A Mandate Without A Duty: The Apparent Scope Of Georgia's Megan's Law

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A MANDATE WITHOUT A DUTY: THE APPARENT SCOPE OF GEORGIA’S MEGAN’S LAW

INTRODUCTION

The next time you visit your neighborhood playground, watch the people who stroll by and see if you can pick out the sexual predator. See if you can find the man who was just paroled from prison after serving little more than half of his sentence for viciously raping and strangling a seven-year-old girl.1 Is that him over there with the cute little puppy2 that your son can’t stop talking about? Or is that him over there telling your daughter and her friend how pretty they look? It’s hard to tell, isn’t it?

But don’t worry: Georgia recently passed a law that requires sheriffs to “notify” you when a sexual predator will be living in your community and mixing with your children.3 Surely you would have heard something by now. Would you be shocked to discover that your “notification” has been on the bulletin board in the sheriff’s office lobby for the last six months?4 Have you been to the sheriff’s office lately? Are you feeling a little safer now?

Since 1996, every state in the country has passed legislation designed to increase public awareness of the presence of sexual predators within communities.5 Known as Megan’s Laws, these statutes require convicted sexual predators to register with local law enforcement when they relocate to a community upon their release from prison.6 Georgia’s first version of Megan’s Law,7 following the example of those adopted nationwide, required

2. See id.
6. See id. at 250.
sheriffs to catalogue offenders, but only "authorized" them to notify the public upon the relocation of an offender. However, on July 1, 1997, Georgia's revised registration statute went into effect with a bold mandate requiring local law enforcement to notify the public of sexual predators within their communities.

But while Georgia's "tougher" stance against sexual predators looks good in the newspapers, it also looks confusing and ineffectively vague to the sheriffs charged with notifying the public. Although the Georgia General Assembly made it clear that the state's sheriffs now have an affirmative duty to notify the public, legislators neglected to define that duty. Instead, the General Assembly literally just replaced the words "authorized to release" with "shall release" and apparently expected the sheriffs to decide the scope of the resulting duty. Consequently, even before the new law took effect, sheriffs in counties across Georgia were scrambling to determine what method of notification the new law required. The options they were prepared to implement varied from posting the register on the Internet, to going door-to-door in the neighborhood, to doing nothing at all.

This Note discusses the apparent scope of the duty mandated by the vague wording of Georgia's Megan's Law and examines the consequences that may result if the General Assembly does not provide a more clear definition of that duty. Section I places Georgia's statute in the turbulent and emotionally charged

9. See Ellis, supra note 3.
10. See Stafford I, supra note 4.
12. See O.C.G.A. § 42-1-12(b)(3) (1997). The statute insists that sheriffs release sex offender information that is "necessary to protect the public," but it does not indicate how broadly or narrowly this mandate should be defined. Id.; see also infra notes 50-70 and accompanying text.
14. See Ellis, supra note 3.
15. See id.; Stafford I, supra note 4.
16. See Ellis, supra note 3; see also Duane D. Stanford, Molesters' Names to Hit Web: Sheriff Plans to Publish List Via Internet, ATLANTA J. & CONST., June 26, 1997, at J1 [hereinafter Stanford II].
context of Megan’s Laws as these laws developed nationwide. Section II discusses the implications of the statute’s vague wording on the sheriff’s duty of notification. Section III focuses on the potential civil liability lurking within this vague wording and examines how Georgia’s Tort Claims Act might affect the State’s response to a lawsuit. Finally, Section IV cautions that ineffective Megan’s Law notification may affect the duty of others within the community, including property owners and real estate agents.

I. GEORGIA’S MEGAN’S LAW IN A NATIONAL CONTEXT

A. The Development of Megan’s Laws in the United States

Megan’s Laws were a product of the public outrage\textsuperscript{17} that followed the brutal rape and strangulation in New Jersey of seven-year-old Megan Kanka.\textsuperscript{18} The man responsible for Megan’s murder had a history of sexually assaulting children and had been released from prison after serving little more than half of his sentence for two prior convictions.\textsuperscript{19} However, the disturbing part of this tragedy was that, unknown to her parents, Megan’s killer lived across the street from the Kankas in a house that he shared “with two other ‘recovering’ sexual offenders.”\textsuperscript{20}

Responding to the outrage surrounding Megan’s death,\textsuperscript{21} the New Jersey legislature passed the Sexual Offender Registration Act,\textsuperscript{22} which requires convicted sexual offenders, upon their release from prison, to register with local law enforcement and provide, in addition to other information, their current address and place of employment.\textsuperscript{23} The offender must update this information every ninety days, and local law enforcement may

\begin{itemize}
\item \textsuperscript{17} See The People of the State of New York v. Lewis Brenner, N.Y. L.J., Mar. 17, 1997, at 31 [hereinafter Brenner].
\item \textsuperscript{18} See Fields, supra note 1.
\item \textsuperscript{19} See id. On May 30, 1997, Jesse Timmendequas was found guilty of murdering, kidnapping, and sexually assaulting Megan Kanka and received the death penalty for his crimes. See Stafford I, supra note 4.
\item \textsuperscript{20} Fields, supra note 1.
\item \textsuperscript{21} See Stafford I, supra note 4.
\item \textsuperscript{22} N.J. STAT. ANN. §§ 2C:7-1 to 2C:7-11 (West 1995).
\item \textsuperscript{23} See Arway v. Attorney Gen., 81 F.3d 1235, 1243 (3d Cir. 1996) (citing N.J. STAT. ANN. §§ 2C:7-2b(1), 2C:7-4b(1) (West 1995)).
\end{itemize}
release this information "when . . . necessary for public protection," pursuant to a "notification" provision.\textsuperscript{24} Similar registration statutes were already in place in other states at the time of the New Jersey enactment,\textsuperscript{25} but these laws soon became known collectively as Megan's Laws.\textsuperscript{26} Further, Congress unanimously passed a national sex offender registration law\textsuperscript{27} as part of the Crime Control Act of 1994.\textsuperscript{28} The federal statute contained a clause encouraging states without sex offender registration laws to adopt such legislation, giving the states until 1997 to do so or risk losing ten percent of their federal "crime-fighting" funds.\textsuperscript{29} Today, all fifty states require sexual offenders to adhere to registration requirements upon their release from prison.\textsuperscript{30}

But in many states, and in the federal statute as well, registration is only half of the crackdown on the perils of recidivism among sex offenders.\textsuperscript{31} In 1996, Congress amended the federal Megan's Law to require the release of information within the sex offender register when local law enforcement officials deemed such release "necessary to protect the public."\textsuperscript{32} Once again, the federal government used its "crime-fighting" funds to encourage states to emulate this "notification" requirement, with thirty-two states responding in some form by May 1996.\textsuperscript{33}

As the registration and notification statutes became effective, the courts began to question their constitutionality. The first constitutional challenges to Megan's Laws originated, ironically, in New Jersey with both the registration and notification schemes subject to ex post facto, double jeopardy, equal
protection, and right to privacy scrutiny. In Artway v. Attorney General, the challenge came from a man released from prison in 1992, after serving a seventeen-year sentence for sodomizing a woman he had tied to a tree. When New Jersey passed its Megan's Law in 1994, the statute forced Artway to comply with its registration requirement because his “conduct was . . . ‘characterized by a pattern of repetitive and compulsive behavior.’” Artway argued that the retroactive application of both the registration and notification statutes was unconstitutional, but the district court only agreed as to the latter. Accordingly, the court upheld the mandatory registration of sexual offenders, but invalidated the community notification provision because it “violat[ed] the ex post facto clause of the Constitution in its retroactive application.” On appeal, the Third Circuit agreed with the validity of the registration statute, but vacated the lower court’s decision on the notification issue because it was not “ripe” for a constitutional challenge.

