school;⁶ mandating states to establish and upkeep a website containing registered offenders' information;⁷ and enhancing the requirements for the monitoring and the transmission of information.⁸

In 2006, the expansions culminated in the Adam Walsh Child Protection and Safety Act. Title I of the act is referred to as the Sex Offender Registration and Notification Act (SORNA) and established a comprehensive, national sex offender registration scheme. The act rewrote the requirements for states' sex offender registries. Unlike the Wetterling Act, this new legislation required an extensive and detailed set of requirements for states to follow. It expanded both the definition of sex offenses requiring registration and states' public notification requirements.⁹ SORNA required states to establish a three-tier system, which categorized individuals based on their offense, as opposed to their threat to public safety.¹⁰ It set forth a detailed list of information that states must collect and include in their registries.¹¹ The act expanded registration periods to a minimum of fifteen years.¹² It

2. *Id.*

3. *Id.*

4. *Id.*

5. Megan's Law, Pub. L. No. 104-145, sec. 2, § 170101(d), 110 Stat. 1345, 1345 (1996).

6. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Pub. L. No. 105-119, sec. 115, §§ 170101, 170102, 111 Stat. 2440, 2461-67 (1997).

7. PROTECT Act, Pub. L. No. 108-21, sec. 604, § 170101(e)(2), sec. 605, § 170101, sec. 606, § 170101(i)(3), 117 Stat. 650, 688 (2003).

8. Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, sec. 2, § 170102(g)(5)(C)(i), 110 Stat. 3093, 3095 (1996).

9. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006) (codified at 42 U.S.C. § 16901).

10. *Id.*

11. *Id.*

12. *Id.*

specifically laid out how states must format their websites' query functions and the software they must adopt.¹³ To determine if states were meeting SORNA's long list of requirements, the act created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office).¹⁴ The SMART Office monitors states' sex offender registries to ensure they are in compliance with SORNA. If states are found to be noncompliant, they lose 10 percent of a federal law enforcement grant.¹⁵

Unlike the Wetterling Act, SORNA restricts a state's ability to be creative with its resources. It expanded registration time periods and increased the number of individuals states were required to place on their registries, while setting forth a detailed set of requirements states' registration and notification systems must follow. SORNA removed from states their autonomy to choose a system compatible to their unique geographic and constituency needs.

III. THE ORIGINAL POLICY GOALS OF THE SEX OFFENDER REGISTRY ARE UNMET BY THE CURRENT SYSTEM

As the federal government expanded its sex offender legislation, it began to move away from the registration system's original purpose. When the federal government enacted the Wetterling Act, it was following the lead of various states and municipalities that had enacted offender registries. While the jurisdictions' registration requirements varied, a common thread throughout was their reasons and goals for enacting a registry.¹⁶ Their goals were: (1) to protect society from sexually violent offenders;¹⁷ (2) to monitor sex offenders due to their high recidivism rates;¹⁸ and (3) to provide law enforcement with information to track sex offenders.¹⁹

13. *Id.* at 596 ("The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user. The jurisdiction shall also include in the design of its Internet site all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website . . .").

14. *Id.*

15. 34 U.S.C. § 20927 (2017).

16. L.A.M.C. § 52.38(a) (1946); ALA. CODE § 13A-11-202 (1975); OHIO REV. CODE ANN. § 2950 (West 1963); NEV. REV. STAT. § 147 (1961); WASH. REV. CODE ANN. §§ 4.24.550, 9A.44.130 (West 1997).

17. "[T]he registration program's original purpose—to promote public safety." Reynolds v. State, 385 S.W.3d 93, 100 (Tex. App. 2012), *aff'd*, 423 S.W.3d 377 (Tex. Crim. App. 2014); *See also* State v. Smith, 780 N.W.2d 90, 109 n.8 (Wis. 2010).

18. "The purpose of the sex offender registration and notification statutes is to protect the public from the danger and propensity for recidivism of convicted sex offenders." Helman v. State, 784 A.2d 1058, 1075 (Del. 2001).

19. "The purpose of section 290 is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future." Barrows v. Mun. Ct., 464 P.2d 483, 486 (Cal. 1970) (citing Kelly v. Mun. Ct., 324 P.2d 990, 994 (Cal. Ct. App. 1958)).

While initial state and federal legislation was narrowly tailored to meet these goals, as the years and legislation progressed the class of individuals requiring registration and the registrations' requirements expanded to unnecessary lengths. As a result, the registries moved away from their intended purposes and began to impinge upon states' and offenders' rights.

A. *Policy Goal: Protect Society from Sexually Violent Offenders*

Society appropriately places sexual offenses on the list of the most heinous crimes one can commit against another. This is most likely due to survivors of sexual abuse remaining alive. Survivors are forced to endure the offense's physiological and physical scars for the remainder of their lives.²⁰ These grave effects justify *law enforcements'* monitoring of a *limited* class of repeat offenders.

Recently, based upon the belief that it would protect society, legislation has expanded the class of individuals who can access the information contained in the sex offender registries from sole law enforcement access to general public access.²¹ While it may be warranted to grant the public access to a few violent offenders' information, legislation has permitted the general public to access the personal information of the majority of the individuals classified as sex offenders. General public access to the sex offender registry does little to protect society. To the contrary, it lures individuals into a false sense of security and diverts resources from efforts aimed at protecting society from the violent few.

In order for public disclosure to be effective, citizens attempting to monitor the sex offenders in their vicinity must check the registry weekly to ensure a new offender has not moved into their area; they must stay informed of all sex offenders' whereabouts; and they must ensure the individuals they are seeking to protect are not permitted to go near any location where an offender may live, work, or pass. Even if a citizen performs these time-consuming tasks, the registry still may not have its intended effect. Public disclosure assumes the sex offender regularly and accurately updates her or his information and that law enforcement diligently checks in with offenders. The public disclosure of sex offenders' information sounds good in theory, but its real-world application proves to be cumbersome.

The registries' effectiveness is further called to question by the offenders listed on the registries making up a small portion of the individuals who commit new sexual offenses. According to the United States Department of Justice, most offenders have a prior relationship with their victims, like a

20. NAT'L VICTIM CTR. AND CRIME VICTIMS RESEARCH AND TREATMENT CTR., RAPE IN AMERICA: A REPORT TO THE NATION 4 (1992), https://evawintl.org/wp-content/uploads/rape_in_america.pdf.

21. Final Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 62 Fed. Reg. 39,009 (July 21, 1997).

relative, friend, or neighbor.²² Only 7 percent of juvenile sexual offenses are committed by strangers.²³ While individuals may believe they can protect themselves if they know where former sex offenders are located, this rationale diverts society's focus from the individuals most likely to commit future offenses—*known* acquaintances. The focus should rather be aimed at youth education programs promoting consensual sex and on mechanisms empowering individuals to report sexual abuse in the home. The public disclosure of *strangers'* information does not protect society from the individuals most likely to commit a new sex offense—those who are invited into the home.

The registry next fails to protect society because most sex offenses are committed by first-time offenders. Legislators often justify the public's access to a registry's information on the rationale that it will help parents protect their children from sexually violent predators.²⁴ The unfortunate reality is that an individual must commit an offense to appear on the registry, and the majority of sexual offenses are committed by first-time, non-registered offenders.²⁵ As a result, public resources are spent protecting society from individuals less prone to offend. Earlier enacted sex-offender legislation curbed this dilemma by placing only those deemed a *threat to public safety* on the registry.²⁶ This process ensured individuals focused their attention on offenders who posed a real threat and the public's resources were effectively used on the violent few. Current legislation aimed at public disclosure of all sex offenders' information includes individuals who arguably pose little threat to society.

Finally, while proponents claim public disclosure is necessary because all individuals on the registry are sexually violent predators, recent years have made this statement untrue. While certain offenders are violent, states have expanded their registries to encompass a variety of non-violent of-

22. LAWRENCE A. GREENFELD, BUREAU OF JUSTICE STATISTICS, NCJ 163392, *SEX OFFENSES AND OFFENDERS: AN ANALYSIS OF DATA ON RAPE AND SEXUAL ASSAULT* iii (1997) (“Based on police-recorded incident data, in 90% of the rapes of children younger than 12, the child knew the offender; two thirds of the victims 18 to 29 years old had a prior relationship with the rapist.”); HOWARD N. SNYDER, BUREAU OF JUSTICE STATISTICS, NCJ 182990, *SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT AND OFFENDER CHARACTERISTICS* 10 (2000) (concluding that 34 percent of youth victims were sexually assaulted by a family member; 59 percent were assaulted by acquaintances; 7 percent were assaulted by strangers).

23. SNYDER, *supra* note 22.

24. “The term ‘sexually violent predator’ means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.” 42 U.S.C. § 14071 (1997) (repealed 2009).

25. PATRICK A. LANGAN, ERICA L. SCHMITT & MATTHEW R. DUROSE, BUREAU OF JUSTICE STATISTICS, NCJ 198281, *RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994* 11 (2003).

