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NATIONAL  
CRIMINAL  
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ASSOCIATION



# **SEX OFFENDER COMMUNITY NOTIFICATION**



168620

Report

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# **SEX OFFENDER COMMUNITY NOTIFICATION**

**October 1997**

**Policy Report**

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## **National Criminal Justice Association**

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# Introduction

In their efforts to balance public safety concerns with the management of sex offenders in the community, policymakers have crafted laws requiring convicted sex offenders to register with law enforcement agencies by providing officials certain identifying information when released from secure custody. The objective of the registration provisions is to provide a tool for law enforcement officials to track and identify individuals who have committed sex crimes. The first registry for sex offenders was created in California in 1947, and by 1996 all States had created laws that require sex offenders to register.

Most States have taken this registration requirement a step further by mandating that criminal justice practitioners make available to the community information about registered sex offenders and their presence in the area. Generally speaking, States implement community notification laws of this sort in two ways. Some States have created provisions that require active notification, where information contained in the central registry is disseminated in a specific manner to a designated person or agency. Other States have adopted more passive notification systems, where information from the registry is made available to the public to view.

Washington State passed the first sex offender notification law as a component of its Community Protection Act of 1990, which requires local law enforcement officials to determine the risk an offender poses to the community and requires them to disseminate information about those offenders to citizens in the area based on that risk assessment. Since 1990, 44 States have passed legislation that allows or mandates notification when a sex offender is released into the community. These laws vary significantly in the scope of the notification effort, how risk is to be assessed, and whether they provide for an active or passive system.

The U.S. Congress also has enacted legislation that has impacted the creation and implementation of States' sex offender registration and notification systems. In 1994 and again in 1996, the Congress passed laws that condition 10 percent of a State's allocation under the Edward Byrne Memorial State and Local Law Enforcement Assistance grant program on the establishment of specific, "effective systems" for registering and tracking convicted sex offenders, and the dissemination to the community of information about their presence in the area.

The debate on the merits of notification has intensified as more States enact legislation and more litigants challenge notification provisions. Proponents of sex offender notification laws argue that the legislation is justifiable given the following:

- *Increase in sex offenses.* In 1980, 6.9 percent of the State prison population had been convicted of rape or sexual assault. By 1994, this figure had increased to 9.7 percent. While the State prison population increased 206 percent over that time, the number of imprisoned sex offenders increased 330 percent.<sup>1</sup>
- *Recidivism.* Although it has been acknowledged that there has been insufficient research to establish consistent estimates of recidivism,<sup>2</sup> an estimated 24 percent of inmates serving time for rape and 19 percent of those serving time for sexual assault had been on probation or parole at the time of the offense for which they were in State prison in 1991.<sup>3</sup>
- *Apprehension of offenders.* The majority of criminal justice agencies around the country report that registration helps in apprehending suspected sex offenders, according to a 1988 survey of 420 criminal justice agencies nationwide by the California Department of Justice.<sup>4</sup> Notification laws provide additional tools to law enforcement to assist them in apprehending suspected sex offenders.

On the other hand, opponents of notification argue:

- *Sex offenses are not increasing.* The number of sex crimes is not increasing, rather, the reporting of these crimes and “vigorous prosecution” is on the rise.<sup>5</sup>
- *False sense of security.* The laws “create a false sense of security, because in reality most sex crimes are committed by friends and relatives...” whose crimes are rarely reported and who probably are not

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<sup>1</sup>Lawrence A. Greenfeld, *Sex Offenses and Offenders, An Analysis of Data on Rape and Sexual Assault* (U. S. Department of Justice, Bureau of Justice Statistics, Washington, D.C.), Feb. 1997.

<sup>2</sup>Peter Finn, *Sexual Offender Community Notification, RESEARCH IN ACTION* (U. S. Department of Justice, National Institute of Justice, Washington, D.C.), Feb. 1997.

<sup>3</sup>Greenfeld, *supra* note 1.

<sup>4</sup>*Sex-Offender Registration Laws Put Victims' Rights Against Civil Rights*, N.Y. TIMES, Feb. 20, 1993.

<sup>5</sup> *Id.*

registered and not subject to notification provisions, according to Phil Gutis of the American Civil Liberties Union.<sup>6</sup>

- *Vigilantism and heightened risk to the public.* “Besides creating a climate of ugly vigilantism, community notification laws cause compulsive sex offenders to run from family, avoid treatment and seek the safety of anonymity by hiding out, thus subjecting the public to even greater risk,” according to Edward Martone, executive director of the New Jersey Civil Liberties Union.<sup>7</sup>
- *Constitutional violations.* The notification laws as enacted and applied in some states violate the Ex Post Facto Clause of the U.S. Constitution because they retroactively change the legal consequences of an act and violate the Double Jeopardy Clause of the U.S. Constitution by imposing additional punishments.

States continue to grapple with these and other issues as they implement sex offender laws, defend the laws against challenges to their constitutionality, and attempt to comply with the Federal eligibility requirements.

## Organization of Report

This report focuses primarily on notification laws and their development and implementation. Chapter 1 provides a summary of Federal law on sex offender registration and notification. Chapters 2 through 5 provide case studies of four States -- Alaska, Louisiana, New Jersey, and Washington. While this report focuses primarily on notification provisions, there is significant overlap between registration and notification laws. Therefore, this report provides background information on registration laws in the four States to provide a context for understanding the notification provisions. Finally, Chapter 6 presents conclusions and other issues that policymakers and legislators may face in the future. The appendix provides a sampling of Internet sites that provide sex offender registry information.

The case studies provide statutory summaries, case law summaries, and information on the four States' experiences with implementing their notification laws. The four States were chosen to provide a sampling of the diverse types of

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<sup>6</sup> John Ritter, *Critics say law's behind surge in vigilantism*, USA TODAY, Jan. 12, 1995.

<sup>7</sup> Robert L. Jackson, *Sex-Offender Notification Laws Facing Legal Hurdles*, L.A. TIMES, Aug. 8, 1995.

notification provisions States have enacted. Alaska's statute permits citizens to obtain information upon request about sex offenders in their geographic area, while Louisiana's statute requires convicted sex offenders to notify the community in which they choose to reside of their presence. New Jersey's statute and relevant case law establishes stringent notification procedures that local jurisdictions are required to follow, whereas the Washington statute allows local jurisdictions significant discretion in implementing notification.

## **Methodology, Uses, and Limitations**

Each case study provides a summary of the State's sex offender registration and notification laws and relevant case law<sup>8</sup> and a discussion of the State's experiences in implementing its law. In compiling information for this analysis, the NCJA staff employed a variety of data collection techniques. The project staff conducted an in-depth analysis of each of the four States' sex offender registration and community notification laws to gain a comprehensive understanding of their scope. The project staff also conducted in-depth interviews with officials charged with enforcing and implementing the laws, as well as victims' advocates and criminal justice policymakers and practitioners in the jurisdictions. The case studies were developed through independent legal research, reviews of existing literature, and interviews. During the interviews, the staff sought information on the inception, development, and passage of registration and notification legislation; factors that impede or facilitate implementation; any evaluation efforts to determine if and how laws are achieving the results intended by the drafters and supporters of the legislation; and how the laws can be improved in the future.

This report is designed for State-level decisionmakers concerned with developing and implementing sex offender notification laws and should be viewed as a tool for lawmakers and policymakers who are searching for ways to help draft and implement new notification provisions or to improve upon existing laws.

This report does not seek to scientifically evaluate the notification laws or to rank or make comparative judgments about their efficacy. The four States highlighted were not chosen as "models," but rather because their laws differ in the level of proactive notification they require and the discretion they afford local law enforcement.

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<sup>8</sup>The statutory and case law summaries are current through Aug. 20, 1997.

# Summary of Federal Requirements for State Laws

Title XVII of the 1994 Violent Crime Control and Law Enforcement Act,<sup>9</sup> the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act<sup>10</sup> (“the Jacob Wetterling Act”), conditions 10 percent of a State’s funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance grant program on the establishment of effective systems for registering and tracking convicted sex offenders. States had until September 13, 1997, to comply with the provisions set forth in the Jacob Wetterling Act.

In 1996, the Jacob Wetterling Act was amended by the Federal version of Megan’s Law,<sup>11</sup> which requires States to release registration information as necessary to protect the public. The Jacob Wetterling Act was amended a second time in 1996 with the passage of the Pam Lychner Sex Offender Tracking and Identification Act,<sup>12</sup> which calls for the creation of a national database to track sex offenders across State lines, and makes more stringent certain registry requirements under the Jacob Wetterling Act. Megan’s Law carried the same September 13, 1997, compliance deadline set forth under the Jacob Wetterling Act, while the provisions of the Pam Lychner Act, which are applicable to state registration programs, must be implemented by October 1999.

## The Jacob Wetterling Act

The Jacob Wetterling Act was named for an 11-year-old boy who was abducted in October 1989 near his home in St. Joseph, Minn., by an armed, masked man. Similarities between Jacob’s abduction and a case involving a boy from a neighboring town who was abducted and sexually assaulted earlier that year prompted police to believe that the two cases were linked. Jacob Wetterling has never been found.

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<sup>9</sup>Codified at 42 U.S.C. §§ 13701-14223 (1995 & Supp. 1997).

<sup>10</sup>Codified at 42 U.S.C. § 14071 (Supp. 1997).

<sup>11</sup>Codified at 42 U.S.C. § 14071(d), § 14072(f), (j)(1)(B) (Supp. 1997).

<sup>12</sup>Codified at 42 U.S.C. §§ 14071, 14072 (Supp. 1997).

Some of the essential elements State programs need to include for compliance with the Jacob Wetterling Act are the following: (1) the creation of a two-tier system of sex offender registration, distinguishing sex offenders from sexually violent predators; (2) the establishment of a board of experts to advise the sentencing court on an offender's status as a sexually violent predator; (3) the management by State and local law enforcement agencies of sex offender registration and address verification systems; and (4) the enactment of provisions that require sex offenders who move into the State from another State to register and that provide for notice to States to which sex offenders registered in the State move.<sup>13</sup>

Under the two-tier registration system, individuals who have committed a "criminal offense against a victim who is a minor" or a "sexually violent offense" must register yearly until 10 years have elapsed from their release from prison, parole, or probation. The other tier involves individuals classified by the State as "sexually violent predators" -- those who have committed sexually violent offenses and who suffer from a mental abnormality or personality disorder that would predispose them to commit predatory and violent sex offenses. Sexually violent predators are subject to more stringent registration requirements and must report address information to the appropriate law enforcement agency every 90 days. In addition, an offender in this category is required to register for life unless it is determined by the court that he no longer suffers from the abnormality or disorder.

The Jacob Wetterling Act also requires that the State boards that serve in an advisory capacity to the sentencing court be composed of two or more experts in fields relating to the behavior and treatment of sex offenders. In final guidelines issued in July 1997 by the U. S. Department of Justice, the standards of qualification for experts and the structure of the board(s) is left to a State's determination.<sup>14</sup> For example, a State could establish a single, permanent board to assist the sentencing court in making these determinations, or could authorize the designation of different boards for different courts, geographic areas, or case types.

States also retain discretion in choosing which State agency is designated as the appropriate law enforcement agency to collect, maintain, and verify registration information under the guidelines. For example, States may give any State law enforcement or public safety agency the responsibility for registration, including a correctional agency or criminal records agency. Further, States are permitted to employ private contractors to carry out the functions of the State's sex offender registry.

Under the guidelines, States are not required to mandate registration for juveniles who are adjudicated delinquent, even if the juvenile has committed a crime that would require registration if perpetrated by an adult. Juveniles convicted of sex offenses in adult criminal court, however, are required to register.

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<sup>13</sup>42 U.S.C. § 14071 (Supp. 1997).

<sup>14</sup>62 Fed. Reg. 39,009 (July 21, 1997).

Also, while no DNA sample collection is required under the Jacob Wetterling Act, the guidelines “strongly encourage” States to collect DNA samples from registering offenders to be typed and stored in State DNA databases. The guidelines also urge the States to participate in the U.S. Department of Justice, Federal Bureau of Investigation’s (FBI) Combined DNA Index System (CODIS), which is a technical assistance program that allows State and local crime laboratories to match DNA records from convicted offenders and crime scene evidence.

To aid States in complying with the provisions of the Jacob Wetterling Act and in implementing their sex offender registries, the Justice Department published revised guidelines in April 1997 and finalized guidelines in July 1997 in an effort to address questions States had about registration provisions submitted to the Department of Justice for preliminary review.<sup>15</sup> Some examples of the clarifications include:

- Verification of registry address may be performed by or change of address may be reported to local law enforcement agencies, providing the local agencies notify immediately the State law enforcement agency maintaining the registry of the change;
- Clarification regarding corrections and court officials who are required to notify the State upon a convicted sex offender’s release from custody or placement on probation or parole;
- Further explanation and clarification of various solicitation offenses and offenses against children for which registration is required; and
- Definition of the amount of discretion States have in determining the qualifications required to be considered an expert in the field of behavior and treatment of sexual offenders for the purpose of serving on State boards that determine an offender’s status as a sexually violent predator.

Although under the law States must have been in compliance by September 13, 1997, to avoid the 10-percent reduction in Byrne formula grant funding, the deadline may be extended up to two years if the State is making “good faith” efforts to implement the law. The authority to determine whether State programs are in compliance with the Jacob Wetterling Act, as amended by Megan’s Law, and whether a State has made “good faith” efforts to implement the Act and Megan’s Law and will be granted an extension has been delegated to the BJA Director.

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<sup>15</sup>62 Fed. Reg. 16,180 (proposed Apr. 4, 1997), 62 Fed. Reg. 39,009 (July 21, 1997).

## Megan's Law

Megan's Law, which was signed by President Clinton on May 17, 1996, amends the Jacob Wetterling Act in two ways. Megan's Law requires States to release any relevant information about registered sex offenders necessary to maintain and protect public safety. Under the original Jacob Wetterling Act provisions, States could release information on registered offenders, however, they were not required to do so as a condition of receipt of full Byrne program funding. Megan's Law also allows disclosure of information collected under a State registration program for any purpose permitted under the laws of the State.

Final guidelines for compliance with Megan's Law were issued by the Justice Department in July 1997.<sup>16</sup> Under the guidelines, States would retain significant discretion to determine the circumstances under which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes.

Both active and passive notification systems are acceptable under the Justice Department guidelines. Active notification systems include those that allow the release of information about convicted sex offenders based on a State's classification of the risk they pose to the community. Passive notification systems make information concerning sex offenders available to the public upon request by making registration lists accessible for public inspection or establishing a telephone line by which the public may access registry information. Notification systems that release information solely to law enforcement or other government agencies and those that allow State officials complete discretion in releasing registry information do not comply with Megan's Law under the guidelines.

States had the same September 13, 1997, deadline for compliance with the provisions of Megan's Law and the Jacob Wetterling Act.

## Pam Lychner Act

The Pam Lychner Sexual Offender Tracking and Identification Act ("the Lychner Act") was named for a victims' rights advocate who was killed in the crash of TWA flight 800 in July 1996. Among other things, the Lychner Act amends the Jacob Wetterling Act by directing the FBI to establish a national sex offender database and makes more stringent the registration requirements set forth in the Jacob Wetterling Act.

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<sup>16</sup>62 Fed. Reg. 39,019 (July 21, 1997).



With the creation of an FBI tracking system, law enforcement officials will be able to access information across State lines about sexually violent offenders who commit sex crimes and crimes against minors. The Lychner Act also requires sex offenders residing in States that have not established a "minimally sufficient" sexual offender registration system -- one that requires registration of all those convicted of covered offenses, address verification, 10-year registration duration, and submission of information to the FBI -- to register directly with the FBI. The Lychner Act also stiffens registration requirements under the Jacob Wetterling Act by requiring lifetime registration for violent and habitual sex offenders, and requiring submission of offenders' fingerprints and photographs with other registry information.

Guidelines for compliance with this law have not yet been issued by Justice Department, although States have until October 1999 -- three years from enactment -- to comply with the mandates set forth in the act. As with the original Jacob Wetterling Act, the Attorney General may grant a two-year extension to States that are making "good faith efforts" to implement the act.

## Proposed Amendments

At the time of this report, members of the 105th Congress are debating two initiatives to amend existing Federal sex offender registration and notification laws. The first, a measure offered by Sen. Judd Gregg (R-N.H.) and Rep. Bill McCollum (R-Fla.) titled, the "Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Improvements Act of 1997,"<sup>17</sup> would provide more flexibility to States in their management of sex offender registries by:

- requiring that State boards classifying offenders as "sexually violent predators" be composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives from law enforcement agencies, although States could apply to the U. S. Attorney General to have the board composition requirement waived;
- allowing some flexibility in States' choice of the appropriate agency to collect registry information;
- requiring military personnel convicted of sex crimes in a U.S. court or by court-martial to register in accordance with the laws of the States where they reside and in which they are stationed;
- requiring that offenders who live in one State and attend school or work in another register in both States; and

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<sup>17</sup>S. 767, 105th Cong., 1st Sess. (1997), H.R. 1683, 105th Cong., 1st Sess. (1997).

- requiring that relocating parolees and probationers register in their new State of residence after an interstate move.

