

SEX OFFENDER RESIDENCY RESTRICTIONS: HOW COMMON SENSE PLACES CHILDREN AT RISK

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I. INTRODUCTION

Sex offender residency restrictions (SORRs) are a manifestation of the American public's retributivist attitudes and biased fears¹—attitudes and fears that ultimately result in ineffective policy choices. Over the last quarter century in the United States there has been a reemergence of “just deserts” as a generalized theory of policy. This retributivist policy is particularly salient in recent civil sanctions levied against sex offenders after their release from prison. Sex offenders, as a group, incite the public's fear and hatred, and politicians seeking to curry electorate favor often support increasingly harsh sanctions against these “political pariahs of our day.”² Most recently, in an attempt to keep communities safe, at least twenty-two states³ and hundreds of local municipalities have placed severe restrictions on where sex offenders may live after being released from prison. These restrictions typically exclude sex offenders from living within 1000 to 2500 feet of schools, parks, day care centers, and other areas where children con-

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1. See Part II.A for a brief discussion regarding research indicating that morals and prejudice rather than fear may actually motivate the public's retributivist attitudes. For simplicity, this paper will refer to public attitudes as “fear-driven” with the caveat that research supports other motivators as contributing factors.

2. *Kentucky v. Baker*, No. 07-M-00604, slip op. at 9 (Kenton Dist. C. filed Apr. 20, 2007), available at http://theparson.net/so/residencyrestrictions.source.prod_affiliate.79.pdf, cert. granted, 2007-SC-000347 (Ky. Aug. 23, 2007).

3. See GARRINE P. LANEY, DOMESTIC SOC. POLICY DIV., CRS REPORT FOR CONGRESS: RESIDENCE RESTRICTIONS FOR RELEASED SEX OFFENDERS 18-27 (2008), available at http://www.criminallawlibraryblog.com/CRS_RPT_DomesticViolence_02-05-2008.pdf. The report includes a table detailing the state statutes. Since the report was published, Indiana's statute was invalidated as ex post facto punishment by Indiana's Appellate Court in *State v. Pollard*, 886 N.E.2d 69 (Ind. Ct. App. 2008).

gregate.⁴ However, research indicates that these fear-driven laws are ill-advised policy choices based on faulty reasoning. They aggravate recidivism risk factors, and hence may actually make communities *less* safe.⁵

By framing these public safety laws in the context of modern criminal policy, this paper highlights the possible mechanisms responsible for the restrictions' development and proliferation despite the growing body of research evidencing their counterproductivity. Understanding the context in which these laws have developed will help shed light on the most useful avenues of sex offender legislation reform. Instead of focusing on the constitutional rights of sex offenders, as most legal scholars have done, strategies for sex offender legislation reform need to focus on uniting the political and legal aspects of the reform effort. More effective reform can be sought through a better informed public, rather than a protective judiciary.

II. CRIME, POLITICS, AND THE ELECTORATE

Recent American crime policy has been largely driven by a focus on punishment and a reemergence of retribution as a viable theory of punishment. This reemergence has come on the heels of a "decline of the rehabilitative ideal," which characterized the late 1960s and early 1970s criminal policy.⁶ By the 1980s, even amidst stable crime rates, America's criminal policy became increasingly punitive as legislators rediscovered the political power of the "tough on crime" image.⁷ A prime example of this punitive policy can be seen in congressional sentencing legislation. During this time, Congress began steadily increasing mandatory minimums and expanding "three strikes and you're out" legislation—a trend that continues today. The result of this shift in crime policy has earned Ameri-

4. See, e.g., ALA. CODE § 15-20-26 (2007) (prohibiting sex offenders from living within 2000 feet of schools and child care facilities); DEL. CODE ANN. tit. 11, § 1112(a) (2007) (prohibiting sex offenders from living within 500 feet of school property); OHIO REV. CODE ANN. § 2950.031 (LexisNexis Supp. 2007) (prohibiting sex offenders from living within 1000 feet of schools).

5. See *infra* Part III.C.

6. DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 8 (2001) (quoting FRANCIS ALLEN, *THE DECLINE OF THE REHABILITATIVE IDEAL* (1981)).

7. *Id.*

ca the “preeminent distinction as a punisher . . . regularly leading the world in imprisonment rates.”⁸

A. *Fear-Driven Criminal Policy*

The 1960s were marked as a decade of civil disorder, protest, and violence. Scholars warned against the use of force as a means of social control in response to these protests.⁹ They argued it would result in a destructive, self-defeating position, because force could not address recurrent longstanding grievances in a democratic society.¹⁰ Criminologist Jerome Skolnick contends that “durable social control arises not from the pain and suffering punishment imposes, but by binding the individual to the social group, ‘by making his society an integral part of him, so that he can no more separate himself from it than from himself.’”¹¹ President Lyndon Johnson agreed. President Johnson’s crime policy focused on stabilizing the lives of criminals and protestors through “jobs, education and hope.”¹² Employment and education were seen as ways to structure and stabilize one’s life and instill a sense of responsibility.¹³ These factors, it was argued, had the potential to both prevent crime and rehabilitate criminals.¹⁴

However, escalating crime throughout the 1970s and an explosion in media attention to crime resulted in a decline in rehabilitative efforts of the Johnson era.¹⁵ Instead of focusing on the complex causes and effects of crime, “crime [had] emerged as a ‘hot button’ political issue, driven by the anxieties of the

8. Wayne A. Logan, *Constitutional Collectivism and Sex-Offender Residence Exclusion Laws*, 92 IOWA L. REV. 1, 5 (2006).

9. JEROME H. SKOLNICK, *POLITICS OF PROTEST: A TASK FORCE REPORT SUBMITTED TO THE NATIONAL COMMISSION ON THE CAUSE AND PREVENTION OF VIOLENCE UNDER THE DIRECTION OF JEROME H. SKOLNICK* 326 (1969).

10. *Id.*

11. Jerome H. Skolnick, *What Not To Do About Crime: The American Society of Criminology 1994 Presidential Address*, 33 CRIMINOLOGY 1, 3 (1995) (quoting EMILE DURKHEIM, *MORAL EDUCATION: A STUDY IN THE THEORY AND APPLICATION OF THE SOCIOLOGY OF EDUCATION* 277 (1961)).

12. NAOMI MURAKAWA, *ELECTING TO PUNISH: CONGRESS, RACE, AND THE AMERICAN CRIMINAL JUSTICE STATE* 1 (2005) (quoting Lyndon B. Johnson’s 1965 crime policy message to Congress).

13. Skolnick, *supra* note 11.

14. *Id.*

15. GARLAND, *supra* note 6.

moment [and] the politics of resentment.”¹⁶ A generalized fear of violence and crime had become part of the culture of society—a fear that remains today.¹⁷ As sociologist David Garland describes the situation, “what was once regarded as a localized, situational anxiety, afflicting the worst-off individuals and neighbourhoods [sic], has come to be regarded as a major social problem and a characteristic of contemporary culture.”¹⁸

The origin of this exaggerated fear is difficult to pinpoint. Scholars have differing opinions as to whether the fear originated in the media, among the public, or from the politicians themselves. Although the exact role the media played in perpetuating this fear is debatable, most researchers agree that media coverage of crime played a part in exacerbating the public’s fear of crime. For example, network television coverage of crime increased 83% from 1990 to 1998, even though the national crime rates had actually decreased 20%.¹⁹ News coverage of crime also tends to dwell on the most newsworthy crimes—those that are unusual or particularly heinous—while “common cases receive little or no attention.”²⁰ Reporting that exalts the unusual turns the most uncommon, brutal crimes into crimes that seem common. This type of reporting helped fuel an unwarranted public fear of crime across the nation in the 1980s.²¹ While researchers disagree as to whether media coverage creates public fear or simply responds to public fear,²² evidence suggests the news images aggravate the public’s insecurities and anxiety, and lead to public outrage at the perceived increasing crime rates.²³

This state of panic creates a background effect of “collective

16. Skolnick, *supra* note 11.

17. GARLAND, *supra* note 6, at 10.

18. *Id.*

19. David A. Singleton, *Sex Offender Residency Statutes and the Culture of Fear: The Case for More Meaningful Rational Basis Review of Fear-Driven Public Safety Laws*, 3 U. ST. THOMAS L.J. 600, 602 (2006).

20. Ross E. Cheit, *What Hysteria? A Systematic Study of Newspaper Coverage of Accused Child Molesters*, 27 CHILD ABUSE & NEGLECT 607, 620 (2003).

21. Skolnick, *supra* note 11.

22. Compare Greg Barak, *Between the Waves: Mass Mediated Themes of Crime and Justice*, 21 SOC. JUSTICE 133, 135 (1994) (detailing a top-down media effect), with Richard V. Ericson, *Mass Media, Crime, Law and Justice*, 31 BRITISH J. OF CRIMINOLOGY 219, 237 (1991) (finding a reciprocal relationship between the media and the public).