26. “[T]he designated State law enforcement agency . . . may release relevant information that is *necessary to protect the public* concerning a specific person required to register under this section” 42 U.S.C. § 14071 (1997) (repealed 2009) (emphasis added).

fenses. These offenses can include indecent exposure,²⁷ sexual assault of an animal,²⁸ prostitution with HIV,²⁹ public intercourse,³⁰ and public urination.³¹ Registries group diverse individuals and offenses into one registration system. The registries only differentiate offenders by tiers, which determine the offender's length of registration.³² This catch-all registration system fails to account for offenders' differing levels of culpability and violence. Under current legislation, a nineteen-year-old senior girl convicted of having sex with her fourteen-year-old freshman boyfriend can face the same registration requirements as a thirty-year-old man who rapes an eight-year-old girl.³³ The only difference between these individuals' registration requirements may be their length of registration and check-in frequency.³⁴ Legislation intended to protect society from violent sexual offenders has spread too broad a net, catching individuals who pose little, if any, threat to society. By limiting a registry's access, the public's attention will be focused on those most likely to reoffend. This will allow states to redirect their saved resources towards more efficient law enforcement monitoring tools.

B. Policy Goal: Monitor Sex Offenders Due to Their High Recidivism Rates

Proponents often justify registries on the belief that all sex offenders are highly likely to reoffend.³⁵ Original registration schemes tailored their requirements to capture only individuals likely to reoffend.³⁶ Recent legislation changed this process by grouping all offenders together, even if their propensity to reoffend was minimal.³⁷ The result has been legislation moving away from its intended goal of monitoring high-risk offenders into a wasteful scheme spending resources monitoring low-risk offenders.

27. ALA. CODE § 15-20A-5 (2019).

28. OR. REV. STAT. ANN. § 163A.005 (West 2020).

29. TENN. CODE ANN. § 40-39-202 (West 2019).

30. ARIZ. REV. STAT. § 13-1403 (2011).

31. IDAHO CODE ANN. § 18-8304 (West 2019).

32. "Except as provided in this section, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about *each sex offender* in the registry." 34 U.S.C. § 20920 (2017) (emphasis added).

33. See 34 U.S.C. § 20911 (2017) (defining registerable offenses).

34. See 34 U.S.C. § 20915 (2017) (determining duration of registration requirement). SORNA's guidelines do not require the public disclosure of a Tier 1 offender's information if he or she did not commit an offense against a minor; however, many jurisdictions require Tier 1 offenders' information to be publicly disclosed.

35. Helman v. State, 784 A.2d 1058, 1075 (Del. 2001).

36. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1993).

37. See Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (grouping all offenders into a three-tier classification system based on their committed offense).

The original piece of federal legislation, the Wetterling Act, narrowly tailored its public registration requirement to offenders with *high propensities* to reoffend.³⁸ Recent legislation changed course by expanding registration requirements to *all* offenders convicted of *specific* offenses.³⁹ Offense-based registration schemes ignore the reality that an offender's propensity to reoffend is not determined by the offense committed, but rather by an individual's specific characteristics, which can include: an extensive criminal history, the age of the offender, a preference for male child victims, and a history of victimizing strangers.⁴⁰

Further, studies show that sexual offenders are less likely to reoffend than individuals convicted of other offenses.⁴¹ Sexual offenders are less likely to reoffend than those who commit robbery, assault, property, drug, and public order crimes; the only offenders less likely than sex offenders to reoffend are those who commit murder.⁴² Yet, sex offenders are held to a monitoring regime unseen in other offenses' sentencing requirements.

Additionally, the studies claiming that sexual offenders have high recidivism rates are difficult to qualify because each study provides differing percentages and timeframes for re-offense. The data ranges from 5.3 percent of offenders reoffending in a three-year period;⁴³ to 2.2 percent, 4.8 percent, and 6.5 percent reoffending in a one-year, three-year, and five-year period, respectively;⁴⁴ to 13.4 percent reoffending after four to five years;⁴⁵ to 27 percent reoffending in a fifteen-year period.⁴⁶ The data is across the board, and as a result, proponents should be wary to rest their justification for monitoring on a foundation that is supported by differing results.

38. 42 U.S.C. § 14071 (1997) (repealed 2009).

39. See OFFICE OF JUSTICE PROGRAMS, SENTENCING, MONITORING, APPREHENDING, REGISTERING AND TRACKING (SMART), THE NATIONAL GUIDELINES FOR SEX OFFENDER REGISTRATION AND NOTIFICATION 15–16 (2008), https://smart.gov/pdfs/final_sornaguidelines.pdf.

40. ANDREW J. R. HARRIS & R. KARL HANSON, PUBLIC SAFETY AND EMERGENCY PREPAREDNESS CANADA, SEX OFFENDER RECIDIVISM: A SIMPLE QUESTION 11 (2004), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/sx-ffndr-rcdvsm/index-en.aspx#a07>.

41. LANGAN, SCHMITT & DUROSE, *supra* note 25; Lisa L. Sample & Timothy M. Bray, *Are Sex Offenders Dangerous?*, 3 CRIMINOLOGY & PUB. POL'Y 59, 59–82 (2003); R. Karl Hanson, Heather Scott & Richard A. Steffy, *A Comparison of Child Molesters and Nonsexual Criminals: Risk Predictors and Long-Term Recidivism*, 32 J. RES. CRIME DELINQ. 325, 325–337 (1995).

42. Mariel Alper & Matthew R. Durose, *Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up*, U.S. DEP'T. JUST. 4 (2019), <https://bjs.ojp.gov/content/pub/pdf/rsorsp9yfu0514.pdf>.

43. LANGAN, SCHMITT & DUROSE, *supra* note 25.

44. Sample & Bray, *supra* note 41.

45. R. Karl Hanson & Monique T. Bussière, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. CONSULTING AND CLINICAL PSYCH. 348, 348–362 (1998).

46. Elizabeth J. Letourneau, Jill S. Levenson, Dipankar Bandyopadhyay, Debajyoti Sinha & Kevin S. Armstrong, *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women*, MED. UNIV. OF S.C. (Sept. 2010), <https://www.ncjrs.gov/pdffiles1/nij/grants/234598.pdf> (This report was created through a grant from the U.S. Department of Justice to provide information on the effectiveness of sex offender registries.).

An explanation for the discrepancies in recidivism rates may be due to the fact that a variety of offenses are classified as sexual offenses. The Department of Justice acknowledges the challenge of creating a complete and accurate accounting of the extent of sexual offenses.⁴⁷ The difficulties arise due to the definition of a “sexual offense” varying across jurisdictions.⁴⁸ A sex crime committed in one state might not be classified as a sex crime in an adjacent state.⁴⁹ The issue is compounded by recidivism rates varying amongst different sexual offenses. Incest offenders recidivate at a significantly lower rate than offenders who target victims outside the family.⁵⁰ Child molesters with male victims recidivate at significantly higher rates than offenders with female victims.⁵¹ The expansion of legislation to include all offenders convicted of a specific offense, opposed to individuals likely to recommit the offense, has moved registration regimes away from their intended policy goal—to ensure only those likely to reoffend are monitored.

C. Policy Goal: Provide Law Enforcement with Information to Track Sex Offenders

Law enforcement personnel were the only individuals who could access the first sex offender registries.⁵² The goal of early legislation was to provide law enforcement the ability to regularly monitor offenders by ensuring that, if an offender reoffended, law enforcement could quickly locate and apprehend the individual.⁵³ However, in recent years, states have expanded law enforcement’s monitoring to unnecessary lengths.⁵⁴ By magnifying the scope of the registry’s original goal, society risks expanding, to oppressive lengths, the government’s ability to monitor its citizens.

Excessive monitoring began with the Adam Walsh Child Protection and Safety Act, which condoned the use of global positioning systems (GPS) to monitor sex offenders.⁵⁵ As a result, states have moved towards requiring sex offenders, upon release, to wear a GPS monitor for potentially the rest of their lives.⁵⁶ While the Supreme Court determined this practice

47. Jane Wiseman, *Incidence and Prevalence of Sexual Offending (Part I)*, U.S. DEP’T OF JUST. 1 (2015), <https://www.smart.gov/pdfs/IncidenceandPrevalenceofSexualOffending.pdf>.

48. *Id.*

49. *Id.*

50. Hanson & Bussière, *supra* note 45.

51. Hanson & Bussière, *supra* note 45.

52. CAL. PENAL CODE § 290 (West 1985).

53. *People v. Hofsheier*, 129 P.3d 29, 34 (Cal. 2006).

54. See NAT’L CONFERENCE OF STATE LEGISLATURES, STATE LEGISLATION ON GPS TRACKING OF SEX OFFENDERS (2006), https://www.npr.org/programs/morning/features/2006/oct/prop83/nclsl_gps.pdf.

55. 42 U.S.C. § 16981(b) (2012) (current version at 34 U.S.C. §20981) (authorizing a pilot program to study the effectiveness of electronic monitoring of sex offenders).

56. See, e.g., CAL. PENAL CODE § 3004(b) (2012). (“Every inmate who has been convicted for any felony violation of a ‘registerable sex offense’ . . . or any attempt to commit any of the

to be a search under the Fourth Amendment, the Court has yet to hold that the GPS monitoring of sex offenders is unconstitutional.⁵⁷

At first glance, this practice appears to follow lockstep with the registry's original goal of enhancing law enforcement surveillance. However, once an offender serves his or her sentence, lists his or her personal information on a public registry, and follows the state's employment, licensing, housing, and check-in requirements, when do the costs, effectiveness, and oppressive nature of the requirements go too far while holding little value?⁵⁸

The effects of GPS tracking create repercussions which echo outside the stated goal of law enforcement surveillance. First, certain states require offenders to pay for their lifetime GPS monitoring systems.⁵⁹ While this removes the financial burden from the state, it places a lifetime burden on the offender who already faces employment and financial hurdles. The effect is a monthly fine the offender must pay for his or her crime.