Further, an amendment to a juvenile justice bill passed by the House of Representatives would amend the Omnibus Crime Control and Safe Streets Act of 1968 -- the law that contains the enabling legislation for the Byrne program -- to require States to notify schools when a juvenile sex offender is enrolled.<sup>18</sup> Rep. Jennifer Dunn's (R-Wash.) amendment would condition 20 percent of a State's Byrne grant allocation upon the requirement that States submit, within one year of the bill's enactment, a plan to the U. S. Attorney General describing the process by which parents will be notified of a juvenile sex offenders' enrollment in an elementary or secondary school.

According to Rep. Dunn, the measure allows States flexibility in determining the scope of notification and the degree of risk posed by an offender that would necessitate notification. In a colloquy, or floor discussion of pending legislation, Rep. McCollum indicated he was in strong support of the amendment, but had reservations of a "technical nature" that could be corrected in conference committee.<sup>19</sup>

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<sup>18</sup>H.R. 3, 105th Cong., 1st Sess. (1997).

<sup>19</sup>143 CONG. REC. H2832 (daily ed. May 8, 1997) (Statement of Rep. McCollum).

# Alaska

## Statutory Summary

Alaska's registration and notification statute was enacted as part of the same legislative proposal in 1994. According to a U.S. Department of Justice, National Institute of Justice (NIJ) report, Alaskan legislators introduced the statute "on their own initiative because they felt the problem needed attention and knew that other States were enacting legislation."<sup>20</sup> Specifically, legislators, criminal justice practitioners, and victims' service providers voiced concern about the high incidence of sex crimes in the State. When the bill was being debated by legislators in 1993 and 1994, testimony presented before the Alaska House Judiciary Committee indicated that, at that time, Alaska "led the nation in child sexual abuse and was second in the nation in terms of sexual assaults in general."<sup>21</sup>

## Registration

The statute requires the Alaska Department of Public Safety (ADPS) to maintain a central registry of sex offenders.<sup>22</sup> Sex offenders required to register must do so in person at the Alaska State trooper post or municipal police department located nearest to where they live at the time of registration.<sup>23</sup> Registrants must provide the following information on a form provided by the police agency:

- name
- date of birth
- residence and mailing addresses within the State
- employer
- place of employment
- most recent driver's licence number
- a list of all sex offenses of conviction

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<sup>20</sup>Finn, *supra* note 2.

<sup>21</sup>*Sex Offender Registration: Hearing on H.R. 69 Before the House Comm. on the Judiciary*, 18th Legis., 1st Sess., (Alaska Feb. 10, 1993) [hereinafter *Committee Minutes*].

<sup>22</sup>ALASKA STAT. § 18.65.087(a) (Michie 1996).

<sup>23</sup>ALASKA ADMIN. CODE tit. 13, § 09.020(a) (Mar. 1996).

- dates of conviction
- city, State, and court in which the convictions were entered
- aliases.<sup>24</sup>

Alaska also requires law enforcement officials to obtain fingerprints from the offender and a frontal view, color photograph.<sup>25</sup> Generally, registrants must re-register annually.<sup>26</sup> Offenders are required to register for 15 years if they have one conviction or for life if they have two or more convictions.<sup>27</sup> An offender who fails to register, file a change of address form, or re-register annually is guilty of a class A misdemeanor.<sup>28</sup> An offender is entitled to submit a written request to the ADPS to correct, modify, or add information or an explanatory notation to the central registry. If the registrant's request is denied, he may appeal to the commissioner of the ADPS. The registrant may appeal the commissioner's decision to the court.<sup>29</sup>

## **Notification**

Community notification is passive in Alaska -- registry information is provided only upon request from the public.<sup>30</sup> In other words, the citizen must take the initiative to obtain the registry information. A citizen may make an inquiry for any purpose, upon submission of a written request on a standardized form supplied by the Alaska State Troopers' Permits and Licensing Unit and at a non-refundable fee of \$10.<sup>31</sup> The public is informed about offender registration provisions by notices displayed at places where the public may apply for a driver's license, identification card, or vehicle registration.<sup>32</sup>

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<sup>24</sup>ALASKA ADMIN. CODE tit. 13, § 09.020(a)(1) (A), (B), (C) (Mar. 1996).

<sup>25</sup>ALASKA ADMIN. CODE tit. 13, § 09.020(a)(2), (3) (Mar. 1996).

<sup>26</sup>ALASKA ADMIN. CODE tit. 13, § 09.030 (Mar. 1996).

<sup>27</sup>ALASKA STAT. § 12.63.020 (Michie 1996).

<sup>28</sup>ALASKA STAT. § 11.56.840 (Michie 1996).

<sup>29</sup>ALASKA STAT. § 18.65.087(d)(1)(A) (Michie 1996), 28.05.048; ALASKA ADMIN. CODE tit. 13, § 09.060 (Mar. 1996).

<sup>30</sup>ALASKA STAT. § 18.65.087 (Michie 1996), ALASKA ADMIN. CODE tit. 13, § 09.050(c)(2) (Mar. 1996).

<sup>31</sup>ALASKA ADMIN. CODE tit. 13, § 09.050(c)(2) (Mar. 1996).

<sup>32</sup>ALASKA STAT. § 28.05.048 (Michie 1996).

The public may request information about a particular registrant or about all registrants in an incorporated or unincorporated municipality or village; in an area designated by a single postal ZIP code; or on a street within a specified incorporated or unincorporated municipality or village.<sup>33</sup>

While certain central registry information, including fingerprints, is confidential and not subject to disclosure, the following information about a registrant may be released upon request:

- the offender's name
- address
- photograph
- place of employment
- date of birth
- crime of conviction
- date, place, and court of conviction
- length of sentence.<sup>34</sup>

Alaska's statute for disclosure of information is designed to protect crime victims' privacy. For example, if an offender is convicted of a crime of incest against a person younger than 18, that offense may be disclosed only as "sexual abuse of a minor."<sup>35</sup> Further, the central registry may not include information about a victim of a sexual offense unless the information is contained in court documents open for public inspection.<sup>36</sup>

## Case Law Summary

While the statute as enacted required all sex offenders to register -- regardless of when their conviction occurred -- a Federal district court in Alaska has enjoined, or prohibited, enforcement of the retroactive application of the notification portion of the statute.<sup>37</sup> The court, however, did not enjoin the retroactive application of the registration portion of the statute.

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<sup>33</sup>ALASKA ADMIN. CODE tit. 13, § 09.050(d)(2) (Mar. 1996).

<sup>34</sup>ALASKA STAT. § 18.65.087(b) (Michie 1996).

<sup>35</sup>ALASKA STAT. § 18.65.087(c) (Michie 1996), ALASKA ADMIN. CODE tit. 13, § 09.050(e)(1) (Mar. 1996).

<sup>36</sup>ALASKA ADMIN. CODE tit. 13, § 09.050(a) (Mar. 1996).

<sup>37</sup>Rowe v. Burton, 884 F. Supp. 1372 (D. Alaska 1994).

In *Rowe v. Burton*, two men who pleaded no contest to sex offenses and the wife of one of the men challenged Alaska's registration and notification laws under the U. S. and the Alaska Constitutions. They requested a preliminary injunction claiming that the act: (a) was an *ex post facto* law -- retrospectively changing the legal consequences of their acts; (b) violated their plea bargain contracts because registration was not a term in their mutual agreements with the court; (c) violated the Fourth Amendment's prohibition against unreasonable searches and seizures; and (d) violated their rights to privacy.<sup>38</sup>

The *Rowe* court held that, although the act was designed to regulate rather than punish, notification would have the punitive effect of subjecting the plaintiffs to public stigma and ostracism that would affect their personal and professional lives.<sup>39</sup> Because of this punitive effect, the court held that the plaintiffs were likely to prevail in their *ex post facto* claim and enjoined the State from disseminating any information about them.<sup>40</sup> The court also held that the plaintiffs were likely to prevail in their claim that enforcement of the act violated their plea agreements.<sup>41</sup>

The court, however, disagreed with the plaintiffs regarding their Fourth Amendment claims. While requiring convicted sex offenders to involuntarily provide their fingerprints and photographs to authorities was a seizure, such a seizure was reasonable because the intrusion was minor and served significant social and governmental interests, according to the court.<sup>42</sup>

The court also held that the act did not violate the plaintiffs' Federal right to privacy because the information subject to disclosure -- fingerprints, photographs, residences, job locations, driver's license numbers, dates of conviction, and nature of convictions -- is all public information. The court did not decide whether the act violated the plaintiffs' right to privacy under the State constitution. According to the court, such a claim would have to be brought in State court.

The *Rowe* plaintiffs were concerned that if they used their real names to challenge the notification laws, the public would be made aware of their status as convicted sex offenders. If they then succeeded with the claim, they would be left with little or no remedy. Therefore, they also requested to proceed under pseudonyms -- false names -- to protect their identities and guarantee their privacy. The district court denied

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<sup>38</sup>*Id.* at 1375.

<sup>39</sup>*Id.* at 1378.

<sup>40</sup>*Id.* at 1380.

<sup>41</sup>*Id.* at 1381.

<sup>42</sup>*Id.* at 1384.

their request and they appealed to the ninth circuit.<sup>43</sup> Generally, a Federal court of appeals does not have jurisdiction over an interlocutory appeal -- an appeal of an issue during the course of a proceeding -- unless the appeal fits within the "collateral order exception." An interlocutory order must meet three conditions to fit within the exception; it must: (a) conclusively determine the disputed question; (b) resolve an important issue completely separate from the merits of the action; and (c) be effectively unreviewable on appeal from a final judgment. The court denied the plaintiffs' request because it did not meet the second condition. Specifically, the court held that the pseudonym issue is not "completely separate from the merits of the action" because both the pseudonym issue and the merits of the action hinged on whether the plaintiffs had a legitimate expectation of privacy in matters that are part of the public record.<sup>44</sup>

In reaching its conclusion, the court acknowledged that two other Federal courts of appeal had decided that an order denying a party to proceed under a pseudonym is immediately appealable under the collateral order doctrine. The court also acknowledged that denying the plaintiffs' motion "forces the plaintiffs to suffer exactly the harm they seek to avoid by challenging the law. . . The fact that the plaintiffs seek the same protection in their motion for leave to proceed under pseudonyms as they do in their underlying complaint underscores that the issues are not in fact separate."<sup>45</sup>

In 1996, a Federal district court dismissed another challenge to Alaska's notification law.<sup>46</sup> In *Nitz v. Otte*, Richard Nitz was convicted of a sex offense in Alaska. He asked the district court to enjoin notification, arguing that applying it in his case would violate the Ex Post Facto Clause of the U.S. Constitution. The court agreed to certify the case as a class action suit applicable to all sex offenders convicted in the Alaska courts prior to the effective date of the notification statute.

The *Nitz* court rejected the *Rowe* court's reasoning in determining whether the act is punitive. The *Nitz* court looked to whether the punitive effects of the act were "sufficiently severe or excessive" to render the act an ex post facto law. The court balanced the potential hardships on the plaintiffs, on the defendants (the

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<sup>43</sup>Doe v. Burton, No. 94-35734, 1996 U.S. App. LEXIS 12630 (9th Cir. May 13, 1996). The court reverted to the traditional "Doe" to identify the plaintiffs because a person named James Rowe wrote to the court while the appeal was pending and said that his reputation was harmed by a newspaper story about the appeal. The decision is reported in table case format at 85 F.3d 635, 1996 U.S. App. LEXIS 31709.

<sup>44</sup>Doe v. Burton, No. 94-35734 at 4.

<sup>45</sup>*Id.* at 6.

<sup>46</sup>*Nitz v. Otte*, 1996 U.S. Dist. LEXIS 4930 (D. Alaska 1996), *appeal dismissed*, 87 F.3d 1321 (9th Cir. 1996).

commissioner of the ADPS, and the attorney general), and on the public. It held that if an injunction were granted, the emotional scars suffered by the victim were less likely to heal than any emotional scars that would be incurred by the plaintiffs if the injunction were not granted. Nitz appealed and the ninth circuit dismissed on abstention grounds because the plaintiffs initiated a class action in State court before any proceeding of substance on the merits in Federal court took place.

## Implementation Issues

During the debate over the creation of the law, policymakers, criminal justice practitioners, and victims' service providers spoke in support of creating a sex offender registry and notification system that would help officials protect the public's safety. In developing a passive notification system, policymakers attempted to balance the public's need for information against the considerations of offender privacy and vigilantism.<sup>47</sup>

In addition to concerns over the prevalence of sex crimes in Alaska, those who supported the creation of registration and notification provisions recognized that most sex offenders display lifelong patterns of sexual deviance, and that for every perpetration reported, there are many other sex crimes committed that go unreported to law enforcement officials. They felt that the compilation of this identifying information in a central place would create a valuable tool for law enforcement officials and concerned citizens who wanted to know more about sex offenders in their community.<sup>48</sup>

However, elected officials also were concerned about the privacy issues that would arise under a system that provided broader distribution of offender information. For example, legislators were fearful that a more active system would violate a provision in the Alaska Constitution that provides an explicit right to privacy.<sup>49</sup> The section states:

The right of the people to privacy is recognized and shall not be infringed.  
The legislature shall implement this section.<sup>50</sup>

Thus, the choice for a more passive system was made consciously, with officials from the DOC and ADPS stressing in their testimony the importance of carefully crafting the procedures that dictate the availability of registry information for broader public

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<sup>47</sup>*Committee Minutes*, *supra* note 21.

<sup>48</sup>*Committee Minutes*, *supra* note 21.

<sup>49</sup>*Committee Minutes*, *supra* note 21.

<sup>50</sup>ALASKA CONST. Art. I § 22.



viewing, to ensure that they would comply with the constitutional privacy right. Testimony from State officials during the debate on the bill in committee suggest that officials also were concerned about the potential for acts of harassment and vigilantism against offenders.<sup>51</sup>

These concerns led to the development of a strictly defined community notification plan once the law was made effective in January 1995. Administrative procedures dictate that the registry information may be provided to the public in a number of formats. Reports may be obtained about an individual registrant or about all registrants in a specified geographic area. Reports are one page in length per registrant and include a photograph; the registrant's home, work, and mailing addresses; aliases; date of birth; offenses for which the registrant was convicted; the case numbers; and the sentences imposed. The ADPS charges \$10 for reports on individuals, while the cost of a report of all registrants in a specified geographic area is \$10 for each offender listed.<sup>52</sup>

In the fall of 1996, the State Troopers broadened the type of search of the registry that citizens are permitted to request. In addition to purchasing information on a specific individual or geographic area, such as a city, town, or county, the public may now obtain an alphabetical list of the names of all registered offenders in a particular community. Included on the list are the registrants' addresses, dates of birth, and conviction information, according to officials with the State Troopers.<sup>53</sup> The cost of such a list is \$1 for the first page and 25 cents for additional pages. The public also may go to the local trooper post to view the State registry and copy pages for the same cost.<sup>54</sup> No literature or community education material is distributed with the registrant information.<sup>55</sup>

While statistics are unavailable for 1995, in 1996 the State Troopers' Permit and Licensing Unit received a total of 230 public queries, according to officials.<sup>56</sup> They reported that initially the office did not receive the volume of public requests anticipated. Officials commented, however, that as citizens have become more familiar

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<sup>51</sup>*Committee Minutes, supra* note 21.

<sup>52</sup>Telephone Interviews with Patrick Hames, Supervisor, Permit and Licensing Unit, Alaska State Troopers (Feb. and Mar. 1997).

<sup>53</sup>*Id.*

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*

<sup>56</sup>Telephone Interview with Daniel Lowden, Deputy Commander of the Division Operations Unit of the Alaska State Troopers (Mar. 1997).

with the program, the number of requests has increased.<sup>57</sup> In the first quarter of 1997 there were 77 queries, more than one-third of the 1996 total.<sup>58</sup>

A primary challenge to implementing community notification in Alaska has been addressing concerns regarding the wider dissemination of registry material once purchased lawfully by an individual, according to officials. At first, officials tried to limit this “unofficial” dissemination of registry information. For example, early in the program’s history, the State Troopers denied a public library’s request for a report on registrants in the community, because the library intended to make the list available to the public free of charge. Prior to the library’s request, the office had received complaints from registrants who were displeased that copies of their registry information was posted in neighborhoods by individuals who had requested registry reports.<sup>59</sup>

To address this issue, the State Troopers adopted a policy requiring a citizen requesting registry information to sign his name upon making the request, in order to provide a “paper trail” if information about the registrant is subsequently used or distributed in an inappropriate manner. However, officials since have realized that they have little or no control over how registry information is distributed once it is lawfully obtained.<sup>60</sup>

This realization, coupled with requests from community groups such as parent-teacher organizations for broader access to registry information, has prompted officials to make the registry available to the public via the World Wide Web, effective June 1997. So far, officials reported that there have not been any problems connected with the increased availability of the information on the Web site, and the public appears satisfied that the information is more readily accessible. Further, officials noted that the Web information is updated daily to help ensure the information presented is as accurate and up-to-date as possible.<sup>61</sup>

An unexpected benefit of having the information more widely available, officials reported, is that citizens have aided the ADPS in keeping the information accurate. Individuals have, in some cases, contacted the ADPS in circumstances when they were aware that a member of the community had been convicted of a crime that would obligate him to register, but for whom no registry information was available on the Web site. In those cases, law enforcement officials verify the information

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<sup>57</sup>Hames Interview, *supra* note 52.