Less than three months later, the notification issue arose again in W.P. v. Poritz. This time, the same district court that decided Artway held that notification did not constitute punishment and, therefore, the statute did not violate the ex post facto, double jeopardy, or due process clauses of the Constitution. On appeal, the Third Circuit upheld the validity of the notification requirement, but reversed on due process grounds and remanded the case for a hearing in compliance with the defendant’s Fourteenth Amendment rights.

This debate rages in other jurisdictions as the states grapple with protecting the rights of sexual offenders while also

34. See Artway v. Attorney Gen., 81 F.3d 1235, 1242 (3d Cir. 1996).
36. See id. at 668.
37. Id.
38. See id. at 668, 692.
39. Id. at 692.
41. Id. at 1252-53.
43. See id. at 1211, 1219, 1223 (citing Artway, 81 F.3d at 1253, 1263).
45. See id. at 1111.
protecting the public.\textsuperscript{46} So far, Washington's and New York's Megan's Laws have been upheld by the Ninth and Second Circuits, respectively.\textsuperscript{47} However, in a 1996 decision, the Supreme Court of Kansas upheld only the registration requirement of its state's Megan's Law, finding the notification portion unconstitutional.\textsuperscript{48}

B. Georgia's Contribution to the Megan's Law Controversy

Although Georgia's Megan's Law has yet to face any serious constitutional challenges,\textsuperscript{49} its 1997 facelift places the statute firmly in the thick of the controversy. Since 1994, Georgia law has required persons convicted of committing sex crimes against children to register with local sheriffs and public school superintendents upon their release from prison; however, the 1994 version of the law did not contain a notification component.\textsuperscript{50} Sheriffs were required merely to maintain the registers, and citizens were responsible for requesting access to the list of sex offenders.\textsuperscript{51} But the furor surrounding Megan Kanka's death motivated the Georgia General Assembly to amend the state's registration law in 1996 with stricter requirements for offenders.\textsuperscript{52} The first change broadened the registration requirement to include "anyone convicted of a sex offense," not just child-related sex offenders.\textsuperscript{53} This change also created a separate classification for offenders considered at high

\textsuperscript{46} See infra notes 105-21 and accompanying text.


\textsuperscript{49} In 1998, the Georgia Court of Appeals declined to consider an ex post facto challenge to the registration requirement of O.C.G.A. § 42-9-12 because the appellant had not raised the issue in the trial court. See Turner v. State, 221 Ga. App. 747, 500 S.E.2d 628 (1998).


\textsuperscript{51} See Soto, supra note 50.

\textsuperscript{52} See 1996 Ga. Laws 1520 (creating new Code Section 42-1-12).

risk for recidivism and required these “sexually violent predator[s]” to register indefinitely or until excused by a judge.54 Finally, the amended law “authorized” sheriffs to disclose sex offender information to the public, but still lacked the mandatory nature of a notification statute.55 Georgia’s next amendment to its Megan’s Law came in 1997, on the heels of Congress’s 1996 Crime Bill revision.56 This change made public notification mandatory in Georgia whenever a sex offender established residence in a community, and saved the state from forfeiting some $1.5 million in federal crime funds for failure to adopt such a law.57

While the federal law encourages states to adopt a notification statute, it does so in broad terms so that state legislatures may develop their own law by formulating specific regulations.58 For example, the federal statute leaves states with the responsibility to generate standards for categorizing offenders according to the danger they pose to communities and to apply different methods of notification depending on that danger.59 But rather than turning Congress’s broad strokes into a more workable statute, Georgia’s legislators merely changed the language in the state’s notification provision to mirror the purposefully vague language of the federal law: the amendment to the notification provision literally only replaced the words “authorized to release” with “shall release.”60

Georgia politicians apparently were unconcerned with the potential effects the vague language might have on implementation when they endorsed this tactic. Former Georgia Senator Mary Margaret Oliver, then chairwoman of the Senate Judiciary Committee, stated that “[t]he technical provisions (of how the notification occurs) are not as important as the general public awareness that children are in harm’s way.”61 Further, Mark Cohen, Executive Counsel to then-Governor Zell Miller, seemed more concerned with loss of funding than the

54. Hansen & Alexander, supra note 53 (quoting O.C.G.A. § 42-1-12 (1997)).
56. See Brenner, supra note 17; see also O.C.G.A. § 42-1-12 (1997).
57. See Soto, supra note 50.
58. See Skorneck, supra note 27.
59. See id.
61. Hansen & Alexander, supra note 53 (quoting Mary Margaret Oliver).
implementation of the amendment: “Our intent is just to make sure that our statute complies with the federal statute, ... adding that the state could lose up to 10 [sic] percent of its federal crime funds if it failed to comply.” By adopting the amendment in this form, the General Assembly did indeed save the state’s crime funds, but the resulting statute retained the vague wording of the federal law without creating specific guidelines designed to help sheriffs implement community notification.

The vague Georgia mandate that requires law enforcement to alert the public to the presence of sex offenders is, not surprisingly, defined by one sentence without any reference to supporting guidelines: “The Georgia Bureau of Investigation or any sheriff maintaining records required under this Code section shall release relevant information collected under this Code section that is necessary to protect the public concerning those persons required to register under this Code section.” The confusion spurred by this vague mandate results from the broad discretion given to sheriffs to decide which means are “necessary to protect the public.” As a result, some Georgia sheriffs are implementing the notification statute in ways that are unlikely to provide actual notice to those in danger. Despite the new duty, one sheriff continued to place the burden on residents, requiring them to make a trip to the sheriff’s office in order to find out for themselves whether sexual predators resided in their neighborhoods. On the other side of the spectrum, one sheriff wanted to include the sex offender’s workplace as part of the information released via the Internet to the public, however, a county attorney cautioned against such

62. Id. (quoting Mark Cohen).
63. See supra note 57 and accompanying text.
64. See text accompanying supra note 60; see also Hansen & Alexander, supra note 53 (stating that statute leaves “tremendous discretion” to sheriffs).
66. Id.; see also Stafford I, supra note 4.
67. See, e.g., Craig Schneider, Impact of Megan’s Law: Facts on Sex Offenders Won’t Be Uniformly Available, ATLANTA J. & CONST., June 26, 1997, at B3. One county decided to leave the burden on citizens to seek out the information because of “the small number of inquiries on sex offenders.” Id.
68. See id.
69. See Stanford I, supra note 8.
action “because of the potential liability it could create for [the county].”\textsuperscript{70}

Sheriffs were not the only civic groups consulting with their attorneys. Real estate professionals, unaware of the scope of Megan’s Law notification, were concerned with the disclosures they needed to make to potential home buyers,\textsuperscript{71} while apartment property owners and managers contemplated “conduct[ing] thorough background checks on all prospective residents and employees.”\textsuperscript{72} Confusion reigned as law enforcement and community organizations began coping with the new statute’s potential to create “different Megan’s Laws in different counties.”\textsuperscript{73}

Even the General Assembly’s more recent amendments to its registration and notification provisions, passed during the 1998 and 1999 sessions, will have little effect in reducing the confusion created by the broad grant of discretion to sheriffs. First, the General Assembly provided that convicted sex offenders must now register within ten days after their release,\textsuperscript{74} whereas, the previous law gave no time frame.\textsuperscript{75} Second, the statute now requires registrants to place this information directly with “the sheriffs office in the county where such person[s] will reside.”\textsuperscript{76} Prior to this change, the Georgia Bureau of Investigation served as the reporting agency for registrants and forwarded the information to the county sheriffs.\textsuperscript{77} Third, the General Assembly strengthened the penalty for those failing to comply with registration or those providing false information by making the second, rather than the third, instance of such conduct a felony.\textsuperscript{78} Fourth, the General Assembly expanded

\textsuperscript{70} Id.