The next issue results from legislation permitting the device to be used to prohibit offenders from being within 100–250 feet of certain areas.⁶⁰ This leads to the legislation banning offenders, sometimes for life, from dropping their child off at school, applying for certain employment opportunities, attending their child's functions, and joining various community and volunteer activities. It can ban offenders from creating a support network, which can be key to an offender's recovery.

Additionally, the logistics of the monitoring system create implications for both law enforcement and the offender. First, offenders may be unable to swim or take a bath with the GPS monitor. Second, the devices frequently malfunction, leading to false violations that law enforcement must follow-up with and report.⁶¹ And third, certain offenders are required to exit buildings once every hour to reset the tracking device.⁶² While the GPS monitoring of sex offenders may enhance law enforcement access to information, it places a heavy burden on law enforcement's resources and results in oppressive offender restrictions.

above-mentioned offenses and who is committed to prison and released on parole . . . shall be monitored by a global positioning system for life.”) *See also* GA. CODE ANN. § 42-1-14(e) (2011); MD. CRIM. PROC. § 11-723(d)(3)(i) (2017); MICH. COMP. LAWS SERV. § 750.520n(1) (LEXIS through Act 81 of 2021 Reg. Legis. Sess.); MO. REV. STAT. § 217.735 (2018); R.I. GEN. LAWS § 11-37-8.2.1 (2020); WIS. STAT. § 301.48 (2018).

57. *Grady v. North Carolina*, 575 U.S. 306, 310 (2015).

58. *Commonwealth v. Cory*, 911 N.E.2d 187, 196–97 (Mass. 2009) (explaining that a lifetime GPS-tracking requirement is “dramatically more intrusive and burdensome” than a registration requirement.).

59. *See, e.g.*, CAL. PENAL CODE § 3004(c) (2012).

60. *See* WIS. STAT. § 301.48(3)(c) (2011); *see also* NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 54.

61. *See* Philip Bulman, *Sex Offenders Monitored by GPS Found to Commit Fewer Crimes*, 271 NIJ J. 22, 22–25 (2013).

62. *See, e.g.*, *Doe v. Bredesen*, 507 F.3d 998, 1002 (6th Cir. 2007).

Finally, GPS systems act as a modern-day scarlet letter, a lifetime mark the offender must wear notifying the public of a past wrong.⁶³ While some say this is justified, it goes well-beyond the legislation’s justification that law enforcement must be able to monitor an offender’s whereabouts.

IV. ADAM WALSH CHILD PROTECTION AND SAFETY ACT’S (SORNA) FAILINGS

As discussed above, Title I of the Adam Walsh Child Protection and Safety Act—the Sex Offender Registration and Notification Act (SORNA)—increased the requirements for states’ sex offender registries. The result has been states struggling to meet SORNA’s restrictive guidelines.

In the federal government’s twenty-six-year experiment with a registry, it has continuously concluded that the best way to end sexual abuse is to expand the registry. Federal legislation originally established a reasonable set of baseline requirements for states’ registries to follow under the Wetterling Act. The legislation focused on “sexually violent predators,” “violent offenses,” and “offenses against children.”⁶⁴ It required offenders to register for a ten-year period,⁶⁵ and it limited the public’s access to the registry.⁶⁶ As the years progressed and new legislation was enacted, the requirements for the registry have expanded to a system that drains states’ resources and impedes offenders from living productive lives.

The expansion culminated in the enactment of SORNA in 2006.⁶⁷ The Act’s aim was to create continuity amongst the national network of sex offender registries.⁶⁸ It set baseline standards for states’ sex offender registries and public notification systems to follow.⁶⁹ If a state failed to meet SORNA’s baseline, the state lost 10 percent of its federal Edward Byrne Memorial Justice Assistance Grant for each year it remained noncompliant.⁷⁰ To verify compliance, SORNA created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking to review jurisdictional laws, policies, and procedures across fourteen SORNA categories.⁷¹ States were judged on whether they:

63. *Id.* at 1011–12.

64. 42 U.S.C. § 14071(a)(1) (1997) (repealed 2009).

65. § 14071(b)(6)(a).

66. § 14071(e).

67. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006) (codified at 42 U.S.C. § 16901).

68. *See* OFFICE OF JUSTICE PROGRAMS, *supra* note 39, at 21–26.

69. 34 U.S.C. § 20912 (2017).

70. 34 U.S.C. § 20927 (2017).

71. OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING, SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA) STATE AND TERRITORY IMPLEMENTATION PROGRESS CHECK 1 (2019), <https://www.smart.gov/pdfs/SORNA-progress-check.pdf>.

- included the required adult and juvenile offenses on their registries;
- retroactively applied registration requirements;
- enacted the appropriate failure to register penalty, notifying, and investigating procedures;
- maintained a public registry with required information;
- immediately notated any changes in an offender's information;
- established an e-mail notification system;
- required any offender who works, attends school, or lives in its jurisdiction to attend in-person check-ins;
- followed an offense-based tiering system;
- provided twenty-one-day advance notification of international travel;
- collected offenders' identification and location information;
- provided information to prosecution and law enforcement agencies; and
- followed information sharing guidelines.⁷²

While the requirements the Act placed on states may appear reasonable, the requirements' effects led to economic and judicial waste and caused offenders and their families to undergo unnecessary harms.

As of June 2019, thirty-four states remained non-compliant with SORNA's requirements.⁷³ Many states choose to remain non-compliant due to the costs associated with implementing and managing the registration system.⁷⁴ The costs included:

- hiring additional administrative personnel;
- installing, learning, and maintaining new software;
- building additional jail and prison space;
- increasing court and administrative needs;
- hiring law enforcement personnel to verify information at more frequent intervals; and
- incurring costs associated with adopting and crafting state laws.⁷⁵

Certain states like Texas and California determined the costs of compliance outweighed the benefits of receiving the public safety grant.⁷⁶ Due to SORNA's financial burden, its intended purpose of creating cohesion amongst the states' registries remains unmet. The Act resulted in states being unable to craft systems tailored to protect their unique citizenry.

72. *Id.*

73. *Id.* at 2–3.

74. JUSTICE POL'Y INST., WHAT WILL IT COST TO COMPLY WITH THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT? (2008), https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/08-08_fac_sornacosts_jj.pdf.

75. *Id.*

76. Jennifer N. Wang, *Paying the Piper: The Cost of Compliance with the Federal Sex Offender Registration and Notification Act*, 59 N.Y.L. SCH. L. REV. 681, 696 (2014).

The federal government, through SORNA, forced states into a dilemma—either meet SORNA’s requirements or lose funds supporting programs that address local public safety concerns, create alternatives to incarceration, establish re-entry services, and promote substance use treatment and prevention.⁷⁷ While connecting funds to legislation is constitutional, it forced states with diverse populations and limited resources to enact federally designed regimes, opposed to creating systems tailored to fit their distinct geographic and constituency-based needs.

SORNA also required states to follow a three-tiered classification system, which based an offender’s registration requirements on his or her convicted offense.⁷⁸ Over half of the jurisdictions violated this provision by instead basing an offender’s registration requirements on his or her propensity to reoffend.⁷⁹ By forcing states to transfer their systems to a three-tiered offense-based system, states faced incurring major financial implications. First, states’ legislatures must assign each sexual offense a tier and pass legislation implementing the three-tiered approach. Then administratively, every current and former sex offender in their registry must be reentered into the system under his or her new classification. This affects the individual’s registration status. As a result, all offenders must be notified that their registration period is changing, which may require a public hearing to dispute their classification. Finally, basing registration on an individual’s committed offense, opposed to his or her characteristics, increases the number of individuals who appear on the registry. The result is a state incurring the ongoing increased costs of monitoring the additional individuals. Not only do states face the financial implications of implementing SORNA, but studies reveal risk-assessment schemes consistently outperform tiered approaches in predicting an offender’s propensity to reoffend.⁸⁰ SORNA forced states to enact a costly, less efficient system.

SORNA’s financial implications are compounded by it establishing, at a minimum, a fifteen-year registration period for offenders.⁸¹ It then required offenders to update their information in every state where they work, attend school, and reside, and required offenders to notify law enforcement every time they change their residence, employment, school, or vehicle, or take a trip outside the United States.⁸² And all offenders must physically

77. 34 U.S.C. § 10152 (2017).

78. 34 U.S.C. § 20911 (2017).

79. OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING, *supra* note 71 (noting that twenty-nine jurisdictions failed to adopt a three-tiered approach).

80. *See, e.g.*, KRISTEN M. ZGOBA, MICHAEL MINER, RAYMOND KNIGHT, ELIZABETH LETOURNEAU, JILL LEVENSON & DAVID THORNTON, A MULTI-STATE RECIDIVISM STUDY USING STATIC-99R AND STATIC-2002 RISK SCORES AND TIER GUIDELINES FROM THE ADAM WALSH ACT 4 (2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/240099.pdf>.

