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A MODERN DAY ARTHUR DIMMESDALE:¹ PUBLIC NOTIFICATION WHEN SEX OFFENDERS ARE RELEASED INTO THE COMMUNITY

INTRODUCTION

Around the country, an enormous outcry over crimes committed by convicted sex offenders shortly after their release from prison² led a handful of states to enact statutes establishing comprehensive registration and notification schemes.³ These statutes apply several novel approaches to the confinement and release of sex offenders. Among these new approaches are: indefinite civil commitment based on future dangerous conduct,⁴ enhanced sentencing for first-time and repeat offenders,⁵ new classification methods for certain offenders,⁶ central registration systems for convicted sex offenders, and release of information to the public when convicted sex offenders are released.⁷

1. Arthur Dimmesdale was a preacher in the book *THE SCARLET LETTER* by Nathaniel Hawthorne. Although Hester Prynne was forced to wear the scarlet letter "A" on her chest as punishment for her adultery, she refused to disclose the identity of her partner. Arthur, her partner in sin, also wore the scarlet letter, but he wore it under his clothing so that the townspeople did not see it. Laws that provide for community notification when sexual offenders are released are often referred to as "scarlet letter laws" because they "brand" the individual as a sex offender in the eyes of the community.

2. See, e.g., Lynn Steinberg, *Child Molesters Often Victims of New Law: Angry Neighbors Can't Forgive When Offenders Live in Their Midst*, *SEATTLE POST-INTELLIGENCER*, Oct. 30, 1990, at A1.

3. These states are Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, Nevada, New Jersey, Oregon, South Dakota, Tennessee, Virginia, and Washington. In addition, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act provides for registration and notification in certain instances. 42 U.S.C. § 14071 (1994).

4. See, e.g., WASH. REV. CODE ANN. § 71.09.060 (West Supp. 1996).

5. Allen Short & Donna Halvorsen, *Some Battling Rape With Radical Means; Castration, Drugs Find Favor Elsewhere*, *MINN. STAR TRIB.*, Nov. 12, 1991, at A12 (stating that some states have enacted a life-without-parole penalty for first degree sexual offenses).

6. See, e.g., WASH. REV. CODE ANN. §§ 71.09.030, -.040, -.060 (West Supp. 1996).

7. See, e.g., LA. REV. STAT. ANN. § 15.574.4(H)(2) (West Supp. 1996); N.J. STAT. ANN. § 2C:7-1 (West 1995); OR. REV. STAT. § 181.509 (Supp. 1994); WASH. REV. CODE ANN. § 9A.44.130 (West Supp. 1996).

This Note addresses the public notification segments of such statutes. Because notification cannot be discussed without some consideration of registration provisions, this Note also addresses those provisions. Part I reviews relevant statutory history and language, pointing out some differences in the statutes enacted by different states. Part II discusses the pertinent social issues, and Part III analyzes the relevant legal issues raised by such laws. Part IV considers the right to privacy and other continuing concerns.

I. THE HISTORY AND PROVISIONS OF PUBLIC NOTIFICATION STATUTES

A. *Purpose*

The public notification provisions of sex offender registration statutes were designed to protect potential victims from especially violent sex offenders with a high propensity to reoffend. For example, the Virginia statute provides:

The purpose of the Sex Offender Registry shall be to assist the efforts of law-enforcement agencies to protect their communities from repeat sex offenders and to protect children from becoming the victims of repeat sex offenders by helping to prevent such individuals from being hired or allowed to volunteer to work directly with children.⁸

These statutory schemes are not intended to punish sex offenders as a class. For example, Washington's Community Protection Act affects only violent sex offenders who are classified as "predatory" under the terms of the statute.⁹ Washington authorizes the release of only "relevant and necessary information" that is "necessary for public protection"¹⁰ from a "sexually violent predator."¹¹ Oregon and the federal government have also created a predator standard.¹² Other states have chosen a different approach. Instead they apply the notification provisions to offenders who are convicted of felony sex offenses under their criminal code or similar offenses under a sister state's code.¹³

8. VA. CODE ANN. § 19.2-390.1(A) (Michie 1995).

9. WASH. REV. CODE ANN. § 71.09.020 (West Supp. 1996).

10. *Id.* § 4.24.550(1).

11. *Id.* § 4.24.550(3)(e).

12. 42 U.S.C. § 14071(a)(1)(B) (1994); OR. REV. STAT. § 181.507(1) (Supp. 1994).

13. *See, e.g.*, IDAHO CODE § 18-8303 (Supp. 1995); NEV. REV. STAT. ANN. § 207.151

B. Legislative Impetus

If any one person could be credited with igniting the public furor over community notification, that person would be Earl Shriner.¹⁴ Despite a long history of sexual deviation and numerous convictions for sexual offenses, Shriner was released from confinement.¹⁵ Shortly thereafter, in 1989, Shriner molested and mutilated a seven-year-old boy and then left the boy for dead.¹⁶ The boy survived and identified Shriner as his attacker.¹⁷ Public outrage over the crime peaked when the community learned that authorities were aware of Shriner's continued violent sexual impulses,¹⁸ but had no legal recourse to prolong his incarceration.¹⁹ The resultant uproar, spearheaded by the victim's mother, Helen Harlow,²⁰ and community activist, Ida Ballasiotes,²¹ led to the formation of a special task force charged with solving the problem of repeat violent sex offenders in the State of Washington.²²

The murder of seven-year-old Megan Kanka in Hamilton Township, New Jersey provoked a similar reaction.²³ Jesse Timmendequas, a twice-convicted sex offender,²⁴ moved in with two other sex offenders across the street from the Kankas.²⁵ The

(Michie Supp. 1995); TENN. CODE ANN. § 40-39-103 (Supp. 1995); VA. CODE ANN. § 19.2-298.1 (Michie Supp. 1995).

14. Gayle M.B. Hanson, *Experts Vexed at What to do with Sex Offenders; Authorities Try New Methods for Tracking Them*, WASH. TIMES, June 6, 1994, at A8.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* Shriner "had admitted to a cellmate that he fantasized about outfitting a van with cages—the better to kidnap, torture, molest and murder children." *Id.* He even drew pictures of a torture chamber specially designed to torture children. *Turning Point: The Revolving Door: When Sex Offenders Go Free* (ABC television broadcast, Sept. 21, 1994) [hereinafter *Turning Point*].

19. *Turning Point*, *supra* note 18.

20. Steinberg, *supra* note 2.

21. Ida Ballasiotes is a victim's rights advocate and the mother of Diane Ballasiotes. Diane was killed by a convicted sex offender, freed on a work-release program, who kidnapped Diane, sexually assaulted her, and stabbed her to death. Ms. Ballasiotes, determined to do something, was galvanized into action after Earl Shriner's vicious attack on Helen Harlow's son. *Turning Point*, *supra* note 18.

22. See David Boerner, *Confronting Violence: In the Act and in the Word*, 15 U. PUGET SOUND L. REV. 525, 537-39 (1992).

23. Michelle Ruess, *Sex Offenders Plan Challenge to Megan's Law*, REC., Oct. 14, 1994, at A4.

24. Jim Hooker, *Megan's Law has a Harsh Prototype; How Statute Works in Another State*, REC., Oct. 10, 1994, at A1.

25. *Id.*

Kanka's perception of Jesse Timmendequas as a mild-mannered laborer shattered abruptly when he allegedly lured Megan into his home and raped and murdered her.²⁶ Towns and boroughs in New Jersey quickly began deliberation on sex offender registration statutes with public notification provisions.²⁷ Governor Christine Todd Whitman called for legislative action.²⁸ The New Jersey House of Representatives responded quickly by introducing ten separate pieces of legislation,²⁹ including a bill authorizing the release of "relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection."³⁰

Similar scenarios resulted in sex offender statutes on both the state and federal levels. The federal crime bill passed in 1994 included the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Federal Wetterling Act).³¹ This Act authorized the release to law enforcement agencies of information collected under any state registration program for sexual offenders.³²

C. Statutory Provisions

Although there are common elements to notification statutes, they differ in several respects. Specifically, the statutes set forth different requirements with regard to (1) registration systems and requirements, (2) registration duration, and (3) disclosure.

1. Registration Systems and Requirements

To release information to law enforcement agencies, school boards, and communities, the information first must be gathered and stored. To gather this information, most states have implemented a registration system for sexual offenders.³³

26. *Id.*

27. Bruno Tedeschi, *Molesters Claim Voluntary Aspect Makes Laws Toothless*, REC., Sept. 22, 1994, at B1.

28. Lisa Anderson, *"Megan's Law" Draws Support, Raises Questions*, CHI. TRIB., Aug. 21, 1994, at A36; Michelle Ruess, *Senate Passes Sex-Offender Crackdown: Fast Vote on Megan's Law*, REC., Oct. 4, 1994, at A3.

29. Jerry Gray, *Sex Offender Legislation Passes in the Senate*, N.Y. TIMES, Oct. 4, 1994, at B6.

30. N.J. STAT. ANN. § 2C:7-5 (West 1995).

31. 42 U.S.C. § 14071 (1994).

32. *Id.* § 14071(d)(3).