\textsuperscript{71} See Leon Stafford, Confusion Still Surrounds Megan’s Law Requirements, ATLANTA J. & CONST., July 3, 1997, at R2 [hereinafter Stafford II]; see also infra notes 210-13 and accompanying text.

\textsuperscript{72} Chris Young, Property Owners and Managers Subject to Liability for Failure to Check Sex Offender Registry, UNITS, Jan. 1, 1897.

\textsuperscript{73} Schneider, supra note 67.

\textsuperscript{74} See O.C.G.A. § 42-1-12(b)(1)(A)-(B) (Supp. 1999).

\textsuperscript{75} See 1997 Ga. Laws 380, § 1, at 383.

\textsuperscript{76} O.C.G.A. § 42-1-12 (b)(1)(A)-(B) (Supp. 1999).

\textsuperscript{77} See 1997 Ga. Laws 380, § 1, at 383.

\textsuperscript{78} Compare O.C.G.A. § 42-1-12(h) (Supp. 1999), with 1996 Ga. Laws 1520, § 1, at 1526. The strength of this increased penalty seems tempered, however, by the sentencing discretion that the legislature also provides in the same subsection. Under the previous enactment, the punishment was “imprisonment for not less than one nor more than three
registration to include those sex offenders who are residents of Georgia but were convicted under the laws of another jurisdiction, and those nonresidents who are required to register elsewhere but enter the state for employment or education purposes.\textsuperscript{79} Finally, the General Assembly took a very small step toward wider dissemination of the registration information by explicitly providing that sheriffs (1) "\textit{may} prepare a list of . . . [sexually violent predators] providing each person's name, address, and photograph"\textsuperscript{80}, (2) "\textit{shall} update the list periodically and \textit{may} post such list in a prominent and visible location in the sheriff's office and each city hall or primary administration building . . . within the county"\textsuperscript{81}; and (3) shall make the list available upon request to any public or private schools within the county.\textsuperscript{82} While several of these changes may indeed increase the effectiveness of Megan's Law registration, the remainder of this Note will argue that more widespread changes are needed to increase the overall effectiveness of Megan's Law notification.

II. DEFINING THE DUTY TO NOTIFY AMID A VAGUE MANDATE

Unlike Megan's Laws in many other states, which provide specific legislative guidelines to aid sheriffs with implementation, Georgia's notification statute leaves the task of interpreting what methods of notification are "necessary to protect the public" to other branches of the government.\textsuperscript{83} Georgia's sheriffs have already assumed the burden of defining their vague duty;\textsuperscript{84} however, Georgia's courts will likely add to the statute's interpretation.

\textsuperscript{80} O.C.G.A. § 42-1-12(b)(1)(B) (Supp. 1999) (emphasis added).
\textsuperscript{81} Id. (emphasis added).
\textsuperscript{82} See id.
\textsuperscript{83} O.C.G.A. § 42-1-12(i)(3) (1997).
\textsuperscript{84} See Schneider, \textit{supra} note 87.
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A. Deciding What It Takes to “Protect the Public”

Politicians have taken a tough stance on the subject of Megan’s Laws. When President Clinton signed the federal Megan’s Law in 1996, 85 “he hailed it as the start of an era when ‘America circles the wagons around [its] children.’” 86 Representative Dick Zimmer (R-New Jersey) sponsored the bill’s journey through Congress and called it “Megan Kanka’s legacy” in that her death “resulted in saving lives of other children.” 87 Even Georgia’s Megan’s Law sounds tough when it grants local law enforcement officials the power to take whatever action is “necessary to protect the public” from repeat sex offenders. 88 But how far does tough talk go when one valid way for sheriffs to interpret this mandate is to compile the information and let it catch dust until someone asks to see it? 89 How does one implement a notification statute that nowhere mentions the word “notify”?

1. Georgia’s Megan’s Law

The vague mandate to sheriffs to decide how their jurisdictions will comply with Megan’s Law leaves defining what constitutes “notice” to their discretion. 90 The Restatement (Second) of Agency states “[a] person has notice of a fact if [the person] knows the fact, has reason to know it, should know it, or has been given notification of it.” 91 Further, in Menke v. First National Bank of Atlanta, 92 the Georgia Court of Appeals, construing a statutory notice provision, remarked that “notice is not complete until it is received.” 93

So far, Georgia’s sheriffs have defined Megan’s Law notification in various ways, including posting the sex offender list on the Internet and listing sex offenders’ names and

86. Hansen II, supra note 11.
89. See Ellis, supra note 3.
90. See Stafford I, supra note 4.
91. RESTATEMENT (SECOND) OF AGENCY § 9(1) (1957).
93. Id. at 497, 309 S.E.2d at 837 (quoting Favors v. Travelers Ins. Co., 150 Ga. App. 741, 744, 258 S.E.2d 554 (1979)).
addresses in local newspapers.\textsuperscript{94} While these methods of notification place the information in the public domain and give neighbors a "reason to know" of a sex offender's presence,\textsuperscript{95} they still require citizens to take the first step and fall short of the kind of direct communication that ensures actual notice.\textsuperscript{96} Some Georgia sheriffs do recognize that the law requires "door-to-door" notice, but ironically the counties with the largest number of sex offenders have chosen not to take this course of action.\textsuperscript{97} Without requiring actual notice, has Georgia's Megan's Law really changed from earlier enactments that merely "authorized" but did not require law enforcement to release information "necessary to protect the public"?\textsuperscript{98}

The puzzling part about Georgia's adoption of a vague duty of notification in this statute is that the General Assembly uses more precise and specific language in the state's other notification statutes. First, in Georgia's "Crime Victims' Bill of Rights,\textsuperscript{99} the General Assembly explicitly requires that "prompt notification" be given to a victim when the person accused of the crime is released from custody pending judicial proceedings.\textsuperscript{100} The Crime Victims' Bill of Rights further mandates that the party releasing the accused from custody must provide the notification, which is "effected by placing a telephone call" to the victim.\textsuperscript{101} Second, Georgia's "School Safety Act,"\textsuperscript{102} which works like a Megan's Law notification statute, requires superior courts to notify current or future school superintendents when a student has been convicted of a felony.\textsuperscript{103} In contrast to Megan's Law, the School Safety Act specifically provides that written notice be made within thirty