<sup>58</sup>Hames Interview, *supra* note 52. In January 1997, there were 34 queries; in February 1997, 25 queries; and in March 1997, 18 queries.

<sup>59</sup>Lowden Interview, *supra* note 56.

<sup>60</sup>Telephone Interview, Sandy Perry-Provost, Special Assistant, Alaska Department of Public Safety, (Aug.18, 1997).

<sup>61</sup>*Id.*

and find the offender to inform him of his responsibility to register. If the offender registers as a result of the contact, no charges for failing to register are filed against him.<sup>62</sup>

In addition to addressing concerns about the availability of registry information to the public, another challenge cited by officials is the enforcement of the address verification provisions. Recent counts indicate that Alaska has registered over 1,500 sex offenders statewide.<sup>63</sup> While officials noted that between 400 and 500 of these offenders are incarcerated in secure confinement, the remaining 1,000 registrants may or may not still be residing in the State. Although Alaska law has provisions for address verification, it is difficult to determine if an offender who is no longer on probation is still present in the State, unless he is apprehended by police for another violation.<sup>64</sup>

Officials also reported that funding concerns -- even in a passive notification system -- present a challenge for the program's implementation. ADPS representatives reported that, although funds were allocated to automate the central registry, no additional resources were appropriated for printing or staffing purposes. Further, although no formal analyses have been conducted to assess the costs of the State's notification program, officials noted the indirect costs associated with Alaska's registration and notification laws -- resources and staff time to litigate the provisions and to rewrite statutes to comply with the Jacob Wetterling Act -- have been significant.<sup>65</sup>

The executive director of the Council on Domestic Violence and Sexual Assault, an organization that lobbied for passage of the sex offender notification law, reported that, for the most part, expectations have been met. She noted that the notification system has been useful for certain groups, such as Alaska's battered women shelters, which have used the law to obtain lists of registrants in the area to help protect the women staying at the shelter.

The Council director commented that some citizens had questions about the registration and notification law when the provisions were first created. Specifically, individuals with whom she spoke were unsure of how to use the registry, how to access information, and what data was available for the \$10 fee. The Council worked with the

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<sup>62</sup>Telephone Interview with Cindy Cooper, Deputy Attorney General, Alaska Department of Law, (Aug. 26, 1997).

<sup>63</sup>Hames Interview, *supra* note 52.

<sup>64</sup>Hames Interview, *supra* note 52.

<sup>65</sup>Cooper Interview, *supra* note 62

State police on responding to these specific requests for information and she believes that any initial confusion has since been resolved as a result.<sup>66</sup>

In moving toward the future, officials are taking steps to assess the efficacy and accuracy of their current registration and notification program. For example, the DOC and the Alaska State Troopers are conducting research to ascertain the rates with which offenders comply with the state's registration provisions.<sup>67</sup> Further, officials from the ADPS are considering modifying the current procedures and fees associated with obtaining the registry information, especially since information is now available on the Web.<sup>68</sup>

Officials also reported that policymakers are considering making the Alaska community notification system more active in nature. In the first year of a two-year legislative session, Alaska legislators considered a number of bills to amend current sex offender registration and notification provisions. These bills remain pending, and will be debated when the legislature reconvenes in 1998.

Two separate proposals would make the notification system more active in Alaska. One initiative, for example, would require the ADPS to provide the name and address of a sex offender and the crime for which he was convicted to each residence and business within a designated area, the superintendent of the school district in which the sex offender resides, and other individuals the department determines appropriate to notify.<sup>69</sup> A second measure would make the notification requirement more active by requiring the ADPS to publish in a statewide newspaper two times per year the name and address of each offender required to register.<sup>70</sup>

Although these provisions are in the early stages of consideration, ADPS officials are aware that there are additional considerations associated with implementing a more active system of community notification. For example, shifting to an active system from the current notification procedures would be more resource intensive, and require additional funding to support. Further, adopting a more active system of notification,

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<sup>66</sup>Telephone Interview with Jane Andreen, Executive Director of the Council on Domestic Violence and Sexual Assault (April 8, 1997).

<sup>67</sup>Lowden Interview, *supra* note 56.

<sup>68</sup>Perry-Provost Interview, *supra* note 60.

<sup>69</sup>H.B. 273, 20th Leg., 1st Sess. (Alaska 1997) (pending).

<sup>70</sup>H.B. 252, 20th Leg., 1st Sess. (Alaska 1997) (pending).

they said, would be an ideological departure from current practice, and may lead to increased concern over issues such as privacy rights and vigilantism.<sup>71</sup>

Finally, officials reported concern with their efforts to comply with the Jacob Wetterling and the Lychner Acts. Alaska's Governor, Tony Knowles, has introduced legislation in both chambers to bring the State into compliance with the Federal law. Specifically, the bill would expand the crimes for which offenders must register, require that fingerprints be included in registry information, and require the transmission of relevant offender information to the FBI.<sup>72</sup>

Policymakers and practitioners remain concerned about amending their laws to comply with one specific Federal requirement. Missing from the Governor's measures are provisions to create a State board to serve in an advisory capacity to the sentencing court on the determination of an offender as sexually violent or a sexually violent predator. Alaska officials said that predicting an offender's proclivity to reoffend is difficult, and that creating a panel of this sort may not achieve the goal of accurately assessing risk. They also noted concern about the State's and panelists' liability if their assessment of an offender does not reflect accurately his subsequent actions.<sup>73</sup>

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<sup>71</sup>Perry-Provost Interview, *supra* note 60.

<sup>72</sup>H.B. 186, S.B. 132, 20th Leg., 1st Sess. (Alaska 1997) (pending).

<sup>73</sup>Cooper Interview, *supra* note 62.



# Louisiana

## Statutory Summary

Louisiana's registration and notification statutes became effective June 18, 1992, and were amended in 1995 and 1997. A victims' rights group lobbied the legislature for a bill.<sup>74</sup> The intent of the legislature in creating these provisions was to promote public safety by providing the "[r]elease of information about sex offenders... under limited circumstances [to] the general public, [which] will further the governmental interest of public safety and public scrutiny of the criminal and mental health system so long as the information released is rationally related to the furtherance of those goals."<sup>75</sup>

### Registration

The statute requires that any adult residing in Louisiana who has pleaded guilty or has been convicted of any sex offense committed on or after June 18, 1992, or committed before June 18, 1992, if the person, as a result of the offense, is under the custody of the Louisiana Department of Public Safety and Corrections (LDPSC) on or after June 18, 1992, is obligated to register. These individuals must register with the sheriff in his parish or, if the offender resides in New Orleans, with the police department in his municipality.<sup>76</sup>

The registrant must, within 45 days of establishing residence in Louisiana, or, if a current resident, within 30 days after conviction or release from confinement, provide the following information to appropriate law enforcement officials: name; address; place of employment; crime of conviction; date and place of conviction; aliases; and Social Security number.<sup>77</sup>

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<sup>74</sup>Finn, *supra*, note 2. Specifically, a victim's rights group called Victims and Citizens Against Crime lobbied the legislature for the bill's passage. Telephone Interview with Sandford Krasnoff, Executive Director of Victims and Citizens Against Crime, Louisiana (May 29, 1997).

<sup>75</sup>LA. REV. STAT. ANN. § 15:540 (West Supp. 1997).

<sup>76</sup>LA. REV. STAT. ANN. § 15:542(A), (E) (West Supp. 1997).

<sup>77</sup>LA. REV. STAT. ANN. § 15:542(B) (West Supp. 1997).

The sheriff or police department must obtain a photograph and fingerprints from the registrant.<sup>78</sup> If an offender fails to register, he may be fined up to \$1,000 or imprisoned up to a year, or both, for his first conviction.<sup>79</sup> For second or subsequent convictions, an offender may be imprisoned for up to three years without the possibility of parole, probation, or suspended sentence.<sup>80</sup>

The LDPSC, Division of Louisiana State Police, Bureau of Criminal Identification and Information (BCII) must maintain a central registry of sex offenders.<sup>81</sup> The BCII is required to adopt regulations and procedures to prescribe the terms and conditions under which relevant and necessary information shall be released by authorized criminal justice agencies when necessary for public protection.<sup>82</sup>

A court must give written notice of the registration requirements to any defendant charged with a sex offense.<sup>83</sup> The LDPSC must give written notice to an inmate at the time of his release from incarceration.<sup>84</sup>

Offenders must comply with the registration and notification requirements for 10 years after conviction, if not imprisoned, or for 10 years from their release from incarceration. The duty to register and notify ends 10 years after the date of initial registration, provided that the registrant does not reoffend during the 10-year period.<sup>85</sup> An offender must send written notice of his change of address to the sheriff within 10 days of establishing a new residence and register with the sheriff in his new parish if he moves.<sup>86</sup>

A registrant may petition the court in which he was convicted for relief from the duty to register and notify.<sup>87</sup> He must name the parish district attorney as the respondent in the petition. In reviewing a petition, the court must consider the nature of the sex offense committed and the criminal and relevant noncriminal behavior of the registrant both

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<sup>78</sup>LA. REV. STAT. ANN. § 15:542(D) (West Supp. 1997).

<sup>79</sup>LA. REV. STAT. ANN. § 15:542(F)(1) (West Supp. 1997).

<sup>80</sup>LA. REV. STAT. ANN. § 15:542(F)(2) (West Supp. 1997).

<sup>81</sup>LA. REV. STAT. ANN. § 15:545(A) (West Supp. 1997).

<sup>82</sup>LA. REV. STAT. ANN. § 15:578(A)(7) (West Supp. 1997).

<sup>83</sup>LA. REV. STAT. ANN. § 15:543(A) (West Supp. 1997).

<sup>84</sup>LA. REV. STAT. ANN. § 15:543(B) (West Supp. 1997).

<sup>85</sup>LA. REV. STAT. ANN. § 15:544(A) (West Supp. 1997).

<sup>86</sup>LA. REV. STAT. ANN. § 15:542 (C) (West Supp. 1997).

<sup>87</sup>LA. REV. STAT. ANN. § 15:544(B) (West Supp. 1997).



before and after conviction. The court also may consider other factors. The petitioner must prove to the court, by clear and convincing evidence, that future registration will not serve the law's purpose.<sup>88</sup>

## Notification

Louisiana is the only State to require offenders to conduct community notification themselves. An offender must notify:

- (1) [a]t least one person in every residence or business within a one mile radius in a rural area and a three square block area in an urban or suburban area of the address where [he] will reside upon release, and
- (2) [t]he superintendent of the school district where [he] will reside, who shall notify the principal of every school the superintendent thinks should be notified of the defendant's name, address, and the crime [of conviction].<sup>89</sup>

Registrants must notify all people living in the designated area by mail and publish the notice on two separate days in an official journal, at his own cost, within 30 days of setting up residency.<sup>90</sup>

The notification statute authorizes the court to order any other form of notice that it deems appropriate, including but not limited to: signs, handbills, bumper stickers, and clothing labeled to identify the registrant as a sex offender.<sup>91</sup> Because of this provision, the law has been dubbed the "scarlet letter" act.<sup>92</sup>

Criminal justice agencies may release "relevant and necessary information" to the public when the release of information is necessary for public protection.<sup>93</sup> Officials who

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<sup>88</sup>*Id.*

<sup>89</sup>LA. REV. STAT. ANN. § 15:542(B)(1)(a), (b) (West Supp. 1997).

<sup>90</sup>LA. REV. STAT. ANN. § 15:542(B)(2)(West Supp. 1997).

<sup>91</sup>LA. REV. STAT. ANN. § 15:542(B)(3) (West Supp. 1997).

<sup>92</sup>N.Y. TIMES, *supra* note 4 at A5.

<sup>93</sup>LA. REV. STAT. ANN. § 15:546(A) (West Supp. 1997).

release information are immune from civil liability for any discretionary decision to release information unless they have acted in bad faith or with gross negligence.<sup>94</sup>

When an offender is released from custody -- for parole, probation, or work release -- the LDPSC must send written notice to the chief of police in the municipality or sheriff in the parish where the inmate will reside or work, no later than 10 days before release.<sup>95</sup> The same notice must be sent to (1) the victim of the crime for which the offender was convicted; (2) any witness who testified against the offender; and (3) any person specified in writing by the prosecuting district attorney, if such person requests such notice in writing.<sup>96</sup> The statute requires the LDPSC's Division of Probation and Parole, Board of Parole to "conduct one public hearing in each municipality with a population of not less than fifty thousand and receive information and input from the public ..."<sup>97</sup>

Laws passed during the 1997 legislative session will expand current community notification requirements to obligate sex offenders to report to their lessor, landlord, or the owner of the property on which they reside as well as the superintendent of any park, playground, or recreation district within their neighborhood of their status as a convicted sex offender.<sup>98</sup> Another amendment expands registration and notification requirements to juvenile offenders when they are adjudicated delinquent for acts that would obligate them to register if they had been committed by adults.<sup>99</sup>

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<sup>94</sup>LA. REV. STAT. ANN. § 15:546(B) (West Supp. 1997).

<sup>95</sup>LA. REV. STAT. ANN. § 15:549(A)(1), (2) (West Supp. 1997).

<sup>96</sup>LA. REV. STAT. ANN. § 15:549(B)(1), (2), (3) (West Supp. 1997).

<sup>97</sup>LA. REV. STAT. ANN. § 15:547 ( C) (West Supp. 1997).

<sup>98</sup>SB 1362, Regular Session, Louisiana Legislature (1997) (enacted); SB 1376, Regular Session, Louisiana Legislature (1997) (enacted).

<sup>99</sup>SB 1304, Regular Session, Louisiana Legislature (1997) (enacted).

## Case Law Summary

The Louisiana courts have held that retroactive application of registration and notification provisions violates the Ex Post Facto Clauses of the Louisiana and U.S. Constitutions.<sup>100</sup> In *State v. Calhoun*, the Court of Appeals of Louisiana, First Circuit, held that retroactive registration as a sex offender exposes the registrant to the possibility of additional penalties for his criminal conduct because he may be fined or imprisoned, or both, if he fails to register.<sup>101</sup>

The courts have held, however, that the State may impose a notification requirement as a condition of parole when the underlying offense was committed prior to the statute's effective date.<sup>102</sup> "[T]he law in effect at the time of a prisoner's release governs the terms of that release, rather than the law in effect at the time of the commission of the offense."<sup>103</sup> In *Lee v. State*, the court reasoned that the offender "is not subject to a greater penalty than that authorized for his crime at the time of its commission," rather, an offender who fails to comply with the notification provision is subject only to return to prison to complete the full term to which he was originally sentenced.

## Implementation Issues

According to the State Policy Advisor for Criminal Justice, Louisiana Commission on Law Enforcement, State legislators in both the House and Senate were active in developing the Louisiana sex offender laws, with Rep. Peter Schneider and Sen. James Cox key players in the enactment of the statutes.<sup>104</sup> Both members authored legislation in their respective chambers that ultimately comprised parts of the registration and notification law passed by the legislature. Specifically, the legislation was prompted by a case in which a man, who was convicted of a sex crime in another State, was released

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<sup>100</sup>*State v. Calhoun*, 669 So.2d 1359 (La. Ct. App. 1996); *State v. Linson*, 654 So.2d 440 (La. Ct. App. 1995); *State v. Babin*, 637 So.2d 814 (La. Ct. App. 1994) (notification violates Ex Post Facto Clause because crimes took place before notification laws took effect); *State v. Payne*, 633 So. 2d 701 (La. Ct. App. 1993), writ denied, 637 So.2d 497 (La. 1994).

<sup>101</sup>*Calhoun*, 669 So.2d at 1363.

<sup>102</sup>*Lee v. State*, 681 So.2d 1020 (La. Ct. App. 1996).

<sup>103</sup>*Id.* at 1023.

<sup>104</sup>Telephone Interview with Carle Jackson, State Policy Advisor for Criminal Justice, Louisiana Commission on Law Enforcement (May 27, 1997).

on parole and settled in Louisiana. Not long after his move, he was apprehended and charged with the murder of a child.<sup>105</sup>

The bill moved through the legislature with relative ease, with State officials and other observers indicating that there was no significant opposition to the bill from organized coalitions.<sup>106</sup> According to the Executive Director of Victims and Citizens Against Crime, a Louisiana victims' rights group, family members of at least four victims of sex crimes testified in support of the legislation before the Louisiana State legislature in 1992.<sup>107</sup>

With almost five years of experience implementing these laws, practitioners have made several observations about their "workability" in practice. Some noted that many of the law's discretionary provisions that allow the offender to be more visible and afford the community more involvement in the process are not often employed. For example, officials said that, generally speaking, very few offenders have been required to utilize more evident forms of community notification allowed by law, such as handbills, yard signs, and specially designated clothing, since the provisions were created in 1992.<sup>108</sup>

More recently, however, there have been reports that judges and probation and parole officials have begun ordering these more stringent provisions with greater frequency. For example, one member of the parole board recently required an offender, as a condition of release, to post a sign in his yard indicating his status as a sex offender. That member has since stated publicly that in future cases that come before her, she will require that sex offenders perform other such "creative" types of community notification.<sup>109</sup>

An observer also noted that forums for community members to ask questions, receive information, or voice concern about the notification process have not been widely attended by citizens. They reported that few citizens have participated in the Board of Probation and Parole's public hearings, and that the Board does not distribute educational materials about the law to citizens who do attend.<sup>110</sup>

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<sup>105</sup>Telephone Interview with Jim Boren, Director, Louisiana Association of Criminal Defense Lawyers, (Aug. 26, 1997).