33. Roughly half the states keep central registers for sex offenders. See SHEILA

Registration statutes require offenders to provide the state with certain information about themselves and the crimes they have committed.³⁴ The registration requirements vary widely from state to state. Some states store only the offender's name, address, and criminal convictions,³⁵ and other states require additional information like fingerprints³⁶ or DNA samples.³⁷

2. Registration Duration

The length of time that the offender is required to remain registered also varies from state to state. Under the Federal Wetterling Act, the maximum is ten years.³⁸ The time period is measured in various ways: from the end of the incarceration period,³⁹ from the end of the discharge of parole or probation,⁴⁰ or from the date of conviction, if the offender was not confined.⁴¹ A few states mandate registration for life.⁴² Still other states require an offender to petition the court to relieve them of the duty to register.⁴³ At least one state does not provide for a time limit at all.⁴⁴

DONNELLY & ROXANNE LIEB, WASHINGTON STATE INST. FOR PUBLIC POL'Y, COMMUNITY NOTIFICATION: A SURVEY OF LAW ENFORCEMENT 1 (1993); Ellis E. Conklin & Robert L. Jamieson, Jr., *Sex Offender is Moving to Another State*, SEATTLE POST-INTELLIGENCER, July 15, 1993, at A1; Cindy Richards, *Freed Sex Offenders Should be Identified*, CHI. SUN-TIMES, Aug. 7, 1994, at 39; Doris S. Wong, *Registry Sought for Sexual Offenders; Weld Wants Their Addresses Public*, BOSTON GLOBE, Sept. 1, 1994, at 37. At last count, thirty-eight states required that local police be notified when release of a sex offender is imminent. Jill Smolowe, *Not In My Backyard!: Citizens Rally to Keep Paroled Sex Offenders and Murderers From Settling in Their Communities*, TIME, Sept. 5, 1994, at 59.

34. See, e.g., IDAHO CODE § 18-8306 (Supp. 1994).

35. See, e.g., O.C.G.A. 42-9-44.1(b)(1)(A)(iv) (1994); IND. CODE ANN. § 5-2-12(b) (Burns Supp. 1995).

36. See, e.g., 42 U.S.C. 14071 (1995); IDAHO CODE § 18-8306 (Supp. 1995); NEV. REV. STAT. ANN. § 207.153 (Michie 1992).

37. See, e.g., ALA. CODE § 36-18-25 (Supp. 1995); ARIZ. REV. STAT. ANN. § 13-4438 (Supp. 1995); CAL. PENAL CODE § 290.2 (West Supp. 1996); CONN. GEN. STAT. ANN. § 54-102g (West Supp. 1996); MINN. STAT. ANN. § 609.3461 (West Supp. 1996).

38. 42 U.S.C. § 14071(b)(6)(A) (1995).

39. *Id.*

40. IDAHO CODE § 18-8305 (Supp. 1995).

41. KAN. STAT. ANN. § 22-4906(a)(1) (Supp. 1994).

42. See, e.g., *id.* § 22-4906(a)(2) (requiring lifetime registration upon second conviction).

43. OR. REV. STAT. § 181.519 (Supp. 1994); WASH. REV. CODE ANN. § 9A.44.140(3) (West Supp. 1996).

44. NEV. REV. STAT. ANN. § 207.152 (Michie 1995).

3. Disclosure

a. Who is Told?

Notification is generally handled in one of three ways: (1) an offense-graded system, basing the scope of notification on the severity of the offense;⁴⁵ (2) a statutorily prescribed list of persons who must be notified;⁴⁶ and (3) victim notification through registry identification numbers, victim identification numbers, and a toll-free hotline.⁴⁷

Offense-graded systems are based on the seriousness of the offender's crime and on the offender's potential for violence or reoffense.⁴⁸ For example, in Washington, a review committee made up in part by mental health professionals evaluates offenders before release.⁴⁹ Law enforcement personnel then use that evaluation to determine the level of danger the offender poses to the general public.⁵⁰ Although each local law enforcement agency possesses complete discretion as to how to disseminate the information,⁵¹ most departments abide by guidelines developed by the Washington Association of Sheriffs and Police Chiefs.⁵² These guidelines help law enforcement agencies decide how and when notification should occur.⁵³

In other states, the list of people who must be notified is statutorily prescribed.⁵⁴ The list may be narrow, requiring notification only to those people deemed potentially at risk,⁵⁵ such as former victims, or it may be broad, requiring the general public to be notified by a media release.⁵⁶ Consistent with the purposes of these statutes,⁵⁷ law enforcement agencies in the

45. See, e.g., 42 U.S.C. § 14071(a)(1) (1995).

46. See, e.g., O.C.G.A. § 42-9-44.1(b)(1) (1994).

47. See, e.g., OR. REV. STAT. § 181.519 (Supp. 1994).

48. See generally Debera C. Harrell, *Sex Offender Notification Guidelines Set: Polices Can Defer in Some Cases*, SEATTLE POST-INTELLIGENCER, May 30, 1990, at B1.

49. DONNELLY & LIEB, *supra* note 33, at 3.

50. *Id.*

51. See Harrell, *supra* note 48.

52. DONNELLY & LIEB, *supra* note 33, at 4.

53. *Id.* at 3.

54. See, e.g., O.C.G.A. § 42-9-44.1 (1994).

55. See, e.g., OR. REV. STAT. § 181.508 (Supp. 1994).

56. See, e.g., DEL. CODE ANN. tit. 11 § 4336(a) (1995).

57. IDAHO CODE § 18-8302 (Supp. 1995).

The legislature finds that sex offenders present a high risk of reoffense and that efforts of law enforcement agencies to protect their communities, conduct investigations and quickly apprehend offenders who commit sex

jurisdictions where offenders will reside after release almost always will be notified, along with school district officials.⁵⁸

The most novel approach to notification is the implementation of a victim's hotline in Oregon.⁵⁹ The victim can call in, give the offender's registry identification number and the victim identification number, and obtain a status report on the offender.⁶⁰ This report may include, but is not limited to, the offender's current incarceration, probationary status, and release information as well as the offender's current address.⁶¹

b. What is Disclosed?

Disclosure practices vary widely. Generally, all information kept by the state in its central registry will be publicized with the exception of the victim's name.⁶² If, as in Georgia, the statute does not provide for a central registry, the notification statute itself will mandate what information can be disclosed.⁶³ Almost every state provides for the release of one or more of the following: the offender's name, aliases, physical description, current address, photo, and the details of the offense.⁶⁴ In addition, some states also require the publication of the name

offenses are impaired by the lack of information available about individuals who have pled guilty to or have been found guilty of sex offenses who live within their jurisdiction. Therefore, this state's policy is to assist efforts of local law enforcement agencies to protect their communities by requiring sex offenders to register with local law enforcement agencies as provided in this chapter.

Id.

58. See, e.g., O.C.G.A. § 42-9-44.1(b)(1) (1994); IDAHO CODE § 18-8304(2) to (4) (Supp. 1995); IND. CODE ANN. §§ 5-2-12-8, -11(1), (6)(b) (Burns Supp. 1995); KAN. STAT. ANN. §§ 22-4905(a)(2)(C), -4909 (Supp. 1994); LA. REV. STAT. ANN. § 542(B)(1)(b) (West Supp. 1996); NEV. REV. STAT. ANN. § 207.155 (Michie Supp. 1995); N.J. STAT. ANN. § 2C:7-4(c) (West Supp. 1995); VA. CODE ANN. § 19.2-390.1(B) (Michie 1995).

59. OR. REV. STAT. § 181.519 (Supp. 1994).

60. *Id.*

61. *Id.*

62. See, e.g., 42 U.S.C. § 14071(d)(3) (1995).

63. See, e.g., O.C.G.A. § 42-9-44.1(b)(1) (1994).

64. See, e.g., IDAHO CODE § 18-8306 (Supp. 1995); IND. CODE ANN. § 5-2-12-6 (Burns Supp. 1995); LA. REV. STAT. ANN. § 15-542(B) (West Supp. 1996); NEV. REV. STAT. ANN. § 207.153 (Michie 1992); N.J. STAT. ANN. § 2C:7-4(b)(1) (West 1995); OR. REV. STAT. § 181.508(3) (Supp. 1994); VA. CODE ANN. § 19.2-298.1(D) (Michie 1995); WASH. REV. CODE ANN. § 9A.44.130(2) (West Supp. 1996).

and telephone number of the offender's probation officer⁶⁵ and the type of vehicle the offender drives.⁶⁶

II. PERTINENT SOCIAL ISSUES

The social policies that accompany notification statutes are thorny and complex. They range from traditional compensation and deterrence rationales to broader goals of individual and public safety. Such often-competing concerns are difficult to reconcile.

A. Deterrence

Critics of notification laws point out that public notification does not advance the traditional goal of deterrence because sex offenders are compulsive in nature.⁶⁷ "For lawmakers to lead people to believe that public notification and registration are going to make them safer is a lie. The man who is still repetitive and compulsive in his desire . . . is still going to commit that crime," said a forty-two-year-old convicted rapist.⁶⁸

Critics also claim that community notification and its stigma, although meant to deter, will not in any way change or deter the offender's behavior.⁶⁹ For example, within hours of the local television broadcast notifying of his release, Robert Sharp, a convicted child rapist from Richland, Washington, "went on a rampage, trying to entice one boy after another into his car."⁷⁰ He finally picked up a twelve-year-old boy outside a bowling alley.⁷¹ Luckily, two witnesses dragged the boy from the car just as it was driving away.⁷² Sharp is now back in prison after being convicted of attempted kidnapping.⁷³

Notification proponents argue that an offender will be deterred if society is made aware of his deviant behavior.⁷⁴ They assert

65. See, e.g., OR. REV. STAT. § 181.508(3)(h) (Supp. 1994).

66. See, e.g., *id.* § 181.508(3)(c).

67. Michelle Ruess, *Offenders Fear Vigilantism; Say Megan's Law Would Do More Harm Than Good*, REC., Sept. 18, 1994, at A4 [hereinafter Ruess, *Offenders Fear Vigilantism*].

68. *Id.*

69. *Id.*

70. Daniel Golden, *Sex-Cons*, BOSTON GLOBE, Apr. 4, 1993, at 12.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Sex-Offender Registration Laws Pit Victims' Rights Against Civil Rights*, N.Y.