\textsuperscript{94} See Schneider, supra note 67. \\
\textsuperscript{95} RESTATEMENT (SECOND) OF AGENCY § 8(1) (1957). \\
\textsuperscript{96} See Soto, supra note 50. \\
\textsuperscript{97} While Rockdale County planned to go "door-to-door" with information concerning its two sex offenders, DeKalb County, which listed 113 sex offenders, only planned to use the newspaper. See Hansen & Alexander, supra note 53; Schneider, supra note 67. While DeKalb County's plan may seem economically feasible, such a plan handicaps those living in larger, more urban areas and denies equal treatment to all citizens of Georgia. \\
\textsuperscript{98} O.C.G.A. § 42-1-12 (1997). \\
\textsuperscript{99} Id. §§ 17-17-1 to -15 (1995). \\
\textsuperscript{100} Id. § 17-17-7. \\
\textsuperscript{101} Id. (emphasis added). \\
\textsuperscript{102} Id. § 15-6-36 (1997). \\
\textsuperscript{103} See id.
days of the conviction and include the crime involved.\textsuperscript{104} Georgia's Megan's Law seeks to avoid the same dangers as these other laws, namely ignorance of potential harm to the public. However, the confusion from which Georgia's Megan's Law suffers could be cured by answering the same basic questions that these other notification laws address: Who should be notified? How should they be notified? When should they be notified?

2. Megan's Laws in Other States

For further guidance in constructing a clearer and more effective Megan's Law, the Georgia General Assembly need only consult similar statutes in other states that have adopted the notification provision. Nationwide, Megan's Law notification statutes are split between those that require law enforcement to notify the community\textsuperscript{105} and those that merely authorize notification.\textsuperscript{106} Although Georgia is among those states that require the release of sex offender information to the public, its vague mandate to sheriffs is more similar to that used by states that still only authorize notification.\textsuperscript{107} In contrast, many of the states that require sheriffs to disclose the information have provided their officials with specific guidelines that help them determine how to execute notification.\textsuperscript{108}

For example, Ohio's "Community Notification of Sex Offender Registration" Act\textsuperscript{109} provides one of the most straightforward attempts at addressing some of the basic questions left unanswered by Georgia's statute. The Act requires the attorney general to define a "specified geographical notification area" within which sheriffs must provide written

\textsuperscript{104} See id.
\textsuperscript{107} See, e.g., 1997 Wash. Legis. Serv. ch. 113 (updating WASH. REV. CODE ANN. § 4.24.550 (West 1996), which authorizes the release of "relevant and necessary information regarding sex offenders and kidnapping offenders to the public when the release of the information is necessary for public protection").
\textsuperscript{108} See infra notes 109-21 and accompanying text.
\textsuperscript{109} OHIO REV. CODE ANN. § 2950.11 (Banks-Baldwin 1990).
notice of a sex offender’s name, address, crime, and status, as either a sexual predator or habitual sex offender.\(^{110}\) The notice must be given to "[a]ll occupants of residences adjacent to the offender’s place of residence . . ., [t]he executive director of the public children services agency," officials of both public and private schools, including preschools and colleges, and day-care center administrators.\(^{111}\) Ohio's statute requires that the sheriff notify neighbors adjacent to the offender within seventy-two hours of the offender’s registration.\(^{112}\) For the community organizations listed, the Act requires the state's human services and education departments to compile and update a list of contacts and to provide those contacts with similar notice within seven days of the offender’s registration.\(^{113}\) Finally, the Act cross-references other sections of the state’s chapter on sex offenders to provide guidelines to assist schools and other institutions in using sex offender information\(^{114}\) and to help judges categorize sexual predators and habitual sex offenders.\(^{115}\)

Delaware’s community notification statute\(^{116}\) requires the Attorney General to categorize released sex offenders according to a “Registrant Risk Assessment Scale” and establishes separate notification guidelines for each risk level.\(^{117}\) Information concerning sex offenders classified as “Low Risk” shall be distributed to “all law enforcement agencies with jurisdiction over the area where the offender intends to reside.”\(^{118}\) Those released as a “Moderate Risk” require notification to law enforcement and the publication of a “Community Organization Alert,” which provides notice to operators of establishments that are “likely to encounter the released offender,” such as where children gather or where women are cared for.\(^{119}\) Finally, the release of a “High Risk” offender mandates law enforcement notification, the release of a “Community Organization Alert,” and community notification,  

\(^{110}\) Id. \$ 2950.11(A).

\(^{111}\) Id.

\(^{112}\) See id. \$ 2950.11(B), (D)(1).

\(^{113}\) See id. \$ 2950.11(D)(2), (G).

\(^{114}\) See id. \$ 2950.13(A)(9).

\(^{115}\) See id. \$ 2950.09.

\(^{116}\) DEL. CODE ANN. tit. 11, \$ 4336 (Supp. 1989).

\(^{117}\) Id. \$ 4336(b).

\(^{118}\) Id. \$ 4336(b)(1).

\(^{119}\) Id. \$ 4336(b)(2).
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which "shall be conducted by door-to-door appearances or by mail or by other methods devised specifically to notify members of the public likely to encounter the offender."\textsuperscript{120}

Arizona and New Jersey have established similar notification hierarchies and have, respectively, charged a guidelines committee and the Attorney General with promulgating regulations for their implementation.\textsuperscript{121}

B. The Role of Judicial Intervention in Defining the Vague Mandate

The Georgia General Assembly's failure to promulgate notification guidelines to help sheriffs define what methods of disclosure are "necessary to protect the public" has placed broad discretion in the hands of law enforcement.\textsuperscript{122} In \textit{Doe v. Poritz},\textsuperscript{123} the New Jersey Supreme Court's constitutional interpretation of that state's Megan's Law, the dissent noted that "[t]he broader the scope of community notification, the greater the punitive impact that notification will impose on the offender."\textsuperscript{124} Therefore, in addition to creating confusion in implementation, the broad scope of Georgia's Megan's Law leaves the statute more vulnerable to attacks on constitutional grounds.\textsuperscript{125} Ultimately, it may fall to the courts to define the scope of notification in an effort to save the legislation from constitutional invalidity.

In \textit{Schall v. Martin},\textsuperscript{126} the United States Supreme Court found that judicial "mechanism[s] existed for correcting on a case-by-case basis" those situations in which a statute adopts a "fatal[ly] vague" provision.\textsuperscript{127} Ultimately, when legislators refuse to provide specificity to a statute, the courts must step in to avoid

\begin{itemize}
\item \textsuperscript{120} Id. § 4336(h)(3).
\item \textsuperscript{121} See \textit{ARIZ. REV. STAT. ANN.} § 13-3825 (West Supp. 1999); N.J. STAT. ANN. § 2C:7-8(a), (c) (West 1995).
\item \textsuperscript{122} Stafford I, supra note 4.
\item \textsuperscript{123} 662 A.2d 367 (N.J. 1995).
\item \textsuperscript{124} Id. at 423 (Stein, J., dissenting).
\item \textsuperscript{125} See, e.g., id. at 388-87. \textit{Doe} held that the danger of implementing the notification statute contrary to legislative intent, and the risk of "unnecessarily penalizing those who are at its source," requires either judicial or legislative review to "better promote uniformity in these matters." Id. at 387.
\item \textsuperscript{126} 467 U.S. 253 (1984).
\item \textsuperscript{127} Id. at 254.
\end{itemize}
a miscarriage of constitutional law. In *Doe v. Poritz*, the New Jersey Supreme Court upheld that state’s sex offender notification statute subject to the adoption of specific guidelines of judicial review created to safeguard an offender’s due process rights. The court “acknowledged that the ‘basic attack on these laws is the alleged excessiveness of community notification,’” and “judicially revised [the statute’s guidelines] to conform with the court’s notion of what was required to provide adequate due process.” In the context of Georgia’s Megan’s Law, unless the General Assembly amends the law’s vague language, the judiciary might ultimately be the institution to define the scope of the sheriffs’ duties.