23. MURAKAWA, *supra* note 12, at 171; Skolnick, *supra* note 11; LORD WINDLESHAM, *POLITICS, PUNISHMENT AND POPULISM* 4 (1998).

anger" and a "righteous demand for retribution," which has led to an increase of social control and the reemergence of the theory of "just deserts" in crime policy.²⁴ According to criminologists Feeley and Simon, this "new penology" is rooted in preemptive practices such as surveillance and containment. Because proponents of new penology believe rehabilitation is not possible, they seek to minimize the risk to the public posed by "deviant" offenders.²⁵ Many researchers believe "the public's concerns about crime are more likely to be driven by the politicians and by policy initiatives than vice versa."²⁶ Thus, these punitive policy choices may be fueling public fears rather than responding to them, but, at least ostensibly, politicians act as though they are addressing the community's need for security and containment of danger through measures of greater social control.²⁷ These measures then become prominent issues in electoral competition, with politicians trying to outdo one another with their "tough on crime" stances.²⁸ As a result, national crime policy is being driven by public fear and the political response.

While the description above is an oversimplification of a very complex and oft-disputed situation, significant research exists that supports this view of the "democratization" of punishment.²⁹ Evidence of democratized punishment can be found in what scholars have called "electoral cycles." These cycles show a strong correlation between the passage of punitive legislation and election proximity. For example, Naomi Murakawa identified electoral cycling in the passage of mandatory minimum sentencing legislation.³⁰ She noted that an overwhelming majority of the increases in sentencing were passed within two months of election time.³¹ Given the political and social climate of current crime policy, there have been

24. GARLAND, *supra* note 6, at 9-11.

25. Malcolm Feeley & Jonathan Simon, *Actuarial Justice: The Emerging New Criminal Law*, in *THE FUTURES OF CRIMINOLOGY* 173, 174-85 (David Nelken ed., 1994).

26. Stuart A. Scheingold, *Constructing the New Political Criminology: Power, Authority, and the Post-Liberal State*, 23 *LAW & SOC. INQUIRY* 857, 875 (1998) (citing KATHERINE BECKETT, *MAKING CRIME PAY: LAW AND ORDER IN CONTEMPORARY AMERICAN POLITICS* 23-26 (1997)).

27. *Id.* at 12.

28. MICHAEL TONRY, *SENTENCING MATTERS* 160 (1996); GARLAND, *supra* note 6, at 12.

29. MURAKAWA, *supra* note 12, at 140.

30. *Id.* at 147.

31. *Id.*

no countervailing forces to deescalate this continual rise in sentencing.³² As a result, the number of mandatory minimum sentencing laws has increased dramatically, from 61 laws in 1983 to 168 laws in 2000.³³ Levitt noted a similar cycle in the number of police officers commissioned during gubernatorial and mayoral election years.³⁴ And finally Huber and Sanford have found that trial judges in Pennsylvania tend to impart longer criminal sentences as their reelection day approaches.³⁵ Due to increasingly punitive measures such as these, imprisonment rates in America doubled in the 1970s and tripled in the 1980s. As of 2005, America had the highest prison population rate in the world³⁶ and has earned the “preeminent distinction as a punisher.”³⁷

B. The Punitive Response: Common Sense or Political Self-Interest?

Some argue that it is just plain common sense to lock up criminals—it is something “everyone intuitively knows”—and it works.³⁸ Garland notes that “[t]here is now a distinctly populist current in penal politics that denigrate[s] the expert and professional elites and claims the authority of the ‘the people’, of common sense, of ‘getting back to basics.’”³⁹ The dominant voices are that of the fearful, anxious public and that of the victim.⁴⁰ Intuition dictates that incarceration and punishment are the ways to keep the public safe and to satisfy the urge to retaliate.⁴¹

However, criminal policy that focuses on a “common sense” approach does so at the expense of expert opinion and re-

32. *Id.* at 141.

33. *Id.* at 146.

34. Steven Levitt, *Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime*, 87 AM. ECON. REV. 270 (1997).

35. Gregory A. Huber & Sanford C. Gordon, *Directing Retribution: On the Political Control of Lower Court Judges*, 23 J.L. ECON. & ORG. 386 (2007).

36. ROY WALMSLEY, KING'S COLL. LONDON, WORLD PRISON POPULATION LIST 1 (6th ed. 2005).

37. Logan, *supra* note 8, at 5.

38. Skolnick, *supra* note 11 (summarizing an argument by Ben Wattenberg in an article in the *Wall Street Journal*).

39. GARLAND, *supra* note 6, at 13.

40. *Id.*

41. Skolnick, *supra* note 11.

search. The result is a policy that is based on faulty assumptions and that often leads to unintended consequences. For instance, in the 1980s, Congressional legislation designed to address the "crack epidemic" was based on three faulty assumptions: (1) that "crack is instantly addictive;" (2) that "crack makes people violent;" and (3) that "women addicts often trade sex for crack, and their children present a new kind of menace."⁴² By 1995, the Sentencing Commission had issued a special report detailing its research on the dangers of crack-cocaine and the resulting epidemic.⁴³ The Commission found all of these assumptions to be unwarranted and unsupported by the research, and presented a formal amendment to Congress based on their findings.⁴⁴ Congress rejected the amendment.⁴⁵ In defense of their rejection, many members of Congress issued statements in which they continued to rely on the faulty assumptions proposed in the 1980s.⁴⁶ Public opinion and supposed "common sense" had triumphed over the research and empirical data.

Jerome Skolnick gives an example of the unintended consequences that can arise when crime policy focuses solely on punishment in what he calls the "Felix Mitchell paradox."⁴⁷ Skolnick describes the aftermath of the arrest, conviction, and subsequent death of Felix Mitchell, the "most notorious drug kingpin" of the West Coast:

Drug sales continued and, with Mitchell's monopolistic pricing eliminated, competition reduced the price of crack-cocaine. The main effect of Mitchell's imprisonment was to destabilize the drug market, lowering drug prices and increasing violence as rival gang members challenged each other for market share. The aftermath saw a rise in drive-by shootings, street homicides, and felonious assaults. By indirection, effective law enforcement, followed by incapacitation, had

42. MURAKAWA, *supra* note 12, at 159-60.

43. *Id.* at 161 (citing U.S. SENTENCING COMM'N, SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (1995)).

44. *Id.* at 162.

45. *Id.*

46. *Id.* at 162-63.

47. Skolnick, *supra* note 11.

stimulated serious random violence.⁴⁸

Despite the research and unintended consequences such as the Felix Mitchell paradox, current crime policy continues to focus almost exclusively on incarceration and increased punishment.

Many scholars theorize that continued adherence to a punitive policy despite the research is the result of political self-interest. As Tonry states:

Positively put, elected officials want to reassure the public generally that their fears have been noted and that the causes of their fears have been acted on. Negatively put, officials want to curry public favor and electoral support by pandering, by making promises that the law can at best imperfectly and incompletely deliver.⁴⁹

Windlesham identified the prevalence of political self-interest in the passage of the 1994 federal crime bill stating that "elected officials almost without exception recognized an imperative need to respond to [the generalized fear of crime which had developed], and in many cases sought to exact political advantage from a fearful, sometimes vindictive, public."⁵⁰

Support for these theories can be found in the responses of the politicians themselves when asked why they voted for certain ill-advised crime measures. Although expressing a reservation about the effectiveness of the mandatory minimum provisions of the 1986 Anti-Drug Abuse Act, Representative Nick Rahall II of West Virginia lamented, "How can you get caught voting against them?"⁵¹ Senator Daniel J. Evans of Washington, expressing his dissatisfaction with the bill, said he felt as though a "congressional lynch mob" had set off a "sanctimonious election-year stampede which will probably trample our Constitution."⁵² Similarly, after voting for the 1994 Violent Crime Control and Law Enforcement Act, Senator Sam Nunn of Georgia said, "In an election year rush to

48. *Id.*

49. TONRY, *supra* note 28, at 160.

50. WINDLESHAM, *supra* note 23, at 12.

51. Karen Tumulty, *Tough Anti-Drug Bill Passes House Despite Qualms*, L.A. TIMES, Sept. 12, 1986, at 1.

52. Karen Tumulty & Robert Rosenblatt, *Anti-Drug Bill Readied by Senate Leaders*, L.A. TIMES, Sept. 26, 1986, at 22.

enact tough anti-crime measures, I am concerned the Congress may be creating quick fixes that may sound good but, too often raise unrealistic expectations in the public's mind."⁵³ These statements evidence the political pressures felt by many politicians—pressures that force them to vote for a crime policy with which they do not necessarily agree. This approach to crime policy has been described by some politicians as “legislation by political panic.”⁵⁴

The foregoing discussion outlined modern crime policy's reliance on democratized punishment. The overly simplified pattern that emerges looks like this: public fear and emotionalism demands a legislative response; the form of that response becomes an election issue; “tough on crime” legislators promote simplistic, “common sense” measures that forsake expert opinion and research for political gain. It is within this culture of “legislation by political panic” that ever increasing restrictions are being levied upon sex offenders—a group of individuals who conjure fear and loathing among the public.

III. RECENT SEX OFFENDER LEGISLATION: RESIDENCY RESTRICTIONS

The same pattern that marks democratized crime policy can be seen in the development and proliferation of the most recent public safety measures taken against sex offenders—SORRs. In the last twenty years, the fear of sex offenders has grown nationwide due to policy initiatives and media reporting on a number of brutal, if unusual, high profile attacks on children⁵⁵—Adam Walsh, Jacob Wetterling, Jessica Lundsford, and Megan Kanka, to name a few. Despite the irregularity of such cases, a wave of public fear and political pressure forced legislatures into action, levying additional restrictions and regulations on sex offenders after their release from prison. Some of the restrictions include registration requirements,⁵⁶

53. 140 CONG. REC. S12,457 (daily ed. Aug. 24, 1994).