<sup>106</sup>Krasnoff Interview, *supra* note 74, Telephone Interview with Sue Bernie, Assistant District Attorney, 23rd Judicial District, Louisiana, (Aug. 14, 1997).

<sup>107</sup>Krasnoff Interview, *supra* note 74.

<sup>108</sup>Jackson Interview, *supra* note 104, Krasnoff Interview, *supra* note 74.

<sup>109</sup>Bernie Interview, *supra* note 106.

<sup>110</sup>Krasnoff Interview, *supra* note 74.

Officials in Louisiana have identified challenges in implementing the notification provisions. For example, the State Policy Advisor for Criminal Justice reported that some practitioners are concerned about the effect of community notification upon victims of incest and fear that community notification may indirectly identify incest victims and cause a chilling effect by inhibiting their reporting of these crimes. Incest victims may not come forward and assist prosecutors because they fear they may be identified by peers and other members of the community when the offender complies with the notification law.<sup>111</sup>

A prosecutor from a smaller community in the State corroborated this concern, and noted that she has had cases where young teen-age girls were molested by their stepfathers but are fearful of being identified when their stepfather's picture is published in the local newspaper. She is disturbed about cases of this sort, where the needs of the victim may not be consistent with the broader interests of the community.<sup>112</sup>

Another practitioner expressed concern about the crimes for which offenders must register and notify the community. In recent amendments to the registration and notification provisions, lawmakers in Louisiana expanded the scope of the statute to include statutory rape and contributing to the delinquency of a minor-type charges as those for which convicted offenders must register. Although in some cases notification to the community of these offenders' presence may be appropriate, there are other situations in which notification may not serve the purpose of alerting the community to a dangerous sex criminal. For example, an 18-year-old who is having consensual sex with his 16-year-old girlfriend may not pose a risk to the community. The fact that there are no exceptions to the notification provisions or any mechanisms by which officials may petition the court to exempt offenders like the one in this example, stated one prosecutor, results in the law being overbroad in practice in some cases.<sup>113</sup>

A criminal defense lawyer confirmed this concern, and noted that the breadth of the law may result in innocent people unnecessarily "getting caught in the web" of the criminal justice system. Cases such as these, he said, do not achieve the end of reducing crime.<sup>114</sup>

Other concerns cited by practitioners relate to the availability of resources necessary to maintain and enforce the notification requirements, especially for probation officials charged with ensuring an offender complies with his duty to notify. For example, one official noted that there has been a significant increase in workload for the LDPSC's Division of Probation and Parole (DPP) as a result of the notification laws. He further

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<sup>111</sup>Jackson Interview, *supra* note 104.

<sup>112</sup>Telephone Interview with Robin O'Bannon, Assistant District Attorney, 23rd Judicial District, Louisiana, (Aug. 13, 1997).

<sup>113</sup>Bernie Interview, *supra* note 106.

<sup>114</sup>Boren Interview, *supra* note 105.

stated that no additional State funds have been appropriated to implement the notification provisions.<sup>115</sup>

Further, recent legislative changes to the notification law have decreased from 30 to 21 days the amount of time that probation officials have to ensure that offenders are conducting notification consistently with the law and the judge's order. This new requirement, according to officials, has added to the administrative burden on probation officers and agencies.<sup>116</sup>

The Deputy Director of the DPP indicates that, although no additional staff has been hired to process sex offender registry and notification information or handle the additional workload, sex offender cases typically are managed by the most senior staff members. As a result, those individuals are spending more time than they had before the laws became effective on these types of cases. Despite the increased workload for probation officials, internal DPP estimates indicate that approximately 95 percent of those offenders required to register do so, while the State enjoys an 80-percent "success" rate in notifying communities of the presence of sex offenders in their area upon release.<sup>117</sup>

Observers and practitioners said the provisions of the notification statute are difficult to enforce for convicted sex offenders moving into and out of Louisiana. For example, the registration and notification provisions have been difficult to enforce against out-of-State offenders moving into Louisiana because the State may not be aware of their presence, according to Jackson.<sup>118</sup>

Others noted concern about sex offenders convicted in Louisiana who move to another State. Although probation officials in the new State are charged with enforcing the terms of the probation as it was set in Louisiana if they participate in interstate probation agreements, when the probationer leaves Louisiana there is no way for Louisiana officials to ensure that the terms of release are fulfilled.<sup>119</sup>

Another consequence of the sex offender notification laws, according to practitioners, is that offenders are less willing to enter plea agreements because of the breadth of the notification provisions. The broad scope of offenses for which notification is required under Louisiana law forecloses, in some cases, the possibility that an offender can plead down to a charge that does not obligate him to register and notify. Offenders, therefore, may prefer to go to trial, where they have a chance to avoid the registration and

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<sup>115</sup>Jackson Interview, *supra* note 104.

<sup>116</sup>Bernie Interview, *supra* note 106.

<sup>117</sup>Bernie Interview, *supra* note 106.

<sup>118</sup>Jackson Interview, *supra* note 104.

<sup>119</sup>O'Bannon Interview, *supra* note 112.

notification obligation if found not guilty. There are unintended consequences associated with taking more of these cases to trial. For example, more trials of this sort require the use of additional resources -- courtroom time, prosecutors, defense attorneys, court personnel, and judges -- to try these cases. In addition to being more work intensive, taking the case to trial requires the victim to cooperate with the prosecution, which can be difficult in intrafamilial cases or when the victim is a child.<sup>120</sup>

A DPP official indicated that no State or local agency has undertaken any formal analysis, evaluation, or study of the sex offender notification effort in Louisiana, but that criminal justice practitioners would benefit from an analysis of the impact and effectiveness of the notification provisions in Louisiana and how those practices interrelate with other efforts to supervise and manage sex offenders in the community.<sup>121</sup>

On the legislative front, lawmakers appear to be moving forward, and prescribing more stringent requirements for sex offenders under community supervision, according to observers.<sup>122</sup> In addition to expanding the scope of the notification effort and the types of offenders required to conduct community notification, lawmakers also created provisions in the 1997 session that would allow for chemical castration of sex offenders in some cases. Further, they passed a bill that would allow for the involuntary civil commitment of certain serious and violent sex offenders in appropriate cases.<sup>123</sup>

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<sup>120</sup>Bernie Interview, *supra* note 106.

<sup>121</sup>Bernie Interview, *supra* note 106.

<sup>122</sup>Telephone Interview with Roxie Goynes-Clark, Attorney, Louisiana Department of Public Safety and Corrections, (Aug. 25, 1997), Bernie Interview, *supra* note 106.

<sup>123</sup>Bernie Interview, *supra* note 106.





# New Jersey

## Statutory Summary

New Jersey's registration and notification statutes were enacted in response to citizen concern after a highly publicized sex crime and murder by a repeat sex offender against 7-year-old Megan Kanka. Only three months after her death in October 1994, the New Jersey legislature voted to create sex offender community notification provisions, calling the initiative Megan's Law in memory of the young victim. The community notification was just one of 10 measures for punishing and tracking sex offenders that was considered during that legislative session. Other provisions included the establishment of a DNA database for genetic information about sex offenders and an involuntary civil commitment option for violent sexual offenders.<sup>124</sup>

There were several factors that led to Megan's Law being "fast-tracked" by legislators. Megan's parents, Richard and Maureen Kanka, were instrumental in the enactment of the community notification provisions, and actively sought support from State legislators for the initiative. Observers report that the New Jersey Assembly Speaker -- who was running for U.S. Senate at the time -- put the package on a fast-track and bypassed committee examination of several of the sex offender-related initiatives in that chamber.<sup>125</sup> Once the sex offender registration and community notification provisions were finalized, however, a New Jersey official reported that every State legislator voted in favor of the law.<sup>126</sup>

The legislation sets forth the purpose of the registration and notification measures as providing for both information sharing with the community on the presence of sex offenders in the area, and tools for law enforcement to help apprehend sex offenders and prevent sex crimes:

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<sup>124</sup>Russ Bleemer, *Assembly to Senate: You Figure Out the Tough Parts*, New Jersey Law Journal, (Sept. 5, 1994).

<sup>125</sup>*Id.*, Telephone Interview with Joe Scarpa, Staffmember, Office of the Honorable Louis Kosco, New Jersey Senate (Sept. 4, 1997).

<sup>126</sup>Telephone Interview with Jessica Oppenheim, Deputy Attorney General, Criminal Justice Division, Prosecutors and Police Section, New Jersey Department of Law and Public Safety (March 7, 1997).

The danger of recidivism posed by sex offenders and offenders who commit other predatory acts against children, and the dangers posed by persons who prey on others as a result of mental illness, require a system of registration that will permit law enforcement officials to identify and alert the public when necessary for the public safety.

A system of registration of sex offenders and offenders who commit other predatory acts against children will provide law enforcement with additional information critical to preventing and promptly resolving incidents involving sexual abuse and missing persons.<sup>127</sup>

## Registration

A person convicted, adjudicated delinquent, or found not guilty by reason of insanity of a sex offense must register with the appropriate agency as defined by the statute.<sup>128</sup> For example, if an offender is on probation, parole, furlough, or work release, he must register at the time he is placed under supervision in accordance with procedures established by the Department of Corrections (DOC), the Department of Human Services (DHS), the Juvenile Justice Commission (JJC), or the Administrative Office of the Courts (AOC), whichever is responsible for supervision.<sup>129</sup> A person confined to a correctional or juvenile facility or involuntarily committed to a mental hospital who is required to register must do so prior to release in accordance with procedures established by the DOC, DHS, or JJC.<sup>130</sup> Further, a person required to register on the basis of a conviction before the effective date of the statute who was neither confined nor under supervision on the effective date of the act is required to register within 120 days of the effective date of the act with the chief law enforcement officer of the municipality in which he is residing or, if the municipality does not have a local police force, the superintendent of State police.<sup>131</sup>

New Jersey law also specifically defines the registration requirements for convicted sex offenders who are relocating to the State. A person moving or returning to the State from another jurisdiction must register with the chief law enforcement officer of the municipality in which he will reside or, if the municipality does not have a local police

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<sup>127</sup>N.J. REV. STAT. § 2C7-1 (West 1995 & Supp. 1996).

<sup>128</sup>N.J. REV. STAT. § 2C7-2 (West 1995 & Supp. 1996).

<sup>129</sup>*Id.*

<sup>130</sup>*Id.*

<sup>131</sup>*Id.*

force, the superintendent of State police, within 70 days of first entering the State.<sup>132</sup> A registrant must notify the appropriate law enforcement agencies for an intrastate move. He must register in both the municipality he is leaving and the municipality to which he is moving at least 10 days before relocating.<sup>133</sup> Further, a registrant must verify his address with the appropriate law enforcement agency every 90 days or every year, depending upon the offense of conviction.<sup>134</sup>

The court must notify an offender of his obligation to register when it imposes a sentence, disposition, or order of commitment following acquittal by reason of insanity.<sup>135</sup> A registrant may apply to the superior court to terminate his registration and notification obligation. The court may grant the request upon proof that the offender has not committed an offense within 15 years of his conviction or release, whichever is later, and that he is not likely to pose a threat to the safety of others.<sup>136</sup>

In addition to developing procedures dictating the process for sex offender registration, the DOC, AOC, JJC, and DHS were required under the law to establish procedures for notifying persons under their supervision of the obligation to register. The Department of Transportation, Division of Motor Vehicles must provide notice of the obligation to register in connection with each application for a driver's license and each application for an identification card.<sup>137</sup> The attorney general was required to publish notice of the obligation to register so that it would reach the general public within 30 days of the effective date of the law.<sup>138</sup>

An offender who is obligated to register must do so on a form to be provided by the designated registering agency.<sup>139</sup> Under the statute, the superintendent of State police was required to prepare a registration form to be approved by the attorney general.<sup>140</sup> The form must include:

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<sup>132</sup>*Id.* A recent court decision, *In re Registrant E.D.*, 672 A.2d 183 (N.J. Sup. Ct. 1996), required an offender living in Pennsylvania but working in New Jersey to register.

<sup>133</sup>N.J. REV. STAT. § 2C7-2 (West 1995 & Supp. 1996).

<sup>134</sup>*Id.*

<sup>135</sup>N.J. REV. STAT. § 2C7-3(1) (West 1995 & Supp. 1996).

<sup>136</sup>N.J. REV. STAT. § 2C7-2 (West 1995 & Supp. 1996).

<sup>137</sup>N.J. REV. STAT. § 2C7-3(3) (West 1995 & Supp. 1996).

<sup>138</sup>N.J. REV. STAT. § 2C7-3(4) (West 1995 & Supp. 1996).

<sup>139</sup>N.J. REV. STAT. § 2C7-2(c) (West 1995 & Supp. 1996).

<sup>140</sup>N.J. REV. STAT. § 2C7-4(a) (West 1995 & Supp. 1996).

- the registrant's name and Social Security number;
- a written statement signed by the registrant acknowledging that he has been advised of the duty to register and re-register;
- his age, race, sex, and date of birth;
- his height, weight, hair and eye color;
- the address of his legal residence and current temporary residence;
- his date and place of employment;
- conviction information, including the date and place of each conviction, adjudication, or acquittal by reason of insanity, and the indictment number;
- fingerprints; and
- a brief description of the crime or crimes committed.<sup>141</sup>

The statute allows the registration form to include other information, such as criminal and corrections records; nonprivileged personnel, treatment, and abuse registry records; and evidentiary genetic markers if the attorney general deems the information necessary for purposes of assessing whether future crimes will be committed.<sup>142</sup>

Once the registering agency receives the registration, it must forward within three days all relevant information about the offender to the prosecutor who tried the case.<sup>143</sup> The prosecutor must then send the registration information to the superintendent of State police. If the registrant is residing in a different county than the one in which he was prosecuted, the prosecutor also must send the form to the prosecutor of the county in which the registrant resides, who must forward the information to the law enforcement agency responsible for the municipality in which the offender is residing. The superintendent must send the conviction data and fingerprints to the FBI.<sup>144</sup>

## **Notification**

Under the notification provisions, the chief law enforcement officer of the municipality where the registrant intends to reside must notify the community within 45 days after receiving notification that an inmate will be released from jail or prison. The statute authorizes the county prosecutor(s) to determine who is subject to what type of notification,<sup>145</sup> and the chief law enforcement officer to conduct the actual notification in

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<sup>141</sup>N.J. REV. STAT. § 2C7-4(b)(1), (2)(West 1995 & Supp. 1996).

<sup>142</sup>N.J. REV. STAT. § 2C7-4(b)(3)(West 1995 & Supp. 1996).

<sup>143</sup>N.J. REV. STAT. § 2C7-4(c) (West 1995 & Supp. 1996).

<sup>144</sup>*Id.*

<sup>145</sup>N.J. REV. STAT. § 2C7-8(d)(1) (West 1995 & Supp. 1996).

the community.<sup>146</sup> If the municipality does not have a police force, the State police superintendent shall conduct notification. The statute leaves the scope of the notification effort, however, to the State attorney general, who was required by statute to promulgate notification guidelines and procedures.<sup>147</sup>

A Notification Advisory Council was charged by the legislature to advise and provide recommendations to the attorney general in promulgating these guidelines. The council was statutorily mandated to consist of 12 persons to be appointed by the Governor, Senate President, and General Assembly Speaker. The guidelines were developed and reviewed by the attorney general and the Advisory Council one year after the effective date of the notification laws, at which time the council expired.<sup>148</sup>

The result of the attorney general's and Notification Advisory Council's effort -- the Registrant Risk Assessment Scale (RRAS)<sup>149</sup> -- is used by prosecutors to determine an offender's risk of re-offense. The RRAS assigns a number to an offender based on several criteria, such as the conditions of release, or the type of supervision the offender will receive; physical conditions that minimize risk of re-offense, such as the offender's age or illness; criminal history factors, such as the seriousness of the offense; length of sentence; age of victim; the use of a weapon in the commission of the crime; the offender's relationship to the victim; psychological or psychiatric profiles; and the offender's response to treatment and recent behavior. Each criterion is assigned a number or score from zero to three. Zero indicates low risk, one indicates moderate risk, and three indicates high risk. Some criteria are given more weight than others.

The individual scores are added to achieve a final score that determines the type of notification to which the offender must adhere. A low risk of re-offense -- a score between zero and 36 -- is defined as Tier I and requires that law enforcement agencies likely to encounter the registrant be notified of his presence in the community. Scores between 37 and 73 are considered a Tier II classification, which requires the same notification as Tier I, as well as notification to certain organizations in the community, including schools and religious and youth organizations. A high risk of re-offense -- a score between 74 and 111 -- is defined as Tier III and warrants Tier II-level information dissemination as well as notification to the public through means designed to reach

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<sup>146</sup>N.J. REV. STAT. § 2C7-7 (West 1995 & Supp. 1996).

<sup>147</sup>N.J. REV. STAT. § 2C7-8(3)(a) (West 1995 & Supp. 1996).

<sup>148</sup>N.J. REV. STAT. § 2C7-11 (West 1995 & Supp. 1996).