### III. INVOLVING GEORGIA’S TORT CLAIMS ACT IN POTENTIAL LIABILITY

Since Georgia’s Megan’s Law gives broad discretion to sheriffs in implementing the notification statute within their jurisdictions, the statute, and the confusion it spawns, seems to invite negligence actions. To appreciate the potential for tort action, one need only imagine a repeat of the Megan Kanka tragedy in Georgia. A jury might be unwilling to accept the State’s excuse that, despite the passage of a law designed to inform parents when a sexual offender moves into the community, the law only required the sheriff to publish notice in the newspaper. This section of the Note views the vague

128. *See, e.g.*, *Doe*, 662 A.2d at 387 (“We have committed to the courts the obligation of providing procedural due process . . . . Those concerns—to devise a remedy without punishing—are of constitutional dimension [and] impel us to interpret the statute and revise its Guidelines to assure their constitutional application.”). *But see Hodgson v. Minnesota*, 497 U.S. 417, 501 (Kennedy, J., concurring in part and dissenting in part) (“[T]he Court errs in serious degree when it commands its own solution . . . . The legislative authority is entitled to attempt to meet these wrongs by taking reasonable measures.”).


131. *Id.*

132. *See supra* notes 64-70 and accompanying text.

133. *See, e.g.*, Stanford II, *supra* note 16 (quoting one concerned sheriff: “We want to make sure we don’t get the . . . taxpayers sued by mishandling the situation”); Stanford I, *supra* note 8.

134. *See, e.g.*, Schneider, *supra* note 67. Further, the fear in the community that notice
duty created by Georgia’s notification statute in the context of tort law and focuses on how the broad duty may fare in a civil action when it is compared with a duty of reasonable care.

Georgia’s Megan’s Law absolves law enforcement and other officials “from liability for good faith conduct” in implementing the statute. The state’s Tort Claims Act, on the other hand, provides a remedy “for the torts of state officers and employees while acting within the scope of their official duties or employment and [that the State] shall be liable for such torts in the same manner as a private individual or entity would be liable under like circumstances.” Seemingly, this section of the Act would allow the facts surrounding a sheriff’s breach of the Megan’s Law duty of notification to reach a jury. However, Georgia’s Tort Claims Act expressly excludes counties from the Act’s definition of “State,” leaving claimants without a remedy against any county officer or employee—including sheriffs.

But, in addition to holding sheriffs to the duty of releasing sex offender information to the public, Georgia’s Megan’s Law also expressly assigns the duty of notification to the Georgia Bureau of Investigation (GBI). The statute instructs the GBI to “implement and carry out” the Code provisions, to coordinate and assist local sheriffs with the registration and notification process, and, using the same vague mandate, to release information that is “necessary to protect the public.” Therefore, it is the GBI, which is comprised of state officers and

will “lull parents into a sense of well-being with their children” shows that the community believes notice is intended to reach parents in the first place. Stanford II, supra note 16 (quoting Sheriff R.L. Conway); see also Fields, supra note 1.

137. Id. § 50-21-23(a).
138. See id. § 50-21-22(5).
139. See id. § 42-1-12(j)(3) (1997); supra note 65 and accompanying text.
140. Id. § 42-1-12(j); see id. § 42-1-12(c), (f).
141. Id. § 42-1-12(j)(3). Currently, the GBI is implementing its duty of notification by maintaining a “Sex Offender Registry” on its Internet web site. See Georgia Bureau of Investigation (visited Aug. 2, 1999) <http://www.ganet.org/GBI/disclaim.html>. While the increasing popularity of the Internet as a means of communication lends appeal to this method of disclosure, this Note argues that a web site still falls short of providing actual notice to a sex offender’s neighbors, which the spirit of Megan’s Law notification demands. See supra notes 94-98 and accompanying text; infra note 204 and accompanying text.
employees, and its neglect of the duty to notify that could create liability for the State.

A. The Restatement (Second) of Torts

Georgia's notification statute requires the GBI to release sex offender information to the community and creates a duty to use good faith in interpreting what is "necessary to protect the public." However, a claimant may find a breach of this duty difficult to define, since the General Assembly couched the mandate itself in vague language. Therefore, the law of tort may be invoked to serve as yet another source for interpreting the scope of the duty to notify.

The Restatement (Second) of the Law of Torts defines the Megan's Law duty of notification assigned to the GBI as one of reasonable care. On one theory, Megan's Law places an affirmative duty on GBI officers to "[a]id others" through notification when such is "necessary to protect the public." According to the Restatement:

One who undertakes... to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if... his failure to exercise reasonable care increases the risk of such harm, or... the harm is suffered because of reliance of the... third person upon the undertaking.

Under this theory of "negligent performance of undertaking," the GBI or its officers may breach the duty of notification in two ways. First, the GBI would breach its duty when it chooses an unreasonable method of disclosure that fails to provide notice and increases the likelihood that an anonymous sex offender would find an unwitting victim. Second, the GBI would breach its duty of reasonable care when the parents of victims, or the victims themselves, relied on

143. See infra notes 146, 157 and accompanying text.
144. RESTATEMENT (SECOND) OF TORTS § 324A(a) (1965).
146. RESTATEMENT (SECOND) OF TORTS § 324A(a) (1965) (emphasis added).
147. Id.
receiving notice of the offender’s presence, but that notice did not reach, or was not calculated to reach, the community.\textsuperscript{148}

Following another Restatement theory, a “special relation” exists between the GBI and the offender\textsuperscript{149} because GBI officers have the duty to control the conduct of third persons having “dangerous propensities.”\textsuperscript{150} Under Georgia’s Megan’s Law, when sex offenders are released from prison, they must register their names and addresses with the sheriff of the county in which they choose to reside.\textsuperscript{151} However, the GBI is responsible for compiling this information, for “establish[ing] operating policies and procedures” to maintain these records, and for implementing the Megan’s Law legislation.\textsuperscript{152} Further, the Bureau must verify sex offender records on a quarterly basis, notify the appropriate officials in another state when the offender relocates to that state, and release registration information to the offender’s neighbors.\textsuperscript{153}

Therefore, the theory goes, a GBI case officer “takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled,”\textsuperscript{154} and registration and notification are part of an attempt to control the offender’s conduct.\textsuperscript{155} The Restatement’s comments following the text reinforce this parallel by elaborating upon the nature of such a relationship: “[T]he actor has charge of a third person . . . who has a peculiar tendency [to act injuriously] of which the actor from personal experience or otherwise knows or should know.”\textsuperscript{156} Again, the Restatement creates a duty of “reasonable care,” this time to guide the supervision of a third person with dangerous propensities.\textsuperscript{157} Arguably, a GBI case officer breaches this duty of reasonable care when, in the eyes of the jury, the officer does not act reasonably to control a sex offender’s conduct through effective notification.