54. Brian Duffy with James M. Hildreth, Andy Plattner & Kenneth T. Walsh, *War on Drugs: More than a Short-Term High?*, U.S. NEWS & WORLD REP., Sept. 29, 1986, at 28.

55. *Misguided Measures: New Sex Offender Laws May Cause Bigger Problems than They Prevent* (ABC news broadcast Mar. 7, 2007), available at <http://www.abcnews.go.com/TheLaw/story?id=2931817&page=1>.

56. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 2038 (1994).

community notification,⁵⁷ civil commitment,⁵⁸ GPS monitoring and tracking,⁵⁹ and SORRs.⁶⁰ These “common sense” measures continue to proliferate even though research indicates that these types of social control are ineffective and perhaps even counterproductive. This Part will examine the development and proliferation of SORRs within the framework of democratized punishment.

A. *Predators Are Everywhere*

As was seen in Part II, modern crime policy can be fueled by the public’s fear of crime and demand for retribution, or at the very least, fueled by politicians’ conceptions of public fear. Similarly, the development of SORRs can be linked to public fears and the political response. Rare, isolated incidents of kidnapping and sexually charged murders of children are reported by the media, and viewed as a prevalent occurrence. Communities cry out for protection from the seemingly omnipresent danger (or, as discussed in Part IIA, perhaps policy initiatives create the sense of danger). Politicians, in turn, react swiftly passing sweeping restrictions with little debate or research to support such actions. This pattern exhibits the hallmarks of democratized punishment seen in Part II—acquiescence to short-term emotionalism, truncated deliberation, and the passage of harsh simplistic measures for electoral gain.⁶¹

The media’s coverage of high profile kidnappings and sexual assaults has contributed to the fear that dangerous, unknown predators were lurking everywhere. Similar to the news coverage of most crime, news reports on sex offenses

57. Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program, 42 U.S.C.A § 16921 (West Supp. 2008).

58. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006).

59. JESSE JANNETTA, CTR. FOR EVIDENCE-BASED CORR., GPS MONITORING OF HIGH-RISK SEX OFFENDERS, available at http://ucicorrections.seweb.uci.edu/pdf/WorkingPaper5106_B.pdf (describing California’s pilot program).

60. See, e.g., ALA. CODE §15-20-26 (Supp. 2007) (convicted sex offenders cannot live or work within 2000 feet of school or child care facility); IOWA CODE § 692a.2a (2007) (convicted sex offender of minor cannot live within 2000 feet of a school or child care facility); TENN. CODE ANN. §40-39-211 (2006) amended by 2008 Tenn. Pub. Acts 1164 (sex offenders cannot live within 1000 feet of school, child care facility, or victim).

61. MURAKAWA, *supra* note 12.

tend to focus on the atypical. A study of the newspaper coverage of child molesters arrested over the course of one year found that media coverage tended to focus on the "the extreme and unusual," while the reporting of typical cases, such as those involving family members or acquaintances, was infrequent to non-existent.⁶² Of the 187 persons charged with child molestation, thirteen of these defendants accounted for over 57% of all the news coverage on sex offenses. The analysis found that these thirteen cases tended to involve either unusual circumstances or multiple victims. The study concluded, as others had, that by dwelling on these atypical cases, "the coverage of child sexual abuse gives an exaggerated sense of 'stranger danger.'"⁶³

Other scholars have noted an increase in the media's coverage of child abductions and sexual assaults. By performing searches of newspaper article databases, David Singleton shows how the newspaper coverage of the most publicized child abductions and murders rose dramatically from 1981 to 2005.⁶⁴ The database search revealed that articles covering the 1981 abduction and murder of Adam Walsh numbered only thirteen, compared to the more than 2500 articles reporting on the 2005 murder of Jessica Lundsford.⁶⁵ While Singleton's selective search of new databases was not statistically analyzed, the numbers are at least evidence of the media's growing coverage of the most unusual and heinous crimes committed against children. This increased attention to child sex crimes contributes to the perception that violent sex crimes are on the rise, when in reality, substantiated cases of child sex abuse decreased by approximately 40% between 1990 and 2000.⁶⁶ These images aggravate the public's insecurities and anxiety, leading to anger and outrage at the perceived increasing crime rates.⁶⁷

In addition to these images increasing the public's fear and concern, the political push to pass sex offender legislation,

62. Cheit, *supra* note 20, at 611-12.

63. *Id.* at 619.

64. Singleton, *supra* note 19, at 606.

65. *Id.*

66. DAVID FINKELHOR & LISA M. JONES, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, EXPLANATIONS OF THE DECLINE IN CHILD SEXUAL ABUSE CASES 1 (2004).

67. WINDLESHAM, *supra* note 23.

such as Megan's Law and the Adam Walsh Act contribute to public fears. The availability of internet databases revealing the location of offenders antagonizes concerned parents when they find an offender living nearby. Already startled by media images, these parents demand that legislators react.⁶⁸ They contact their representatives demanding something be done.⁶⁹ Iowa State Senator Jerry Behn received such a phone call from an angry mother, upset that a sexual predator with a history of abusing six-year-old girls was living in an apartment overlooking a grade school playground.⁷⁰ Senator Behn quickly went to work, passing a statewide restriction excluding registered sex offenders from living within 2000 feet of schools or daycare centers. Senator Behn admits that not much research was done into the law's effectiveness; "We all just, frankly, took it for granted that it would have some benefit. . ."⁷¹ The passage of restrictions in other states and cities can be similarly linked to the public's reaction to news of sex offender crimes. For instance, in California, balloting initiative Proposition 83, which contains a SORR provision, was the result of the murders of Jessica Lundsford and Courtney Sounce.⁷² In Florida, the murders of three girls from 2004-2005 led many cities and towns to pass more stringent restrictions, increasing the protections of the statewide SORR already in place.⁷³

Here we can see the beginning of democratized crime policy—the demand for public safety from a perceived threat causing legislators to jump into action. As the next section will show, the legislative response takes the form of "common-sense" social control measures that favor political gain over empirical evidence.

68. Shanna Hogan, *Too Close for Comfort*, TRIB. (Mesa, Ariz.), Mar. 18, 2006, at A1; Laura Pace, *More Limits Sought on Sex Offenders: Legislators Ponder Restrictions on Residency*, PITTSBURGH POST-GAZETTE, June 21, 2007, at A1.

69. Jim Saunders, *Lawmakers Grapple with Sex Offender Laws*, DAYTONA NEWS-J., Feb. 27, 2006, at 2; Dave Sheeley, *Falls May Put Limits on Sex Offenders: Input Sought from Village Residents on Potential Restrictions*, MILWAUKEE J. SENTINEL, Mar. 6, 2007, at B7; *Laws Based More on Myth Than Fact* (Minnesota Public Radio June 19, 2007), available at <http://minnesota.publicradio.org/display/web/2007/06/11/sexoffender2/> [hereinafter *Myth*].

70. *Myth*, *supra* note 69.

71. *Id.*

72. Jeff Warren, *Laws Tighten Rules for Sex Offenders*, L.A. TIMES, Sept. 21, 2006, at B1.

73. Todd Lesknic, *More Cities Limit Residences of Sex Offenders*, TAMPA TRIB., May 14, 2006, at 1.

B. *Legislative Response and SORR Proliferation: Safety, Politics, and the "Domino Effect"*

Just as politicians claimed increased punishment was a common sense approach to solving the nation's crime problem, legislators likewise claim SORRs are necessary to ensure the public's safety. Some politicians admit that political pressures and fear of being seen as "soft on sex offenders" forced them to vote in favor of the rather ill-advised restrictions. Meanwhile, other legislators felt compelled to pass legislation because neighboring towns had enacted restrictions. These politicians feared sex offenders would flee areas with restrictions into their unrestricted towns. All of these factors have contributed to a proliferation of SORRs across the nation.

Many politicians and parents alike insist that residency restrictions are necessary for the safety of children. As one legislator puts it, "common sense tells you that if you can keep sexual predators physically away from children, then they are going to victimize children less often."⁷⁴ Legislators also point to the low rehabilitation rates of sex offenders and their correspondingly high recidivism rates as reasons for needing the restrictions.⁷⁵

Even when faced with research suggesting the laws are ineffective, many legislators continue to support such restrictions, claiming safety is paramount. Speaking out in favor of local restrictions in East Rockaway Village, New York, trustee Edward Sieban commented, "I'd rather err on the side of keeping sex offenders as far from our children as possible than worry about what an expert who doesn't live in my village has to say."⁷⁶ When Kansas state officials held hearings regarding the state's moratorium on local restrictions, they heard the same sentiment echoed by citizens. People in the hearing would say, "Yes, I hear all the data. Yes, I know what the research is saying. But you know what, this makes me feel safer."⁷⁷ These statements clearly evidence a preference for the

74. John Ingold, *Lyons Debating Sex-Offender Residency Rules*, DENVER POST, Apr. 16, 2007, at B1 (quoting state Rep. David Balmer, R-Centennial); see also *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005).