81. 34 U.S.C. § 20915 (2017).

82. 34 U.S.C. § 20914 (2017).

check-in with law enforcement as frequently as once every three months to, at a minimum, once every year.⁸³ These expanded registration periods coupled with the extensive registration requirements, which the state must continuously update, not surprisingly have proven to be a costly endeavor to implement. California estimated it would cost local law enforcement agencies roughly \$10 million to meet SORNA's registration requirements.⁸⁴

Further, studies show individuals are most likely to reoffend within five years of being released from incarceration.⁸⁵ SORNA's minimum registration length, for the least violent offenders, extends the monitoring period ten years outside this critical point. States are forced to expend their resources monitoring low-risk individuals for an extended period of time.

Outside SORNA's implementation and administrative costs, it also strains a state's judicial system. If offenders violate any of SORNA's registration requirements, they face being charged with a new crime—failure to register.⁸⁶ SORNA first forces states to increase the number of individuals who appear on their registry and then increases the number of ways individuals can violate their registration requirements. This results in local law enforcement agencies and judicial systems bearing the burden of adjudicating these new offenses. States' feasibility studies reveal SORNA's requirements force states to increase the number of available prison beds, officers needed to locate individuals who fail to register, and court fees for adjudicating the additional offenses.⁸⁷ The value-add of these additional costs is limited. States are forced to track low-risk offenders, at the cost of diverting funds from other policing tools, including training programs, rehabilitation efforts, or sexual-abuse education programs. SORNA prohibits states from choosing how to best utilize their resources.

Beyond SORNA's financial implications, some states forgo adopting the legislation due to the registration requirements it places on juvenile sex offenders.⁸⁸ Many states' opposition is based upon juveniles holding a

83. 34 U.S.C. § 20918 (2017).

84. CAL. SEX OFFENDER MGMT. BD., ADAM WALSH ACT: STATEMENT OF POSITION 1 (2009), <https://casomb.org/docs/Adam%20Walsh%20Position%20Paper.pdf>; See also Hector Castro, *Sex Offender Registry Failing*, SEATTLE POST-INTELLIGENCER (Jan. 7, 2003), http://seattlepi.nwsourc.com/local/103212_register08.shtml (noting that San Jose, California, spent \$600,000 to dedicate seven staff members to monitor individuals on the registry).

85. Harris & Hanson, *supra* note 40, at 8.

86. 18 U.S.C. § 2250 (2016).

87. See, e.g., VA. DEP'T OF PLANNING AND BUDGET, FISCAL IMPACT STATEMENT FOR PROPOSED LEGISLATION, S. B. No. 590 (2008), <http://leg1.state.va.us/cgi-bin/legp504.exe?081+oth+SB590F122+PDF>.

88. SORNA includes in its definition of sex offender individuals who are, "delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of Title 18), or was an attempt or conspiracy to commit such an offense." 34 U.S.C. § 20911 (2017).

higher rehabilitation potential.⁸⁹ The Supreme Court has acknowledged this rationale.⁹⁰ And studies support this theory by revealing that juvenile offenders show a lower propensity to reoffend.⁹¹ Under SORNA, juvenile offenders may be held to a lifetime registration requirement.⁹² This causes individuals to face employment, housing, and college admission hurdles, while being ostracized from their peer groups. As a result, many juveniles experience devastating developmental effects, including suicide.⁹³ Sex offender registration causes juveniles to detach from normative social institutions and increases their likelihood to engage in criminal activity.⁹⁴ Due to these effects, state courts have struck down SORNA's juvenile registration provision.⁹⁵ States' legislatures should be permitted to determine the best course of action for rehabilitating their youth.

SORNA failed to create continuity across all jurisdictions' sex offender registries. Its costly and overinclusive regulations cause states to actively forgo adopting the legislation. As a result, states are forced into the dilemma of losing public safety funding or enacting an ineffective, costly regime. States should be permitted to craft sex offender policies that meet their unique needs.

V. ACKNOWLEDGING THE TRAGEDIES OF SEXUAL ABUSE

If SORNA is repealed and states are permitted to create their own registration systems, legislatures must ensure that their new systems take into account the involved parties' tragedies. The first federal legislation, the

89. AM. BAR ASS'N., *JUVENILE SEX OFFENDER POLICY*, A.B.A. POLICIES (2009) americanbar.org/groups/public_interest/child_law/resources/attorneys/juvenile_sex_offenderpolicy/.

90. *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

91. See Donna M. Vandiver, *A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults*, 21 J. INTERPERSONAL VIOLENCE 673, 673–688 (2006) (A 2006 study in Texas of 300 juvenile sex offenders found 4.3 percent of the sample size was rearrested for another sex offense.); see also Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Reoffense Risk*, 7 CHILD MALTREATMENT 291, 294 (2002), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1018.891&rep=rep1&type=pdf> (reviewing twenty-five studies examining recidivism amongst juvenile sex offenders found rates of a 1.7–19.6 percent chance of reconviction for another sex offense).

92. 34 U.S.C. § 20911 (2017).

93. See William Edwards & Christopher Hensley, *Contextualizing Sex Offender Management Legislation and Policy: Evaluating the Problem of Latent Consequences in Community Notification Laws*, 45 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 83, 83–101 (2001); see also Elizabeth J. Letourneau, Andrew J. Harris, Ryan T. Shields, Scott M. Walfield, Amanda E. Ruzicka, Cierra Buckman, Geoffrey D. Kahn & Reshmi Nair, *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination*, 24 PSYCH. PUB. POL'Y & L. 105–117 (2018).

94. See Franklin E. Zimring, Alex R. Piquero & Wesley G. Jennings, *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 CRIMINOLOGY & PUB. POL'Y 507, 507–34 (2007); see also J. J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J. L. & ECON. 161, 161–206 (2011).

95. See, e.g., *In re J.B.*, 107 A.3d 1, 20 (Pa. 2014).

Wetterling Act, did this by weighing the survivor's, society's, and offender's needs to arrive at a balanced registration scheme. Unfortunately, over the years, many proponents and opponents to sex offender registries have crafted their narratives around the darkest tragedies at both ends of the spectrum. The stories are true, but the result has been the formerly balanced legislation moving towards legislation that tips too heavily in favor of one party.

Proponents of the registry support their arguments with the tragedies of survivors whose lives were forever altered by sexual assault. Jared Scheierl's story is one of these tragedies. On January 13, 1989, in rural Cold Spring, Minnesota, twelve-year-old Jared was walking home after grabbing a chocolate malt with his friends at a local café.⁹⁶ A blue car pulled up next to him. The man inside yelled at Jared to get in, saying, "I have a gun and I'm not afraid to use it."⁹⁷ Jared was forced into the vehicle's back seat. The man drove him down a rural gravel road where he parked the car and sexually assaulted Jared.⁹⁸ As Jared was released, the man said if the authorities ever got close to him, he would kill Jared first. Following the assault, Jared struggled with nightmares, anxiety, depression, and a crippling fear his perpetrator would return.⁹⁹ The effects had lasting impacts on Jared; years later the mental toll caused him to separate from his wife and lose a well-paying job.¹⁰⁰ Almost thirty years after the attack, Jared's perpetrator Danny Heinrich (Heinrich) was brought to justice. It was discovered that, months after Jared's assault, Heinrich abducted, sexually assaulted, and killed the boy whose name is placed on the federal government's first sex offender act, Jacob Wetterling.¹⁰¹ Police believe Heinrich was a habitual sex offender and was connected to more than the two boys' cases.¹⁰² Jared's story reveals the lasting effects of sexual assault on both a survivor and his or her family.¹⁰³

96. MPR News Staff, *'In the Dark': The Story of the Boy Abducted 10 Months Before Jacob Wetterling*, MPR NEWS (Sept. 14, 2016), <https://www.mprnews.org/story/2016/09/14/in-the-dark-jared-scheirel>.

97. *Id.*

98. *Id.*

99. Kirsti Marohn, *Victim of Wetterling Killer Testifies About Deep Scars Left by Assault*, MPR NEWS (Oct. 19, 2018), <https://www.mprnews.org/story/2018/10/19/victim-of-wetterling-killer-testifies-about-deep-scars-left-by-assault>.

100. *Id.*

101. Parker Yesko & Curtis Gilbert, *Missing a Murderer*, APM REPORTS (Sept. 21, 2018), <https://www.apmreports.org/story/2018/09/21/why-law-enforcement-didnt-see-danny-heinrich-killed-jacob-wetterling>.

102. *See id.*

103. It is hard to determine if Heinrich's registration would have stopped Jared or Jacob's offense. However, if prior to Jared's abduction Heinrich was placed on the registry for one of the prior assaults police believe he committed, then the police would have had access to his location, vehicle description, and personal information. This information could have led to his apprehension for Jared's assault, which could have prevented Jacob's murder.