\textsuperscript{148} See id. § 324(A); Stanford II, supra note 16 (discussing “lull[ing] parents into a sense of well-being with their children”).
\textsuperscript{149} RESTATION (SECOND) OF TORTS § 315(a) (1965).
\textsuperscript{150} Id. § 319.
\textsuperscript{151} See O.C.G.A. § 42-1-12(b)(1)(A)-(B) (Supp. 1999).
\textsuperscript{152} Id. § 42-1-12(c); see id. § 42-1-12(b)(3), (4).
\textsuperscript{153} See id. § 42-1-12(c), (e), (f)(3).
\textsuperscript{154} RESTATION (SECOND) OF TORTS § 319 (1965).
\textsuperscript{155} See O.C.G.A. § 42-1-12(b)-(e), (f), (g) (Supp. 1989).
\textsuperscript{156} RESTATION (SECOND) OF TORTS § 319 cmt. a (1965).
\textsuperscript{157} Id. § 319.
Two cases help illustrate how both these theories work when applied to ineffective notification. In *Cansler v. State*, the Supreme Court of Kansas held that a state prison breached its duty to notify neighboring communities when seven inmates escaped. Cansler, a police officer in a nearby town, was not notified by the prison of the escape and was shot by the fleeing inmates as he followed their car. While the court used the “special relation” test to support its holding against the prison, it also discussed whether the local sheriff’s department, which was notified of the escape but failed to warn Cansler, owed a duty to notify surrounding communities of the danger. Following the “negligent performance of undertaking” theory, the court focused on the existence of an affirmative duty in one sheriff’s office to notify another of a prison break. Passing on judgment because of an inadequate record, the court found a basis for the county’s liability “resulting from the failure of its officers to exercise reasonable care in disseminating the information promptly.” Analogizing this case to Megan’s Law, since the GBI owes an affirmative duty of notification to the community upon the relocation of a sex offender, its officers must use reasonable care in providing such disclosure. Should they fail to exercise reasonable care, the State should be liable in tort.

In *C.J.W. v. State*, the Supreme Court of Kansas used the Restatement’s “special relation” test to find that a social worker had a duty to notify a juvenile detention facility of a child’s history of aggressive and violent behavior. The social worker was “in charge” of the juvenile’s case and knew of his dangerous propensities from reports that he was “‘disruptive’ and violent with other students” and displayed “sexually deviant tendencies.” Despite her knowledge, the social worker neglected to notify the juvenile facility of the juvenile’s history.

159. See id. at 60, 66.
160. See id. at 60-61.
161. See id. at 66-67.
162. See id. at 67.
163. Id.
165. See id. at 12.
166. Id. at 7-8.
when he was transferred; subsequently, he was placed with a younger boy whom he raped and sexually molested.\textsuperscript{167} The court held that, under the Restatement, "the State not only had a duty to warn the officials of Juvenile Hall . . . but also to take reasonable steps to protect [the] plaintiff."\textsuperscript{168} Analogizing to Megan's Law, a GBI officer "in charge"\textsuperscript{169} of sex offender registration and notification and aware of the offender's dangerous propensities would owe a duty to reasonably warn parents of the offender's presence and take reasonable action to protect unwitting victims.

\textbf{B. Interaction with Georgia's Tort Claims Act}

The Restatement (Second) of the Law of Torts illustrates that grounds may exist for a negligence action when GBI officers fail to exercise reasonable care in implementing the notification statute.\textsuperscript{170} However, despite the valid claim, Georgia's Tort Claims Act provides for only a limited waiver of sovereign immunity, which expressly narrows the type of negligence cases that can be brought against the State.\textsuperscript{171} While the State can be sued in general "for the torts of state officers and employees while acting within the scope of their official duties or employment,"\textsuperscript{172} the Act excepts "liability for losses resulting from [for example]: the failure to exercise or perform a \textit{discretionary} function or duty . . . or the failure to provide, or the method of providing, law enforcement, police, or fire protection."\textsuperscript{173} Therefore, a valid Megan's Law claim alleging a breach of the duty to notify could be dismissed solely based on these two exceptions.

In the first instance, the vague language in Georgia's Megan's Law grants GBI officers broad discretion in implementing the notification statute.\textsuperscript{174} Therefore, a plaintiff establishing a breach of the duty of reasonable care in notification, as set forth in the Restatement, may not state a cause of action because

\textsuperscript{167} See id.
\textsuperscript{168} Id. at 12.
\textsuperscript{169} Id. at 7.
\textsuperscript{170} See supra notes 142-69 and accompanying text.
\textsuperscript{171} See O.C.G.A. § 50-21-23(a) (1998).
\textsuperscript{172} Id.
\textsuperscript{173} Id. § 50-21-24(2), (6) (emphasis added).
\textsuperscript{174} See supra notes 64-70 and accompanying text.
Georgia's Tort Claims Act expressly excepts discretionary duties from liability.\textsuperscript{175}

In \textit{C.J.W.}, the state of Kansas argued under its Tort Claims Act\textsuperscript{176} that the social worker's duty to notify the juvenile facility of the defendant's history of violent behavior was merely discretionary and that any breach thereof was excepted from liability.\textsuperscript{177} However, the Supreme Court of Kansas found that the duty was "ministerial" and not discretionary because the duty of notification was "imposed by law."\textsuperscript{178} "plaintiff's claim is not based upon abuse of discretion, but upon \textit{breach of nondiscretionary duty} . . . [and it] is not based upon how the State decided to confine or warn, but upon the State's alleged complete failure to do so."\textsuperscript{179} Further, the court rejected the argument that the discretionary function exception applies when a statute creates a duty but fails to provide "standards or guidelines" for implementing the duty.\textsuperscript{180} "[The State] cannot rely upon its manual [which stated the juvenile facility must request information about a juvenile] to avoid liability for its act regarding a duty imposed by law."\textsuperscript{181} Accordingly, the court held that the State must waive sovereign immunity because the discretionary function exception did not apply.\textsuperscript{182}

Following the second exception, the State of Georgia, in \textit{Long v. Hall County},\textsuperscript{183} argued that it was not liable for the actions of a prison guard because the Tort Claims Act excepts the "failure to provide, or the method of providing, law enforcement" from any waiver of sovereign immunity.\textsuperscript{184} There, an inmate escaped from a prison work detail and stole a truck, which he eventually drove into the plaintiff's car.\textsuperscript{185} The plaintiff claimed that the inmate would not have escaped in the first place had the prison guard not been negligent in his duty to supervise the

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\item[176.] KAN. STAT. ANN. § 75-8104 (1986).
\item[178.] Id. at 13.
\item[179.] Id. at 14 (quoting Cansler v. State, 675 P.2d 57 (Kan. 1984)) (emphasis added).
\item[180.] Id.
\item[181.] Id.
\item[182.] See id.
\item[184.] Id. at 857, 467 S.E.2d at 189.
\item[185.] See id. at 853, 467 S.E.2d at 187.
\end{thebibliography}
However, the Georgia Court of Appeals affirmed summary judgment for the State without reaching the negligence claim because the prison guard's failure to supervise the work detail "amount[ed] to a failure to provide law enforcement services" and, thus, was excepted from any waiver of sovereign immunity. In *Hilson v. Department of Public Safety*, the court reached the same result on facts involving a state trooper's collision with a civilian vehicle during the high-speed pursuit of a third vehicle: the trooper's actions were excepted from waiver as a "method of providing law enforcement."