75. Stephanie Simon, *Ex-Cons Exiled to Outskirts*, L.A. TIMES, Dec. 5, 2002, at 1; Daniel Walsh, *Limit Sex Offenders, Freeholders Urge Towns*, PRESS OF ATLANTIC CITY, Oct. 10, 2005, at 1.

76. Erik German, *Sex Offenders Face Tighter Rules*, NEWSDAY, Dec. 5, 2006, at 42.

77. *Kansas Rejects Buffer Zones*, THE KANSAN.COM, Feb. 12, 2007, <http://thekansan.com/>

expression of public interest over empirical research—a common theme in modern democratized crime policy.⁷⁸

Besides appealing to people's common sense, SORRs have proliferated because politicians can use the restrictions to promote a "tough on sex offenders" image. Simon, of the ACLU of Florida, calls the local ordinances a "shameless exploitation by politicians"⁷⁹—politicians taking advantage of the "fearful, sometimes vindictive, public."⁸⁰ Many politicians admit there is little research to support the restrictions, but they feel as though they cannot vote against them. In New Jersey, one politician, who refused to be identified, called SORRs "feel-good legislation," but he stated that politicians would not publically speak out against the restrictions for fear of being seen as soft on sex offenders.⁸¹ Iowa State Senator Behn recognizes that Iowa SORR probably needs to be changed.⁸² Yet Senator Behn and other legislators "[cannot] vote for any law that appears to give sex offenders a break, for fear of giving political opponents ammunition."⁸³ This political pressure on legislators is immense. In Iowa, prosecutors, public defenders, and law enforcement officials alike have all urged the repeal of the residency restrictions, yet the legislature has refused to act. The Iowa County Prosecutor's Office states, "Very seldom do we have something like this where every attorney in the state says repeal it, the police say repeal it, and [the legislature] still [doesn't] do it."⁸⁴

While safety and political concerns are motivating factors at both the state and local levels, local legislators face an additional concern—fear of offenders moving from areas with restrictions into unprotected areas.⁸⁵ Restrictions of 2500 feet severely limit the housing options for sex offenders, especially in

stories/021207/topstories_021207006.shtml (quoting Roger Werholtz, secretary of the Kansas Department of Corrections and member of the Kansas Sex Offender Policy Board).

78. GARLAND, *supra* note 6, at 9.

79. Leskanic, *supra* note 73.

80. WINDLESHAM, *supra* note 23, at 12.

81. Walsh, *supra* note 75.

82. *Myth*, *supra* note 69.

83. *Id.*

84. Dustin Lemmon, *Tracking Sex Offenders Becomes 'Nightmare' for Police*, QUAD-CITY TIMES (Ill.), Nov. 13, 2006, <http://www.qctimes.com/articles/2006/11/13/news/local/doc45581a6ad5f57192445248.txt>.

85. Jim Collar, *Residency Limits Weighed for Sex Offenders*, POST-CRESCENT (Wis.), June 18, 2007; Hogan, *supra* note 68.

densely populated areas and small towns.⁸⁶ When one town enacts an SORR, neighboring towns fear offenders, desperate to find housing, will flood their neighborhoods.⁸⁷ For instance, when Iowa restricted sex offenders from living within two-thousand feet of schools, parks, and playgrounds, a border town in Nebraska had twenty-eight offenders move in from Iowa.⁸⁸ Whether or not this migration of offenders is typical, the fear of such migration is a motivating factor for many politicians when considering the law.⁸⁹

Legislatures feel they must move quickly to prevent this migration of sex offenders into their towns. In New York, majority leader Judith Dagostino of the Schenectady County legislature, responded to the criticism that the county's legislation was rushed, saying fast action was necessary due to restrictions in nearby counties.⁹⁰ Jim Lundrigan, the custodian of Madison County's sex offender registry and a retired captain with the sheriff's office, said "It is just a matter of time before every county in [New York] has a residency restriction to prevent the migration of sex offenders from counties where laws are in place."⁹¹ This fear of sex offender migration creates a "domino effect" of legislation. One town restricts offenders and neighboring towns feel pressure to enact similar restrictions to prevent offenders from flooding into their town. For instance, in Miami-Dade and Broward Counties in Florida, the contiguous cities of Miami Beach, North Bay Village, and Miami Gardens passed restrictions within two weeks of one another.⁹² Within four months, at least another seventeen mu-

86. COLO. DEP'T OF PUB. SAFETY, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY 37 (2004), available at http://dcj.state.co.us/odvsom/sex_offender/SO_Pdfs/FullSLAFinal.pdf; see also Brandon Bain, *What If There's No Space? Residency Limits on Sex Offenders May Need to be Adjusted*, NEWSDAY, Nov. 23, 2006, at A18; John Pain, *Miami Sex Offenders Get OK to Live Under a Bridge: Law Makes Housing All But Unobtainable*, CHI. TRIB., Apr. 7, 2007, at 25.

87. German, *supra* note 76; Leskanic, *supra* note 73; Myth, *supra* note 69.

88. Hogan, *supra* note 68.

89. German, *supra* note 76; Hogan, *supra* note 68; Leskanic, *supra* note 73; Walsh, *supra* note 75.

90. Judith Diagostino, Majority Leader Schenectady County Legislature, Letter to the Editor, *Schenectady County Sex Offender Measure Met with Misconceptions*, ALBANY TIMES UNION, July 12, 2007, A12.

91. Aaron Gifford, *Sex Offender Laws Increase Despite Challenge in Binghamton, Municipalities Adopt Residence Restrictions*, POST STANDARD (Syracuse), Jan. 21, 2007, at B1.

92. *Id.*

nicipalities in the area had passed restrictions.⁹³ Similar fears and patterns have been noted in New Jersey,⁹⁴ Nebraska,⁹⁵ Arizona,⁹⁶ Texas,⁹⁷ Pennsylvania,⁹⁸ Massachusetts,⁹⁹ and Wisconsin.¹⁰⁰

As this section highlighted, SORRs have proliferated for numerous reasons. Some legislators believe they are necessary for the safety of children, while critics believe the restrictions have flourished because politicians see an easy way to boost their popular appeal. Other legislators, not particularly convinced of the restriction's effectiveness, feel compelled to defend their town from a restriction-induced migration of sex offenders. As will be seen in the following discussion, the policy of restricting where sex offenders live is based upon faulty assumptions about the nature of sex offenses and the recidivism rates of sex offenders.

C. *Flawed Common Sense: Stranger Danger, Proximity, and Recidivism*

Part II highlighted modern crime policy's general tendency to champion common sense measures of social control over empirical evidence and research. Likewise, SORRs continue to be supported despite the growing body of evidence indicating they are an ineffective safety measure and perhaps even counterproductive. According to proponents, the restrictions are

93. *Id.*

94. Walsh, *supra* note 75 (quoting Fairfield Township Mayor Thomas of N.J., "We certainly don't want to see our municipality become a haven for people other communities have pushed out.").

95. Nate Jenkins, *Senators Urge City to Wait as They Mull Sex Offender Bills*, LINCOLN J. STAR (Neb.), Jan. 6, 2006, at A1 (claiming South Sioux City and South Sioux passed restrictions because of offenders that may flee Iowa).

96. Hogan, *supra* note 68.

97. Wendy Hundley, *Richardson Weighs Sex Offender Zones*, DALLAS MORNING NEWS, Oct. 15, 2006, at 7B; Beth Wilson, *Two Towns to Restrict Offenders' Residence*, CORPUS CHRISTI CALLER-TIMES, Jan. 16, 2007.

98. Tom Coombe, *Sex Offenders Face More Local Restrictions: As Municipalities Look to Limit Where They Can Live, Some Say Actions Would be Misguided and Illegal*, MORNING CALL (Allentown, PA), Apr. 1, 2007.

99. Elaine Thompson, *1000ft Buffer Is Closer to Law: Marlboro May Tighten Rules for Sex Offenders*, WORCESTER TELEGRAM & GAZETTE, May 8, 2007.

100. Collar, *supra* note 85; Mike Johnson, *1,500 Feet Would Separate Falls' Kids, Sex Offenders: Village Board Adopts Limits on Residences, Movement*, MILWAUKEE J. SENTINEL, June 18, 2007, at 3.

necessary to protect children from unknown predators. Common sense dictates that keeping offenders away from the places children congregate will decrease the risk of recidivism. Proponents point to the extraordinarily high recidivism rates of sex offenders and the low rehabilitative success as further reasons why the restrictions are necessary. However, the research available does not substantiate any of these rationales. But, as is common with democratized punishment, research and expert opinion are often sacrificed for the “common sense” approach.