<sup>149</sup>N.J. REV. STAT. § 2C7-8(b)(1)-(8) (West 1995 & Supp. 1996).  
*Guidelines for Law Enforcement for Notification to Local Officials and/or the Community of the Entry of a Sex Offender into the Community* (June 1, 1996, on file with author).

citizens likely to encounter the registrant, such as publishing information in local newspapers or posting fliers in appropriate areas.<sup>150</sup>

In cases where an offender is classified under Tier II or Tier III, New Jersey law also requires prosecutors to conduct training and offer educational materials about sex offenders and sex crimes to community organizations when conducting notification.<sup>151</sup> For example, county prosecutors often personally meet with an organization the first time it receives notification of a sex offender in the community. When meeting with the organization, the prosecutor brings copies of the notification announcements, explains the law, and stresses the importance of confidentiality to protect the privacy of the offender.<sup>152</sup> For subsequent notifications to the organization, the prosecutor typically contacts the organization by telephone and mails the flier.<sup>153</sup> When schools are notified, fliers are sent home with students or mailed to parents.<sup>154</sup>

## Case Law Summary

After the enactment of the statute and promulgation of the guidelines, an offender identified as John Doe challenged the notification law as violative of his constitutional rights. The New Jersey supreme court upheld the law in *Doe v. Poritz* with a number of caveats, including that offenders are entitled to prenotification review of a prosecutor's tier decision.<sup>155</sup>

The *Poritz* court provided for the appointment by the assignment judge of "one judge in the vicinage," or a single judge who handles all applications for review in an attempt to assure uniformity of treatment.<sup>156</sup> The review process allows a registrant to apply to the court for judicial review of his tier classification.<sup>157</sup> The court reasoned that, although community notification is constitutional, it impinges upon a registrant's liberty interests

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<sup>150</sup>N.J. REV. STAT. § 2C7-8(c) (West 1995 & Supp. 1996).

<sup>151</sup>*Guidelines*, *supra* note 149.

<sup>152</sup>Finn, *supra* note 2 at 8.

<sup>153</sup>Finn, *supra* note 2 at 8.

<sup>154</sup>Finn, *supra* note 2 at 8.

<sup>155</sup>*Doe v. Poritz*, 662 A.2d 367 (N.J. 1995).

<sup>156</sup>*Id.* at 386.

<sup>157</sup>*Id.* at 382.

under New Jersey law and triggers both the procedural and substantive due process requirements of the New Jersey Constitution.<sup>158</sup>

The court required the attorney general to formulate procedures designed to ensure that the registrant is given ample notice of his tier designation before Tier II or Tier III notification takes place so that the registrant may object.<sup>159</sup> The notice must be written and inform the offender of the proposed tier level; specific manner and details of notification; and that, unless he applies to the court on or before the date mentioned in the notice (at least two weeks after he is given notice), the notification will take place.<sup>160</sup>

The notice given to the registrant also must inform him that he has a right to an attorney at the tier classification hearing and if he cannot afford an attorney the court will provide one for him.<sup>161</sup> The notice must inform the registrant that he must request a hearing in a timely manner.<sup>162</sup> If he chooses to apply for review without retaining an attorney, he may do so by writing a letter, delivered to the assignment judge named in the notice, enclosing the prosecutor's notice of tier designation, "and indicat[ing][the] objection to it, disagreement with it, or the simple fact that he or she does not want the notification to be given."<sup>163</sup>

When the court receives the registrant's objection it must schedule a pre-hearing conference and, if necessary, a hearing date to decide the issue.<sup>164</sup> The prosecutor must provide the court and the registrant (and the registrant's counsel if counsel has been retained or appointed) with all relevant documents, including the prosecutor's findings and a statement of reasons for the level and manner of proposed notification.<sup>165</sup>

The hearing is to be held in camera, or in a courtroom without spectators.<sup>166</sup> The court determines whether and to what extent production of witnesses and cross examination will be required. The rules of evidence do not apply at the hearing. The State has the burden of proof and must present evidence that *prima facie*, or at a

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<sup>158</sup>*Id.*

<sup>159</sup>*Id.*

<sup>160</sup>*Id.*

<sup>161</sup>Poritz, 662 A.2d at 382.

<sup>162</sup>*Id.*

<sup>163</sup>*Id.*

<sup>164</sup>*Id.*

<sup>165</sup>*Id.*

<sup>166</sup>*Id.*

bare minimum, justifies the level and manner of notification. The burden of persuasion then shifts to the registrant to show that the level and manner of notification is not justified.

The *Poritz* court said that the only issue to be determined at a hearing is the risk of reoffense.<sup>167</sup> All offenders are subject to at least Tier I notification. When the State chooses to impose Tier II notification, its *prima facie* case must include a description of Tier I and Tier II offenders and their risk of reoffense; proof, in the form of expert opinion or otherwise, that the Tier II class of offenders poses a substantially higher risk of reoffense than does the Tier I class; and proof that the offender before the court is a moderate-risk offender who poses such substantially higher risk.<sup>168</sup>

When the State chooses to impose Tier III notification, it must follow a similar procedure and include a description of Tier I & II class of offenders and the risks associated with each class; a description of the Tier III class of offenders, including a description of the high risk of reoffense; some proof, in the form of expert opinion or otherwise, that the Tier III class of offenders poses a substantially higher risk of reoffense than does the Tier II class; that the offender before the court is a high-risk offender who poses such substantially higher risk than a Tier II offender.<sup>169</sup> The court did not define or quantify the term “substantially higher.”<sup>170</sup> For individuals offering expert opinion, the court held that the prosecutor, or someone designated by the prosecutor, shall be presumptively accepted by the court as an expert on the risk of reoffense.<sup>171</sup>

The *Poritz* court also set forth specific restrictions upon the manner and scope of community notification for Tier II and Tier III offenders. For Tiers II and III notification, “only those community organizations that own or operate an establishment where children gather under their care, or where women are cared for, shall qualify, and only those that are ‘likely to encounter’ the offender . . .” shall be notified.<sup>172</sup> The word “likely” means “having a fair chance to encounter;” it does not mean possibly or probably.<sup>173</sup> For example, a battered women’s shelter may be notified of an offender’s presence in the community because women are cared for at the shelter. A rape crisis center that counsels women over the telephone, however, is not required to be notified if that center does not care for women in their facility. The

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<sup>167</sup>*Poritz*, 662 A.2d at 382.

<sup>168</sup>*Id.* at 383.

<sup>169</sup>*Id.* at 383-384.

<sup>170</sup>*Id.* at 384.

<sup>171</sup>*Id.*

<sup>172</sup>*Id.*

<sup>173</sup>*Poritz*, 662 A.2d at 385.



notice also must specifically direct the organizations not to notify anyone else.<sup>174</sup> The *Poritz* court stated that notification could include “schools and other institutions in adjacent municipalities” to the offender’s residence.<sup>175</sup> The organizations to be contacted must be determined by the prosecutor on a case-by-case basis.

For Tier III notification, the guidelines originally provided that an entire community may be notified regardless of who would be likely to encounter the offender. The court, however, limited public notification to those in the “immediate neighborhood of the offender’s residence”<sup>176</sup> and defined “likely to encounter” as including “the immediate neighborhood of the offender’s residence and not just the people next door.”<sup>177</sup> Notification generally is accomplished by door-to-door visits by local police who hand out fliers with information about the offender who has moved into the neighborhood. The *Poritz* court acknowledged that some members of the media may reach beyond the intended scope of notification to unfairly identify offenders.<sup>178</sup> The court said, however, that it would “assume that the media will exercise responsibility in this matter.”<sup>179</sup> The court suggested that a statute should be enacted imposing criminal penalties on those specifically charged with keeping the information confidential -- not upon the public or the media -- if they exceed the bounds of the confidentiality restriction.<sup>180</sup>

These court-imposed restrictions narrowed the scope of notification proposed by the attorney general. Originally, the guidelines allowed for public notification through community meetings and speeches in schools and religious congregations. However, the court determined that those means were not authorized under the statute and prohibited such communications unless the State could show that the meetings and speeches notified only those “likely to encounter” the offender.<sup>181</sup> While the court declined to specify the precise area of notification, the court commented that

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<sup>174</sup>*Id.* at 438.

<sup>175</sup>*Id.*

<sup>176</sup>*Id.* at 385.

<sup>177</sup>*Id.*

<sup>178</sup>*Id.* at 386.

<sup>179</sup>*Poritz*, 662 A.2d at 386.

<sup>180</sup>*Id.*

<sup>181</sup>*Id.* at 385.

geography, the offender's proclivity for certain locations, and other factors should be used to determine the area of a notification on a case-by-case basis.<sup>182</sup>

The U. S. Court of Appeals for the Third Circuit, in *Artway v. Attorney General*,<sup>183</sup> vacated as premature a district court injunction against retroactive application of community notification for Tiers II and III offenders. The court, however, upheld Tier I notification to law enforcement officials on the ground that it does not constitute punishment.<sup>184</sup> A Federal district court in New Jersey upheld retroactive application in *W.P. v. Poritz*.<sup>185</sup> The *W.P.* court ruled that information concerning offenders who would be designated as Tier II and III but were convicted prior to the enactment of the notification law could be released. The third circuit, however, has temporarily stayed notification to allow the plaintiffs to seek Supreme Court review.

The third circuit also refined the due process requirements established under the *Poritz* decision.<sup>186</sup> In *W.P. v. Verniero*,<sup>187</sup> the court held that the burden of persuasion of a tier classification hearing must be placed on the State, and that the State must support its tier classification and notification decision by clear and convincing evidence.<sup>188</sup> The court reasoned that an erroneous underestimation of a registrant's risk level "will

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<sup>182</sup>*Id.*, In determining the geographic area of notification, according to the NJ report: "Prosecutors in New Jersey sit down with local law enforcement officers and, using maps, usually determine a radius of approximately 1,000 feet in urban areas and up to two miles in rural areas. According to one prosecutor, 'We look at how far the offender has to travel to buy cigarettes.' If an offender lives in one community, works in another, and goes to school in a third, the prosecutor and police may have to extend the area." Finn, *supra* note 2, at 7.

<sup>183</sup>*Artway v. Attorney General*, 81 F.3d 1235 (3d Cir. 1996).

<sup>184</sup>*Id.* at 1253.

<sup>185</sup>*W.P. v. Poritz*, 931 F. Supp. 1199 (D. N.J. 1996), *aff'd sub nom.* *W.P. v. Verneiro*, 119 F.3d 1077 (3d Cir. 1997). The case name has changed because the lead defendant, Attorney General Deborah Poritz, was named Chief Justice of the Supreme Court of New Jersey. Peter Verniero is currently Attorney General of New Jersey. Poritz will not be reviewing any of the sex offender litigation in the State supreme court, according to a March 6, 1997 interview with Michael Buncher, Chief Counsel, Special Hearings Unit, New Jersey Public Defender's Office.

<sup>186</sup>*W.P. v. Verneiro*, 119 F.3d 1077 (3d Cir. 1997).

<sup>187</sup>*Id.* at 1108.

<sup>188</sup>*Id.* at 1111.

not necessarily result in harm to protected groups” because all registrants are at least subject to Tier I notification. However, “an overestimation of an individual’s dangerousness will lead to immediate and irreparable harm to the offender.”<sup>189</sup> Therefore, procedural due process requires that the standard of proof be higher than a preponderance of the evidence.<sup>190</sup> The court remanded the case to the district court with instructions to enter an injunction foreclosing notification in those Tier II and Tier III cases in which a registrant did not have an opportunity to challenge his tier classification in a hearing that comports with the above due process requirements.<sup>191</sup>

Since the *Poritz* ruling, New Jersey courts have issued several decisions about judicial proceedings to review offenders’ tier designations. These decisions have addressed the use of hearsay evidence and nonconviction offenses in tier designation hearings<sup>192</sup> and expert testimony to challenge tier classification.<sup>193</sup> Another decision addresses specifically the geographic scope of notification efforts,<sup>194</sup> and notification to private organizations.<sup>195</sup>

In *In re Registrant C.A.*, the New Jersey supreme court provided guidance for the use of the RRAS.<sup>196</sup> The court held that the RRAS is a useful tool to help prosecutors and courts determine an offender’s risk of reoffense.<sup>197</sup> The court said that a tier classification based upon an RRAS score should be afforded deference, however, the RRAS is not a scientific device, and officials should not rely solely on the RRAS for the tier determination.<sup>198</sup> The *C.A.* court also addressed the role of nonconviction offenses and hearsay evidence in tier classification hearings. The court held that a nonconviction offense may be considered in determining a convicted sex offender’s tier classification and that the State may prove that offense solely by reliable hearsay evidence.<sup>199</sup>

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<sup>189</sup>*Id.* at 1110.

<sup>190</sup>*Id.* at 1111.

<sup>191</sup>*Id.*

<sup>192</sup>*In re Registrant C.A.*, 679 A.2d 1153 (N.J. 1996).

<sup>193</sup>*In re Registrant G.B.*, 685 A.2d 1252 (N.J. 1996).

<sup>194</sup>*In re Registrant E.A.*, 667 A.2d 1077 (N.J. Super. Court App. Div. 1995).

<sup>195</sup>*Id.*

<sup>196</sup>*In re Registrant C.A.*, 679 A.2d 1153.

<sup>197</sup>*Id.* at 1171.

<sup>198</sup>*Id.*

<sup>199</sup>*Id.* at 1160, 1165.

In *In re Registrant G.B.*, the New Jersey supreme court overrode *G.B.*'s tier classification, which was based upon an RRAS score.<sup>200</sup> The court ruled that a convicted sex offender should be permitted to retain an expert and to present expert testimony at a hearing to show that unique aspects of his offense or character render the RRAS scores suspect and should result in a lesser tier classification.<sup>201</sup>

*G.B.* was indicted for various sexual offenses prior to the 1994 enactment of the notification statutes. The charges stemmed from multiple sexual encounters with his minor cousin. He pleaded guilty to one count of second degree sexual assault and was sentenced to five years at the Adult Diagnostic and Treatment Center at Avenel. He was released in June 1995.

The county prosecutor classified him as a Tier II offender based upon his RRAS score. The prosecutor determined that all schools within a two-mile radius of his residence and several other community organizations should be notified of *G.B.*'s identity and presence in the community.

*G.B.* sought judicial review of the prosecutor's determination. He challenged the factual bases of the RRAS calculation and the proposed scope of community notification. He also challenged the predictive value of the RRAS for determining the risk of reoffense and the correctness of the RRAS as applied to his case.

He tried to introduce evidence at his judicial hearing from three experts: a psychiatric expert, a statistical expert, and a human factors expert. The trial court ruled that expert testimony was unwarranted;<sup>202</sup> however, the State supreme court affirmed the appellate division's holding that *G.B.* should be permitted to retain and present expert testimony to show that based upon the factors considered in determining his RRAS score, he should have received a Tier I classification. The court held that a registrant should be permitted to introduce expert evidence about his classification if: (1) the evidence tends to establish that the RRAS score does not accurately or adequately take into account significant aspects of the registrant's character or prior offenses; (2) such aspects would be relevant and material to the trial court's determination of tier classification; and (3) the evidence would, in the trial court's discretion, assist in the disposition of the case.<sup>203</sup> At the trial court's discretion, the evidence can be introduced "in the form of hearsay, written opinion, deposition-type testimony, or live testimony."<sup>204</sup> If the trial court determines that the evidence is not relevant or

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<sup>200</sup>*Registrant G.B.*, 685 A.2d 1252.

<sup>201</sup>*Id.* at 1256.

<sup>202</sup>*Id.* at 1258.

<sup>203</sup>*Id.* at 1266.

<sup>204</sup>*Id.*

essential, then it must explain on the record the decision to exclude the evidence.<sup>205</sup> Of particular interest to the court was that G.B.'s offense occurred within the family. The RRAS did not take this into account in determining G.B.'s likelihood to reoffend or to narrow the scope of community notification.<sup>206</sup> The *G.B.* court remanded the case back to the trial court for a determination of G.B.'s tier classification in light of its decision.<sup>207</sup>

A recent superior court, appellate division decision modified an offender's classification from Tier II to Tier I, even though the Tier II classification was based upon an RRAS score.<sup>208</sup> In *In re Registrant E.I.*, a 21-year-old male and a 15-year-old female twice had consensual sexual relations. Because of the girl's age, Megan's Law was triggered.<sup>209</sup> Essentially, the court held that the RRAS "need not be rigidly followed in all cases."<sup>210</sup> The court noted that the attorney general has not yet complied with the court's directive in *Poritz* to prepare psychological or psychiatric profiles to be considered in support of low risk and high risk assessments. Therefore, E. I.'s RRAS score may have been unreliable because psychological and psychiatric factors were not taken into consideration. It follows, the court said, that classifying E. I. as a Tier II offender would not serve the primary purpose of the statute, which is to protect society from sexual predators.

Finally, New Jersey courts have addressed procedures for criminal justice practitioners when notifying the community of the presence of a sex offender in the area. In *In re Registrant E.A.*,<sup>211</sup> the court held that to facilitate the judicial review process of the geographic scope of community notification, the prosecutor must:

prepare a grid, color-coded, large scale map of the county to identify the low-, moderate-, and high-population density areas on a municipality-by-municipality basis. The map can be based on census data, county planning board data, or information provided by local planning boards and law enforcement officials to assist in refining the correctness of the prosecutor's knowledge of the county. The prosecutor . . . can then

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<sup>205</sup>*Id.*

<sup>206</sup>*Registrant G.B.*, 685 A.2d at 1266.

<sup>207</sup>*Id.* at 1266-1267.