These two exceptions to Georgia's waiver of sovereign immunity for the actions of its "officers and employees" could create significant problems for a civil litigant alleging that GBI officers breach their Megan's Law duty of notification when they provide inadequate notice. The discretion granted to the GBI under the statute's vague mandate would seem to trigger an argument by the State that such discretion excepts waiver of its sovereign immunity. Using a rationale converse from that in *C.J.W. v. State*, Georgia could argue that while the "complete failure" to provide notification may involve a breach of a "ministerial" duty, as long as the sheriffs provide notice there is no breach. Therefore, while the duty to provide notice is mandatory and "imposed by law," selecting an adequate means of disclosure is not mandatory, involves a choice in the method of providing law enforcement, and merely results in an "abuse of discretion" in how the State decided to warn the public.

However, a victim of the alleged breach of duty might still advance three convincing responses. First, the victim might argue that any method of notification that fails to provide actual notice to the intended target is nothing less than the "complete
failure" of the "ministerial" duty to provide notice. Therefore, regardless of the discretion built into the statute, inadequate notice is no notice, and a mandatory duty has been breached. Second, the victim might argue that the State created the duty to notify without providing guidelines for its implementation and cannot now be allowed to use the vague language to avoid liability. This argument borrows from the rationale of C.J.W., which held that the State cannot rely on a failure to adopt "standards and guidelines . . . to avoid liability for its acts regarding a duty imposed by law." The success of either of these arguments would quash the State's attempt to use discretionary duty as an exception to the waiver of sovereign immunity.

Third, the victim could rebut the State's characterization of notification as a "method of providing law enforcement" by distinguishing Long and Hilson, the only precedent in Georgia addressing this issue. While both cases only narrowly define what action amounts to a failure to provide law enforcement, Hilson, the more recent case, examines the legislative intent behind limiting the waiver of sovereign immunity. According to Hilson, the Georgia General Assembly recognized "the inherently unfair and inequitable results that occur in the strict application of the traditional doctrine of sovereign immunity," but noted that "[s]tate government should not have the duty to do everything that might be done."

195. Id.
196. Id. In fact, Georgia's Megan's Law does not even expressly grant discretion to sheriffs in implementing notification; it merely requires them to provide notice "necessary to protect the public." O.C.G.A. § 42-1-12 (1997).
198. Hilson v. Department of Public Safety, 230 Ga. App. 638, 520 S.E.2d 910, 912 (1999). The Hilson court's research revealed that Long v. Hall County is the only other Georgia case that addresses the issue of failure to provide law enforcement services. See id.
199. See id. ("Chasing a speeding vehicle is a method of law enforcement subject to this exception."); Long v. Hall County, 219 Ga. App. 853, 857-58, 487 S.E.2d 188, 190 (1996) ("[T]he allegation that [the prison guard] negligently supervised the work detail from which the inmate . . . escaped amounts to failure to provide law enforcement services within the meaning of this Code section.").
Clearly, as in *Long* and *Hilson*, law enforcement officers cannot be expected “to do everything that might be done” to avoid escapes during prison work details or collisions during high-speed chases. Such necessary law enforcement activities involve split-second decision making by the actors and the only way to make them safe would be by avoiding them altogether. However, the GBI can accomplish neighborhood notification without the need for impulse decisions and can easily select a method of notification that does not require its officers to do *everything* that might be done to provide notice. In view of the current state of Megan’s Law notification, one might argue that the GBI has not done *anything* that might be done to provide actual notice. Therefore, the failure of the GBI to use reasonable care in notifying the public of a sex offender’s presence is not the kind of “failure to provide law enforcement” that the General Assembly intended when it declared that “the public policy of this state” shall be to assign State tort liability “within the limitations of this article and in accordance with the fair and uniform principles established in this article.”

IV. EXTENDING THE SCOPE OF THE DUTY TO NOTIFY BEYOND THE VAGUE MANDATE

The purpose of the Megan’s Law notification statute is to avoid ignorance by communicating to neighbors that a potentially dangerous person has relocated to the community. Reaching the goal of the statute would seem to involve the participation of all those in the community to alert others of the danger. In practice, many situations exist that require certain members of the neighborhood to communicate potential dangers to the community. For example, real estate brokers who are aware of latent defects in a home are required to disclose

202. Such is the consequence of legislation that creates a duty for the state’s law enforcement officers without providing guidelines in implementing that duty. *See supra* notes 58-70 and accompanying text.  
204. *See, e.g.*, OHIO REV. CODE ANN. § 2950.02 (Banks-Baldwin 1999) (“[A]dequate notice and information about sexual predators… allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.”).
them to unknowing home buyers.\textsuperscript{205} Similarly, business owners are required to anticipate and warn customers of dangers that may be caused by the "misconduct of other customers or persons on the premises."\textsuperscript{206} This same duty to warn others would seem to be triggered when the broker sells the house next door to a sex offender or when the business employs a sex offender. Requiring these same groups to notify others of the presence of the sexual offender, however, creates an unfair burden when the weak mandate in Georgia's Megan's Law forces them to seek out the registration information for themselves or face liability for their ignorance. Why should these groups be charged with affirmatively notifying the public of a sexual offender's presence when Georgia's sheriffs and the GBI are not even required to provide actual notice?\textsuperscript{207} Having apparently recognized the liability created for these groups by a sexual offender registration law that does not allow for the effective dissemination of registration information, the Georgia General Assembly has already attempted to resolve these issues.\textsuperscript{208}

In 1998, the General Assembly exempted real property owners and their agents from any cause of action arising from their "failure to disclose in any real estate transaction any information or fact which is provided or maintained" under Georgia's Megan's Law registration statute.\textsuperscript{209} Prior to this exemption, real estate agents interpreted the statute's vague language cautiously and were unsure of their obligations when a sexual offender lived near one of their properties—was it their duty to seek out this information and disclose it to prospective buyers or was notification left solely to the discretion of law enforcement?\textsuperscript{210}

This danger led many agents to seek advice from their attorneys to clarify the scope of any duty.\textsuperscript{211} The ethical

\begin{thebibliography}
\bibitem{207} See supra notes 64-70 and accompanying text.
\bibitem{208} See O.C.G.A. § 44-1-18 (Supp. 1999).
\bibitem{209} Id.
\bibitem{210} See Stafford II, supra note 71 (citing Robert T. Hamilton, Executive Vice President of the Georgia Association of Realtors).
\bibitem{211} See id.
\end{thebibliography}
argument, on the one hand, suggested that “a prudent real estate agent would notify a potential buyer that he [or she] was purchasing a home near a sex offender.”212 The legal argument, on the other hand, might discourage the disclosure, because such action could result in defamation suits and in decreasing property values.213 By exempting both the sellers and their real estate agents from any liability resulting from their failure to disclose the registration information, the General Assembly created a statutory solution to this dilemma.214 But in view of the purpose of Megan’s Law notification, perhaps the General Assembly’s exemption for real property owners and their agents goes too far. While the statute does relieve owners and their agents from any liability for their failure to seek out registration information for themselves, should they also be relieved of any duty to notify families of the danger that may be lurking next door?215