On the other end of the spectrum, opponents to the registry support their arguments with a second set of tragedies. These stories involve persons who made one wrong decision, which forever impacted their and their families' lives. Shawna Baldwin's (Shawna) story provides an example of one of these tragedies. It was Shawna's nineteenth birthday.¹⁰⁴ At the time, she was living with a thirty-one-year-old female who befriended a fourteen-year-old young man.¹⁰⁵ On the evening of Shawna's birthday, the three decided to get drunk and play truth or dare. The thirty-one-year-old dared the duo to get naked and kiss, so they did.¹⁰⁶ As the evening progressed, Shawna and the fourteen-year-old had sex. At one point, the young man put his arms around Shawna and said, "I don't want you to think that I am taking advantage of you while you are drunk."¹⁰⁷ The next morning the boy's mother called and told Shawna that she had filed a complaint against her.¹⁰⁸ Shawna was charged, eventually pleaded guilty, and was sentenced to six months in jail and lifetime probation and sex offender registration requirements.¹⁰⁹ She was classified as a level-three child molester, the most serious classification.¹¹⁰ Today, Shawna is the mother of three children.¹¹¹ She struggles to find employment.¹¹² After finding employment at a newspaper, she was later fired when a reader complained about the company hiring a sex offender.¹¹³ Shawna is unable to take her children to local parks or lakes.¹¹⁴ Her children's friends are unable to enter her home for her children's birthday parties.¹¹⁵ She was required to take a polygraph every six months and attend sex offender group therapy.¹¹⁶ Her lifetime status as a sex offender impedes her ability to care for herself and for her children. She struggles to find work and housing that meet her registration's requirements. Her children are forced to bear the badge of having a parent who is a sex offender. Shawna's story reveals the lasting effects of an overly broad sex offender registration scheme.

Registries exist for individuals at Heinrich's end of the spectrum. Current legislation encompasses too many individuals who, like Shawna, pose

104. David Feige, *Shawna: A Life on the Sex Offender Registry*, THE MARSHALL PROJECT (Sept. 17, 2017), <https://www.themarshallproject.org/2017/09/17/shawna-a-life-on-the-sex-offender-registry>.

105. Lenore Skenazy, *This Mother of 3 Is on the Sex Offender Registry for Life Because She Made a Mistake as a Teen*, REASON (Jan. 7, 2017, 2:30 PM), <https://reason.com/2017/01/07/this-mother-of-3-is-on-the-sex-offender/>.

106. *Id.*

107. Feige, *supra* note 104.

108. Feige, *supra* note 104.

109. Skenazy, *supra* note 105.

110. Feige, *supra* note 104.

111. Skenazy, *supra* note 105.

112. Feige, *supra* note 104.

113. Feige, *supra* note 104.

114. Skenazy, *supra* note 105.

115. Skenazy, *supra* note 105.

116. Skenazy, *supra* note 105.

little threat to society. Legislation must be narrowly tailored to balance these competing tragedies to ensure all parties are protected.

VI. RECALIBRATING THE BALANCE IN SEX OFFENDER REGISTRATION LEGISLATION

New legislation must be crafted that acknowledges the rights of all involved parties. Parents hold the right and the need to protect their children. Victims hold the sacred right to be free from forced sexual relations. Offenders deserve the right to earn an income and to support their basic needs. States hold the right to enact legislation that best meets its citizens' needs. Current federal legislation fails to serve the above parties' interests. Parents are falsely led to believe all individuals on the registry are dangerous. Offenders are unable to meet their basic needs due to housing and employment restrictions and the stigma of registration. States must enact financially burdensome legislation. The result is survivor services falling to the wayside due to funds being spent on the registries' upkeep and the costs of incarceration. In order to ensure all parties' needs are met, SORNA must be repealed, and states must be permitted to establish programs aimed at stopping sexual abuse.

Federal sex offender registration requirements should return to a similar scheme established by the Wetterling Act.¹¹⁷ The Wetterling Act limited registration requirements to violent offenders and those who committed offenses against children.¹¹⁸ The Act authorized the public disclosure of information in limited situations, and states were provided the flexibility to craft programs that met their needs.¹¹⁹ However, a major flaw in the Wetterling Act was its failure to include SORNA's statutory rape provision, which excludes from its definition of sexual offenses acts of consensual sex between minors.¹²⁰ Due to the myriad of laws that have been passed since the Wetterling Act, a new piece of legislation must be adopted that permits states the flexibility to enact their own sex offender registration programs.

VII. RECOMMENDATIONS FOR STATE REGISTRATION SYSTEMS

Once SORNA is repealed, states must enact systems which meet their unique citizenries' needs. When crafting legislation, legislators should focus on preventing future sexual offenses and enhancing survivor services. The below are considerations for state legislatures:

117. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).

118. *Id.*

119. *Id.*

120. "An offense involving consensual sexual conduct is not a sex offense for the purposes of this subchapter . . . if the victim was at least 13 years old and the offender was not more than 4 years older than the victim." 34 U.S.C. § 20911(5)(C) (2017).

A. *Do Not Require Offense-Based Registration, but Rather, Enhancement-Based Registration*

Prior to SORNA, at least half of all states followed an enhancement-based registration system.¹²¹ In an enhancement-based registration system, a board or a judge reviews an individual's record looking for characteristics which, based on science, make the offender more prone to reoffend.¹²² The board or judge then crafts the individual's registration requirements based on his or her danger to society.¹²³ This differs from the current federal system which assigns registration requirements based on the individual's offense or conviction. By basing an offender's registration requirements on his or her propensity to reoffend, society focuses its energy on monitoring dangerous offenders.¹²⁴ Enhancement-based registration systems will reduce the number of individuals on the registry, which will decrease the costs from: monitoring offenders, adjudicating failure to register offenses, and upkeeping the system. Additionally, enhancement-based registration systems are proven to be more effective than offense-based registration schemes.¹²⁵

New York and Texas follow an enhancement-based registration regime.¹²⁶ Texas adopted its system to ensure resources were focused on those most likely to reoffend.¹²⁷ In Texas, when an individual is released from incarceration, she or he first undergoes a risk assessment.¹²⁸ The Risk Assessment Review Committee then creates and oversees the assessment.¹²⁹ The committee is comprised of individuals from occupations who work either with sex offenders or victims.¹³⁰ The assessment tool examines various objective metrics to determine if an offender is likely to reoffend.¹³¹ The individual is then assigned a number, which correlates to a low-, mod-

121. JENNIFER HORNE & AMY VANDERVORT-CLARK, COUNCIL OF STATE GOV'TS, SORNA AND SEX OFFENDER POLICY IN THE STATES, at 6 (2010), https://knowledgecenter.csg.org/kc/system/files/SORNABriefFINAL_0.pdf.

122. N.Y. CORRECT. LAW § 168-l (2011).

123. N.Y. CORRECT. LAW § 168-n (2005).

124. Jill S. Levenson & David A. D'Amora, *Social Policies to Prevent Sexual Violence: The Emperor's New Clothes?*, 18 CRIM. JUST. POL'Y REV. 168, 180–82 (2007) (Overbroad registration practices make it difficult for the public to determine who on the registry may or may not pose a public safety threat.).

125. Zgoba, Miner, Knight, Letourneau, Levenson & Thornton, *supra* note 80.

126. CORRECT. § 168-l.

127. Donna Lyons, *As the Deadline Approaches to Comply with Federal Rules on Sex Offenders, Some States Are Saying "No Thanks."*, NAT'L CONF. OF STATE LEGISLATURES, at 26 (June 2011), <https://www.ncsl.org/research/civil-and-criminal-justice/sex-offender-law-down-to-the-wire.aspx>.

128. Tex. Dep't Crim. Just., Parole Division, PD/POP-3.6.4, Sex Offender Registration Program (Sept. 1, 2021), https://www.tdcj.texas.gov/documents/pd/03.06.04_parole_policy.pdf.

129. TEX. CODE CRIM. PROC. ANN. art. 62.007(a) (West 2017).

130. *Id.*

131. Tex. Dep't Crim. Just., Parole Division, *supra* note 128.

erate-, or high-risk level.¹³² Each risk level then correlates to a different public notification requirement.¹³³ The system ensures an offender's notification requirements are tailored to the risk she or he poses to society.

States can easily adopt a similar system by integrating the risk assessment tool into the offender's sentencing proceeding. By adding the assessment tool to the presentence investigation report, states can reduce the costs of implementing the procedure. By basing an offender's registration requirements on her or his propensity to reoffend, society will focus its attention and resources on the dangerous few.

B. Limit the Public's Access to Sex Offenders' Personal Information

The Wetterling Act limited the public's access to most sex offenders' personal information. The Act provided that "the designated State law enforcement agency . . . may release relevant information that is *necessary* to protect the public[.]"¹³⁴ It struck a balance between the parties' interests by ensuring the public was able to access information that law enforcement deemed was necessary to protect the public and by ensuring low-risk sex offenders were not subjected to placement on the registry. States should return to limited public access to the registry. Limited public access can increase public safety and decrease sex offender ostracism.

Globally, this practice is currently in use. Both the United Kingdom and Bermuda use vetting processes to ensure only dangerous offenders are included on their public registries. The United Kingdom enacted its sex offender registry through the Sexual Offences Act 2003.¹³⁵ The Act requires offenders to provide the same information as is required by the United States' system: name, date of birth, address, national identification number, and physical characteristics.¹³⁶ However, in the United Kingdom, only law enforcement can access the registry.¹³⁷ Concerned individuals are permitted to request information about a specific person.¹³⁸ However, prior to the information's release, law enforcement undergoes a detailed decision tree to ensure the person, whose information is requested, poses a threat to the requester.¹³⁹ Outside of a request, a survivor of a sexual offense is auto-

132. CRIM. PROC. art. 62.007(c).

133. *Id.*

134. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 (repealed 2009) (emphasis added).