<sup>208</sup>*In re Registrant E.I.*, No. A-3767-96T1, 1997 N.J. Super. LEXIS 218 (N.J. Super. Ct. App. Div. May 7, 1997).

<sup>209</sup>*Id.* at 8.

<sup>210</sup>*Id.* at 11.

<sup>211</sup>*Registrant E.A.*, 667 A.2d at 1081.

specifically locate a registrant's residence or place of business within the identified population density zones and apply the distance criteria approved.<sup>212</sup>

The *E.A.* court also held that a registrant must be provided with a list of registered community organizations to be notified and the basis for their notification.<sup>213</sup>

## Implementation Issues

Officials charged with implementing New Jersey's sex offender provisions have taken active steps to meet the courts' requirements. Although most Tiers II and III community notifications have been delayed until very recently, officials have developed tools for county prosecutors and local law enforcement personnel to guide their implementation of community notification to comply with the explicit requirements set forth in statute and subsequent court decisions.

For example, in 1995 the multidisciplinary group of criminal justice practitioners, mental health care providers, and prosecutors who created the RRAS also developed a manual for prosecutors in employing the risk determination tool in practice. The purpose of the manual is to "provide prosecutors with an objective standard on which to base the community notification decision mandated by the statute and to ensure that the notification law is applied in a uniform manner throughout the State."<sup>214</sup>

The manual explains how and why the RRAS criteria were selected, and why they are weighted as they are. The RRAS places the most weight on the seriousness of the offense for which the offender was convicted; followed by his offense history; individual offender characteristics, such as response to treatment and past substance abuse; and community support and environmental stability. Within each of the factors that comprises these four criteria, the manual offers examples of Tier I, Tier II, and Tier III risk offenders to help prosecutors assess the risk an offender poses to the community and best prepare citizens for the offender's presence in the area.<sup>215</sup>

The attorney general's office has also developed guidelines for law enforcement officials in notifying the community of the presence of a sex offender in the area. Specifically, the document outlines the interaction between county prosecutors and State and local law enforcement officials in implementing community notification based on the RRAS.

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<sup>212</sup>*Id.*

<sup>213</sup>*Id.*

<sup>214</sup>REGISTRANT RISK ASSESSMENT SCALE MANUAL, NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY (on file with author), (Oct. 3, 1995).

<sup>215</sup>*Id.*

In addition to defining the statutory requirements for conducting community notification, the guidelines offer suggestions to local decision makers about the provisions of the notification process over which they retain some discretion -- the scope of the notification effort and the community education information disseminated to community members when a notification occurs. The guidelines note that, "once the tier designation has been made, the scope of notification should, within the confines of the assessment procedure and the methods of community notification set forth here and in the statute, be tailored to meet the intent of the statute and to notify those in the community who are at risk."<sup>216</sup>

The document offers examples of scenarios in which local officials may tailor the scope of the notification effort to meet the needs of the community most appropriately. For example, the guidelines advise that in cases where the offender's past victims have all been adult women and prosecutors have no documentation on file to indicate that the offender has committed crimes against young children, it may be appropriate to exclude from notification elementary schools or organizations that supervise children, as they will not likely encounter the offender.<sup>217</sup>

Concerning the dissemination of relevant educational materials to the community when conducting notification, the guidelines reiterate the importance of providing appropriate tools to citizens to both prevent further sex crimes as well as acts of harassment and vigilantism against offenders. They note that:

there must be a strong emphasis on providing pertinent information, constructive knowledge and guidance to the community, as well as advice concerning the consequences of vigilante activity. It should be stressed that law enforcement will carefully investigate all allegations of criminal conduct taken by any person against the offender, the offender's family, employer or school, and will criminally prosecute where appropriate. Community education should be conducted to inform the public about the purpose and implementation of this law.<sup>218</sup>

In addition, as per the *Poritz* decision, each county now has been assigned a "Megan's Law judge," who deals exclusively with sex offender cases. Also, most counties have assigned prosecutors who specialize in trying sex offenders or conducting hearings and providing community notification and education concerning sex offenders under community supervision.<sup>219</sup> These community notification "units" often consult with

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<sup>216</sup>*Guidelines, supra* note 149 at 13.

<sup>217</sup>*Guidelines, supra* note 149 at 14-15.

<sup>218</sup>*Guidelines, supra* note 149 at 15-16.

<sup>219</sup>Oppenheim Interview, *supra* note 126; Telephone Interview with Steve Finkel, Legislative Counsel, New Jersey Department of Law and Public Safety, (Sept. 3, 1997).

professionals from other disciplines, such as social workers or psychologists, when handling these cases. Further, notification units typically keep separate information and documentation for each registrant in a designated Megan's Law file.<sup>220</sup>

With Tiers II and III notification for most offenders delayed since 1995, New Jersey officials' concerns about the implementation of community notification have been based on limited implementation experiences. For example, the deputy attorney general who oversees community notification in New Jersey was once concerned that "summary proceedings" would become a "battle of the experts," and that offenders and prosecutors would present competing testimony from numerous experts. She further noted that the *G.B.* decision allowing offenders to solicit expert testimony on their behalf is not "practical" in that it requires considerable time and expense not accounted for in the State legislation.<sup>221</sup> However, prosecutors have reported that competing expert testimony has not occurred in most cases where the *G.B.* provisions have been applied.<sup>222</sup>

Officials are also careful to warn citizens that Megan's Law and information about sex offenders is not a "panacea" for the problem of sexual abuse, but rather just one tool with which parents can help protect their children. To be effective, community notification must be accompanied by information about the nature of sex offending to prevent these crimes from recurring. For example, when addressing a group of concerned parents, clergy, social workers, and other professionals about the law, the deputy attorney general charged with overseeing its provisions told participants that "by learning the signs and symptoms of sexual abuse, a community may be able to stop attacks before they happen."<sup>223</sup>

A developing concern, according to officials, relates to the practical application of Megan's Law provisions and its impact on the housing market.<sup>224</sup> Specifically, real estate agents in New Jersey have voiced concern about whether information concerning the presence of a sex offender in the neighborhood will affect home sales and property values. Other concerns relate to the individual liability that an agent may carry if he does not disclose to a potential buyer, for example, that a resident in the neighboring

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<sup>220</sup>*Guidelines, supra* note 149 at 8.

<sup>221</sup>Oppenheim Interview, *supra* note 126.

<sup>222</sup>Written comments provided by Jane Grall, Assistant Attorney General, New Jersey Department of Law and Public Safety, (June 27, 1997, on file with author).

<sup>223</sup>Brenda Barbosa, *Official Says Megan's Law 'Not Only Answer'* (a presentation by Oppenheim), Asbury Park Press, (June 7, 1997).

<sup>224</sup>Finkel Interview, *supra* note 219.



house has just been released from prison for committing a sex crime.<sup>225</sup> This latter concern about personal liability stems from a 1995 New Jersey supreme court decision that requires agents for sellers living within a half-mile of a landfill, sewer plant, or environmental hazard to, at the very least, inform a potential buyer that he should check with the town hall about the possible hazard.<sup>226</sup>

In response to this concern, the New Jersey Real Estate Commission has issued regulations that would not obligate sellers or their agents to identify specific neighbors as sex offenders. The regulations do require, consistent with the court's decision, that real estate contracts include a "Megan's Law disclaimer," advising buyers of the existence of the law and inviting them to check with law enforcement officials or the county prosecutor about the status of neighbors as sex offenders.<sup>227</sup>

New Jersey officials have assessed the scope of the sex offender laws as well as the costs associated with conducting and litigating the State's sex offender registration and notification provisions. There were 4,392 registered sex offenders residing in New Jersey as of August 20, 1997.<sup>228</sup> In fiscal year 1997, \$700,000 in Local Law Enforcement Block Grant and State funds was allocated to the State police to update the State's DNA database; \$400,000 in State funds and \$200,000 of State forfeiture money was allocated to State prosecutors; and \$700,000 in State funds was allocated to public defenders to represent offenders at hearings to review their tier classifications.<sup>229</sup> Approximately \$2 million has been spent to implement tier classification over a 29-month period and \$4 million has been spent by the attorney general's office to defend lawsuits challenging the statute.<sup>230</sup>

Reports of vigilantism have surfaced since enactment of the legislation. In a well-publicized case, two men forced their way into a New Jersey home in January 1995 and began beating a man who they believed was a "child molester" recently paroled in their

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<sup>225</sup>Rocco Cammarere, *Megan's Law Could Snafu Home Sales*, New Jersey Lawyer, (Oct. 24, 1994).

<sup>226</sup>David M. Levitt, *Megan's Law Posing Dilemma In Real Estate*, Asbury Park Press, (May 31, 1997).

<sup>227</sup>Lisa Colangelo, *Megan's Law Upheld by Federal Appellate Court*, Asbury Park Press, (Aug. 21, 1997).

<sup>228</sup>Thomas J. O'Reilly, Administrator, N.J. Department of Law and Public Safety, presentation at the *1997 National Criminal Justice Association Annual Membership Meeting*, (May 29, 1997).

<sup>229</sup>*Id.*

<sup>230</sup>*Id.*

community. Their victim was not a sex offender.<sup>231</sup> In another case of misinformation, according to one story, a poster notified residents of a child stalker living the area -- but the person had been acquitted of charges more than a decade earlier.<sup>232</sup>

While in some cases, unverified addresses have made dissemination of accurate notification information difficult, an official with the New Jersey State police noted that the law's address verification requirements have helped local law enforcement more closely track offenders.<sup>233</sup> Further, they note that most of the problems associated with offender harassment and acts of vigilantism as a result of community notification occur when information about a sex offender is disseminated by private groups or citizens with unofficial fliers and notices. When community notification is conducted officially, by prosecutors and law enforcement, there have been few problems, an official with the attorney general's office noted.<sup>234</sup>

At the time of this writing officials plan to move ahead with the implementation of community notification now that its provisions have been upheld by the third circuit. The attorney general's office will inform the over 600 New Jersey registrants who have been classified preliminarily as Tier II and Tier III offenders that notification is authorized to begin unless they choose to appeal their tier determination. These offenders will have 30 days to respond to the written notice and request that the appeal proceedings commence. If offenders choose not to appeal, community notification will begin for those offenders, according to a statement made by Verniero.<sup>235</sup> An Associated Press report further noted that New Jersey Governor Christine Todd Whitman is hopeful that the notification process could begin by October 1997, although a representative from the State's Public Defender's office indicated the office plans to appeal the third circuit decision.<sup>236</sup>

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<sup>231</sup>Jackson, *supra* note 7.

<sup>232</sup>Ritter, *supra* note 6.

<sup>233</sup>Telephone Interview with Captain Frank McNulty, Bureau Chief, State Bureau of Investigation, New Jersey State Police, (Aug. 29, 1997).

<sup>234</sup>Oppenheim Interview, *supra* note 126.

<sup>235</sup>Colangelo, *supra* note 227.

<sup>236</sup>Ralph Siegel, *Megan's Law Upheld, Next Step is Sex Offender Notification*, Associated Press (Aug. 21, 1997).

# Washington

## Statutory Summary

A series of violent crimes against women and children in the mid- to late-1980's and mounting public dissatisfaction with the criminal justice system's response to these offenders prompted Washington's Governor Booth Gardner to form the Task Force on Community Protection in 1989. The charge of the Task Force was to recommend changes in State law to help the system more effectively handle sex offenders and their crimes. After months of information gathering, the Task Force, which is composed of citizens, criminal justice practitioners, and State legislators, recommended to the Washington legislature the Community Protection Act of 1990.<sup>237</sup>

An omnibus piece of legislation, the law enhanced penalties for sex crimes, created a sex offender registration system, and established programs to assist victims of sex offenses. The act also authorized law enforcement officials to notify the community when a sex offender was released from the custody of the State. Washington's community notification provisions were the first of their kind in the country.<sup>238</sup>

In enacting the legislation, the legislature noted the importance of community knowledge and education as an element of community notification. The act states:

The legislature finds that members of the public may be alarmed when law enforcement officers notify them that a sex offender who is about to be released from custody will live in or near their neighborhood. The legislature also finds that if the public is provided adequate notice and information, the community can develop constructive plans to prepare themselves and their children for the offender's release. A sufficient time period allows communities to meet with law enforcement to obtain information about the rights and responsibilities of the community and the offender, and to provide education and counseling to their children.<sup>239</sup>

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<sup>237</sup>ROXANNE LIEB, WASHINGTON'S SEXUALLY VIOLENT PREDATOR LAW: LEGISLATIVE HISTORY AND COMPARISON WITH OTHER STATES, (Dec. 1996).

<sup>238</sup>*Id.*

<sup>239</sup>WASH. REV. CODE ANN. § 4.24.550 (West 1988 & Supp. 1997).

## Registration

Under the law, any adult or juvenile living in Washington who has been found to have committed or been convicted of any sex offense or has been found not guilty by reason of insanity of committing any sex offense must register with the county sheriff.<sup>240</sup> The registrant must provide the following information:

- name;
- address;
- date and place of birth;
- place of employment;
- crime of conviction;
- date and place of conviction;
- aliases; and
- Social Security number.<sup>241</sup>

The law also requires that the sheriff obtain a new color Polaroid photograph of the registrant on the reverse of which is to be written his full name, date of birth, and State identification number; and a fingerprint card paper-clipped to the photograph along with the registration information.<sup>242</sup>

The Washington statute defines specifically the obligations of various offenders to register. Offenders who were in custody after July 28, 1991, for committing a sex offense must register within 24 hours of release. The agency that has jurisdiction over the offender -- the Washington State's Department of Corrections (WDOC), Department of Social and Health Services (WDSHS), or the local division of youth services, local jail, or juvenile detention facility -- is responsible for notifying the offender of his duty to register.<sup>243</sup> An offender who knowingly fails to register within 24 hours of release or moves without notifying the county sheriff is guilty of a class C felony or a gross misdemeanor, depending upon the underlying crime for which he was convicted.<sup>244</sup>

Offenders who were not in custody but under State or local jurisdiction and supervision, such as parole or probation as of July 28, 1991, must register within 10 days of that date.<sup>245</sup> Offenders who were in the custody of Federal authorities as of July 23, 1995,

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<sup>240</sup>WASH. REV. CODE ANN. § 9A.44.130 (West 1988 & Supp. 1997).

<sup>241</sup>WASH. REV. CODE ANN. § 9A.44.130(2) (West 1988 & Supp. 1997), WASH. ADMIN. CODE § 446-20-515 (1995).

<sup>242</sup>WASH. ADMIN. CODE §§ 446-20-515, 446-20-520 (1995).

<sup>243</sup>WASH. REV. CODE ANN. § 9A.44.130(3)(a)(I) (West 1988 & Supp. 1997).

<sup>244</sup>WASH. REV. CODE ANN. § 9A.44.130(7) (West 1988 & Supp. 1997).

<sup>245</sup>WASH. REV. CODE ANN. § 9A.44.130(3)(a)(ii) (West 1988 & Supp. 1997).

for committing sex offenses must register within 24 hours of release. An offender who was not in custody, but was under Federal jurisdiction and supervision as of July 23, 1995, must register within 10 days of that date.<sup>246</sup>

Individuals who are convicted of a sex offense on or after July 28, 1991, for an offense committed on or after February 28, 1990, but who are not sentenced to serve a term of confinement immediately upon sentencing, must register immediately after sentencing.<sup>247</sup>

Finally, an offender who has been convicted of a sex offense under the laws of another State, foreign country, or Federal law on or after February 28, 1990, who moves into the State from another State or foreign country and is not under supervision by a Washington State agency must register within 30 days of establishing residence in the State. If such an offender is under the supervision of a Washington State agency when he moves into the State, he must register within 24 hours of moving to Washington.<sup>248</sup>

If an offender is arrested, served with a complaint, or arraigned for failure to register, the court deems the registrant to have actual notice of the duty to register. If the offender asserts lack of notice to register as a defense to a failure to register charge, he must register within 24 hours of receiving actual notice. If he does not register within 24 hours, another charge for failure to register may be filed. Subsequent registration does not relieve an offender from liability for an initial failure to register.<sup>249</sup>

Washington statutes also include provisions for address verification. When an offender registers with the county sheriff, the county sheriff must make reasonable attempts to verify that the registrant is living at the registered address.<sup>250</sup> Reasonable attempts include sending certified mail, return receipt requested, to the registrant at the registered address. If the receipt is not signed by the registrant, the sheriff should talk in person with the residents living at the address.<sup>251</sup> The sheriff must make reasonable attempts to find a registrant who cannot be found at the registered address.<sup>252</sup>

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<sup>246</sup>WASH. REV. CODE ANN. § 9A.44.130(3)(a)(iii) (West 1988 & Supp. 1997).

<sup>247</sup>WASH. REV. CODE ANN. § 9A.44.130(3)(a)(iv) (West 1988 & Supp. 1997).

<sup>248</sup>WASH. REV. CODE ANN. § 9A.44.130(3)(a)(v) (West 1988 & Supp. 1997).

<sup>249</sup>WASH. REV. CODE ANN. § 9A.44.130(3)(c) (West 1988 & Supp. 1997).

<sup>250</sup>WASH. REV. CODE ANN. § 9A.44.135 (West 1988 & Supp. 1997).

<sup>251</sup>*Id.*

<sup>252</sup>WASH. REV. CODE ANN. § 9A.44.135 (West 1988 & Supp. 1997).