SORRs are designed to protect children from the unknown assailant lurking in the schoolyard or on the playground, an idea commonly referred to as “stranger danger.” However, the assumption that these kinds of sex offenders pose a great risk to children is not supported by data.¹⁰¹ While sexual assaults and kidnappings committed by strangers are indeed tragic, research shows they are actually an infrequently occurring event. According to a national survey conducted by the National Institute of Justice, of the children ages ten to sixteen that reported being sexually abused, most were victimized by someone they knew and trusted—nearly 74%.¹⁰² A study done in Utah reports that 90% of child victims under the age of twelve knew the offender.¹⁰³ Another study showed incest alone accounted for 46% of the convictions for sexual assaults committed against children under twelve years of age.¹⁰⁴ In that same study, 70% of imprisoned rapists who victimized a child under the age of twelve reported that their victim was a family member.¹⁰⁵ A Minnesota study that analyzed sex offender recidivism from 1990-2005 found that 65% of the offenders victimized family members or acquaintances they met through another adult, for instance a girl friend or co-worker.¹⁰⁶ Furthermore, “sexual murders are . . . more than

101. Jill Levenson, Kristen Zgoba & Richard Tewksbury, *Sex Offender Residence Restrictions: Sensible Crime Policy or Flawed Logic?*, 71 *FED. PROBATION* 2, 5 (Dec. 2007).

102. NAT'L INST. OF JUSTICE, *YOUTH VICTIMIZATIONS: PREVALENCE AND IMPLICATIONS* 5 (2003).

103. UTAH COAL AGAINST SEXUAL ASSAULT, RAPE AND SEXUAL VIOLENCE RESEARCH REPORT 4 (2006).

104. PATRICK LANGAN & CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, *CHILD RAPE VICTIMS* (1992), <http://www.ojp.usdoj.gov/bjs/pub/ascii/chilrape.txt>.

105. *Id.*

106. MINN. DEP'T OF CORR., *RESIDENTIAL PROXIMITY AND SEX OFFENSE RECIDIVISM IN*

three times as likely to be committed by someone known to the victim than by a stranger."¹⁰⁷ All of these studies support the conclusion that the majority of sex offenses committed against children are perpetrated by someone known to the child, not a stranger.

Child abductions by strangers are also an infrequent event. For instance, in the *New England Journal on Criminal and Civil Confinement*, Richard Wright details the statistics on kidnapping:

Of those estimated 150,000 abducted children, 78% were abducted by family members, while 22% were abducted by non-family members, including strangers. Of those children abducted by non-family members, nearly 50% were sexually assaulted. The National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMAART) research team estimated that 115 children were the victims of a stereotypical kidnapping, the kind often associated with sex-offender cases.¹⁰⁸

According to these statistics, of the estimated 150,000 cases of abducted children in 1999, approximately 115, or 0.08% are the kinds of abductions associated with sex-offender cases.¹⁰⁹ Hence, the restrictions focus on a relatively small fraction of the offenses committed against children, and completely ignore the most prevalent forms of sexual assault and kidnapping. Some proponents argue that the restrictions are worthwhile to save just one child, but, as will be discussed later, the restrictions may actually pose an increased risk to child safety.¹¹⁰

The second faulty assumption upon which SORRs are premised is the idea that residential proximity to areas where children gather is a factor in recidivism. While some experts endorse the idea that "limiting the frequency of contact between sex offenders and areas where children are located is

MINNESOTA 17 (2007).

107. Rose Corrigan, *Making Meaning of Megan's Law*, 31 LAW & SOC. INQUIRY 267, 292 (2006).

108. Richard G. Wright, *Sex Offender Post-Incarceration Sanctions: Are There Any Limits?*, 34 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 17, 22 (2008) (citations omitted).

109. *Id.*

110. See *infra* notes 119-29 and accompanying text.

likely to reduce the risk of an offense,"¹¹¹ many experts emphasize that social proximity to the child, not residential proximity, is the most significant factor in sex offender recidivism.¹¹² Studies have concluded that residence proximity to schools, parks, and other areas where children congregate has little impact on re-offense.¹¹³ In one Minnesota Department of Corrections study, officials scrutinized the circumstances surrounding sex offender re-offense and concluded that "[n]one of the new crimes occurred on the grounds of a school or was seemingly related to a sex offender living within close proximity to a school."¹¹⁴ Two crimes did occur near parks, however, in both cases, the parks were not located near the offenders' residences.¹¹⁵ Similarly, the Colorado Department of Public Safety concluded that residency restrictions "are unlikely to deter sex offenders from recommitting sex crimes, and that such policies should not be considered a feasible strategy for protecting children."¹¹⁶ In a survey of 185 sex offenders, most said that "the restrictions would not factor much or at all into whether they would re-offend."¹¹⁷ Moreover, many of the respondents said when they re-offended in the past, "they were careful to steer clear of their own neighborhoods."¹¹⁸ Again, we see that the restrictions, while promising child safety, actually focus on a relatively small portion of the sex offenses committed against children.

The third faulty belief underlying SORRs involves offender recidivism. Proponents of SORRs contend sex offenders have exceedingly high recidivism rates; however, studies actually reveal that recidivism rates among sex offenders are actually lower than commonly believed.¹¹⁹ Within a three-year follow-up period, the Bureau of Justice Statistics found a 5.3% recidiv-

111. *Doe v. Miller*, 405 F.3d 700, 716 (8th Cir. 2005) (discussing expert testimony in the district court).

112. Levenson, Zgoba & Tewksbury, *supra* note 101, at 3.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. Leskanic, *supra* note 73 (citing to research in INT'L J. OF OFFENDER THERAPY & COMP. CRIMINOLOGY).

118. *Id.*

119. Levenson, Zgoba & Tewksbury, *supra* note 101, at 3.

ism rate amongst 9691 sex offenders released from prison.¹²⁰ While statistics tend to underestimate the prevalence and incidents of sexual assaults, these rates are quite lower than recidivism rates for non-sexual offenses.¹²¹ Furthermore, the Bureau of Justice Statistics reported that of all the new sex offenses committed by released prisoners, released sex offenders accounted for only 13% of those offenses, while released non-sex offenders accounted for 87% of the sex crimes committed by released prisoners.¹²² These statistics underscore the fact that the restrictions are targeting only a small fraction of sex offenses while promising broad protections to the public.

Finally, proponents of SORRs cite to the low rehabilitation rates of sex offenders as a reason for restricting where sex offenders live. However, the residency restrictions actually aggravate factors which *increase* the risk of recidivism. In many urban areas SORRs make it difficult for offenders to find compliant housing, and experts warn that finding and maintaining housing is one of the most important factors in preventing recidivist activity.¹²³ While the impact of SORRs on the ability of offenders to find housing is largely unknown, studies indicate SORRs make it difficult for offenders to find housing. In one study, one quarter of the offenders were forced to move from a home they owned or rented.¹²⁴ Nearly half reported that they were unable to live with supportive family members.¹²⁵ More than half reported having trouble finding compliant, affordable housing. Other studies reported that 22% of offenders were forced to move multiple times as a result of the restrictions, and almost half the offenders report that landlords refused to rent to them.¹²⁶ In Iowa, within six months of the implementation of statewide restrictions, thousands of sex of-

120. PATRICK A. LANGAN, ERICA L. SCHMITT & MATTHEW R. DUROSE, BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, at 1, 24 (2003), available at http://www.ipce.info/library_3/pdf/rsorp94.pdf.

121. Levenson, Zgoba & Tewksbury, *supra* note 101 (comparing offenders who were rearrested for committing the same crime).

122. LANGAN, SCHMITT & DUROSE, *supra* note 120, at 24.

123. Levenson, Zgoba & Tewksbury, *supra* note 101, at 3.

124. Jill S. Levenson & Leo P. Cotter, *The Impact of Sex Offender Residence Restrictions: 1,000 Feet from Danger or One Step from Absurd?*, 49 INT'L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 168, 173 (2005).

125. *Id.*

126. Levenson, Zgoba & Tewksbury, *supra* note 101.

fenders became homeless.¹²⁷ In California, the incidence of homelessness among registered sex offenders has increased 27% since California's restrictions took effect in November 2006.¹²⁸ Overall, the studies conclude that SORRs are associated with transience, homelessness, reduced employment opportunities, and further distance from social services and mental health treatment.¹²⁹

According to experts, all of these factors increase the risk of recidivism. Many scholars have identified housing as the most important factor in offender reintegration.¹³⁰ "Housing is the linchpin that holds the reintegration process together. . . . [I]n the end, a polity that does not concern itself with the housing needs of returning prisoners finds that it has done so at the expense of its own public safety."¹³¹ Likewise, scholars have noted that "[s]ex offenders who maintained social bonds to communities through stable employment and family relationships had lower recidivism rates than those without jobs or significant others."¹³² For instance, the Colorado Department of Public Safety found that offenders who had a positive support system had significantly lower recidivism than offenders with no support.¹³³ With so many sex offenders struggling to find suitable housing and being pushed away from their social networks, the restrictions may actually be placing communities at an increased risk. Instead of binding the individual to the community like criminologists recommend, SORRs further alienate the offenders.¹³⁴

In addition to having an alienating effect, SORRs have increased enforcement and monitoring problems. Offenders who are unable to find suitable housing often lie about where they are living or stop registering all together, making it diffi-

127. *Id.* at 4.

128. LANEY, *supra* note 3, at 13.

129. Levenson, Zgoba & Tewksbury, *supra* note 101, at 5.

130. NANCY G. LA VIGNE, CHRISTY VISHER & JENNIFER CASTRO, URBAN INST., CHICAGO PRISONERS' EXPERIENCES RETURNING HOME 16 (2004), available at http://www.urban.org/uploadedPDF/311115_ChicagoPrisoners.pdf.