135. Sex Offences Act 2003, c. 42, § 96 (UK).

136. *Id.* § 83.

137. *Id.*

138. HOME OFF., *Guidance: Find Out if a Person Has a Record for Child Sexual Offences* (Mar. 26, 2013), <https://www.gov.uk/guidance/find-out-if-a-person-has-a-record-for-child-sexual-offences>.

139. HOME OFF., *The Disclosure Scheme – Decision Tree* (Oct. 29, 2010), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97866/appendix-a-decision-tree.pdf.

matically notified when his or her offender is released.¹⁴⁰ This system invests its resources in law enforcement monitoring, opposed to registry upkeep. The United Kingdom created a system of interagency reporting and monitoring that ensures the “critical few” who pose a risk to society are heavily monitored.¹⁴¹ Thus, the system places its information with law enforcement personnel, who are trained to monitor offenders and protect society.

The British territory of Bermuda provides a similar vetting approach before publicly releasing sex offender information. It reserves public notification for high-risk offenders.¹⁴² The system has a presumption against the public disclosure of information.¹⁴³ The presumption exists to ensure an offender is not prohibited from living a productive life, to evade the risk of violence to an offender, and to avoid driving an offender underground.¹⁴⁴ To determine whether disclosure is warranted, the Minister of Justice first administers a risk assessment to determine a sex offender’s threat to public safety.¹⁴⁵ The minister then arrives at one of four determinations: (1) no public notification; (2) notification to a specific group of people; (3) notification to a specific person; or (4) public notification.¹⁴⁶ Before the minister approves the disclosure, she or he must consult with the Commissioner of the Police.¹⁴⁷ Then, the minister tailors the notification procedure to meet the involved parties’ needs. In certain situations, a police officer holds a face-to-face meeting to inform the at-risk individual about the offender.¹⁴⁸ In other situations, general public notification is utilized through flyers or newspaper notices.¹⁴⁹ This process ensures the necessary individuals are informed, while protecting an offender’s information from unnecessary public disclosure.

Outside the proper allocation of resources, studies question the effectiveness of the United States’ broad public notification system. Over a four-year period, a study in Washington examined the recidivism rates between sexual offenders subject to public notification and offenders who committed

140. c. 42, § 96.

141. DAVID MIDDLETON, THE REQUIREMENTS FOR NOTIFICATION BY SEXUAL OFFENDERS IN ENGLAND AND WALES (KNOWN AS THE “SEX OFFENDERS REGISTER”), https://www.unafei.or.jp/publications/pdf/RS_No72/No72_No11VE_Middleton3.pdf.

142. MINISTRY OF LEGAL AFF., GOV’T OF BERM., SEX OFFENDER FACT SHEET, <https://www.gov.bm/sites/default/files/9853-Fact-Sheet-Sex-Offender-Amendment-Act.pdf>.

143. *Id.*

144. ATTY’N GENERAL’S CHAMBERS, PROTOCOL ON THE DISCLOSURE OF INFORMATION IDENTIFYING SEX OFFENDERS (2008).

145. CRIM. CODE ACT, 1907, c. 13 § 329FA.

146. *Id.* § 329H.

147. *Id.*

148. ATTY’N GEN.’S CHAMBERS, *supra* note 144, at 6.

149. *Notice: Sex Offender To Be Released From Prison*, BERNEWS (Aug. 21, 2020), <https://bernews.com/2020/08/notice-sex-offender-to-be-released-from-prison>.

crimes prior to public notification.¹⁵⁰ The study found registration had little effect on the overall recidivism rates between the groups.¹⁵¹ Similar studies performed across various jurisdictions have arrived at the same conclusion.¹⁵² Although proponents reference studies with adverse conclusions and note the general deterrent effects of registries, the studies' varying results call to question the effectiveness of public notification. States should examine reallocating resources to alternative law enforcement monitoring tools and rehabilitation and reintegration programs for sex offenders.

Further, broad public notification systems have the negative effect of emotionally and physically prohibiting offenders from reintegrating into society. Prohibiting sex offender integration leads to negative societal impacts. Legislatures should consider the following list of negative effects that can arise from public notification.

1. Public Notification Prohibits Offenders from Acquiring Gainful Employment

One of the largest hurdles offenders face is finding employment. Public registries require offenders to provide their place of employment.¹⁵³ As a result, many employers are reluctant to hire offenders for fear of public backlash, regardless of the offense's relation to the available position.

Additionally, many states place employment restrictions on all registered offenders, regardless of their conviction.¹⁵⁴ The employment prohibitions vary across jurisdictions and range from tow truck drivers,¹⁵⁵ real estate appraisers,¹⁵⁶ Uber or Lyft drivers,¹⁵⁷ to electricians.¹⁵⁸ An employer's access to the registry coupled with the statutory employment restrictions inhibit offenders from finding employment, let alone employment with health insurance and retirement benefits.

As a result, offenders are unable to care for themselves and their families. This can cause individuals to seek criminal enterprises in order to meet

150. DONNA D. SCHRAM & CHERYL DARLING MILLOY, WASH. ST. INST. PUBL. POL'Y, COMMUNITY NOTIFICATION: A STUDY OF SEX OFFENDER CHARACTERISTICS AND RECIDIVISM 2 (1995), <http://www.wsipp.wa.gov/rptfiles/chrtec.pdf>.

151. *Id.*

152. Richard Zevitz, *Sex Offender Community Notification: Its Role in Recidivism and Offender Reintegration*, 19 CRIM. JUST. STUD. 193 (2006) (finding extensive community notification has no direct effect on the likelihood of an offender being recommitted to prison); GENEVA ADKINS, DAVID HUFF & PAUL STEGEBERG, IOWA DEP'T OF HUM. RTS., DIV. OF CRIM. AND JUV. JUST. PLAN. AND STAT. ANALYSIS CTR., THE IOWA SEX OFFENDER REGISTRY AND RECIDIVISM (2000), <https://humanrights.iowa.gov/sites/default/files/media/SexOffenderReport%5B1%5D.pdf> (finding mixed results of the registry's effect on recidivism).

153. 34 U.S.C. § 20914 (2017).

154. ALA. CODE § 15-20A-13 (2017) (prohibiting all sex offenders from accepting various types of employment regardless of whether the offense involved children).

155. VA. CODE ANN. § 46.2-116 (West 2020).

156. GA. CODE ANN. § 43-39A-14 (West 2019).

157. N.Y. VEH. & TRAF. LAW § 1699(2)(b)(iii) (McKinney 2017).

158. DEL. CODE ANN. tit. 24, § 1408(13) (West 2019).

their basic needs.¹⁵⁹ Further, studies reveal that employment, which fills an offender's time and enhances his or her self-worth, are key to offender rehabilitation and reducing recidivism.¹⁶⁰ Public notification harms society by impeding offenders from providing for their own and their families' needs.

2. *Public Notification Can Lead to Vigilante Violence Against Offenders and Their Families*

Public notification can cause individuals to devolve into vigilante justice against the offender and the offender's family. Offenders' families often face threats, harassment, assault, or property damage due to an offender living at their home.¹⁶¹ With the ease of accessing an offender's information, individuals have, unfortunately, taken it upon themselves to protect society.¹⁶²

In Alaska, a man broke into the homes of three individuals who had been convicted of a sex offense, brutally attacking them with his fists and a hammer.¹⁶³ He found the three individuals' names and addresses on the sex offender registry and ordained himself the "avenging angel."¹⁶⁴ In Maine, Stephen Marshall used the sex offender registry to obtain thirty-four individuals' home and work addresses.¹⁶⁵ He then traveled to the home of a fifty-seven-year-old named Joseph Gray.¹⁶⁶ He parked his car outside and shot Joseph through the home's window, while Joseph's wife stood by helpless.¹⁶⁷ Next, Stephen drove to twenty-four-year-old William Elliott's home and repeatedly shot William when he answered the door.¹⁶⁸ Before the end of Stephen's rampage, three individuals were dead and four were

159. See J. J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J. L. & ECON. 161 (2011) (citing RICHARD G. ZEVITZ & MARY ANN FARKAS, NAT'L INST. OF JUST., DEP'T OF JUST., SEX OFFENDER COMMUNITY NOTIFICATION: ASSESSING THE IMPACT IN WISCONSIN 10 (Dec. 2000), <https://www.ncjrs.gov/pdffiles1/nij/179992.pdf>).

160. ERIC SELEZNOW & CTR. FOR SEX OFFENDER MGMT., TIME TO WORK: MANAGING THE EMPLOYMENT OF SEX OFFENDERS UNDER COMMUNITY SUPERVISION (2002); see also Paul Gendreau, Tracy Little & Claire Goggin, *A Meta-Analysis of the Predictors of Adult Criminal Recidivism: What Works!*, 34 CRIMINOLOGY 575 (1996).