The law also requires registrants to send written notice of a change of address to the county sheriff at least 14 days before moving within a county. If the registrant moves to another county, he must provide written notification to the sheriff in his new county within 14 days; register with that county sheriff within 24 hours of moving; and send written notice to the sheriff in the previous county within 10 days of the change of address. If the registrant moves out of Washington State, he must send written notice to the sheriff in the county from which he is moving within 10 days.<sup>253</sup>

An offender convicted of a class A felony may petition the superior court to be relieved of the duty to register -- otherwise, registration is a lifetime obligation. The petition must be made to the court in which the registrant was convicted. If the offender was convicted in a foreign country or a Federal or military court, he must petition the court in Thurston county, who must be named and served as the respondent in the petition. The court may relieve the registrant of his duty to register only if he shows, by clear and convincing evidence, that future registration will not serve the purpose of the registration laws.<sup>254</sup>

For an offender convicted of a class B felony, the registration requirement ends 15 years after the last date of release from confinement, if any, or entry of the judgment and sentence if the offender has spent 15 consecutive years in the community without being convicted of any new offenses.<sup>255</sup> Offenders convicted of a class C felony, or attempt, solicitation, or conspiracy to commit a class C felony are required to register for a period of 10 years.<sup>256</sup>

Under the law, juveniles also are subject to registration. An offender who committed his offense as a juvenile may petition the court to be relieved of the duty to register. When reviewing a juvenile's petition, the court must consider the nature of the offense for which the juvenile was required to register and the behavior of the offender -- both criminal and noncriminal -- before and after adjudication.<sup>257</sup>

If the juvenile petitions the court to be relieved of the duty to register and committed the offense when he was 15 years or older, the juvenile must prove, by clear and convincing

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<sup>253</sup>WASH. REV. CODE ANN. § 9A.44.130(4)(a) (West 1988 & Supp. 1997).

<sup>254</sup>WASH. REV. CODE ANN. § 9A.44.140(1)(a), (3) (West 1988 & Supp. 1997).

<sup>255</sup>WASH. REV. CODE ANN. § 9A.44.140(1)(b) (West 1988 & Supp. 1997).

<sup>256</sup>WASH. REV. CODE ANN. § 9A.44.140(1)(c) (West 1988 & Supp. 1997).

<sup>257</sup>WASH. REV. CODE ANN. § 9A.44.140(4) (West 1988 & Supp. 1997).

evidence, that future registration will not serve the purposes of the registration law.<sup>258</sup> If the juvenile was younger than 15 years old when he committed the offense, the standard of proof is lower. The juvenile must not have been adjudicated of any additional sex offense for two years from the date of his initial adjudication and must prove -- by a preponderance of the evidence -- that future registration will not serve the purposes of the registration law.<sup>259</sup>

The statute authorizes local law enforcement agencies to bill the Washington State patrol for the actual costs incurred as a result of the registration provisions, not to exceed \$32 for each registrant. The fee is to “further ensure that direct and indirect costs at the county level associated with the provisions of [the statute] are refunded by the Washington State patrol on a monthly basis upon receipt of an invoice from the county sheriff indicating the number of registrations submitted.”<sup>260</sup>

## Notification

In Washington, community notification is conducted by local law enforcement officials. The statute authorizes public agencies to release “relevant and necessary” information concerning sex offenders to the public when the dissemination of the information is necessary to enhance the public’s safety.<sup>261</sup> In practice, sheriffs and chiefs of police in local, county, or city jurisdictions assess an offender’s risk status, and release information to the community based on this determined propensity to reoffend. To help local police officials determine risk, the law requires that the WDOC and the WDSHS provide local law enforcement officials with all relevant information concerning individual sex offenders prior to their release or placement in the community.<sup>262</sup> The law further requires law enforcement officials who conduct community notification to make a good faith effort to notify the public and residents of the community at least 14 days before a registrant is released.<sup>263</sup>

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<sup>258</sup>*Id.*

<sup>259</sup>*Id.*

<sup>260</sup>WASH. ADMIN. CODE § 446-20-530 (1995).

<sup>261</sup>WASH. REV. CODE ANN. § 4.24.550(1) (Wast 1988 & Supp. 1997).

<sup>262</sup>WASH. REV. CODE ANN. § 4.24.550(2) (Wast 1988 & Supp. 1997).

<sup>263</sup>*Id.*

The statute grants immunity from civil liability to public officials, employees, and agencies for any decision made under the notification provisions unless it is shown that they acted with gross negligence or bad faith.<sup>264</sup>

Officials in Washington State, as a result of the 1997 legislative session, will alter slightly the methods by which risk is determined for the purpose of community notification. The legislation will require that the WDOC or the WDSHS and the End of Sentence Review Committee (ESRC) assign risk levels, review available release plans, and make appropriate risk assessment referrals for sex offenders leaving the custody of the State. Although a State agency or body will make the risk assessment based on the Washington Association of Sheriffs and Police Chiefs (WASPC) guidelines, local law enforcement officials may modify the assessment based on local public safety considerations.<sup>265</sup>

## Case Law Summary

Whether the Washington notification statute applies retroactively is unclear. Challenges to retroactive application based on the Ex Post Facto Clause have failed in State court.<sup>266</sup> At the time of this writing, the issue is pending before the U. S. Court of Appeals for the Ninth Circuit.<sup>267</sup>

In *Stearns v. Gregoire*, the district court denied a motion for a preliminary injunction against retroactive application of Washington's notification act.<sup>268</sup> The court held that the plaintiffs failed to show a likelihood of success on the merits because the statute does not impose additional punishment. The court reasoned that information about the offenders can be released to the public only if the offender "is dangerous, is likely to reoffend, or presents a threat to the community . . . Even then, the only information that can be released is that which is 'relevant and necessary . . . for public protection . . . ' therefore, the overall design and effect of the statute indicates a non-punitive purpose."<sup>269</sup>

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<sup>264</sup>WASH. REV. CODE ANN. § 4.24.550(3), (4) (West 1988 & Supp.1997).

<sup>265</sup>S.B. 5759, 55th Leg., 1997 Regular Session (enacted).

<sup>266</sup>*State v. Ward*, 869 P.2d 1062 (Wash. 1994) (upholding retroactive notification).

<sup>267</sup>*Doe v. Gregoire*, No. C97-188WD, 1997 U.S. Dist. LEXIS 4418 (W.D. Wash. Mar. 21, 1997) *citing* *Stearns v. Gregoire* (W.D. Wash. Case No. 95-1486D, *filed* Apr. 12, 1996) (unreported case denying motion for preliminary injunction against notification).

<sup>268</sup>*Stearns*, No. 95-1486D at 2.

<sup>269</sup>*Id.* at 8.



On the contrary, another Federal district court in Washington enjoined the Seattle Police Department from notifying the community about Doe's release on the grounds that the retroactive application of the statute would violate the Ex Post Facto Clause of the U.S. Constitution.<sup>270</sup> In *Doe v. Gregoire*, the offender was convicted in 1985 and released from prison in February 1997.<sup>271</sup> The court noted that, in practice, law enforcement agencies disseminate an offender's record of charges and convictions and a narrative description of alleged crimes with which the offender was never charged. The court held that the breadth of the notification suggested punishment rather than regulation because Doe's history did not indicate pedophilia or a heightened risk to neighbors; yet the proposed notification would go to schools, the parks department, the public library, and neighboring block watch captains, among others. The court acknowledged the State legislature's regulatory intent in enacting the notification provisions, but relied upon a recent U.S. Supreme Court decision that held that the punitive effects of a statute are more important than the legislative intent when a court is determining whether the law actually lengthens a term of punishment, in violation of the Ex Post Facto Clause of the U.S. Constitution.<sup>272</sup> *Doe* has been argued and the proceedings are stayed pending a decision in *Stearns*.

The Washington supreme court has clarified the scope of governmental discretion in determining the extent of public disclosure of sex offender registration information. In *State v. Ward*, the court ruled that an agency must have "some evidence of an offender's future dangerousness, likelihood of reoffense, or threat to the community to justify disclosure to the public in a given case."<sup>273</sup> The court also determined that the State may disclose only information relevant to and necessary for counteracting the offender's dangerousness and that the geographic scope of dissemination must rationally relate to the threat posed by the offender.<sup>274</sup>

Despite these legal cautions, the court acknowledged that the State has considerable discretion in determining the extent of community notification. Where disclosure is appropriate, the type of information disclosed and the geographic scope of disclosure will vary from case-to-case:

Depending on the particular methods of an offender, an agency might decide to limit disclosure only to the surrounding neighborhood, or to schools and day care centers, or, in cases of immediate or imminent risk of harm, the public at large... In addition, the content of a warning may vary by proximity: next-door neighbors or nearby schools might receive a more detailed warning

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<sup>270</sup>*Id.*

<sup>271</sup>*Id.*

<sup>272</sup>*Id.* at 15,16 (citing *Lynce v. Mathis*, -- U.S. --, 137 L.Ed.2d 63, 117 S.Ct. 891 (1997)).

<sup>273</sup>*Ward*, 869 P.2d at 1070.

<sup>274</sup>*Id.* at 1070-71.

than those further away from harm... we leave to the appropriate agencies the specified decision of whether, what, and where to disclose within the parameters [outlined in the decision].<sup>275</sup>

## Implementation Issues

Criminal justice practitioners and State policymakers have created tools to aid local law enforcement officials in their determination of the risk an individual sex offender poses to the community. One such tool -- the ESRC -- was created within the WDOC to help determine the risk that sex offenders being released from State institutions pose to the community. The ESRC is chaired and staffed by officials of the WDOC, and includes representation from the juvenile corrections and mental health divisions of the WDSHS and the Indeterminate Sentence Review Board.<sup>276</sup> The information from the ESRC assessment proceedings, which are conducted eight months prior to the offender's release from custody, is provided to a prisoner before his release and to prosecutors to help them determine if they should move forward with civil commitment proceedings.<sup>277</sup>

The ESRC also shares with local law enforcement officials their determination of an offender's risk through the issuance of "Special Bulletins," which describe an offender's history and propensity to reoffend. A second tier of bulletin, the "Law Enforcement Notification Bulletin," alerts local officials of the release of high-risk offenders who may or may not be convicted sex offenders, including offenders who were originally arrested for a predatory sex offense that was plea-bargained to a non-sex offense, dangerous mentally ill offenders, and/or offenders who present a threat to law enforcement or to the community based on past or current criminal behavior.<sup>278</sup>

In addition to the information provided by the ESRC, the WASPC has developed a tiering system for local law enforcement to determine the appropriate scope of notification once an offender's risk has been assessed. The WASPC groups offenders into three categories of risk. For example, the guidelines indicate that offenders whose crime was nonviolent and occurred in a family setting pose a low risk to the community. It recommends that registry information on these low-risk, or Level I, offenders be disseminated only to appropriate law enforcement agencies. Intermediate-risk, or Level II, offenders are those whose crime

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<sup>275</sup>*Id.*

<sup>276</sup>SCOTT MATSON & ROXANNE LIEB, COMMUNITY NOTIFICATION IN WASHINGTON STATE: 1996 SURVEY OF LAW ENFORCEMENT, (Nov. 1996).

<sup>277</sup>*Id.*

<sup>278</sup>*Id.*

occurred outside the family setting, who have committed multiple offenses at different times, or who have committed a violent offense (whether inside or outside the family). The WASPC tiering tool suggests that registry information be disseminated on intermediate-risk offenders to schools and neighborhood groups. High-risk offenders are those who have a history of predatory sex crimes or multiple violent offenses, have expressed a desire to reoffend, or have been diagnosed as sexual predators. Information on these offenders may be disseminated more broadly to include schools, neighborhood groups, and also the general public.<sup>279</sup>

The WASPC guidelines suggest that local law enforcement agencies should release registrant information on a “need to know” basis.<sup>280</sup> Schools, child protective services, and other organizations protected by State confidentiality laws that request such information are more likely to be granted access to full information regarding registered sex offenders, according to the WSIPP.<sup>281</sup> This information is likely to include names, addresses, and criminal history details.<sup>282</sup>

A WDOC official in Washington reported that there are several factors that have contributed to the success of community notification efforts in their State. One of the most important factors was the diversity in composition of the initial Governor’s Community Protection Task Force in 1990. According to its chair, the task force was composed of individuals from a wide variety of disciplines, including prosecutors, victims’ groups, criminal defense lawyers, offenders’ rights advocates, law enforcement, and the medical profession. The Governor, she noted, made it a priority to convene a working group that represented a broad cross section of relevant and affected individuals.<sup>283</sup>

Having representatives from a variety of disciplines at the table in the development of the Community Protection Act was beneficial during the legislative process. According to the task force chair, no one testified in opposition to the Community Protection Act when it was being considered in the Washington legislature.<sup>284</sup>

The task force members also had statewide support for the initiative. The task force spent approximately six months prior to developing the first draft of the bill conducting community workshops around the State to build citizen support, and receive input and feedback from individuals about the issue. After creating a draft bill, the task force chair

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<sup>279</sup>Finn, *supra* note 2, at 5, 6.

<sup>280</sup>MATSON & LIEB, *supra* note 276 at 4.

<sup>281</sup>MATSON & LIEB, *supra* note 276 at 5, Finn, *supra* note 2, at 8.

<sup>282</sup>Finn, *supra* note 2 at 8.

<sup>283</sup>Telephone Interview with Victoria Roberts, Program Administrator, Offender Programs, Washington Department of Corrections, (Aug. 26, 1997).

<sup>284</sup>*Id.*

reported, members conducted a second round of community hearings to follow up and present the legislative package. She noted that both series of meetings were very well attended and that citizens were engaged in the process.<sup>285</sup>

In addition to soliciting support from all groups within the criminal justice system during the bill's development and introduction, officials reported that the information-sharing requirement written into the original act has contributed to the implementation of community notification. Because the sharing of offender information is required by law, individual agencies cannot rely on any tradition protecting certain information.<sup>286</sup>

## Evaluation

Washington is among the few States that have conducted evaluations of their notification program. When creating the Community Protection Act in 1990, task force officials realized the importance of assessment and evaluation in judging the efficacy of the initiative. The act created the Community Protection Research Project to evaluate the effectiveness of state-supported programs for sex offenders and victims of sexual abuse. The Washington State Institute for Public Policy (WSIPP) oversees the project, and provides ongoing information to the Washington legislature, as well as state and local agencies, on its implementation.<sup>287</sup> To date, the WSIPP has conducted or commissioned several analyses of the notification provisions of the Community Protection Act that discuss the costs associated with community notification and offender recidivism rates and report the results of a survey of State law enforcement officials on the implementation of community notification.

The first analysis was conducted in 1995 by the WSIPP to assess the decision-making behind and costs associated with community notification procedures in Washington. In reporting their findings, researchers described the importance of available tools that law enforcement officials use to help guide the notification process and emphasized two important features of community notification in Washington. The first is that law enforcement agencies do not directly distribute the bulletins from the WDOC to public schools or community groups, but use them for the basis of their notification. The report cited a variety of procedures law enforcement agencies use to conduct community notification, including the distribution of fliers and press releases, and door-to-door visits.<sup>288</sup>

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<sup>285</sup>*Id.*

<sup>286</sup>*Id.*

<sup>287</sup>WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY,  
COMMUNITY PROTECTION, SUMMARY OF PUBLICATIONS,  
(Nov. 1996) (on file with author).

<sup>288</sup>CAROL POOLE & ROXANNE LIEB, COMMUNITY NOTIFICATION  
IN WASHINGTON STATE, DECISION-MAKING AND COSTS, (July  
1995).

The second feature is that most jurisdictions rely on the WASPC guidelines to conduct notification, according to the report. In addition, many jurisdictions augment these information dissemination procedures and risk assessment classifications with community meetings, which are intended to provide the community with information about the offender, and develop methods to protect community members from sex crimes.

Community meetings concerning Level III offenders in one Washington county, for example, are announced to the community before they are convened. These meetings are typically held in an accessible public building, such as a school, and are facilitated by the county law enforcement agency's Public Information Officer. Also in attendance is a detective, a representative from the WDOC, and the offender, if he chooses to attend. According to the report, these meetings have been well attended, with 200 to 300 people participating at each forum.<sup>289</sup>

Once a public meeting has been held, the report noted that significant follow up in the community often is needed to respond to citizens' questions and concerns. Also, law enforcement officials in many jurisdictions maintain regular contact with registered sex offenders and may make periodic home visits to the offender.<sup>290</sup>

A final observation made by the researchers at the WSIPP relates to the costs of conducting community notification in Washington. Using data from eight Washington counties, the researchers described two notification approaches present in the State: modest-cost and higher cost scenarios. These classifications are based largely on the population of the area and the policy choices of local law enforcement agencies, according to the report.

For example, jurisdictions with smaller populations likely will have lower costs associated with community notification, because news of an offender's presence is more likely to travel quickly through the community by word of mouth. Also, the number of sex offenders who are required to register typically is small. There are virtually no costs associated with this scenario.

Jurisdictions also may have lower costs due to policy decisions. In these situations, the law enforcement agency serves as an information repository, and the classification decision is simplified by relying on information supplied from the State Patrol and the WDOC. In these situations, information dissemination within the community is done in a standard manner each time, such as through press releases or sharing information with school officials. The costs associated with this scenario, according to the WSIPP, are variable.