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that the offender's biggest weapon is secrecy.⁷⁵ The offender can prey on innocent women and children because the victims are not aware of the offender's potential to harm. Local residents cannot take adequate steps to protect themselves without the proper information.⁷⁶ Publicizing information relating to convicted sexual offenders removes the veil of secrecy.⁷⁷ Whether the offender will be deterred by the notification is immaterial; the neighborhood can act and react to deter the offender's behavior by preventing access to victims.⁷⁸ In addition, notification and the accompanying response sends a clear message to the offender that deviant behavior will not be tolerated by the community.⁷⁹ This message may help the offender who truly wants to rehabilitate himself and blend into society.

B. Public and Community Safety

Public safety is the statutory justification for most of the notification provisions.⁸⁰ By notifying the public when a potential offender is released into the community, the public can guard against the threat the offender poses to potential victims. Although there are no statistics to support their claim,⁸¹ proponents assert that notification statutes have accomplished the goal of making communities safer by apprising residents of potential danger in their midst.⁸² Proponents note that residents

TIMES, Feb. 20, 1993, § 1, at 5 [hereinafter *Sex-Offender Registration Laws*].

75. See Donna Greene, *Westchester Q&A: Rocco A. Pozzi; Keeping a Spotlight on Sex Offenders*, N.Y. TIMES, Oct. 2, 1994, § 13 (Westchester), at 3.

76. *Sex-Offender Registration Laws*, *supra* note 74.

77. See Golden, *supra* note 70. "These criminals can't stand the light of day," says Jake Evans, police chief in Auburn, Washington. "When they're exposed, they scream and holler. Dragging it into the daylight shows that, if they reoffend, we'll be right in their face." *Id.*

78. *Sex-Offender Registration Laws*, *supra* note 74.

79. Golden, *supra* note 70. "One reality check is bumping up against a roomful of angry people who say this behavior isn't tolerated in this community." *Id.* (quoting Lawrence Ankrum, Department Commander of Mountlake Terrace, Washington Police Department).

80. See, e.g., IDAHO CODE § 18-8302 (Supp. 1995); LA. REV. STAT. ANN. § 540(B) (West Supp. 1996).

81. Anderson, *supra* note 28 (stating that no studies have been conducted to measure the effect of notification statutes).

82. See Cathy Kiyomura, *Sex Offender Law To Begin*, OREGONIAN, Nov. 3, 1993, at B01; Diane Pettit, *Washington Law A Different Scenario*, LEWISTON MORNING TRIB., Feb. 16, 1992, at 1A; Joanne Plank, *'Predator' Alert Called Vindicated—Arrest of Man Police Warned Was a Sex Offender is No Surprise to an Activist for Victims' Rights*, SEATTLE TIMES, May 20, 1990, at B1. Sheriff Tomson of Whitman County,

keep a closer watch on their children,⁸³ form tighter neighborhood patrols,⁸⁴ and guard against strange or suspicious behavior.⁸⁵

Critics of notification laws declare that notification has not made communities safer.⁸⁶ In one case, even after the community was notified that a sexual offender had settled in its area, the man was able to assault and attempt to rape a neighborhood woman.⁸⁷ Critics point out that the offense occurred despite notification: Notification did not make the community safe enough in that particular instance.⁸⁸ Critics also argue that notification statutes miss their mark. Most notification statutes are designed to apply to offenders who prey on strangers.⁸⁹ However, the great majority of sexual offenses are committed by those who already know or have a relationship with the victim.⁹⁰

Washington remarked that "if the new law had been in place a year earlier, police would have been alerted to a man who . . . raped a [Washington State University] coed on the campus." Pettit, *supra*. Tomson now notifies campus police about registered sex offenders on campus. *Id.*

83. See Linda Keene et al., *Legal Dilemma: Rapist's Rights vs. Public's Right to Know*, SEATTLE TIMES, July 13, 1993, at A1.

84. *Id.*

85. Ovetta Wiggins, *Towns Consider Tracking Convicts; Critics Cite False Sense of Security*, REC., Sept. 13, 1994, at D1. Under a proposed ordinance, the Township of Saddle Brook would rely on residents to notify law enforcement officials if they were suspicious of a new neighbor. *Id.* Once the police were notified, they would run a background check on the person. *Id.*

86. Keene et al., *supra* note 83. Jerry Sheehan, legislative director of the ACLU, states, "I don't see one whit of evidence of any additional community security created by this notification process. It only causes anxiety and fear, without any additional benefits to the community." *Id.*

87. Plank, *supra* note 82.

88. *Id.*

89. See, e.g., WASH. REV. CODE ANN. § 71.09.020(4) (West Supp. 1996). The Washington sex offender notification law is known as the Sexually Violent Predators Act. *Id.* § 71.09. A predatory act is one which is "directed toward strangers." *Id.* § 71.09.020(4). In Washington, the public is notified about roughly 6% of the sex offenders released from confinement. Thomas Zolper, *Making Megan's Law Work*, ASHBURY PARK PRESS, July 30, 1995, at A1.

90. Keene et al., *supra* note 83. The Snohomish County Prosecutor's Office reports that in Snohomish County, Washington, only 4% of the felonious sexual assaults against children between 1989 and June 1992 were committed by strangers. Further, 43% of the offenses were by acquaintances of the victim, 22% by natural parents, 15% by other relatives, and 9% by step-parents. *Id.*

Sometimes, notification promotes complacency.⁹¹ The notification laws "create a false sense of security," said Ed Martone, executive director of the American Civil Liberties Union (ACLU) chapter of New Jersey.⁹² Because notification is mandated, the general public assumes that it will be notified about every released sexual offender who settles in the community.⁹³

On the contrary, most states notify a community only when certain sexual offenders are released.⁹⁴ The class of offenders subject to general public notification varies from state to state. For example, in Washington, the general public is notified only when the offender is classified as a Level III offender under the Washington Sheriff's Association Guidelines.⁹⁵ A Level III offender is one who has demonstrated a high propensity to reoffend by a lack of interest in counseling or rehabilitation and has committed violent offenses in the past.⁹⁶ Level I and II offenders are subject to different notification provisions that do not involve the general public.⁹⁷

Another problem with notification is excessive NIMBYism (Not In My Back Yard Syndrome).⁹⁸ When a community is notified that a sexual offender has settled in its area, it often bands together to drive that offender from the community.⁹⁹ In some cases, the offender has been fired from his job,¹⁰⁰ evicted from his residence,¹⁰¹ and generally harassed until he has left the

91. *Stopping Sex Offenders Will Take More Money*, REC., Aug. 26, 1994, at B6 [hereinafter *Stopping Sex Offenders*]; Wiggins, *supra* note 85. "[N]otification alone accomplishes little and creates a false sense of security." *Stopping Sex Offenders*, *supra*. Parole officer Kevin Vogeler fears the specific warnings encouraged by the notification can be dangerous because parents and children will drop their guard around these sex offenders who are not subject to notification. Joan Abrams, *Sex Offenders: After Prison Confined to their New Life*, LEWISTON MORNING TRIB., Dec. 5, 1993, at 1A.

92. Wiggins, *supra* note 85.

93. *Id.*

94. Keene et al., *supra* note 83. From March 1990 to March 1993, 2216 sex offenders were released from Washington state prisons. Of that number, 20% (415 offenders) were subject to community notification. DONNELLY & LIEB, *supra* note 33, at 3.

95. DONNELLY & LIEB, *supra* note 33, at 3.

96. *Id.* at 16.

97. *Id.* at 3.

98. Smolowe, *supra* note 33.

99. Anderson, *supra* note 28.

100. See, e.g., *Sex-Offender Registration Laws*, *supra* note 74.

101. See, e.g., *id.*; Jim Hooker, *Megan's Law Has a Harsh Prototype; How Statute Works in Another State*, REC., Oct. 10, 1994, at A1. Within hours of Gary Ridgway's

area.¹⁰² Most offenders leave and move to areas that either have no registration provisions or, at the very least, no notification provisions.¹⁰³ "To make [the conviction] public probably means that person will be hounded out and into a place where there is no registry and no family or support group," said John Roberts, executive director of the ACLU chapter of Massachusetts.¹⁰⁴ This conceivably could lead to concentrations of sexual offenders in communities that are not legally, economically, or politically equipped to fend them off.¹⁰⁵ Public safety is ill-served by such redistribution.¹⁰⁶

C. Rehabilitation

There is some debate over whether notification statutes actually foster or impede rehabilitation. Offenders point out that the stigma associated with notification prevents their effective rehabilitation.¹⁰⁷ ACLU's Martone believes that rather than penalize sex offenders by registration and notification, "[t]he Legislature should focus instead on improving treatment programs to enable sex offenders [to] return to society."¹⁰⁸ Offenders sometimes cannot get jobs or find places to live, and the stigma of their crimes forces them to live in isolation.¹⁰⁹ "This is a crime of self-esteem and the inability to handle feelings and stress," said a forty-four-year-old convicted child

notification, he was evicted from his trailer. Hooker, *supra*.

102. Golden, *supra* note 70.

103. *Id.* Police in the State of Washington estimate that at least half of the sex offenders subjected to notification move to other states. *Id.* Paul Wood is an example. One week after his notification, he bought a train ticket and went from Washington to West Virginia. *Id.*

104. Doris S. Wong, 'Registry' is Sought for Sexual Offenders; Weld Wants Their Addresses Public, BOSTON GLOBE, Sept. 1, 1994, at 37.

105. *Vigilantism Isn't the Answer*, NEWSDAY, Aug. 14, 1994, at A33.