161. See Jill S. Levenson & Leo P. Cotter, *The Effect of Megan's Law on Sex Offender Reintegration*, 21 J. CONTEMP. CRIM. JUST. 49, 49 (2005).

162. See Michelle A. Cubellis, Douglas N. Evans & Adam G. Fera, *Sex Offender Stigma: An Exploration of Vigilantism Against Sex Offenders*, 40 DEVIANT BEHAV. 225, 235 (2018).

163. Tegan Hanlon, *Anchorage Man Who Attacked Sex Offenders Hopes His Story Can Be a Lesson for Others*, Anchorage Daily News (Jan. 2, 2018), <https://www.adn.com/alaska-news/crime-courts/2018/01/01/anchorage-man-who-attacked-sex-offenders-says-he-wants-his-story-to-serve-as-a-deterrent>.

164. *Id.*

165. Rob Csernyik, *How Sex Offender Registries Can Result in Vigilante Murder*, VICE (Mar. 30, 2018, 12:45 PM), https://www.vice.com/en_us/article/ne9ew7/how-sex-offender-registries-can-result-in-vigilante-murder.

166. *Id.*

167. *Id.*

168. *Id.*

spared when Stephen drove by their homes but did not stop.¹⁶⁹ While these stories illustrate extreme cases, studies reveal many offenders face some form of violence or persecution.¹⁷⁰ Beyond brutal attacks, sex offenders undergo community shaming, death threats in the mail, and insults. The shaming and ostracism extend beyond offenders to their children, spouse, parents, and employers. States can forgo these issues by placing access to offenders' information solely in the hands of law enforcement agents—the individuals trained to utilize the information.

3. *Public Notification Can Decrease Neighborhood Property Values*

An often-unrealized outcome of a public registry is its effects on neighborhood property values. By notifying the public that an offender lives in a neighborhood, individuals are hesitant to purchase homes in that area. The result is sex offenders' neighbors' property values decreasing. Studies reveal houses in a sex offender's neighborhood sell for 17 to 19 percent less than similar houses not located near a sex offender, and when an offender moves into a neighborhood, housing values on the block decline by an average of 4 percent.¹⁷¹ By making the registry public, neighbors of sex offenders are harmed.

4. *Public Notification Can Cause a Survivor to Forgo Reporting the Offense*

In 90 percent of child rapes, the survivor knew the offender.¹⁷² In many situations, the offender was a family member or close relation. The offender may own the home where their victim resides or provide the salary that supports the victim's family. As a result, juvenile survivors may hesitate to report the incident due to the impact public notification would have on their family.¹⁷³ Public notification can also add a stigma to a survivor's family if the perpetrator and survivor share the same name, adding an additional hurdle a survivor must overcome to report the offense.

C. *Limit Sex Offenders' Residency Restrictions*

Currently, many sex offenders are unable to find housing due to jurisdictions' residency restrictions. Residency restrictions create a false sense of security for communities, while limiting offenders' employment and housing opportunities and potentially forcing an offender underground or

169. *Id.*

170. See Cubellis et al., *supra* note 162, at 236.

171. Leigh Linden & Jonah E. Rockoff, *Estimates of the Impact of Crime Risk on Property Values from Megan's Laws*, 98 AM. ECON. REV. 1103, 1104 (2008).

172. GREENFELD, *supra* note 22, at iii.

173. See Robert E. Freeman-Longo, *Prevention or Problem*, 8 SEXUAL ABUSE: J. RES. & TREATMENT 91, 99 (1996).

into homelessness. States should craft their residency restrictions to ensure offenders are able to obtain housing and employment.

Roughly thirty-three states place residency restrictions on sex offenders.¹⁷⁴ In Georgia, offenders cannot reside or work within 1,000 feet of any childcare facility, church, school, or area where minors congregate.¹⁷⁵ These requirements place unworkable restrictions on offenders. In Catoosa County, Georgia, only two apartment complexes in the entire county meet these standards.¹⁷⁶ Families are torn apart when offenders are unable to live in the family home.¹⁷⁷ The few housing options available to sex offenders are often unattainable due to the cost of rent, rental deposit, and high demand.¹⁷⁸ The restrictions clump offenders together in one region of the city.¹⁷⁹ Further, when new residency restrictions are passed, offenders' families are required to move from their homes in search of a new compliant location.¹⁸⁰ Finally, households with a registered sex offender are prohibited from partaking in federally-assisted housing programs.¹⁸¹ The result is many offenders are driven into homelessness due to their inability to find housing.¹⁸²

The negative effects of residency restrictions come with little value. A study analyzing the patterns of released sex offenders found, based on the offenses' locations, residency restrictions would not have prevented the offense.¹⁸³ The study examined the patterns of all offenders in a twelve-year

174. *Sex Offender Enactments Database*, NAT'L CONF. OF STATE LEGISLATURES, (Jan. 1, 2018), <https://www.ncsl.org/research/civil-and-criminal-justice/sex-offender-enactments-database.aspx>.

175. GA. CODE ANN. § 42-1-15 (2017).

176. Jessica Szilagyi, *Georgia City Wrong to Target Sex Offenders in New "Homelessness Ordinance"*, ALL ON GA. (Nov. 14, 2018), <https://allongeorgia.com/georgia-column-politics/column-georgia-city-wrong-to-target-sex-offenders-in-new-homelessness-ordinance>.

177. See Jill S. Levenson & Leo P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?*, 49 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 168, 173 (2005) (In a study of Florida sex offenders, 44 percent reported that they were unable to live with supportive family members due to zoning laws.).

178. See *In re Taylor*, 60 Cal. 4th 1019, 1030, 343 P.3d 867, 874 (2015).

179. See *Sex Offender Restricted Residency Zone Map*, LEWISTON MAINE POLICE DEP'T, <https://www.lewistonmaine.gov/893/Sex-Offender-Restricted-Residency-Zone-M> (last visited Apr. 7, 2020); see also *Sex Offender Residency Restriction Map, City of Brookfield Wisconsin, CITY OF BROOKFIELD WIS.* (Dec. 1, 2020), <https://www.ci.brookfield.wi.us/DocumentCenter/View/14064/Sex-Offender-Map>.

180. See Jacqueline Canlas-Laflam, *Has Georgia Gone Too Far-or Will Sex Offenders Have To?*, 35 HASTINGS CONST. L. Q. 309, 315 (2008) (citing *Whitaker v. Perdue*, No. 4:06-cv-140-CC (N.D. Ga. filed June 20, 2006)) (Woman and her family were forced to move when Georgia legislature passed a new residency restriction statute, which placed her home in violation because it was within one thousand feet of a church that operated a daycare.).

181. 24 C.F.R. § 5.856 (2020).

182. See Beth Schwartzapfel & Emily Kassie, *Banished*, THE MARSHALL PROJECT (Oct. 3, 2018, 7:00 AM), <https://www.themarshallproject.org/2018/10/03/banished>.

183. See Grant Duwe, William Donnay & Richard Tewksbury, *Does Residential Proximity Matter? A Geographic Analysis of Sex Offense Recidivism*, 35 CRIM. JUST. & BEHAV. 484, 484 (2008).

period who, prior to the enactment of residency restrictions, recommitted a sexual offense.¹⁸⁴ It found, of the 224 offenders studied, none of their offenses would have been prevented by a residency restriction.¹⁸⁵ Most offenders do not select their victims based upon the victim's proximity to their home, but rather on their ability to manipulate a preexisting relationship.¹⁸⁶ This conclusion is affirmed by statistics showing that the majority of sexual offenses are committed by known relations.¹⁸⁷ The study further revealed stranger offenders, which residency restrictions are enacted to protect against, are more likely to travel outside their neighborhood to commit the offense.¹⁸⁸

Rather than lowering recidivism, residency restrictions can create the opposite effect.¹⁸⁹ Residency restrictions prohibit an offender from obtaining employment.¹⁹⁰ The restrictions can limit opportunities to attend treatment services.¹⁹¹ They limit many pro-social support systems, like church groups, volunteer opportunities, community choir, or other extracurricular activities, which take place within 1,000 feet of a park, church, or place where children congregate.¹⁹² Studies report positive support networks are key to lowering an offender's likelihood of reoffending.¹⁹³

Residency restrictions limit an offender's ability to acquire housing and employment. As a result, offenders are prohibited from reentering society. States must realize that offenders will eventually be released from prison, and when they are, they need to find viable housing and employment opportunities. If they are unable to care for themselves, both they and their families will become dependent upon government services. Or worse, the offender will become frustrated and be forced down a path towards criminal activity and re-offense. Housing restrictions must either be lifted or greatly limited.

184. *Id.*

185. *Id.*

186. *Id.*

187. GREENFELD, *supra* note 22.

188. Duwe, Donnay & Tewksbury, *supra* note 183, at 492.

189. See MINN. DEP'T OF CORR., RESIDENTIAL PROXIMITY & SEX OFFENSE RECIDIVISM IN MINNESOTA, at 2 (2007), <https://ccoso.org/sites/default/files/import/SexOffenderReport-Proximity.pdf>.

190. See MARCUS NIETO & DAVID JUNG, THE IMPACT OF RESIDENCY RESTRICTIONS ON SEX OFFENDERS AND CORRECTIONAL MANAGEMENT PRACTICES: A LITERATURE REV. 18 (2006).