Higher cost scenarios may result from a larger population and a greater number of registered sex offenders residing in certain areas. A large caseload of offenders and many concerned citizens, the report noted, can translate into greater demands on law enforcement officials' time.

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<sup>289</sup>*Id.*

<sup>290</sup>*Id.*

Community notification also may result in higher costs when public officials elect to make it a high priority, the report noted. In these scenarios, law enforcement officials are often assigned specifically to conduct risk assessments, use mapping software to track offenders' behavior, or monitor sex offenders through community visits.<sup>291</sup>

The WSIPP commissioned a second study, which was conducted in October 1995 and is an empirical analysis of offender characteristics and recidivism rates for Level III offenders subject to community notification. The researchers used a variety of data collection and statistical techniques in undertaking their analysis. They employed descriptive statistics to learn more about the characteristics of Level III offenders, such as their race, age, and crimes for which they were charged and convicted. Researchers also employed statistics that allowed them to estimate the correlation between offender characteristics and recidivism. Finally, to assess the impact of community notification on new criminal behavior, the analysis compared the recidivism patterns of a sample of offenders subject to Level III notification released between March 1, 1990, and December 31, 1993, to those of offenders with similar risk characteristics who were released from incarceration prior to the implementation of the notification law.

The researchers drew several conclusions about the impact of community notification on the behavior of violent sex criminals. According to the report, law enforcement agencies used the Level III notification judiciously, and those offenders subject to this notification group were at high risk to reoffend and were in fact appropriately categorized as such. Despite this finding, however, the study found no evidence to indicate that community notification prevented recidivism among adult sex offenders. Offenders who were subject to Level III notification had high rates of recidivism and were just as likely to be arrested for new sex offenses as the offenders in the comparison group.<sup>292</sup>

The report concluded, however, that the time frame for reoffending was different for the notification and comparison groups, with offenders subject to community notification arrested much more quickly than comparable offenders who were released without notification. The researchers noted that this finding is difficult to interpret without a qualitative examination of changes in law enforcement and community behavior as a result of the community notification law. It suggests that further study on this issue should explore whether sex offenders who are subject to Level III notification are watched more closely, with this increased attention resulting in earlier detection of subsequent criminal behavior.<sup>293</sup>

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<sup>291</sup>*Id.*

<sup>292</sup>DONNA D. SCHRAM, PH.D. & CHERYL DARLING MILLOY, PH.C.,  
COMMUNITY NOTIFICATION: A STUDY OF OFFENDER  
CHARACTERISTICS AND RECIDIVISM (Oct. 1995).

<sup>293</sup>*Id.*

Finally, in 1996, the WSIPP evaluated the Washington notification effort by surveying all 39 counties and 16 of the State's most populated cities during August and September 1996 to determine how they were conducting community notification in their jurisdictions. There was an 82-percent response rate to the survey, with 30 counties and 15 cities participating. The 1996 survey was a follow up to one conducted by the WSIPP in 1993.<sup>294</sup>

According to the results, 942 of 9,912 registrants statewide have been subject to notification, which represents approximately 11 percent of convicted sex offenders in the State. The report noted that a typical community notification includes a physical description of the offender, his photograph, a description of his past crimes, and the method he employs in approaching his victims.<sup>295</sup>

The survey responses also provided information on how local law enforcement officials disseminate offender information. It noted that in 42 of the 45 responding jurisdictions, or 93 percent of local law enforcement agencies, the recommended tiering procedures developed by the WASPC were utilized. Respondents indicated that the media, community groups, individual citizens, and others who represent private interests or who are not protected by confidentiality laws often are less likely to receive information or receive only limited information such as the offender's name and/or address. In some parts of the State, private individuals may have access to a complete list of offenders or information only on specified offenders. In other parts of the State, individuals receiving information may be required to reveal their identity and address to enable police to track harassment activities that occur.<sup>296</sup>

The method of information dissemination also varies. The WSIPP determined that 91 percent of responding jurisdictions issue media releases; 62 percent deliver door-to-door fliers, and 24 percent mail fliers.<sup>297</sup>

The geographic scope of notification depends upon the jurisdiction. For instance, in two Washington cities, anyone residing in a three-square-block area of an offender's residence is notified.<sup>298</sup> Notification in Seattle is conducted within the Federal census tract and tracts abutting the offender's residence, usually a one- to one-and-a-half-mile radius. In Thurston County, detectives visit the offender's home to verify his residence and to scan the area of notification.<sup>299</sup>

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<sup>294</sup>1996 SURVEY OF LAW ENFORCEMENT, *supra* note 276.

<sup>295</sup>1996 SURVEY OF LAW ENFORCEMENT, *supra* note 276.

<sup>296</sup>1996 SURVEY OF LAW ENFORCEMENT, *supra* note 276.

<sup>297</sup>1996 SURVEY OF LAW ENFORCEMENT, *supra* note 276.

<sup>298</sup>1996 SURVEY OF LAW ENFORCEMENT, *supra* note 276.

<sup>299</sup>1996 SURVEY OF LAW ENFORCEMENT, *supra* note 276.

The survey findings corroborated an earlier analysis conducted by the WSIPP concerning the importance of sharing information and interacting with the community to ensure successful and fair community notifications. According to the report, 22 of the 45 jurisdictions surveyed conduct community meetings in addition to distributing fliers and press releases. The survey analysis provided a detailed account of the techniques that various law enforcement agencies employ with respect to the organization of and approach to presentations, literature distributed, audience reaction, and post-notification concerns.

The results also indicated that these meetings have been well received by the community and law enforcement officials: more than 150 meetings have occurred in the reporting jurisdictions, with more than 1,740 citizens participating in the 22 most recent forums. Law enforcement officials, when asked to estimate citizen support for community notification meetings, rated their assessment of citizen support at 8.5 on a scale of 1 to 10 (1 indicating a critical audience, 10 indicating a fully supportive audience).<sup>300</sup>

Finally, the survey addressed issues surrounding acts of harassment and vigilantism against offenders subject to community notification. The WSIPP findings indicate that there have been acts of harassment against 33 registered sex offenders -- 4 percent of those subject to notification. The most serious of these incidents resulted in an arson, where the offender's residence was burned. Other harassment reported includes two physical assaults, two cases of minor property damage, and verbal threats to the offender or his family.

Law enforcement officials surveyed indicate that they often take preventive steps to discourage citizen vigilantism and harassment, by including warnings on fliers and verbal warnings during door-to-door notification and at community meetings. These warnings, the survey analysis noted, advise citizens that legal action will be taken against those responsible for harassment and that the law will be repealed if it results in acts of citizen vigilantism.<sup>301</sup>

## **Future Steps**

According to the Vice President of the WASPC, the 1997 amendment to the Community Protection Act that requires the State to assign risk levels for sex offenders being released from custody was created to provide more uniformity in the classification of risk at the local level. He noted some instances where there was significant variation between jurisdictions in how risk was being assessed. For example, an offender could be classified as a Level I in one community and move to another and be classified as a Level II. He noted that this legislation provides balance and ensures fairness in the risk assessment process by creating continuity in risk determinations from county to county and retains

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<sup>300</sup>1996 SURVEY OF LAW ENFORCEMENT, *supra* note 276.

<sup>301</sup>1996 SURVEY OF LAW ENFORCEMENT, *supra* note 276.



local law enforcement's ability to modify the state's suggestions to fit the public safety needs of the immediate community.<sup>302</sup>

The 1997 legislative initiative also requires the WASPC to create a model policy for law enforcement officials to use when conducting notification. A task force of law enforcement officials and other criminal justice practitioners currently are developing the model policy. The task force Vice President commented that the model policy will include tools to help local law enforcement officials create a notification plan, identify pertinent registry information to be released, and include other public safety information that explains the law and helps community members protect themselves and their children from victimization.

The WASPC's and the legislature's hope is that each strategy of the model policy they develop be employed by sheriffs and police chiefs each time they conduct community notifications. Officials are moving ahead quickly with the project; the legislation requires that the plan must be adopted and disseminated to county sheriffs and city police chiefs by January 1, 1998.<sup>303</sup>

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<sup>302</sup>Telephone Interview with Doug Blair, Sheriff, Yakima County, and Vice President and Head of Task Force for Developing Model Community Notification Procedures, Washington Association of Sheriffs and Police Chiefs, (Aug. 26, 1997).

<sup>303</sup> *Id.*



# Conclusions

During the interviews conducted for this project, many State and local officials expressed the need for evaluations of existing sex offender notification systems. In designing such evaluations, researchers and State policymakers may wish to consider the following issues:

## *Costs.*

What costs have States incurred in implementing these laws? Are States specifically allocating funds for implementation or are State and local agencies using existing funds to implement the laws? What costs are States and their judicial systems incurring to resolve legal challenges to the laws?

## *Explicit mandates v. flexible guidelines.*

Whether explicit mandates -- as in New Jersey- - or flexible guidelines -- as in Washington -- more effectively achieve the goals of community notification. The WSIPP found that:

[E]xplicit and strict statutorily established eligibility criteria may also increase the States' exposure to lawsuits because they allow each offender to argue that pertinent considerations were not included in the decision to subject the person to notification. As a result, criteria and procedures that were included in the original legislation in Washington State were eliminated in the final version.<sup>304</sup>

Thus, in some cases, flexible guidelines may both minimize litigation risk and allow local jurisdictions maximum flexibility in fashioning notification plans. For example, Washington has endured much less litigation than other states where guidelines are far more explicit in devising notification plans.

## *Policy and Political Issues.*

What should policymakers and legislators consider when creating or amending notification programs? Are those offenders who pose the greatest threat the ones required to register? For example, should the laws include young adults convicted of sexual offenses as a result of consensual sex and/or individuals convicted of sexual offenses against members of their family?

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<sup>304</sup>Finn, *supra* note 2, at 5.

### *Recidivism.*

Have sex offender recidivism rates declined since implementation? Why, or why not? Do the registration and notification laws have a positive or negative impact on recidivism? Is there a causal connection between registration and notification laws and recidivism? Are offenders conforming their behavior to comport with their labels?

### *Arrest and conviction rates.*

Is it easier for law enforcement officials to investigate sex offenses with the registration and notification laws in effect? Are sex offense arrest rates higher for registrants than for non-registrants? Are registrants being unfairly singled out by police? Are conviction rates for sex offenses now higher? Why or why not?

### *Compliance rates.*

What are the registration and notification compliance rates? Why are some offenders not complying? Do they fear harassment by the public? By local law enforcement? Were they not effectively informed of the registration requirement or were they informed but choosing to ignore the registration requirements?

### *Active v. Passive Notification Systems.*

Does the type of notification system, such as Louisiana's active system or Alaska's more passive approach, have an impact on recidivism and offender compliance? For instance, does passive notification, which may have fewer implications for compromising an individual's privacy than active notification, achieve a similar or different effect than active community notification efforts?

### *Offenders' rights and concerns.*

How are offenders' rights -- such as privacy, interstate and intrastate travel, housing, and employment -- affected by the registration and notification laws? How are offenders being treated by employers, family members, and the community in general after notification occurs?

### *Vigilantism.*

Have vigilante crimes against offenders increased or declined over time? How are law enforcement officials handling acts of vigilance against offenders? How quickly are they responding to vigilante attacks on offenders compared to violence and/or acts of harassment committed against other members of the community?

# Appendix

A number of sites on the World Wide Web have been established through which anyone may obtain information about registered sex offenders in certain States.<sup>305</sup>

## Alaska

The Alaska Department of Public Safety (ADPS) maintains a Web site that provides access to the ADPS's Sex Offender Registration Central Registry.<sup>306</sup> The Web site allows a viewer to search for a registered offender by first name, last name, address part, ZIP code, or city. It also allows a viewer to browse the entire database by name. The database contains more than 1600 registered offenders. The following offender information is provided to the viewer: photograph; name; aliases; race; sex; hair and eye color; height and weight; date of birth; employer name and address; registration address; date that address information last changed; conviction information, including court docket number, court of conviction, conviction date, offense code, description of offense; and the statute pursuant to which the offender is required to register. The database is updated regularly and each record is accompanied by the following warning: "This information is made available for the purpose of protecting the public. Anyone who uses this information to commit a criminal act against another person is subject to criminal prosecution." Anyone who believes that any of the information found in the database is in error is advised to contact the Alaska State Troopers, Permits and Licensing Unit at 117 West 4th Avenue, Anchorage, AK 99501; Phone: (907) 258-8892. Information requests and questions may be sent via e-mail to Patrick Hames at [pphames@psafety.state.ak.us](mailto:pphames@psafety.state.ak.us).

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<sup>305</sup>The following list of Web addresses and summaries is intended to be only an informative sampling of offender information available on the World Wide Web. It is not necessarily a comprehensive representation.

<sup>306</sup>Alaska Department of Public Safety, *Sex Offender Registration Central Registry* <<http://www.dps.state.ak.us/Sorcr>>.

## California

California's Web site provides information on the Child Molester Identification Line.<sup>307</sup> Callers may access the nation's first "900" information line that makes public the identities of convicted child molesters. The Child Molester Identification Line was created under the California Child Protective Act of 1994, and is operated by the California Department of Justice (CDOJ). The line became operational July 3, 1995. It provides child molester information to the public in two ways: through a 900 telephone line, which callers may use to describe persons they are concerned about and find out if they are sexual predators, and through a directory of California's most dangerous sex offenders, which may be reviewed by citizens at their local sheriff or police department. Callers must be at least 18 years old to access the information and must know the offender's name and one other unique identifier, such as his street address, exact date of birth, driver's license number, or Social Security number. If a caller knows only the offender's name, a record check may still be conducted if a caller can provide a complete physical description, including height, weight, hair color, eye color, ethnicity, and any distinctive tattoos, scars, birthmarks, or other physical traits. Each call costs \$10 to obtain information on up to two individuals. Only information regarding convicted sex offenders is provided. The Web site also provides a list of organizations and clubs who "check on" potential employees and volunteers. For more information, write to: California Department of Justice, Child Molester Identification Line, Rm. B-216, P. O. Box 903387, Sacramento, CA 94203-3870.

## Florida

Florida's Web site is maintained by the Florida Department of Law Enforcement (FDLE).<sup>308</sup> Florida law requires the FDLE to maintain an updated list of sexual offenders in the State after a court has made a written finding designating them as sexual predators as that term is defined by Florida statute. The FDLE provides an on-line form that enables the public to search by county, city, and/or last name. Users of the database can access the following information about an offender: photograph; race; sex; height; weight; hair and eye color; date of birth; FDLE number; scars, marks, or tattoos; last known address; date the record was last updated; act committed by the offender and how the victim was chosen; alias; and section of the Florida statute pursuant to which the offender is registered. For further information, contact the Florida Department of Law Enforcement, Criminal Justice Information Systems Help Desk at (904) 487-2806.

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<sup>307</sup>*Child Molester Identification Line* (visited Aug. 25, 1997) <<http://www.caag.state.ca.us/bcia/cmld.htm>>.

<sup>308</sup>Florida Department of Law Enforcement, *Registered Sexual Predators* (visited Aug. 25, 1997) <[http://www.fdle.state.fl.us/Sexual\\_Predators](http://www.fdle.state.fl.us/Sexual_Predators)>.

## Indiana

The Criminal Justice Institute (CJI) maintains a Web site in Indiana.<sup>309</sup> The CJI acquired offender release information from the Indiana Department of Corrections facilities' release coordinators, county jails, community corrections programs, and courts and probation agencies. The CJI acquired offender registration information from sheriffs departments and police departments. Information has been received concerning persons who have been convicted of specified offenses and who have been or are scheduled for release into the community on or after July 1, 1994. The following information must be provided to search the database: full name, alias, Social Security number, birth date, and county or city of residence.

## Michigan

*The Muskegon Chronicle* maintains a Web site in Michigan.<sup>310</sup> The Web site provides descriptions of convicted sex offenders that include photographs, names, addresses, dates of birth, convictions, and prison and jail term information. The site does not identify sexual assault victims -- "the exact nature of the crimes is being withheld to protect children victimized by parents or other relatives," according to *The Muskegon Chronicle*. Information can be viewed from an alphabetical listing. The Muskegon County Sheriff's Department provides photos for the Web site. The Muskegon County 14th Circuit Court provides the criminal records information detailed above. Questions and comments can be sent to [crimes@mlive.com](mailto:crimes@mlive.com).

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<sup>309</sup>The Access Indiana Information Network, *Sex Offender Registry - State of Indiana*, (visited Aug. 25, 1997)  
<<http://www.ai.org/cji/index.html>>.

<sup>310</sup>The Muskegon Chronicle, *Michigan Live* (visited Aug. 25, 1997)  
<<http://www.mlive.com/news/crimes/faces.html>>

## Oregon

In Oregon, the Benton County Sheriff's Office, Community Corrections maintains a Web site.<sup>311</sup> The site provides photographs, demographic information such as sex, date of birth, age, height, weight, ethnicity, and address. Additionally, the site includes information regarding offenders' legal status and conditions of release. For more information call: Aaron East, Parole and Probation Office; Phone: (541) 757-6887; or e-mail: aaron.w.east@co.benton.or.us

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<sup>311</sup> Benton County Sheriff's Office, *Sex Offender Community Notification* (last modified Apr. 10, 1997) <<http://www.peak.org/benton-county/sheriff/corrections/sonote.htm>>.



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