106. *See id.*

107. Christy Hoppe & Diane Jennings, *Ex-inmates Post Quandry for Many States: Convicts Seen as Threat Even After Their Release*, DALLAS MORNING NEWS, Aug. 29, 1993, at 1A. Dr. Bill Chambliss, a professor of sociology at George Washington University in Washington, D.C., argues that ostracizing sex offenders increases the likelihood of repeat offenses. *Id.*

108. Michelle Ruess, *Senate Passes Sex-Offender Crackdown; Fast Vote on Megan's Law*, REC., Oct. 4, 1994, at A3.

109. Golden, *supra* note 70.

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molester.¹¹⁰ "To make released sex offenders continuing targets is really to perpetuate the problems which caused the crime."¹¹¹

Offenders argue that communities will not forgive or forget their offenses even if they make a concerted effort to rehabilitate themselves¹¹² and that they will continue to be ostracized despite their best efforts to become law-abiding citizens of the community.¹¹³ For instance, "[b]randing the forehead of a convicted child molester . . . [or s]hipping [an offender] to some remote island" were recent suggestions at a New Jersey town meeting for what should be done with sexual offenders.¹¹⁴

Proponents insist that registration and notification rehabilitate offenders. Stripping away the secrecy under which the offender lives and operates forces the offender to acknowledge his problems.¹¹⁵ By facing the deviancy head on, an offender can make more progress toward true rehabilitation.¹¹⁶ Offenders typically live in a state of denial.¹¹⁷ They deny that anything is wrong with their behavior, often blaming their victims or society for their deviant impulses.¹¹⁸ By forcing the offender to confront society's opprobrium on a daily basis, this denial can be effectively ended and the offender can continue with the process of rehabilitation.¹¹⁹

110. Ruess, *Offenders Fear Vigilantism*, *supra* note 67.

111. *Id.*

112. See Michelle Ruess, *Hard To Say Which Sex Offenders Pose Threat*, *Experts Say*, REC., Aug. 25, 1994, at A3; Ruess, *Offenders Fear Vigilantism*, *supra* note 67; Smolowe, *supra* note 33.

113. *Sex-Offender Registration Laws*, *supra* note 74. "Nobody can live in a house with a sign out front that says, 'Hi! I raped a child.' They'll get out and soon realize that no matter what they do, they're seen as evil, so they might as well be evil," says James Boren, a director of the Louisiana Association of Criminal Defense Lawyers. *Id.*

114. Wiggins, *supra* note 85.

115. Anderson, *supra* note 28. Lee Wilson, who works with sex offenders, said: "Yeah, it's working. These guys are starting to come forward and say, 'Hey, I've got to get going.' And they start dealing with treatment issues and things they should have dealt with years ago. This [notification] is the push, definitely the push." *Id.*

116. *Id.*; Cathy Kiyomura, *Sex Offender Law To Begin*, OREGONIAN, Nov. 3, 1993, at B1. "[N]otification might force some offenders to confront their problems and actively participate in rehabilitation." Kiyomura, *supra*. Maggie Miller, a probation officer in Oregon, stated: "I let my offenders know they have a serious crime and if they don't go to treatment or if they are high risk, we will notify on them. We will not keep a sex offender in the community who is not working to get better." *Id.*

117. Golden, *supra* note 70; Ruess, *Offenders Fear Vigilantism*, *supra* note 67.

118. Golden, *supra* note 70.

119. Barbara Kessler, *Sex Offender Law Falls Short*, DALLAS MORNING NEWS, May 19, 1996, at 1A.

However, some sex offenders disagree.¹²⁰ "All of us had high-level professional jobs. We were well-respected in the community. We knew the consequences, it did not stop us," said a forty-four-year-old sex offender.¹²¹

D. Danger to the Offender: Harassment and Vigilantism

A major concern about public notification statutes is the danger posed to offenders when the public is notified of the details of their offenses.¹²² Offenders fear that notification will result in vigilantism.¹²³ Such fears are justified.¹²⁴ The most widely known example of vigilantism is the burning of Joseph Gallardo's house in Lynnwood, Washington the night before he was to move back in after his release from prison.¹²⁵ Other similar events have happened across the State of Washington, where community notification legislation has been in effect since 1990.¹²⁶ For example, in Thurston County, Gary Ridgway quit a vocational training program, was evicted from his home, and was shunned by neighbors within hours of notification.¹²⁷ Residents in the area talk of guns, dogs, and other protections for their children.¹²⁸ Such vigilantism often forces the offender to "go underground" or to flee the area.¹²⁹

120. Ruess, *Offenders Fear Vigilantism*, *supra* note 67.

121. *Id.* Unfortunately, the statistics bear out this statement. A long-term study conducted at the Penetanguishene Mental Health Centre in Ontario, Canada and published in 1989 revealed that "sex offenders who received treatment actually committed more violent crimes following their release than those [who received no therapy]." Short & Halvorsen, *supra* note 5.

122. Ruess, *Offenders Fear Vigilantism*, *supra* note 67.

123. *Id.* Jerry Sheehan, of the ACLU of Washington stated, " 'People better be ready for the time when somebody gets hurt' because of a public policy that 'fans the flames of public emotion.' " Jolayne Houtz, *When Do You Unmask a Sexual Predator?*, SEATTLE TIMES, Aug. 30, 1990, at B2.

124. The Washington Institute for Public Policy reports that there have been 14 acts of harassment directed at released sex offenders or their families in the three-year period that the law has been in effect. DONNELLY & LIEB, *supra* note 33, at 7; Keene et al., *supra* note 83. "[W]hen police have decided an offender warrants notification, the public response has often been more aggressive and violent than anticipated." Keene et al., *supra* note 83.

125. Karen Alexander, *Child Rapist Moves To New Mexico—And Publicity Follows*, SEATTLE TIMES, July 16, 1993, at A1.

126. Ellis E. Conklin & Robert L. Jamieson, Jr., *Sex Offender is Moving to Another State*, SEATTLE POST-INTELLIGENCER, July 15, 1993, at A1.

127. Hooker, *supra* note 24.

128. *Id.*

129. *Id.* Critics of the law argue that its propensity to force offenders

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Fear of vigilantism and harassment can also convince the offender not to register at all.¹³⁰ Although, in Washington, failure to register is a serious felony for offenders convicted of certain offenses,¹³¹ most states punish failure to register as a misdemeanor.¹³² Fear of misdemeanor punishment is an inadequate incentive to register as compared to the potential harassment, vigilantism, and devastation that the offender fears will accompany notification.¹³³

Once the public is notified, they do one of two things: They either lock themselves in their homes or drive the offender to the next community. We have seen both responses in New Jersey and other states that have notification laws. It moves the problem around, but doesn't solve anything.¹³⁴

There is a danger not only to offenders, but also to those who provide offenders with shelter or employment.¹³⁵ Family members who offer to help and support the offender are often ostracized and stigmatized.¹³⁶ Bradford Webb's situation provides a perfect example.¹³⁷ Webb, a mildly retarded man, pled guilty to second-degree sexual assault in May 1994.¹³⁸ Webb's sister tried to keep her brother's troubles a secret from the community.¹³⁹ Despite her efforts, she has seen her nieces, Webb's daughters, ostracized by their former friends.¹⁴⁰ "My 6-year-old niece comes home crying three to four times a week," she said.¹⁴¹

"'underground' . . . undermines the protections the law was designed to offer." *Id.*

130. *Id.*

131. WASH. REV. CODE ANN. § 9A.44.130(7) (West Supp. 1996). The basis for such classifications is the risk of recidivism. Such risk classifications are generally based on the repeat offense rates set forth in the *Handbook of Sexual Assault* by William Marshall and Howard Barbaree. Anderson, *supra* note 28.

132. See, e.g., O.C.G.A. § 42-9-44.1(d) (1994); KAN. STAT. ANN. § 22-4903 (Supp. 1994); ME. REV. STAT. ANN. tit. 34-A, § 11003(5) (West 1992); NEV. REV. STAT. ANN. § 207.157 (Michie 1992); TENN. CODE ANN. § 40-39-108 (Supp. 1995).

133. Richards, *supra* note 33.

134. Bruno Tedeschi, *Molesters Claim Voluntary Aspect Makes Laws Toothless*, REC., Sept. 22, 1994, at B1 (quoting Ed Martone, director of New Jersey Chapter of the ACLU).

135. Alexander, *supra* note 125.

136. *Id.*

137. Leslie Haggin, *Measure Not Enough, Some Say*, REC., Aug. 30, 1994, at A1.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

The mother and grandmother of Alan Jay Groome, a convicted sex offender, are also familiar with this type of community reaction.¹⁴² Within hours after notification of Groome's status as a sex offender, the company that owned their apartment issued an ultimatum: Groome could move out and never visit, or they all had to go.¹⁴³

An elderly couple in Olympia, Washington, who took in convicted sex offender Warren Pendleton, witnessed first hand the vengeful behavior of their community.¹⁴⁴ They received hate mail, threatening visits from community leaders, and other random acts of vigilantism.¹⁴⁵ With no employer or landlord willing to take him on, Warren Pendleton, like so many other sex offenders, left the State of Washington.¹⁴⁶

In response to such vigilantism, Senator Louis Kosco, a New Jersey state senator, is considering sponsoring legislation that would make it a crime to harass sex offenders or their families.¹⁴⁷ "It's a real problem," he said.¹⁴⁸

E. Financial Burden on Law Enforcement Agencies, Communities, and Offenders

Some officials are concerned with the costs of offender registration and notification.¹⁴⁹ The administration of a registry alone requires personnel and money.¹⁵⁰ Some states, though providing for a central registry and a host of administrative procedures to regulate it, have failed to provide the requisite law enforcement agencies with the necessary funds.¹⁵¹ The Federal Wetterling Act mandated that states establish such a central

142. Golden, *supra* note 70.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. Ruess, *Offenders Fear Vigilantism*, *supra* note 67.

148. *Id.*

149. Wiggins, *supra* note 85.

150. *Stopping Sex Offenders*, *supra* note 91.