131. KATHARINE H. BRADLEY ET AL., CMTY. RES. FOR JUSTICE, NO PLACE LIKE HOME: HOUSING AND THE EX-PRISONER 7 (2001), available at <http://www.crjustice.org/hmbrief.htm>.

132. Levenson, Zgoba & Tewksbury, *supra* note 101 (citing Candace Kruttschnitt, Christopher Uggen & Kelly Shelton, *Predictors of Desistance Among Sex Offenders: The Interaction of Formal and Informal Controls*, 17 JUST. Q. 61 (2000)).

133. COLO. DEP'T OF PUB. SAFETY, *supra* note 82, at 31.

134. See *supra* note 9 and accompanying text.

cult for law enforcement officials to supervise them.¹³⁵ Reportedly, Mike Jimenez, president of the California parole officers union, has stated that, "It will be impossible for parole agents to enforce Jessica's Law in certain areas, and encouraging 'transient' living arrangements just allows sex offenders to avoid [registering] altogether."¹³⁶ After Iowa enacted restrictions, the number of sex offenders who registered reportedly declined. "The *Des Moines Register* reported that the number of sex offenders who failed to register in the state increased from 142 in June 2005 to 346 in December 2006."¹³⁷ In Cedar Rapids, Iowa, officials are finding it impossible to keep track of individuals registered in the county.¹³⁸ Sheriff Don Zeller told ABC news, "Five years ago, we knew where about 95% of those individuals were. Now we're lucky if we know where 50, 55% of them are."¹³⁹

In the end, what seems like common sense turns out to be premised on faulty assumptions and has potentially dangerous consequences. The restrictions apply to a broad range of sex offenders while designed to target only a small fraction. By focusing on strangers and geography, the restrictions ignore the greatest source of harm to children—those adults the child knows and trusts.¹⁴⁰ The public and political attention being given to SORRs turns a blind eye on the majority of child sex assault victims and leaves them virtually unprotected. Many critics claim "[p]reventative policies that truly sought to protect the greatest number of children from the greatest source of harm would instead prioritize intrafamilial abuse, not predation by strangers."¹⁴¹ Moreover, the restrictions end up excluding offenders from communities and aggravating factors that have been shown to increase offender recidivism. As is common in modern crime policy, some politicians continue to support the restrictions despite the coun-

135. Greg Bluestein, *Sex Offender Challenges GA Residency Restrictions*, WASH. POST (July 16, 2006); Pain, *supra* note 86; Myth, *supra* note 69.

136. LANEY, *supra* note 3, at 12.

137. *Id.*

138. Jim Avila, Mary Harris & Chris Francesceni, *Misguided Measures: New Sex Offender Laws May Cause Bigger Problems than They Prevent*, ABC News, Mar. 7, 2007, available at <http://abcnews.go.com/TheLaw/story?id=2931817&page=1>.

139. *Id.*

140. Corrigan, *supra* note 107, at 291.

141. *Id.*

tervailing evidence.

This Part has attempted to highlight the trademarks of democratized punishment that can be seen in the development and proliferation of SORRs across the nation. It starts with a general societal fear and results in simplistic measures that champion politics over empirical data. Many offenders have challenged these restrictions in court. However the vast majority have not been successful. Part IV will examine the judiciary's highly deferential response to SORRs.

IV. JUDICIAL RESPONSE: COMMON SENSE AND RATIONAL BASIS REVIEW

The overwhelming judicial response to SORR challenges has been to defer to legislative decision making. The leading case analyzing the constitutionality of SORRs comes from the Eighth Circuit's *Doe v. Miller*.¹⁴² According to the reasoning in *Doe*, Iowa's statewide SORR did not violate procedural or substantive due process.¹⁴³ Nor did the restriction compel self-incrimination or contravene the Constitution's Ex Post Facto Clause.¹⁴⁴ Given the court's findings, Iowa's SORR was only subject to the highly deferential rational basis review, a standard the restriction easily met. Overcoming rational basis review is a substantial obstacle for anyone wishing to challenge the restrictions. In general, the judiciary's failure to subject SORRs to heightened scrutiny has left legislatures unchecked in subjecting this unpopular group to additional restrictions. Despite these obstacles, some state courts have handed down favorable rulings, enjoining the retroactive application of the restrictions and finding local ordinances to be in violation of state law.¹⁴⁵ But the overwhelming majority of opinions have followed the precedent set in *Doe*.¹⁴⁶

142. *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005).

143. *Id.* at 709, 714.

144. *Id.* at 716, 721.

145. *See, e.g.*, *State v. Pollard*, 886 N.E.2d 69 (Ind. Ct. App. 2008) (invalidating Indiana's statewide restriction as *ex post facto* punishment); *G.H. v. Galloway Twp.*, 951 A.2d 221 (N.J. Super. Ct. App. Div. 2008) (finding local ordinances to be preempted by New Jersey's Megan's Law); *Nasal v. Dover*, 862 N.E.2d 117 (Ohio 2007) (holding retroactive application which required an offender to move who owned home for several years prior to enactment was unconstitutional).

146. *See, e.g.*, *Boyd v. State*, CR-04-0936, 2006 WL 250832 (Ala. Crim. App. Feb. 3, 2006); *Doe v. Baker*, No. Civ.A. 1:05-CV-2265, 2006 WL 905368 (N.D. Ga. Apr. 5, 2006); *People v. Le-*

In *Doe v. Miller*, the Eighth Circuit upheld Iowa's statewide restriction that prevented sex offenders from living within 2000 feet of any school or child care facility.¹⁴⁷ Overturning the district court's ruling, the Eighth Circuit found that the restrictions did not violate the Fifth Amendment, the Fourteenth Amendment, or the Ex Post Facto Clause of the Constitution.

Judge Colloton, writing the majority opinion for the court, first dismissed the argument that the restriction violated procedural due process under the Fourteenth Amendment because the law "fails to provide notice of what conduct is prohibited, and because it does not require an individualized determination whether each person covered by the statute is dangerous."¹⁴⁸ The court found that the failure of some cities to provide information about the location of restricted areas and the difficulty in measuring such restricted areas did not render the law "impermissibly vague in all of its applications."¹⁴⁹ Likewise, the law did not violate procedural due process by foreclosing an "opportunity to be heard."¹⁵⁰ In dismissing the claim, Judge Colloton stated:

The restriction applies to all offenders who have been convicted of certain crimes against minors, regardless of what estimates of future dangerousness might be proved in individualized hearings. Once such a legislative classification has been drawn, additional procedures are unnecessary, because the statute does not provide a potential exemption for individuals who seek to prove that they are not individually dangerous or likely to offend against neighboring schoolchildren.¹⁵¹

Judge Colloton then moved on to discuss and dismiss the substantive due process claims, finding that the restrictions did not infringe upon any established fundamental rights. According to Judge Colloton, the restrictions did not infringe upon the right to live with family members, because the law did not regulate family relationships and any effect on the

roy, 828 N.E.2d 769 (Ill. App. Ct. 2005); *State v. Seering*, 701 N.W.2d 655 (Iowa 2005).

147. IOWA CODE ANN. § 692A.2A (West 2003).

148. *Miller*, 405 F.3d at 708.

149. *Id.* (citing *Vill. of Hoffman Estates v. Flipside*, 455 U.S. 489, 497 (1982)).

150. *Id.*

151. *Id.* at 709.

family was only “incidental or unintended.”¹⁵² Likewise, Judge Colloton rejected the claim that the law infringed upon the constitutional right to travel, because the statute did not impose an “obstacle to a sex offender’s entry into Iowa, and it does not erect an actual barrier to interstate movement.”¹⁵³ Nor was it found that the law treated nonresidents differently than current residents.¹⁵⁴ Judge Colloton next addressed the appellees’ claims that the restrictions infringed upon the right to intrastate travel, finding that the right to intrastate travel, if such a right even existed, was not implicated in the case.¹⁵⁵ Finally, Judge Colloton declined to expand current substantive due process to recognize a fundamental right “to live where you want.”¹⁵⁶

Since the law did not infringe upon any fundamental rights, the court applied rational basis review. Despite the absence of evidence showing the laws actually fulfilled Iowa’s stated interest of child safety, the court found the law within the state’s police power authority to protect the health and welfare of its citizens.¹⁵⁷ Out of respect for separation of powers, the court deferred to the legislature stating that the “[l]egislature is equipped to weigh the benefits and burdens” of such policies, not the courts.¹⁵⁸ Since, as one expert put it, “it is just ‘common sense’ that limiting the frequency of contact between sex offenders and areas where children are located is likely to reduce the risk of an offense,” Judge Colloton concluded that Iowa was entitled to use this ‘common sense’ in employing residence exclusion as a social control strategy.¹⁵⁹

After disposing of the appellees’ substantive due process claims, the court addressed the claim that the restriction, combined with the state’s registration requirements, compels sex offenders to incriminate themselves in violation of the Fifth and Fourteenth Amendments. Judge Colloton dismissed this claim, stating that the restrictions in no way compelled an offender “to be a witness against himself or a witness of any

152. *Id.* at 710.

153. *Id.*

154. *Miller*, 405 F.3d at 710.

155. *Id.* at 713.

156. *Id.* at 713-14.

157. *Id.* at 714.

158. *Id.* at 716.