Some commentators would question whether the exemption was appropriate, noting a trend in property law towards the liberalization of what real estate agents must reveal to prospective home buyers, including an implied duty to notify them of the proximity of a sexual offender.216 As in most states, Georgia property law requires real estate sellers to disclose known on-site material defects to prospective home buyers when knowledge of the flaw would affect the buyer’s decision.217 This basic tenet would seem to insulate sellers from any duty of disclosure pursuant to registration information, since the proximity of a sex offender’s residence to the property is essentially an off-site defect.218 However, the Supreme Court of New Jersey has already extended the duty of defect disclosure to include certain off-site conditions as well.219

212. Id.
213. See id.
215. See id.
218. See id.
In *Strawn v. Canuso*, the court held that “professional sellers of residential housing . . . and the brokers representing them” are “liable for nondisclosure of off-site physical conditions known to it and unknown . . . [to] the buyer if the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property.” The court linked the decision with the policy that “[l]ocation is the universal benchmark of the value and desirability of property” and remedied the case so that a jury could pass on whether a landfill near the property in question would decrease home values. Applying the *Strawn* holding in the context of Megan’s Law notification, a broad interpretation of an “off-site physical condition” that affects the “enjoyment” and “value” of property might bring the nearby residence of a sexual offender within the expansion of the duty to disclose property defects.

Beyond this trend away from caveat emptor, meeting the level of community awareness that is the spirit of Megan’s Laws requires spreading the word about registered sexual offenders, and the role of property sellers and their agents in this effort is especially vital. By exempting these parties from liability for their failure to provide prospective buyers with registration information, however, the General Assembly weakened this effort by creating yet another discretionary disclosure duty, as it did for sheriffs and the GBI in the notification statute. Instead, the General Assembly could have strengthened community notification by requiring owners and agents to disclose the registration information, but not without also requiring law enforcement officers to effectively

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220. *Id.*
221. *Id.* at 428, 431.
222. *Id.* at 431-32.
223. *See id.*
224. *Id.* Commentary on *Strawn* has noted that, while the holding has been largely eroded by statute, the case nonetheless represents a trend in the law towards open disclosure in home buying. *See, e.g.*, Komuves, *supra* note 216, at 708 n.5.
225. *See supra* notes 94-98, 204 and accompanying text.
disseminate the information to them. This would provide all communities with two affirmative sources of registration information, rather than leaving many of them with a legacy of empty discretionary duties.

Furthermore, while the disclosure exemption surely weakens Megan’s Law notification, it only solves part of the problem for real property owners and their agents. The exemption does relieve them of liability if they fail to disclose the information; however, it does not protect them if they decide, in their discretion, to disclose it.\textsuperscript{228} Therefore, if any ethically minded agents feel compelled to disclose the information, the exemption does not protect them from any liability for defamation or a resulting drop in property values.\textsuperscript{229} As it stands, the exemption statute only encourages the owners and their agents to remain silent, a response that is hard to reconcile with the level of awareness needed to effectuate Megan’s Laws.

CONCLUSION

Sex offenders, as a group, exhibit some of the highest rates of recidivism among convicted criminals.\textsuperscript{230} In an effort to curb this statistic, Megan’s Laws were adopted for one underlying purpose: to put parents and their children on notice when a potentially dangerous sex offender joins their community. Congress and every state legislature have effectuated this purpose by requiring released sex offenders to register with local sheriffs upon relocating to a community.\textsuperscript{231} Courts around the country have held that these laws serve the legitimate purpose of protecting children and are valid on constitutional grounds.\textsuperscript{232} Some states, including Georgia, have even taken the extra step of requiring law enforcement to inform the public of this potential threat to their neighborhood.\textsuperscript{233} In light of all this progress, Georgia’s Megan’s Law seems out of place because, while it purports to be a statute that requires notice, it does not

\textsuperscript{228} See O.C.G.A. § 44-1-16 (Supp. 1999).
\textsuperscript{229} See supra notes 209, 212-13 and accompanying text.
\textsuperscript{231} See Brenner, supra note 17.
\textsuperscript{232} See supra notes 34-49 and accompanying text.
\textsuperscript{233} See O.C.G.A. § 42-1-12 (1997).
require that the notice actually reach the community. Instead, it issues a vague notification mandate to sheriffs that has resulted in confusion and, in some jurisdictions, preserving the status quo in which citizens must obtain the information for themselves.234

For Georgia to effectuate the spirit of Megan’s Laws, the state must be prepared to use the sex offender register in a way that will provide maximum notice to its citizens of potential danger. Further, it must treat all citizens equally in providing such notice—not just those with Internet access, not just those who can read, and not just those living in counties in which a manageable number of sex offenders allows door-to-door notice.235 Finally, the state must lead by example and take an active part in providing notice, using community organizations as an aid in spreading the word and not as the sole means of notification.

Georgia’s General Assembly can directly meet these goals by amending the vague language in the state’s Megan’s Law notification provision. As it stands, the statute requires sheriffs and the GBI to release sex offender information to the community, but it does not require them to provide notice to those in danger.236 The General Assembly can cure this inequity by adopting the specific language already in place in some states’ Megan’s Laws. For example, the General Assembly should replace the current language that only requires the “release” of information to the community regarding sex offenders with language that requires “notice” to the community. Both Ohio and Delaware have expressly included the words “notice” or “notify” in their notification statutes.237 Further, the General Assembly could provide Georgia’s law enforcement with a clearer definition of their duty by simply incorporating specific methods of notification. Ohio, for

234. Some law enforcement bodies are making more of an effort than others to provide notice to the community. See Schneider, supra note 67; supra note 141. Some counties have been willing to make door-to-door visits or have posted the registry on the Internet. See Schneider, supra note 67. Another county sent out a questionnaire to gauge public preference in notification methods, but limited the choices to radio, television, or newspaper. See id.
235. See supra note 97 and accompanying text.
236. See supra notes 64-70 and accompanying text.
237. See OHIO REV. CODE ANN. § 2950.11 (Banks-Baldwin 1999); DEL. CODE ANN. tit. 11, § 4336 (Supp. 1999).
example, requires that written notice be provided to adjacent neighbors within seventy-two hours of a sex offender’s registration.\textsuperscript{238} Delaware, on the other hand, retains some discretion, but sets a high standard by expressly listing door-to-door visits and notice through the mail as expected methods of compliance.\textsuperscript{239} Changes such as these will eliminate much of the confusion involved in implementing the state’s Megan’s Law and provide more effective protection for its citizens.

Until such time as the General Assembly provides guidelines for implementing the notification statute, Georgia’s Megan’s Law will remain a vague and confusing mandate to the state’s law enforcement officers. Without these changes, the statute has merely evolved from one that “authorized” law enforcement to maintain sex offender registers to one that “authorizes” them to provide notice. Instead of putting teeth into the fight against repeat sex offenders, all the statute really gives citizens is a faulty set of dentures and an empty tube of PoliGrip\textsuperscript{\textregistered}.

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