151. See Linda Keene, *Warning Signs—A New State Law Alerts Parents to Predators in the Neighborhood and the Struggle to Cope Begins*, SEATTLE TIMES, Sept. 15, 1991, at 17. "There is nothing in [the Community Protection Act] to help [the community] install security fences or flood lights; nothing to protect their children after learning that a predator has arrived. It's as if someone had shouted "Fire!" and then stood back and watched the panic." *Id.*

registry for certain offenses, but provided no specific funding for that provision.¹⁵²

In addition to the costs of administering the registry, the cost of notification alone can be prohibitive.¹⁵³ In Louisiana, some agencies accept donations to help offenders buy stamps so that they may notify all the people they are required to notify under the statute.¹⁵⁴ "Money is the central issue here. There is no way to effectively monitor dangerous sex offenders, to parole them for life, or to see that they receive the treatment they need without spending money on new programs and enough staff to make them effective."¹⁵⁵

III. ANALYSIS OF RELEVANT LEGAL ISSUES

Constitutional challenges to registration statutes have rarely been successful.¹⁵⁶ However, notification statutes are on shakier ground.¹⁵⁷ Each challenge to registration and notification statutes necessarily depends on the provisions of that particular state's statutes. New Jersey and Washington provide examples of how statutory provisions can affect a reviewing court's analysis and results.

For example, in Washington, the Governor responded to Earl Shriner's vicious attack by creating the Governor's Task Force on Community Protection.¹⁵⁸ The Task Force assessed current problems with the criminal justice system and established criteria for legal remedies.¹⁵⁹ The Task Force worked for five months crafting Washington's sexually violent predators statute.¹⁶⁰ Its recommendations to the Governor were

152. Robert T. Nelson, *Gorton, Dunn Oppose Crime Bill—This Despite Their Key Roles in Shaping Bill Now in Senate*, SEATTLE TIMES, Aug. 24, 1994, at A1 (stating that there is practically no funding in the crime bill to track offenders).

153. Golden, *supra* note 70.

154. *Id.*

155. *Stopping Sex Offenders*, *supra* note 91. "By and large, state prison systems lack the money, space, and political commitment either to rehabilitate sex offenders or to hold them long in already crowded prisons. All too often, offenders plea-bargain for short sentences, receive little or no treatment, and are freed to rape or molest again." Golden, *supra* note 70.

156. Anderson, *supra* note 28; Doe v. Poritz, 662 A.2d 367, 372 (N.J. 1995).

157. See, e.g., Artway v. Attorney General of New Jersey, 876 F. Supp. 666 (D. N.J. 1995).

158. David Boerner, *Confronting Violence: In the Act and in the Word*, 15 PUGET SOUND L. REV. 525, 538 (1992).

159. *Id.*

160. *Id.* at 538, 574.

unanimously adopted by the legislature.¹⁶¹ The community notification provisions enacted in Washington are discretionary;¹⁶² thus, not every sex offender must register and be subject to notification.¹⁶³

New Jersey's statute, on the other hand, was developed amid a huge public outcry following Megan Kanka's death. Within two months, the legislature passed ten bills regulating sex offenses and access to information.¹⁶⁴ Megan's Law is the toughest state law on sex offender notification.¹⁶⁵ Registration is mandatory¹⁶⁶ for all sex offenders regardless of when the offenses were committed.¹⁶⁷

A. Washington v. Ward

The Washington Supreme Court rejected a challenge to the registration and notification sections of the Community Protection Act in *State v. Ward*.¹⁶⁸ In *Ward*, defendant Jeffrey S. Ward, previously convicted of a felony sex offense, was advised of his duty to register with the state as a sex offender.¹⁶⁹ He challenged this requirement on the ground that the registration statutes were unconstitutional ex post facto laws because the registration and notification provisions applied retroactively to those convicted of sexual offenses prior to the passage of the Community Protection Act in 1990.¹⁷⁰ In determining that the Act did not constitute an ex post facto law, the court considered whether the notification provisions operated as an "affirmative disability or restraint" on the defendant.¹⁷¹

161. *Id.* at 574.

162. WASH. REV. CODE ANN. § 4.24.550(1) (West Supp. 1996).

163. *Id.* § 9A.44.130(3)(a). Each class of offender—those currently in custody, those on parole or probation, those being held because of incompetency to stand trial—are given different registration deadlines. *Id.* However, regardless of category, the registration provisions are all prospective. *Id.* These provisions apply only to sex offenders being punished for offenses committed on or after February 28, 1990. *Id.*

164. Gray, *supra* note 29.

165. Suzanne Fields, *We Should Lock Them Up For Life*, ATLANTA J. & CONST., Mar. 6, 1995, at 8A.

166. N.J. STAT. ANN. § 2C:7-2(a) (West 1995).

167. *Id.*

168. 869 P.2d 1062, 1077 (Wash. 1994).

169. *Id.* at 1065-66.

170. *Id.* at 1066.

171. *Id.* at 1069.

Ward also argued that actual disclosure of information acted as a restraint by creating a hostile environment and negative publicity.¹⁷² The court addressed this argument, stating that registration itself did not impose an additional burden on the defendant.¹⁷³ All the information required to be given by him was already on file with at least one state agency at the time of his conviction.¹⁷⁴ In addition, the mere collection of information does not restrain the offender in any way.¹⁷⁵ As long as the offender complies with registration requirements, the offender is free to come and go.¹⁷⁶

The court noted that Washington provides for the release of criminal conviction records by statute.¹⁷⁷ Therefore, only when nonconviction data, such as the offender's current name and address, is disclosed does the statute even provide potential for restraint.¹⁷⁸ The court held that the disclosure did not restrain the defendants because the legislature limited the disclosure of information to the public:¹⁷⁹ "The Legislature placed significant limits on (1) whether an agency may disclose registrant information, (2) what the agency may disclose, and (3) where it may disclose the information."¹⁸⁰ Thus, the legislature clearly intended to disclose relevant information to the public only when circumstances evidence a threat to public safety.¹⁸¹

First, the court held that to release registry information the agency "must have some evidence of an offender's future dangerousness, likelihood of reoffense, or threat to the community."¹⁸² The statute, on its face, imposed such a requirement that, absent such evidence, the information could not be disseminated.¹⁸³

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* (citing the Washington State Criminal Records Privacy Act, WASH. REV. CODE ANN. § 10.97.050(1) (West Supp. 1996)).

178. *Id.*

179. *Id.*

180. *Id.* at 1069-70.

181. *Id.* at 1070. "Public agencies are authorized to release relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection." *Id.* (quoting WASH. REV. CODE ANN. § 4.24.550(1) (West Supp. 1996)).

182. *Id.*

183. *Id.*

Second, the court stated that the statute limits what may be disclosed to the public.¹⁸⁴ The statute authorizes the disclosure of information that is "relevant and necessary"¹⁸⁵ to further the stated purposes of the statute—public protection and effective operation of law enforcement.¹⁸⁶ This imposes an obligation on the agency to release only that information necessary to counteract the danger posed by the release of the offender.¹⁸⁷ The information released will vary, depending on the entity to whom the information is released.¹⁸⁸ For example, a potential employer may need more or different information than the general public.¹⁸⁹

The third limitation imposed by the statute is geographic.¹⁹⁰ Because the release of information must be "related to the furtherance"¹⁹¹ of the statute's goals, the geographic release must rationally relate to the threat of danger posed by the offender.¹⁹² Depending on the circumstances of the particular case and the typical method of the offender in question, the agency will decide how broad or narrow the release of information must be to counteract the threat posed by that particular offender.¹⁹³ It may be as broad as the release of information to the public at large, or as narrow as the release of information to specific schools and day-care centers.¹⁹⁴ The court also noted that the warning itself may vary according to the geographic scope and the offender's methods.¹⁹⁵ If an offender has a habit of preying on neighbors, those living nearby may deserve a more detailed warning than those farther away.¹⁹⁶ In all cases, the scope of the warning must be tailored to the threat posed by the offender.¹⁹⁷

184. *Id.*

185. *Id.* (quoting WASH. REV. CODE ANN. § 4.24.550(1) (West Supp. 1996)).

186. *Id.*

187. *Id.*

188. *See id.*

189. *Id.* "[R]elease of an offender's social security number may be unnecessary in many cases, but critical where a potential employer must discover the offender's identity and criminal background." *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.* at 1070-71.

194. *Id.* at 1071.

195. *Id.*

196. *Id.*

197. *Id.*

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Finally, the court responded to the offender's argument that negative publicity is an affirmative burden:¹⁹⁸ "Any publicity or other burdens which may result from disclosure arise from the offender's future dangerousness, and not as punishment for past crimes."¹⁹⁹

The court discussed other factors in determining whether the registration provisions of the Community Protection Act operated as an ex post facto law.²⁰⁰ The court held that registration: (1) was not an affirmative disability or restraint; (2) was not historically regarded as punishment; (3) only furthered the traditional aims of punishment incidental to its primary purposes; and (4) was not excessive in relation to nonpunitive purposes.²⁰¹ Because the court found that registration did not constitute extra punishment as determined by the above factors, it ruled that the Community Protection Act did not operate as an ex post facto law.²⁰²

However, other state statutes, not as carefully drafted as the Community Protection Act, may not be on stable ground. The Washington Supreme Court in *Ward* strongly implied that it was the limitation on the release of information that swayed its decision that the statute did not impose an affirmative restraint or disability.²⁰³

B. *Artway v. Attorney General of New Jersey*

Two recent New Jersey cases further illustrate the uncertain constitutional fate of registration and notification statutes. In *Artway v. Attorney General of New Jersey*,²⁰⁴ the plaintiff, Alexander Artway, had been convicted of sodomy in 1971 and had been released from custody in 1992, after serving his entire twenty-year sentence.²⁰⁵ Under the terms of New Jersey's newly enacted Sexual Offender Registration Act,²⁰⁶ Mr. Artway was

198. *Id.* at 1069.