159. *Id.* at 715-16.

kind.”¹⁶⁰ The residency restrictions do not require sex offenders to provide any information that may be used against them in court, therefore the statute does not violate the constitutional protection from compelled self-incrimination.¹⁶¹

Finally, the court moved on to address the appellees’ last claim—that Iowa’s residency restriction violates the Ex Post Facto Clause of Article I, Section 10 of the Constitution by imposing “retroactive punishment on those who committed a sex offense prior to [the statute’s enactment].”¹⁶² First, the court concluded that the Iowa General Assembly intended to create “a civil, non-punitive statutory scheme to protect the public.”¹⁶³ Next, using the guideposts established in *Kennedy v. Mendoza-Martinez*,¹⁶⁴ the court addressed whether the law was nonetheless so punitive in effect as to negate the legislature’s intent.¹⁶⁵

The guideposts required the court to focus on five factors: “whether the law has been regarded in our history and traditions as punishment, whether it promotes the traditional aims of punishment, whether it imposes an affirmative disability or restraint, whether it has a rational connection to a nonpunitive purpose, and whether it is excessive with respect to that purpose.”¹⁶⁶ Applying these factors to the case at hand, Judge Colloton first rejected the appellee’s argument that the restrictions resemble the traditional punishment of banishment, because the law “does not ‘expel’ the offenders from their communities.”¹⁶⁷ Addressing the second factor, Judge Colloton recognized that the laws may have a deterrent and retributive effect, but nonetheless determined that the statute was more aligned with the regulatory objective of protecting the health and safety of children rather than the traditional aims of punishment.¹⁶⁸

Turning to the remaining factors, Judge Colloton acknowledged that the laws imposed an “affirmative disability or re-

160. *Miller*, 405 F.3d at 716.

161. *Id.*

162. *Id.* at 718.

163. *Id.*

164. 372 U.S. 144, 168-69 (1963).

165. *Miller*, 405 F.3d at 719.

166. *Id.*

167. *Id.*

168. *Id.*

straint,” but this impact was outweighed by the final, most significant factor—the law had a “rational connection to a nonpunitive purpose.”¹⁶⁹

This final factor—whether the regulatory scheme has a “rational connection to a nonpunitive purpose”—is the “most significant factor” in the *ex post facto* analysis. The requirement of a “rational connection” is not demanding: A “statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance.” The district court found “no doubt” that [the Iowa statute] has a purpose other than punishing sex offenders and we agree. In light of the high risk of recidivism posed by sex offenders the legislature reasonably could conclude that [the Iowa statute] would protect society by minimizing the risk of repeated sex offenses against minors.¹⁷⁰

Thus the court determined that the laws were not so punitive as to render them a violation of the Ex Post Facto Clause of the Constitution. Ultimately the court found the restriction to be a rational policy choice that the legislature was entitled to make and the court was not in a position to oppose.¹⁷¹

As *Doe* demonstrates, generally most courts’ rational basis review and *ex post facto* analysis ultimately turn on “common sense” and “rational connections”—factors which do not have to be substantiated by empirical data. These highly deferential standards present an enormous obstacle for offenders and opponents of the law who advocate for a policy based on evidence rather than faulty common sense. Also highlighted in *Doe* is the fact that the standards used by the court are based on the premise that the legislature has the ability to research and investigate different policy choices. Yet, as the foregoing discussions regarding modern crime policy and SORRs illustrate, that reasoned legislative approach does not always occur. As Parts II and III showed, public fear and ignorance coupled with political tactics can cloud judgment, and rash decisions based on a sometimes illusory “common sense” can dictate policy. *Doe* illustrates that respect for separation of

169. *Id.* at 721.

170. *Id.* (citations omitted).

171. *Miller*, 405 F.3d at 721.

powers dictates judicial deference to those policy choices, regardless of their origin and efficacy.

V. MOVING PAST *DOE*: TRADING COMMON SENSE FOR EDUCATION

Several possibilities exist for overcoming the precedent set in *Doe v. Miller*. Legal scholars have attacked different aspects of the *Doe* ruling; some focus on the parallels between SORRs and banishment, while others scrutinize the court's ex post facto analysis. Still others argue for a more stringent rational basis review when laws appear to be the result of fear-based policy. While legal efforts to overturn *Doe* serve an important purpose, this author would argue they are insufficient if not coupled with an attack on the policy that made such counter-productive and short-sighted laws a reality in the first place.

A. Arguments Proposed by Legal Scholars

Some legal scholars argue that *Doe* and subsequent cases decided along similar lines were wrongly decided.¹⁷² Rayburn Young and Durling both argue that these laws are truly punitive in intent and effect, and as such they violate the Ex Post Facto Clause of the Constitution.¹⁷³ Rayburn Young relies on a comparison between the traditional punishment of banishment and SORRs, while Durling scrutinizes the ex post facto analysis applied in *Smith v. Doe* and relied on in *Doe*. Both scholars come to the same conclusion, that SORRs are punitive and a violation of the Ex Post Facto Clause. However, ex post facto analysis calls for the "clearest proof" of the statute's punitive effects,¹⁷⁴ and whether or not the evidence put forth by these scholars rise to the level of "clearest proof" remains to be seen.

Other legal scholars find the laws to be contrary to the "collectivist traditions" upon which the Constitution was

172. See, e.g., Caleb Durling, *Never Going Home: Does It Make Us Safer? Does It Make Sense? Sex Offenders, Residency Restrictions and Reforming Risk Management Law*, 97 J. CRIM. L. & CRIMINOLOGY 317 (2006); Corey Rayburn Young, *Banishment by a Thousand Laws: Residency Restrictions on Sex Offenders*, 85 WASH. U. L. REV. 101 (2007).

173. Durling, *supra* note 172, at 346; Young, *supra* note 172, at 153.

174. *Miller*, 405 F.3d at 719.

founded.¹⁷⁵ Logan poses an interesting argument against SORRs using the Supreme Court's decisions in *Edwards v. California*¹⁷⁶ and *City of Philadelphia v. New Jersey*.¹⁷⁷ In *Edwards*, the Court struck down a California law that made it illegal to bring an out-of-state impoverished person into the state;¹⁷⁸ while in *City of Philadelphia*, the Court found a state could not isolate itself from a nation-wide societal problem—trash.¹⁷⁹ Logan draws an obvious parallel between the laws at issue in these two cases and the states' current efforts to exclude sex offenders.¹⁸⁰ According to Logan, ex-offenders are a “problem to be shared by all,”¹⁸¹ and “the common responsibility and concern of the whole nation;”¹⁸² and as such, no state is entitled to isolate itself from this common problem.¹⁸³

Other legal scholars advocate for a more stringent standard of review when analyzing these types of laws. David Singleton, an adjunct professor of Law at Northern Kentucky University, cites to *Doe* as an example of the need for a more rigorous standard when reviewing laws “driven primarily by fear and dislike” rather than reasoned analysis.¹⁸⁴ Singleton lays out a framework in which courts could determine if a public safety law is rooted in fear despite its seeming “common sense” approach.¹⁸⁵ According to Singleton's plan, if the law was found to be driven by community fear, the court would subject the law to a higher level of scrutiny.¹⁸⁶ Singleton argues that SORRs would fail to survive heightened scrutiny.

175. See, e.g., Logan, *supra* note 8.

176. *Edwards v. California*, 314 U.S. 160 (1941).

177. *City of Phila. v. New Jersey*, 437 U.S. 617 (1978).

178. *Edwards*, 314 U.S. at 175.

179. *City of Phila.*, 437 U.S. at 622.

180. Logan, *supra* note 8, at 27-28.

181. *Id.* (quoting *City of Phila.*, 437 U.S. at 629).

182. *Id.* (quoting *Edwards*, 314 U.S. at 175).

183. Logan, *supra* note 8, at 29.

184. Singleton, *supra* note 19, at 601.

185. *Id.* at 623-26.

186. *Id.*

B. *The Limitations of Courts*

While these arguments are convincing, focusing on legal battles may prove to be futile. Many scholars have pointed out limitations of courts when dealing with matters of social policy. Court battles can be time consuming, costly, and are still subject to reversal by the political process. Limitations such as these can make a litigation strategy futile and frustrating.

Court cases and precedent building take a tremendous amount of time and money, and in the end may only end up affecting a limited area.¹⁸⁷ As illustrated in Tushnet's account of the NAACP's legal attack on school segregation, the legal process literally took decades. The development of a legal strategy began in the 1920s, but *Brown v. Board* was not decided until 1954.¹⁸⁸ Even after the *Brown* decision, the implementation of school desegregation took many more decades and, in some instances, still continues today.

While turning to courts of law may be an alternative to fighting for policy change through the political process in some cases, it is important to understand that law is rooted in politics.¹⁸⁹ Politicians make the law and have the ability to react to judicial decisions by enacting new laws. Given the current climate of sex offender policy, it is likely legislatures will respond to any court decisions with new laws and restrictions. For example, in late November 2007, the Georgia Supreme Court struck down the state's SORR as an unconstitutional taking as applied to an offender who was forced to move out of his home after a new daycare center opened within 1,000 feet of his home.¹⁹⁰ By early April 2008, the Georgia legislature had already sent an amended SORR to the governor for signing.¹⁹¹ Legislatures have numerous control meas-

187. See, e.g., GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991); STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* (2d ed., Univ. of Mich. Press 2004) (1974); MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950* (1987).