191. *See id.*

192. JILL S. LEVENSON, SEX OFFENDER RESIDENCE RESTRICTIONS: A REPORT TO THE FLORIDA LEGISLATURE 10 (2005).

193. See SEX OFFENDER MGMT. BD., COLO. DEP'T PUB. SAFETY, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY 31 (2004).

D. *Limit Length of Registration*

States should limit low-risk offenders' registration periods to under five years. By limiting individuals' registration periods, states will save resources by not having to:

- monitor low-risk individuals for an extended period of time;
- update information when a sex offender moves, changes employment, travels outside the United States, or acquires a different vehicle;
- adjudicate violations for low-risk offenders' failure to register;
- hire personnel for offenders' yearly check-ins; or
- increase the number of prison beds for individuals who violate their registration requirements.

Lowering low-risk offenders' registration periods poses little risk to public safety. Studies show low-risk offenders are likely to reoffend within five years and high-risk offenders within fifteen.¹⁹⁴ These recidivism rates decrease based on an offender's characteristics, support network, and available rehabilitation services. The resources that states will save due to the lowered registration periods can be reallocated to enhance sex offender reintegration and rehabilitation services, which will potentially decrease recidivism.

Further, other countries currently follow lower registration periods. Compared to other countries with sex offender registries, the United States has one of the lengthiest registration periods. Twelve countries set their minimum registration periods at or below five years and an additional six countries set their minimum registration periods below ten years.¹⁹⁵ The remaining countries, with higher registration periods, only require registration for the country's most heinous sexual offenses. The United States should follow other countries and use its registration system to target high-risk offenders.

Currently, low-risk offenders are required to register well beyond the time period necessary to ensure public safety. Decreasing the registration period will help offenders be self-sustaining and decrease the registry's cost. This cost savings will permit states to invest more resources in monitoring high-risk individuals and investing in rehabilitative services.

194. Harris & Hanson, *supra* note 40.

195. OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING, U.S. DEP'T OF JUSTICE, SMART SUMMARY: GLOBAL OVERVIEW OF SEX OFFENDER REGISTRATION AND NOTIFICATION SYSTEMS, APP. D: SUMMARY TBL. OF NAT'L PROVISIONS (2016).

E. Reallocate Funds from Registry Upkeep to Survivor Services and Public Education Programs

States will decrease the cost of their registries if they limit the number of offenders on their registries, decrease registration lengths, and repeal restrictions that impede offenders from reentering society. States can then use the cost savings to fund survivor services and community programming.

Sexual assault is one of the most atrocious offenses one can endure. Many survivors of sexual offense face lifelong physical and emotional harms. Following an assault, survivors report feeling anxious, guilty, and afraid.¹⁹⁶ They can develop a form of post-traumatic stress disorder.¹⁹⁷ It causes survivors to have nightmares and intrusive memories of the event, feel they are always in danger, and begin to distrust those around them.¹⁹⁸ The effects can lead to depression, obsessive-compulsive disorder, alcohol and substance abuse, eating disorders, and in the worst cases, suicide.¹⁹⁹ Many individuals undergo these traumas alone and never report the offense to law enforcement or campus safety.²⁰⁰ Those who do report the offense are often retraumatized through law enforcement questioning and the criminal justice process.²⁰¹

Instead of focusing funds on the monitoring of sex offenders, states should increase their funding of survivor service programs. These programs can include adopting or enhancing survivor advocates within prosecutors' offices who will walk with the survivor through the criminal process and connect the survivor with necessary services.²⁰² States should also enact programs requiring law enforcement officers to complete trainings on trauma-focused investigations, which can increase a survivor's ability to report the offense.²⁰³ While increasing survivor services is an after-the-fact solution, it ensures individuals are supported when reporting a crime. These programs put mechanisms in place to ensure survivors are connected to services that will help them cope with the mental or physical trauma.

196. Matthew Tull, *Symptoms of PTSD After a Sexual Assault*, VERY WELL MIND, <https://www.verywellmind.com/symptoms-of-ptsd-after-a-rape-2797203> (last updated Aug. 10, 2021).

197. *Id.*

198. *Id.*

199. See Dean G. Kilpatrick, *The Mental Health Impact of Rape*, NAT'L VIOLENCE AGAINST WOMEN PREVENTION RSCH. CTR. (2000), <https://mainweb-v.musc.edu/vawprevention/research/mentalimpact.shtml>.

200. See Bonnie Fisher, Leah E. Daigle, Francis T. Cullen & Michael G. Turner, *Reporting Sexual Victimization to the Police and Others: Results from a National-Level Study of College Women*, 30 CRIM. JUST. & BEHAV. 6, 7 (2003).

201. See Lisa R. Avalos, *Policing Rape Complainants: When Reporting Rape Becomes a Crime*, 20 J. GENDER, RACE & JUST. 459, 468–69 (2017).

202. See, e.g., *Victim Assistance Program*, DOUG PETERSON NEB. ATT'Y GEN., <https://ago.nebraska.gov/victim-assistance-program> (last visited Apr. 21, 2020).

203. See Off. on Violence Against Women, *The Importance of Understanding Trauma-Informed Care and Self-Care for Victim Service Providers*, U.S. DEP'T OF JUST. (July 30, 2014), <https://www.justice.gov/archives/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers>.

Beyond increasing survivor services, states should increase funding to programs aimed at preventing sexual abuse. The Centers for Disease Control created a Sexual Violence Preventative Package to help communities and states create sexual violence prevention programs.²⁰⁴ The strategy established five key areas communities must focus on:

- promoting social norms that protect against violence;
- teaching skills to prevent sexual violence;
- providing economic and social opportunities to empower females;
- creating protective environments; and
- supporting victims/survivors to lessen harms.²⁰⁵

Through proper programming states can begin to change attitudes and decrease the number of sexual offenses.

Finally, states can redirect funds to sex offender rehabilitation programs. Rehabilitation programs can help offenders reintegrate into society and curb their underlying compulsions. Washington state created a treatment option for offenders as an alternative to incarceration. Under the Special Sex Offender Sentencing Alternative (SSOSA), an offender's jail time is reduced in exchange for outpatient treatment and supervision.²⁰⁶ As part of the program, the offender normally spends twelve months in jail; then upon release, the offender is supervised by the Department of Corrections.²⁰⁷ The offender must maintain employment, successfully participate in treatment, remain law abiding, pay restitution to the survivor, and follow court-ordered requirements.²⁰⁸ The program aims to treat offenders' underlying compulsions, which are likely to result in recidivism.²⁰⁹ Individuals who partake in SSOSA have lower recidivism rates than those who remain incarcerated and are later released.²¹⁰ The program was also found to increase the intrafamily reporting of sex crimes.²¹¹ Rehabilitation programs can help reduce recidivism and reintegrate offenders into society.

204. See KATHLEEN C. BASILE, SARAH DEGUE, KATHRYN JONES, KIMBERLEY FREIRE, JENNY DILLS, SHARON G. SMITH & JERRIS L. RAIFORD, NAT'L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, *STOP SV: A TECHNICAL PACKAGE TO PREVENT SEXUAL VIOLENCE* (2016), <https://www.cdc.gov/violenceprevention/pdf/sv-prevention-technical-package.pdf>.

205. *Id.* at 3.

206. WASH. REV. CODE ANN. § 9.94A.670 (2009).

207. *Id.*

208. *Id.*

209. See DAVID S. MARSHALL, *WASHINGTON'S SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE*, MARSHALL DEF. FIRM, at 5, <https://marshalldefense.com/wp-content/uploads/2018/08/MDF-SSOSA-Guide.pdf>.

210. See WASH. STATE INST. FOR PUB. POL'Y, *SEX OFFENDER SENTENCING IN WASHINGTON STATE: SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE TRENDS* (2006), http://www.wsipp.wa.gov/ReportFile/928/Wsipp_Special-Sex-Offender-Sentencing-Alternative-Trends_Report.pdf.

211. MARSHALL, *supra* note 209, at 3.

States can reallocate resources to programs aimed at stopping sexual abuse. Sex offender registries work to solve the problem after the harm has occurred. The problem will continue if the underlying issues are not addressed through public education, rehabilitation, and reintegration programming.

VIII. CONCLUSION

Current sex offender legislation does little to end sexual abuse. The legislation casts too wide a net by requiring low-risk offenders to register. The system causes states to waste valuable resources by requiring an expanse of people, who will likely not reoffend, to register.

To best utilize states' resources, SORNA must be repealed, and states must be permitted to enact their own systems. When enacting their own systems, states must weigh the interests of all involved parties—survivors, survivors' families, society, offenders, and offenders' families. In doing so, states should require registration for only the few individuals who pose a threat to society. A state's registration determinations should be based on an offender's propensity to reoffend, not on her or his offense or conviction. The disclosure of a sex offender's information should be narrowly tailored to specific individuals or groups who the offender may harm. Further, states should repeal residency and employment restrictions to ensure offenders are not prohibited from reintegrating into society. By limiting registration, residency, employment, and disclosure requirements, states will have more resources available to invest in efforts aimed at stopping sexual violence.

Sex offender registries are an after-the-fact remedy. States' autonomy must be restored so they can craft creative solutions to stop sexual violence before it occurs.