199. *Id.* at 1071.

200. *Id.* at 1072-74.

201. *Id.* at 1074.

202. *Id.*

203. *Id.*

204. 876 F. Supp. 666 (D.N.J. 1995).

205. *Id.* at 668.

206. The Act is commonly known as Megan's Law. N.J. STAT. ANN. §§ 2C:7-1 to -11 (West 1995).

compelled to register with law enforcement authorities in the municipality in which he planned to reside after his release.²⁰⁷

Instead of registering with local law enforcement authorities, Mr. Artway challenged the registration and notification statutes in federal district court under a variety of constitutional claims.²⁰⁸ He asserted that the statutes were unconstitutional under: (1) the Ex Post Facto Clause of the United States Constitution;²⁰⁹ (2) the prohibition against cruel and unusual punishment under the Eighth Amendment;²¹⁰ (3) the constitutional right to privacy recognized under the United States Constitution; (4) the prohibition against bills of attainder; and (5) the Double Jeopardy Clause.²¹¹

The court first addressed the plaintiff's ex post facto argument, setting out the historical context and intent of the Ex Post Facto Clause and enumerating the factors that determine whether legislation is punitive or regulatory.²¹² The court noted that, under *Calder v. Bull*,²¹³ the relevant ex post facto analysis for sex offender registration statutes is whether the "law . . . changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed."²¹⁴ This analysis focuses on whether the intent of the legislature in enacting the law was to punish the individual for past activity or whether the additional restriction of the individual is merely incidental to a valid regulation.²¹⁵ If the stated intent of the legislation is punitive, the court will apply an ex post facto analysis.²¹⁶ However, if the statute is not clearly punitive, the court must decide whether the statute, despite its regulatory function, is punitive in nature.²¹⁷

The court began the ex post facto analysis of New Jersey's Sexual Offender Registration Act by determining whether the

207. 876 F. Supp. at 668.

208. *Id.* at 667-68.

209. *Id.* at 668; see U.S. CONST. art. I, § 10.

210. *Artway*, 876 F. Supp. at 668; see U.S. CONST. amend. VIII.

211. *Artway*, 876 F. Supp. at 671.

212. *Id.*

213. 3 U.S. (3 Dall.) 386 (1798).

214. *Artway*, 876 F. Supp. at 672 (quoting *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390 (1798)).

215. *Id.*

216. *Id.*

217. *Id.*

statute was regulatory or punitive.²¹⁸ The court disregarded the legislature's stated aim that the legislation be regulatory and not punitive²¹⁹ and engaged in its own analysis under the following factors listed by the United States Supreme Court in *Kennedy v. Mendoza Martinez*:²²⁰

Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned²²¹

After enumerating the *Kennedy* factors, the court surveyed opinions from Arizona,²²² Washington,²²³ Louisiana,²²⁴ and Alaska²²⁵ dealing with the constitutionality of sex offender registration and notification statutes under the *ex post facto* analysis.²²⁶ After that survey, but before proceeding with the *ex post facto* analysis in this case, the court briefly discussed the plaintiff's other constitutional challenges.²²⁷

218. *Id.* at 673.

219. *Id.* The court cited *Collins v. Youngblood*, 497 U.S. 37 (1990), noting that even if the stated purpose of the legislation is regulatory, the court must still examine the effects of the statute and determine for itself whether or not the statute is punitive. *Id.* at 672. "[B]y simply labeling a law 'procedural' a legislature does not thereby immunize it from scrutiny under the Ex Post Facto Clause Subtle *ex post facto* violations are no more permissible than overt ones." *Id.* (quoting *Collins v. Youngblood*, 497 U.S. 37, 46 (1990)).

220. 372 U.S. 144 (1963).

221. *Artway*, 876 F. Supp. at 673 (quoting *Kennedy*, 372 U.S. at 168-69).

222. *Arizona v. Noble*, 829 P.2d 1217 (Ariz. 1992).

223. *Washington v. Ward*, 869 P.2d 1062 (Wash. 1994); *Washington v. Taylor*, 835 P.2d 245 (Wash. Ct. App. 1992).

224. *Louisiana v. Babin*, 637 So. 2d 814 (La. Ct. App. 1994).

225. *Rowe v. Burton*, 884 F. Supp. 1372 (1994).

226. *Artway*, 876 F. Supp. at 673-77.

227. *Id.* at 677-85. The court, in discussing plaintiff's Eighth Amendment, privacy, and bill of attainder arguments, noted that each of these analyses, however difficult and complicated, depended on the resolution of plaintiff's *ex post facto* claim. *Id.* Thus, the court discussed the legal and historical underpinnings of each theory, intimated how each might affect the constitutionality of the sex offender registration and notification statutes, but ultimately declined to decide the case on these grounds. *Id.* Instead, the court folded these separate constitutional concerns back into the *ex post facto* analysis. *Id.*

Finally, the court turned to the *ex post facto* analysis of Megan's Law.²²⁸ The court declined to give any deference to the stated legislative intent of the statute, stating that it must look beyond the intent of the statute and determine its punitive nature.²²⁹ The court stated that the registration and notification laws pose many dangers, using excerpts from *To Kill a Mockingbird*²³⁰ and *The Scarlet Letter*,²³¹ along with references to Nazi Germany,²³² to illustrate the use of devices that "brand registrants in the eyes of a hostile populace."²³³ Such branding, the court noted, could expose the registrants to "public humiliation rising to the level of punishment."²³⁴

Therefore, the court applied the *Kennedy* factors to determine the constitutionality of the notification provisions.²³⁵ The court held that public dissemination of a registrant's information creates an affirmative disability.²³⁶ It was not the heightened scrutiny of a registrant by law enforcement that created the disability, but the effect on the registrant's employability, business, and social associations.²³⁷ The court distinguished mere availability of the registrant's information in his criminal record from active dissemination of information to the public.²³⁸ Notification requires that additional information, not contained in a registrant's public criminal records, be disseminated.²³⁹ Public dissemination of the registrant's information guarantees that "a sex offender's former mischief—whether habitual or once-off—shall remain with him for life, as long as he remains a resident of New Jersey. . . . [S]uch an eclipse of a registrant's future weighs heavily in favor of finding it to be an affirmative disability or restraint."²⁴⁰

228. *Id.* at 685.

229. *Id.* at 686.

230. HARPER LEE, *TO KILL A MOCKINGBIRD* 8-9 (Warner Books 1987) (1960).

231. NATHANIEL HAWTHORNE, *THE SCARLET LETTER* 51 (Bantam Classic 1986) (1850).

232. *Artway*, 876 F. Supp. at 687.

233. *Id.*

234. *Id.*

235. *Artway*, 876 F. Supp. at 688. The court found the *registration* provisions constitutional, relying on the rationale of *Arizona v. Noble*, 829 P.2d 1217 (Ariz. 1992). *Id.*

236. *Id.* at 689.

237. *Id.* at 688-89.

238. *Id.* at 689.

239. *Id.*

240. *Id.*

The court noted that public dissemination of a registrant's malfeasance, after his debt to society has been paid, is "historically perceived as punitive."²⁴¹ The public has consistently found sex offenses to be loathsome.²⁴² On the other hand, the court acknowledged that the legislature had justified the need for notification with numerous studies showing an uncommonly high rate of recidivism among sex offenders,²⁴³ which supports regulatory rather than punitive purposes.

However, the court considered a number of additional factors that supported finding notification provisions to be punitive. The court held that the notification provisions promote deterrence.²⁴⁴ The function of the notification provisions is to deter reoffense through awareness.²⁴⁵ If law enforcement officials and the community are aware of the registrant's tendencies to reoffend, they can guard against and protect their children from the harm that could occur.²⁴⁶ The court held that this is clearly deterrence, "a traditional element of punishment."²⁴⁷

The fact that the behavior to which the notification statutes apply is a crime indicates its punitive nature.²⁴⁸ Further, because the notification provisions require "public dissemination of facts about registrants which otherwise could not be obtained," any alternative purpose, such as protecting the health, safety, and welfare of the community from the risk of reoffense, is outweighed by the law's punitive aspects.²⁴⁹

Finally, the court held that the notification provisions were excessive in relation to the alternative purposes assigned to the statute.²⁵⁰ Thus, under the *Kennedy* factors, the court found that the notification provisions were punitive and not regulatory²⁵¹ and, therefore, unconstitutional when retroactively applied.²⁵²

241. *Id.*

242. *Id.*

243. *Id.* at 690.

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.* at 691.

249. *Id.* at 692.

250. *Id.*

251. *Id.*

252. *Id.* at 669, 692. Megan's law contained three categories, or tiers, of notification.

C. Doe v. Poritz

In New Jersey state court, convicted sex offender John Doe²⁵³ had filed an action seeking to enjoin enforcement of New Jersey's registration and community notification laws and attorney general guidelines and seeking a determination that the laws were unconstitutional.²⁵⁴ The New Jersey Supreme Court, after the federal *Artway* case had been decided, held that the registration and notification laws were constitutional, but essentially rewrote the law and the guidelines, adding certain procedural protections to ensure constitutionality.²⁵⁵

The court began by discussing the dilemma faced by the New Jersey Legislature after Megan Kanka's murder.²⁵⁶ Protecting the public from repetitive and compulsive sex offenders was difficult, and the legislature was forced to compromise the safety of the public as well as the rights of convicted sexual offenders in enacting Megan's Law.²⁵⁷ The court discussed the legislative purpose behind Megan's Law, summarizing the law's general provisions and studies that support a high recidivism rate among sex offenders.²⁵⁸ The court noted that such laws were not the result of only one state's horrible experience, but were a national trend reflecting a societal problem.²⁵⁹

Next, the court explained in detail the provisions of Megan's Law and the attorney general's guidelines.²⁶⁰ Generally, the law consists of two parts: registration and notification.²⁶¹ All sex offenders convicted of an enumerated list of offenses are required to register with law enforcement officials and to keep the

The court noted that two of the tiers—Tier 2, which allowed notification of schools, day-care facilities, battered women's shelters, and all other facilities that were entrusted with the care of women and children, and Tier 3, which allowed notification of all those likely to come in contact with the offender—were both unconstitutional when applied retroactively. *Id.*

253. Doe v. Poritz, 662 A.2d 367 (N.J. 1995).

254. *Id.* at 372.