188. TUSHNET, *supra* note 187.

189. SCHEINGOLD, *supra* note 187.

190. *Mann v. Ga. Dep't of Corr.*, 653 S.E.2d 740, 755 (Ga. 2007).

191. Jake Armstrong, *New Sex Offender Restrictions Head to Governor*, GA. PUB. BROAD. NEWS, Apr. 4, 2008, http://news.mywebpal.com/news_tool_v2.cfm?show=localnews&pnID

ures at their disposal. As Wright enumerates in his article in the *New England Journal on Crime & Civil Confinement*, sex offenders are subject to a host of post-incarceration sanctions: registration, notification, GPS monitoring and tracking, civil commitment, chemical castration, and loitering laws.¹⁹² Politicians will be continually pressured to address the public's fears in some manner and will likely resort to another form of social control.

Furthermore, one of the most debilitating aspects of using the courts to fight for sex offender legislation reform is that the courts are limited by the Constitution. Legal arguments need to be framed in terms of "rights."¹⁹³ Courts strip the issues down to a narrow legal question. This has several important implications for sex offender legislation reform. Advocates of reform must attack residency restrictions in terms of sex offender rights. This framing of the issue, in turn, creates a social and political backlash. It is not socially or politically popular to be supporting "sex offender rights," so politicians and society in general refuse to support a legal battle to vindicate such abhorred rights. Therefore, even if a court decision strikes down the law, as seen in the preceding discussion, politicians feel the need to counteract the decision with additional measures to control the "risk" presented by sex offenders. Therefore, attempts to reform sex offender legislation through the court system may not result in the effective policy measures one would hope.

C. *New Proposals: Coherence and Education*

Given the limitations of the court system and the context in which these laws were promulgated, this author argues that sex offender reform can benefit from reframing the issue. If the courts are to be used as a tool in the battle for reform, more of an effort needs to be made to match legal rhetoric with more politically popular rhetoric than "the rights of sex offenders." Achieving coherence between legal and political rhetoric is not an easy task in the case of sex offender legislation reform, but important lessons can be learned from other

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192. Wright, *supra* note 108, at 29-47.

193. Rosenberg, *supra* note 187; Scheingold, *supra* note 187.

difficult reform efforts, such as the Kentucky school finance reform discussed below. Another possible strategy could be addressing the underlying source of the problem: the democratization of punishment.

As discussed in the preceding section, legal analysis of social issues generally focuses on "rights." In his study of school finance reform in Kentucky, scholar Michael Paris discusses how effective "translation" of a social issue into a cognizable legal claim is important.¹⁹⁴ In Kentucky, an ardent anti-taxation state, proponents of school finance reform took the focus off taxes and "Robin Hoodesque" equality, and instead focused the reform rhetoric on achieving an adequate, constitutionalized, "Kentuckian" education called for under the Kentucky Constitution.¹⁹⁵ The "translation" of what was essentially a tax issue into an issue about adequate education helped reformers gain support amongst the politicians and the public. This creates what Paris terms "cohesion."¹⁹⁶ Cohesion between the legal arguments and political rhetoric allowed the reform movement to gain support. This cohesion further helped the reform after a court struck down the entire Kentucky school system, because it allowed the executive and legislative branches to work together with reformers to carry out the court's decision.

Similarly, advocates of sex offender legislation reform need to translate the issue of "sex offender rights" into more politically popular rhetoric. As discussed in Parts II and III, rehabilitation and sex offender rights are not popular issues, whereas community safety and effective law enforcement are much more rhetorically powerful issues. Whether or not these topics are the best issues on which to focus is arguable, what is important is that legal mobilization efforts need to consider how the legal argument is framed and what impact that framing, or translation, has on the public at large and support for sex offender legislation reform. Articulating a cognizable legal right that also carries a powerful political punch when it comes to sex offender legislation may be difficult. Whereas the Kentucky Constitution provided a fundamental right to an "effi-

194. Michael Paris, *Legal Mobilization and the Politics of Reform: Lessons from School Finance Litigation in Kentucky, 1984-1995*, 26 L. & SOC. INQUIRY 631, 639 (2001).

195. *Id.*

196. *Id.* at 635-36.

cient" education, not many rights spring to mind that do not encompass sex offender rights in some way. Is there a right to "child safety" or "community safety?" Is there a right to "efficient law enforcement?" Advocates of sex offender legislation reform need to concentrate their efforts on creatively transforming "sex offender rights" into an acceptable political message *and* a viable legal argument.

Paris's article also points out another obstacle many reform efforts face when using litigation: the public perception that reformers are trying to "short circuit" the democratic process. In Kentucky, the Council for Better Education met this challenge in several ways, one of course being that they structured their argument in such a way as to appeal to the majority. But another strategic move helped combat this perception—selecting Bert T. Combs, a former governor of Kentucky, as lead counsel. As Paris notes, Combs had "an outstanding personal reputation for probity and honesty."¹⁹⁷ This selection no doubt helped curb the perception that reformers were using the legal process to short-circuit the legitimizing democratic process. Sex offender legislation reformers can learn a valuable lesson from the Council's careful selection of lead counsel. Currently, many of the lawsuits challenging residency restrictions have been brought by the ACLU. While the ACLU is a highly respected organization, it is also a polarizing organization at times. That polarization can hamper the kind of cohesiveness which made the Kentucky reform such a success. Victims' rights groups who do not agree with the restrictions could be a particularly powerful resource here. Legal mobilization efforts from these groups will likely not be perceived in the same negative light as efforts by the ACLU, and some of the stigmatization that comes with using the countermajoritarian courts can be assuaged.

One last lesson that may be taken from the example of school finance reform in Kentucky was the approach taken by the Prichard Committee in evaluating and studying the Kentucky school system. Paris describes the Prichard Committee's approach to school reform in contrast to the approach used by a majority of the nation. Paris describes the Prichard Committee's approach as well-deliberated and thoroughly studied,

197. *Id.* at 644.

embracing the idea of a common experience of all Kentucky school children, rather than the “meritocratic ‘get tough’ outlook” being promoted on the national stage in the 1980s.¹⁹⁸ Paris describes the general efforts of the rest of the nation as a “rush to reform” while the committee took time to deliberate and study.¹⁹⁹ Ultimately, Paris attributes much of the reform success to these early “deliberate” mobilization efforts which helped build a network of those committed to education reform.

The national “rush to reform” and “get tough outlook” of which Paris speaks exactly describes the atmosphere of reform when it comes to sex offenders. If the Prichard Committee’s deliberate mobilization was able to counteract the national current of “get tough” education reform, that strategy of study and deliberation may be helpful in the context of sex offender legislation reform. The intensive study of sex offender legislation involving participants from many different social and political groups may be useful in bringing about political support for a new approach to sex offender legislation.

If all of these strategies prove to be unworkable, efforts can be made to use the democratized system of criminal policy to enact effective, well-researched legislation. Advocates of crime policy reform often argue that educating the public is paramount in crime policy reform. Criminologist Jerome Skolnik, urges crime policy reform is possible, but advocates need to make a strong effort to “change public opinion even in this controversial sphere.”²⁰⁰ SORRs, like crime policy, are “a matter to be thought about, to be reasoned about, and argued, and not merely a matter to be left to feelings and sentiment.”²⁰¹ Skolnik points to public opinion research which distinguishes between “raw opinion” in the early stages of public debate, and responsible public judgment, when the public has the opportunity to consider alternatives and payoffs.²⁰² Opponents of the current sex offender policies need to inform the public of the alternatives and payoffs.

There is evidence that mobilization against the restrictions is

198. *Id.* at 652.

199. *Id.*

200. SKOLNIK, *supra* note 9.

201. *Id.*

202. *Id.*

happening. Patricia Wetterling, the mother of abducted child Jacob Wetterling, has said residency restrictions are an example of laws that “go too far” and are an example of politicians trying to “out-tough” one another.²⁰³ Victims’ rights groups have also started speaking out against the restrictions.²⁰⁴ Because of their unique position supporting the *victims* of sex offenses, these groups have the potential to effectively deliver information regarding SORRs and the negative impact the restrictions have. Research and education efforts need to continue if effective public and criminal policy is what is desired.

VI. CONCLUSION

This paper has outlined modern crime policy’s shift toward the democratization of punishment and the “simplistic and overly harsh” policies that have resulted from the American public’s fear of crime. SORRs have been presented as a prime example of this democratized policy. By framing SORRs in this context, this Note highlights the mechanisms responsible for the restrictions’ development and proliferation despite the evidence of their counterproductivity. Understanding the context in which these laws have developed will help shed light on the most useful avenues of sex offender legislation reform. Instead of focusing on sex offender rights, reform efforts need to be aimed at rhetoric which has both legal and political currency. Shaping the reform in a way which captures the most political and public support will ultimately make for a successful effort.

203. *Sex Offender Laws Have Unintended Consequences* (Minn. Public Radio June 18, 2007), available at <http://minnesota.publicradio.org/display/web/2007/06/11/sexoffender1/>.

204. Jenifer Warren, *Sex Crime Residency Laws Exile Offenders: California Voters Weigh Restrictions Similar to Those Passed in Iowa*, L.A. TIMES, Oct. 30, 2006, at A1.