255. *Id.*

256. *Id.* at 372-73.

257. *Id.* at 373.

258. *Id.* at 373-76.

259. *Id.* at 376. The court noted that recently enacted federal legislation required states to enact sex offender registration laws in order to receive certain federal funds. *Id.*; see 42 U.S.C. § 14071(f)(2)(A) (1995).

260. Doe, 662 A.2d at 377.

261. *Id.*

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information current with annual verification.²⁶² Registration must be maintained for life unless the offender both remains offense-free for fifteen years and successfully petitions the court.²⁶³ The scope of notification is based on the offender's classification.²⁶⁴ The statute creates three classification levels, known as tiers.²⁶⁵ All offenders are subject to some level of notification.²⁶⁶ The higher the number of the tier, the wider the scope of the notification.²⁶⁷ The attorney general's guidelines supplement the statutory provisions, prescribing how classifications are made and by whom.²⁶⁸

In one of the most important sections of the opinion, the court interpreted Megan's Law and revised the attorney general's guidelines.²⁶⁹ First, the court noted that it can revise and interpret a law to avoid invalidating the law on constitutional grounds.²⁷⁰ Among its many changes to the law, the court (1) revised the factors used by the prosecutor to classify the registrant;²⁷¹ (2) required that the registrant, upon notice of his classification and application to the court, have judicial review of his classification before the notification is carried out;²⁷² (3) mandated that the state provide the registrant with counsel at his classification hearing;²⁷³ and (4) set out procedures for judicial review of the registrant's classification.²⁷⁴ Further, the court provided some guidance to future reviewing courts about the meaning of low, moderate, and high risk for reoffense—the

262. *Id.* at 378-79.

263. *Id.* at 378.

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.* at 378-79.

269. *Id.* at 381.

270. *Id.*

271. *Id.*

272. *Id.* at 382-83.

273. *Id.* at 382. This requirement caused the New Jersey Bar Association to protest. Robert Hanley, *'Megan's Law' Leaves New Jersey Lawyers in a Tough Spot*, N.Y. TIMES, Oct. 16, 1995, at A9. The state originally wanted to include sex offender classification challenge assignments as a part of an attorney's pro bono work. *Id.* Attorneys throughout the state vigorously objected, citing everything from excessive workload to moral repulsion as grounds to refuse. *Id.* Ultimately, the state backed down and assigned the sex offender classification challenges to the New Jersey Public Defender's office. Andy Newman, *N.J. Law; Taking a Tougher Stand on Crime*, N.Y. TIMES, Dec. 31, 1995, § 13 (N.J.), at 8.

274. *Doe*, 662 A.2d at 382-83.

standards used for tier classification.²⁷⁵ The court restricted Tier Two and Tier Three notification to those persons “likely to encounter” the registrant in the community.²⁷⁶ The court also provided for the appointment of at least one judge in each “vicinage” who will handle all applications for tier classification review to ensure uniformity of treatment.²⁷⁷ Additionally, a three judge panel would be appointed that would have the responsibility for reviewing all classification decisions for uniformity.²⁷⁸ Finally, the court required the Administrative Office of the Courts to issue an annual report that, without compromising the registrants’ identities, would notify the public of Megan’s Law’s implementation.²⁷⁹ The court suggested that perhaps supervision by a legislatively created agency might be better equipped to handle implementation than the courts would.²⁸⁰

Next, the court turned to the plaintiff’s contention that Megan’s Law violated the prohibition on ex post facto laws.²⁸¹ The law’s validity depended on whether or not the notification provisions constituted punishment.²⁸² The plaintiff argued that any punitive impact, even the slightest deterrent effect, compelled the conclusion that punishment had been inflicted.²⁸³ The court rejected this argument, stating that only when no other explanation for a statute exists can such an argument succeed.²⁸⁴ When the legislative intent is remedial, the burden to show punitive intent is on those claiming that the statute is punitive.²⁸⁵ They must do so by the clearest evidence of punitive intent.²⁸⁶

Although other courts have used the “so-called ‘test’”²⁸⁷ of *Kennedy*, this court distinguished the *Kennedy* analysis, stating

275. *Id.* at 383-84.

276. *Id.* at 385-86.

277. *Id.* at 386.

278. *Id.*

279. *Id.*

280. *Id.* at 387.

281. *Id.*

282. *Id.* at 390.

283. *Id.* at 392.

284. *Id.* at 392-93.

285. *Id.* at 398 (citing *United States v. Ward*, 476 U.S. 242, 248-49 (1980)).

286. *Id.*

287. *Id.* at 399.

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that the “test” in that case was not a test at all and was not relevant to this analysis.²⁸⁸

The court stated that Megan’s Law is clearly remedial.²⁸⁹

The legislative intent . . . is clearly and totally remedial in purpose [The laws] were designed simply and solely to enable the public to protect itself from the danger posed by sex offenders, such offenders widely regarded as having the highest risk of recidivism. . . . “There is no doubt that preventing danger to the community is a legitimate regulatory goal.”

We find it difficult to accept the notion that the Registration and Notification Laws are designed or are likely to deter repetitive and compulsive offenders who were not previously deterred by the threat of long-term incarceration.²⁹⁰

Any punitive effect resulting from publicizing the registrant’s information is merely a consequence of the remedial scheme, and not intended as punishment.²⁹¹

The court noted that under the tier system, the notification provisions were narrowly tailored—designed to perform their remedial function without excessive intrusion into the registrant’s anonymity.²⁹² Because the purpose of the laws is solely regulatory and its provisions are narrowly tailored—aimed only at achieving that regulatory purpose—they do not constitute punishment.²⁹³ Therefore, the plaintiff’s *ex post facto*, bill of attainder, double jeopardy, and cruel and unusual punishment claims must fail.²⁹⁴

The court then turned to plaintiff’s privacy claims, first addressing whether the plaintiff had a reasonable expectation of privacy in the information to be disclosed under the registration and notification provisions.²⁹⁵ The plaintiff had no reasonable expectation of privacy in the information contained in his public

288. *Id.* The *Kennedy* test, rejected by this court, was used by the federal district court to invalidate the notification provisions of Megan’s Law in *Artway v. Attorney General of New Jersey*, 876 F. Supp. 666 (D.N.J. 1995).

289. *Doe*, 662 A.2d at 404.

290. *Id.* (quoting *United States v. Salerno*, 481 U.S. 739, 747 (1987)).

291. *Id.*

292. *Id.*

293. *Id.* at 405.

294. *Id.*

295. *Id.* at 406.

record of arrest and conviction²⁹⁶ or in other information required for registration, such as his age, legal residence, or type of vehicle, because that information is also available in public records.²⁹⁷

The court found that the plaintiff had some expectation of privacy in his home address when it was coupled with the other information required for notification.²⁹⁸ A distinction exists between providing access to information available in public records and compiling and disclosing that information in one source.²⁹⁹

Having found a privacy interest to be implicated by the notification provisions of Megan's Law, the court considered whether those privacy interests were outweighed by the state's interest in disclosure.³⁰⁰ After analyzing the relative interests at stake, the court concluded that the state's interest in public disclosure substantially outweighed the plaintiff's privacy interest. Thus, disclosure was allowed.³⁰¹

The court concluded by stating: "Despite the unavoidable uncertainty of our conclusion, we remain convinced that the statute is constitutional. To rule otherwise is to find that society is unable to protect itself from sexual predators by adopting the simple remedy of informing the public of their presence."³⁰²

IV. PRIVACY RIGHTS AND OTHER CONTINUING CONCERNS

Although the right of privacy was addressed in *Doe v. Poritz*,³⁰³ how the right of privacy will affect notification statutes remains uncertain. Each state will have to decide the issue based on the provisions of its particular notification statute and its privacy law jurisprudence.

296. *Id.*

297. *Id.* at 407.

298. *Id.* at 409.

299. *Id.* at 411. The court engaged in an extended analysis of *United States Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), which held that the Freedom of Information Act did not require the FBI to provide 'rap sheets' to the public upon request. *Id.* at 410-11.

300. *Id.* at 411.

301. *Id.*

302. *Id.* at 422. Justice Stein filed a vigorous dissent to the majority's opinion in this case. However, because the resolution is important to this Note only to illuminate the problems that can occur in sex offender notification statutes, his dissent will not be discussed.

303. 662 A.2d 367 (N.J. 1995).

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Sex offenders argue that public notification statutes violate their common law right of privacy.³⁰⁴ The common law provides for a cause of action when the right of privacy is violated by public disclosure of private facts.³⁰⁵ However, there are two major limitations on the right of privacy.³⁰⁶ First, the publicized facts must be truly private.³⁰⁷ Matters of public record are not private facts.³⁰⁸ Second, the right of privacy will not be infringed when the publication concerns a matter of legitimate public interest.³⁰⁹

Arguably, these limitations on the right of privacy defeat the infringement argument asserted by sexual offenders. Obviously, an offender's criminal conviction for a sexual offense is a matter of public record. In addition, knowledge of such matters is clearly in the public interest. Some states explicitly assert this in their notification statutes. For example, the Louisiana statute provides:

The legislature finds that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest. The legislature further finds . . . that lack of information . . . may result in failure . . . to meet this paramount concern of public safety. . . . Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sex offenders . . . under limited circumstances [to] the general public [] will further the governmental interests . . . so long as the information released is rationally related to the furtherance of those goals.³¹⁰

304. See Mary A. Kircher, *Registration of Sexual Offenders: Would Washington's Scarlet Letter Approach Benefit Minnesota?*, 13 HAMLINE J. PUB. L. & POLY 163, 173 (1992).

305. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977). See generally 62A AM. JUR. 2D *Privacy* § 100 (1990).

306. *Frith v. Associated Press*, 176 F. Supp. 671, 674 (E.D.S.C. 1959).

307. *Davis v. Monsanto*, 627 F. Supp. 418, 421 (S.D. W. Va. 1986).

308. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 492-94 (1975); *Frith*, 176 F. Supp. at 674. The right of privacy is not infringed by the publication of matters of public record. *Cox Broadcasting*, 420 U.S. at 493.

309. *Frith*, 176 F. Supp. at 674.

310. LA. REV. STAT. ANN. § 540A (West. Supp. 1996).

Other states assert the governmental interest implicitly by providing civil immunity for their agents who release erroneous information in good faith.³¹¹

Although the facts of a sex offender's conviction are public record at the time of conviction, this public record cannot be publicized forever without some consideration of the sex offender's privacy interests.³¹² However, in some states, the registration and notification provisions for sexual offenders are imposed for life.³¹³ Because the notification duration is not limited, civil libertarians argue that such notification statutes violate sex offenders' right to privacy.³¹⁴ They claim that if a sex offender assumes a lawful role in society and is rehabilitated, the public record of the offender's convictions should fade into obscurity and, after a certain time, should no longer be considered a matter of public record.³¹⁵ However, the *Restatement (Second) of Torts* states that a lapse of time is not dispositive. It reads:

The fact that there has been a lapse of time, even of considerable length . . . does not of itself defeat the authority to give him publicity or to renew publicity when it has formerly been given. Past events and activities may still be of legitimate interest to the public Such a lapse of time is, however, a factor to be considered, with other facts, in determining whether the publicity goes to unreasonable lengths in revealing facts about one who has resumed the private, lawful and unexciting life led by the great bulk of the community.³¹⁶

Evidence shows that sex offenders have a high propensity to reoffend.³¹⁷ Therefore, the record of their convictions will

311. See, e.g., NEV. REV. STAT. ANN. § 207.155(3) (Michie Supp. 1995).

312. RESTATEMENT (SECOND) OF TORTS § 652D cmt. k (1976). A matter that was once of public record may be protected as a private fact when disclosure of the information would utterly ruin the new life of someone who has been rehabilitated. *Id.*

313. See, e.g., KAN. STAT. ANN. § 22-4906(a)(2) (Supp. 1994).

314. Robert O'Harrow, Jr., *Suburban Flier Campaign Targets Recently Released Sex Offender*, WASH. POST, Sept. 1, 1994, at C1.

315. *Id.*

316. RESTATEMENT (SECOND) OF TORTS § 652D cmt. k (1976).

317. David A. Kaplan et al., *The Incorrigibles*, NEWSWEEK, Jan. 18, 1993, at 48 (stating that recidivism rates for sex offenders are higher than other violent criminals).

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probably always be considered a matter of legitimate public interest. Many mental health professionals are convinced that predatory sexual offenders cannot be cured.³¹⁸ They analogize the law-abiding sexual offender to a sober alcoholic,³¹⁹ who must always be aware of and guard vigilantly against unlawful impulses.³²⁰ Due to the high propensity for reoffense and the danger that offenders pose to the uninformed public, registration for life upon conviction of a second sexual offense is probably not unreasonable.

Despite questions after *Doe v. Poritz* was decided, New Jersey began classifying registrants and notifying communities of offenders' presence.³²¹ As expected, registrants soon challenged their classification status, creating considerable work for prosecutors and public defenders.³²² Compounding problems further, because of the delay in enforcement of Megan's Law during litigation, New Jersey prosecutors faced an enormous backlog of cases.³²³ Currently, funding and workload have become serious questions for New Jersey prosecutors' and public defenders' offices.³²⁴ Maureen O'Brien, an assistant prosecutor in charge of Union County's sex offender notification unit, said: "We've had a lot of internal problems, duplicating efforts and backtracking. I don't want to say we make up the rules as we go along, but you have to figure out your procedures as you go, and

318. Kaplan, *supra* note 317.

319. Greene, *supra* note 75.

320. See Golden, *supra* note 70.

321. *Enforcing Megan's Law; N.J. Attorney General Issues Needed Guidelines*, ASBURY PARK PRESS, Sept. 24, 1995, at C2; *'Megan's Law' Warnings*, ASBURY PARK PRESS, Dec. 31, 1995, at A3; Terry Pristin, *11 Get Megan's Law Notices*, N.Y. TIMES, Oct. 6, 1995, at B1.

322. *In re Registrant E.A.*, 667 A.2d 1077 (N.J. Super. Ct. App. Div. 1995); *In re Registrant C.A.*, 666 A.2d 1375 (N.J. Super. Ct. App. Div. 1995).

323. Hanley, *supra* note 274. Deborah Poritz, New Jersey's Attorney General, estimates that there are over 2000 offenders who must be classified and given an opportunity to challenge that classification before notification can begin.

324. Lisa L. Colangelo, *Paying for Megan's Law Backlog*, ASBURY PARK PRESS, Nov. 3, 1995; Andy Newman, *Forecast for Enforcing 'Megan's Law': Complicated, Costly*, N.Y. TIMES, Jan. 14, 1996, § 13 (N.J.), at 6. New Jersey's Attorney General has suggested using forfeiture funds to pay for processing the backlog of cases under Megan's Law. Colangelo, *supra*. Forfeiture monies are generally used only for emergency equipment, not for salaries. *Id.* However, smaller counties may need to dip into those funds to pay detectives who carry out the notification. *Id.* Under extreme pressure, the state legislature agreed to provide \$250,000 to public defender's offices to fund the extra work in classification challenges that office has taken on. Newman, *supra*.

we change them regularly."³²⁵ The financial cost of Megan's Law is still undetermined, but all agree that it is climbing.³²⁶

Megan's Law will probably face future challenges. A provision of Megan's Law makes juvenile sex offender records available to courts, probation departments, county prosecutors, and other states.³²⁷ Upon request, the victim's immediate family, investigating law enforcement agencies, and the principal of the juvenile's school may also obtain the juvenile's crime records.³²⁸ This provision is likely to be challenged on many of the same grounds as the registration and notification requirements.

CONCLUSION

At this time, it is unclear whether notification laws will have any significant impact on either the behavior of sex offenders or the number of sexual offenses committed. What is clear is that the public, when hearing of a sexual offender in its midst, experiences a visceral reaction that is difficult to rationalize, mediate, or control. Such a reaction makes it politically impracticable, and almost impossible, for legislators to oppose notification laws.³²⁹

325. Newman, *supra* note 273.

326. *Id.*

327. N.J. STAT. ANN. § 2C:7-2 (West 1995). Jessica Nesterak, *Amanda Legacy Written in Laws*, ASBURY PARK PRESS, Sept. 23, 1995, at A6. New Jersey State Senator John O. Bennett, III referred to the legislation as "Amanda's Law." *Id.* His reference was to six-year-old Amanda Wengert, killed by her next door neighbor, twenty-one-year-old Kevin Aquino, just four months before Megan Kanka was raped and murdered. *Id.* Aquino was a juvenile offender who had a record of sex offenses against little girls. *Id.* He pled guilty to trespassing in a girls' restroom in Pine Brook Elementary School on Dec. 7, 1993. *The Sentencing of Kevin Aquino: A Crime that Changed a Community Forever*, ASBURY PARK PRESS, Sept. 23, 1995, at A7 [hereinafter *Aquino Sentencing*]. He was charged with harassment of a girl in connection with a Feb. 15, 1994 incident. *Id.* In fact, Aquino had a history of sexually molesting neighborhood children dating back to 1991. *Id.* However, because he was a juvenile when these offenses occurred, his record was not made available to law enforcement or school authorities. Nesterak, *supra*. Unfortunately, Amanda's parents did not know about it either. *Aquino Sentencing, supra*. In a surprise agreement just weeks before his death penalty case for kidnapping, murder, burglary, and felony murder charges resulting from Amanda's abduction, Kevin Aquino pled guilty to kidnapping and murder. *Id.* On Sept. 22, 1995, Aquino received a life sentence. *Id.* He will be at least seventy-four-years old when released. *Id.*

328. N.J. STAT. ANN. §§ 2C:7-4 to -5 (West. 1995).

329. Amy Bayer, *Deal Revives Provision on Sex Offenders*, Aug. 19, 1994, at A6. "[The Republicans] 'all but accused us of trying to protect perverts,' said one Judiciary Committee aide." *Id.*

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Although the benefits to their community may be unsure, activists continue to lobby for notification statutes in their state, township, county, or borough. Perhaps Anna Quindlen expresses this dichotomy most clearly:

[I]t is easy to imagine embracing any measure that gives even the illusion that we can make the world a less dangerous place for the little loves of our lives. Amid a plethora of concerns, issues and facts, there is no greater than this: the passion we all share to keep our children safe and sound.³³⁰

Claire M. Kimball

POST SCRIPT

On May 17, 1996, President Bill Clinton signed into law an amendment to the Violent Crime Control and Law Enforcement Act of 1994, known as Megan's Law, which requires the release of relevant information about sexually violent offenders.³³¹ The federal version of Megan's Law is sure to face the same legal and fiscal challenges that prior state laws have faced.

330. Anna Quindlen, *Public & Private; The Passion to Keep Them Safe*, N.Y. TIMES, Aug. 6, 1994, § 1, at 19.

331. Pub. L. No. 104-145, 110 Stat. 1345 (1996) (to be codified at 42 U.S.C. §§ 13701, 14071).